Department of Finance
An Roinn Airgeadais
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Managing Public Money Northern Ireland

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Foreword

This document sets out the main principles for dealing with resources in public sector organisations in Northern Ireland. Its origin lies in the requirements for departments in central government, however, the same basic principles generally apply in all parts of the NI public sector, with adjustments for context as necessary. And everyone working in public services in NI should be aware of the need to manage and deploy public resources responsibly in the public interest.

The key themes remain unchanged from the previous version of this document. They are the fiduciary duties of those handling public resources to work to high standards of probity; and the need for the public sector to work in harmony with the NI Assembly ('the Assembly').

These principles are invariant.

However, the law, business practices, and public expectations all change. Public sector organisations can and should innovate in carrying out their responsibilities, using new technology and adopting good business practice. Throughout, the Assembly always expects the government and its public servants to meet the demanding standards set out in this document.

The Department of Finance (DoF) stands ready to help anyone who needs help in thinking through the issues.

Where necessary, DoF will also issue "Dear Accounting Officer" letters, to provide specific advice on issues of accountability, regularity and propriety, value for money and annual accounting exercises. The content of those letters carries the same force as the material contained in this document.

Above all, nothing in this document should discourage the application of sheer common sense.

The Treasury Officer of Accounts (TOA) in DoF is the owner of this document. The TOA will ensure that a high level review of the document is carried out on an annual basis at the start of each year and updated as necessary. The document will also be updated in line with any HMT updates and from time to time as the need arises.

Glossary

Name	Definition
Accounting Officer	A person appointed by DoF or designated by a department to be accountable for the operations of an organisation and the preparation of its accounts. The appointee is normally the head of a department or other organisation or the Chief Executive of a NDPB or other ALB. See Chapter 3.
Accounts Direction	A direction issued setting out the accounts which a body must prepare, and the form and content of those accounts.
Affirmative resolution	An Assembly procedure exercising control over secondary legislation (i.e. a Statutory Rule in the form of an Order or Regulation). The Assembly's positive approval is required before the instrument can take effect.
Annually Managed Expenditure, AME	Spending included in Total Managed Expenditure (TME), which does not fall within Departmental Expenditure Limits (DELs). Expenditure in AME is generally less predictable and controllable than expenditure in DEL.
Arm's Length Bodies, ALBs	Umbrella term to describe central government bodies that carry out discrete functions on behalf of departments, but which are controlled or owned by them. They include NDPBs and government-owned companies.
Assembly authority	The Assembly's formal agreement to authorise an activity or expenditure.
BBCNI	Better Business Cases Northern Ireland. DoF guidance on the appraisal and evaluation of projects, policies and programmes, which supplements the Treasury guidance in the Green Book.
Budget Acts	Annual Acts of the Assembly which give formal approval to departmental Estimates. The Budget Bill when enacted becomes the Budget Act.
Capital spending	Spending on the purchase of assets (including buildings, equipment and land), above a certain threshold (set by the body concerned), which are expected to be used for a period of at least one year. Items valued below it are not counted as capital assets, even where they have a productive life of more than one year.
CCAB	Consultative Committee of Accounting Bodies comprising CIPFA, ICAEW, CAI, ICAS and ACCA.
Central government bodies	Departments and departmental executive agencies, NDPBs, and Health and Social Care organisations. The Office for National Statistics (ONS) determines which bodies are classified to central government.
Chief Executive	Title for the head of an ALB, normally appointed as Accounting Officer.
Civil Service Code of Ethics	A concise statement setting out the framework within which all NI civil servants work, and the core values and standards they are expected to uphold.

Clawback	The concept that where an asset financed by public money is sold, all or part of the proceeds of the sale should be returned to the NI Consolidated Fund.
Commercial banks	Bodies which provide banking services, including private sector banks and building societies.
Common law	One of the historical sources of law in the United Kingdom. Often used to distinguish judge-made case-law and longstanding legal principles from legislation.
Comptroller and Auditor General for Northern Ireland, C&AG	The head of the Northern Ireland Audit Office, appointed by the Crown, and an Officer of the Assembly. As Comptroller, the C&AG's duties are to authorise the issue by DoF of public funds from the NI Consolidated Fund to government departments and others. As Auditor General, the C&AG certifies the accounts of all government departments and most other public bodies, and carries out value for money examinations. See Annex 1.1.
Concordat	A long-standing agreement between the Treasury and the Public Accounts Committee that continuing functions of government should be defined in specific statute. See Annex 2.3.
Consolidated Fund Extra Receipts, CFERs	Income, or related cash, that passes through a department's accounts but may not be retained by the department and is surrendered to the NI Consolidated Fund.
Consolidated Fund Standing Services	Payments for services which the Assembly has decided by statute should be met directly from the NI Consolidated Fund, rather than financed annually by voted money.
Contingent liabilities	Potential liabilities that are uncertain but recognise that future expenditure may arise if certain conditions are met or certain events happen.
Control Total	The measure used by the government to plan public expenditure for the medium term, and monitor and control it within each financial year.
Corporate governance	The system and principles by which organisations are directed and controlled.
Cost of capital	The cost to the government of financing investment, i.e. the rate at which it borrows. This is included in the calculation when setting fees and charges and is calculated as a percentage of the net asset value.
Data Protection Act	Legislation (1998) which governs how organisations can use personal information which they hold.
Delegated authority	A standing authorisation by DoF under which a body may commit resources or incur expenditure from money voted by the Assembly without specific prior approval from DoF. Delegated authorities may also authorise commitments to spend (including the acceptance of contingent liabilities) and to deal with special transactions (such as write-offs) without prior approval.
Departmental Expenditure Limit, DEL	Expenditure limit within which a department has responsibility for resource allocation (subject to DoF agreement and rules), though some elements may be demand led.

Depreciation	A measure of the wearing out, consumption or other reduction in the useful life of a fixed asset whether arising from use, passage of time or obsolescence through technological or market changes.
Derivative	A financial instrument derived from another, usually sold singly or in packages to promote hedging, e.g. interest rate and exchange rate options.
Detective controls	Controls designed to detect error, fraud, irregularity or inefficiency.
Discretionary services	Services that are not required by statute but are provided, often into competitive markets.
Estimate	A statement of how much money departments need in the coming financial year, and for what purpose(s), by which Assembly authority is sought for the planned level of expenditure and receipts in a department.
Excess Vote	A request for resources which, after the year end, is found to have financed expenditure not agreed by the Assembly, whether because it exceeds the prescribed amount of expenditure or because part is outside the descriptions the Assembly has approved.
Feasibility	The principle that proposals with public expenditure implications should be implemented accurately, sustainably and to the intended timetable.
Freedom of Information	Legislation designed to promote public access to a wide range of public sector data and information (but not personal data).
Full cost	The total cost of all the resources used in providing a good or service in any accounting period (usually one year). This includes all direct and indirect costs of producing the output (cash and non-cash costs) including a full proportional share of overhead costs and any selling and distribution costs, insurance, depreciation, and the cost of capital, including any appropriate adjustment for expected cost increases.
Funding	Transferring monies to an account, so that they are available when needed for payments.
Generally Accepted Accounting Practice in the UK, UK GAAP	The accounting and disclosure requirements of the Companies Act and pronouncements by the Financial Reporting Council (FRC) (principally accounting standards and FRC abstracts), supplemented by accumulated professional judgements.
Governance Statement	An annual statement which Accounting Officers are required to make as part of the Annual Report and Accounts on a range of risk and control issues.
Grant	Payments made by departments to outside bodies to reimburse expenditure on agreed items or functions, and often paid only on statutory conditions.
Grant in aid	Regular payments made by departments to outside bodies (usually NDPBs) to finance their operating expenditure on agreed items or functions.
Green Book	Guidance issued by Treasury on how to appraise policies, programmes and projects, which is supplemented by DoF's guidance in BBCNI.

Hedging	Transaction(s) designed to reduce or eliminate financial risk, e.g. because of interest rate or exchange rate fluctuations.
International Financial Reporting Standards, IFRS	International accounting standards reflected in UK GAAP. Adapted by government for the public sector.
Irregular expenditure outside the ambit of a vote	Expenditure outside the ambit of a vote, i.e. resources spent on matters which were not included in the relevant ambit in the departmental Supply Estimate and therefore the Assembly has not authorised. See Section 5.4.
Joined-up government	Arrangements under which policy-making and service delivery are unhindered by departmental boundaries.
Judicial review	A procedure by which the courts can review the legality of decisions and actions of public authorities, including the government. Judicial review looks at the fairness of the decision-making process rather than the merits of the decision itself.
Levies	Licences to operate public goods, often set to recover associated costs such as supervision by a regulator.
Misstatement	A statement which is untrue. The maker of a misstatement can be sued for damages by those who have relied on the misstatement, but only if in the circumstances it was reasonable to rely on it.
Northern Ireland Audit Office, NIAO	Office of the C&AG which audits resource accounts. See Annex 1.1.
Northern Ireland Consolidated Fund, NICF	The Executive's "current account", managed by DoF, through which passes most of the Executive's payments and receipts.
Northern Ireland Estimates Manual	A practical reference guide issued by DoF which provides detailed information on the Estimates policy and process.
Northern Ireland Guide to Expenditure Appraisal and Evaluation, NIGEAE	Former DoF guide to the appraisal, evaluation, approval and management of policies, programmes and projects. While largely superseded by BBCNI it remains a useful reference particularly for legacy cases.
Northern Ireland National Insurance Fund, NINIF	A government fund used to meet the cost of contribution-based benefits, financed mainly by contributions paid by employers and individuals.
National Loans Fund, NLF	The fund through which passes most of the UK government's borrowing transactions and some domestic transactions.
Non-Departmental Public Body, NDPB	A body with a role in the processes of government, but not a government department or part of one. NDPBs accordingly operate at arm's length from Ministers.
Notional costs of insurance	A cost which is taken into account in setting fees and charges to improve comparability with private sector service providers. The charge takes account of the fact that public bodies do not generally pay an insurance premium to a commercial insurer.
Office for National Statistics, ONS	The independent body responsible for collecting and publishing official statistics about the UK's society and economy.
Orange Book	The informal title for *Management of Risks: Principles and Concepts*, guidance issued by DoF for public sector bodies.

Overdraft	An account with a negative balance.
Partnership Agreement	Relationship document between a department and their ALBs laying out the governance structures and assurance framework (previously Management Statement Financial Memorandum). Roles and responsibilities are also outlined.
Prerogative powers	Powers exercisable under the Royal Prerogative, i.e. powers which are unique to the Crown, as contrasted with common-law powers which may be available to the Crown on the same basis as to natural persons.
Primary legislation	Acts which have been passed by the Westminster Parliament and, where they have appropriate powers, the Scottish Parliament and the Assembly. Known as Bills until they have received Royal Assent.
Propriety	The principle that patterns of resource consumption should meet high standards of public conduct, and robust governance and respect the Assembly's intentions, conventions and control procedures, including any laid down by the PAC. See Chapter 2 Box 2.5.
Public Accounts Committee, PAC	A committee of the Assembly which examines the accounting for and the regularity and propriety of Executive expenditure. It also examines the economy, efficiency and effectiveness of expenditure.
Public corporation	A trading body controlled by central government, local authority or other public corporation that has substantial day to day operating independence. See Section 7.8.
Public Dividend Capital, PDC	Finance provided by government to public sector bodies as an equity stake; an alternative to loan finance.
Rate of return	The financial remuneration delivered by a particular project or enterprise, expressed as a percentage of the net assets employed.
Regularity	The principle that resource consumption should accord with the relevant legislation, delegated authorities and this document. See Chapter 2 Box 2.5.
Relationship document	A document setting out the accountabilities and relationships of Agencies and ALBs with their sponsor departments – see Annex 7.2.
Resource Budget	The means by which the Executive plans and controls the expenditure of resources to meet its objectives.
Restitution	A legal concept which allows money and property to be returned to its rightful owner. It typically operates where another person can be said to have been unjustly enriched by receiving such monies.
Return on Capital Employed, ROCE	The ratio of profit to capital employed of an accounting entity during an identified period. Various measures of profit and of capital employed may be used in calculating the ratio.
Royal Charter	The document setting out the powers and constitution of a corporation established under prerogative power of the monarch acting on Privy Council advice.
Rose Book	Guidance on the management of knowledge assets such as intellectual property, research and development, and data, in government.

Second Stage	The second time a Bill enters the Assembly. Debate on the Bill is held and the whole principle on which it is based is either affirmed or denied by the Assembly.
Secondary legislation	Laws, including orders and regulations, which are made using powers in primary legislation. Normally used to set out technical and administrative provision in greater detail than primary legislation, they are subject to a less intense level of scrutiny.
Service Level Agreement, SLA	Agreement between parties, setting out in detail the level of service to be performed. Where agreements are between central government bodies, they are not legally a contract but have a similar function.
Spending review	A UK cross-government review of departmental aims and objectives and analysis of spending programmes which results in the allocation of multi-year budgetary limits.
State Aid	In the UK, following EU Exit, State Aid is a subsidy to an enterprise involved in the trade of goods or wholesale electricity or, when the Article 10(2) of the Windsor Framework does not apply, the production of and trade in agricultural and fisheries products, where the subsidy has the potential to distort trade and competition between Northern Ireland and the European Union. See Annex 4.7.
Statement of Excesses	A formal statement detailing departments' overspends and irregular spending as identified by the C&AG as a result of undertaking annual audits.
Subhead	Individual elements of departmental expenditure identifiable in the Estimates as single cells, for example cell A1 being administration costs within a particular line of departmental spending.
Subsidy	Financial assistance provided to an enterprise, directly or indirectly, that has the potential to distort investment, trade and competition in goods or services either domestically or internationally.
Subsidy Control Regime	A set of legally binding rules, procedures and processes that allow public authorities to award subsidies to achieve public policy objectives, whilst also limiting the negative effects of these subsidies on domestic and international competition and investment.
Supply	Resources voted by the Assembly in response to the Estimates, for expenditure by government departments.
Supply Resolution	The process where the Assembly are asked to consider and vote on a motion seeking their approval to the total amounts of cash and resources in the Estimates.
Target rate of return	The rate of return required of a project or enterprise over a given period, usually at least a year.
Trading fund	Public sector organisation that has a financing framework allowing it to meet outgoings from commercial revenues. In national accounts they are normally classified as public corporations.
Total Managed Expenditure, TME	The HM Treasury budgeting term which covers all current and capital spending carried out by the public sector (i.e. not just for central departments).

Value for money	The process under which organisation's procurement, projects and processes are systematically evaluated and assessed to provide confidence about suitability, effectiveness, prudence, quality, value and avoidance of error and other waste, judged for the public sector as a whole.
Virement	The process through which funds are moved between subheads of Estimates such that additional expenditure on one is met by savings on one or more others.
Vote	The process by which the Assembly approves funds in response to Estimates.
Voted expenditure	Provision for expenditure that has been authorised by the Assembly. The Assembly 'votes' authority for public expenditure through the Estimates process. Most expenditure by central government departments is authorised in this way.
Windfall	Monies received by a department which were not anticipated in the spending review.

1 Responsibilities

Under the Northern Ireland Act 1998 the relationship between the Northern Ireland Executive, exercising through Ministers the Executive powers on transferred matters, and the Northern Ireland Assembly, with legislative powers representing the public, is central to how public resources are managed. Ministers implement government policies, and deliver public services, through public servants; but are able to do so only where the Assembly grants the right to raise, commit and spend resources. It falls to the Department of Finance (DoF) to respect and secure the rights of both the Assembly and the Executive in this process (and where appropriate to ensure compliance with HM Treasury guidance). Resources are provided by central government and hence it is expected that the public sector in Northern Ireland will operate within the broad framework established by HM Treasury.

1.1. Managing public money: principles

1.1.1 The principles for managing public resources run through many diverse organisations delivering public services in Northern Ireland (NI). The requirements for the different kinds of body reflect their duties, responsibilities and public expectations. The demanding standards expected of public services are set out in Box 1.1.

Box 1.1: Standards expected of all public services

honesty	impartiality	openness	accountability	accuracy
fairness	integrity	transparency	objectivity	reliability

carried out

- in the spirit of, as well as to the letter of, the law;
- in the public interest;
- to high ethical standards; and
- achieving value for money.

1.1.2 The principles in this handbook complement the guidance on good governance in the extant *Corporate Governance in Central Government Departments: Code of Good Practice (NI) ("the Corporate Governance Code")* applying to central government departments.

1.1.3 Much of this document is about meeting the expectations of the Assembly. These disciplines also deliver accountability to the general public, on whose behalf the Assembly operates. The methods of delivery used should evolve as technology permits. Public services should carry on their businesses and account for their stewardship of public resources in ways appropriate to their duties and context and conducive to efficiency.

1.2. Ministers

1.2.1 In the absence of a written constitution, the powers used to deploy public resources are a blend of common law, primary and secondary legislation, Assembly procedure, the duties of Ministers and other long-standing practices. In Northern Ireland this includes the Northern Ireland Act 1998, the extant Ministerial Code, the Departments (Northern Ireland) Order 1999 (N.I. 1) and the Departments Act (Northern Ireland) 2016. This mix may of course change from time to time.

1.2.2 As the *Corporate Governance Code* makes clear, the Minister in charge of a department is responsible for its policy and business as part of the overall policy of the Executive. They:

- determine the policies of the departmental group;
- choose which areas of business to delegate to officials, and on what conditions;
- look to the department's Accounting Officer (see Chapter 3) to delegate within the department to deliver the Minister's decisions and to support the Minister in making policy decisions and handling public funds; and
- have general oversight of other bodies on whose behalf they may answer in the Assembly, including the department's Arm's Length Bodies (ALBs).

1.2.3 Ministers should heed the advice of their Accounting Officers about the proper conduct of public business. See Section 3.5 for how the Minister may direct the Accounting Officer to proceed with a proposal if a point of this kind cannot be resolved.

1.2.4 FM and dFM may under a determination, define areas of their Department's business, or of its Assembly work, to their Junior Ministers. Ministers have wide powers to make policies and to instruct officials.

1.2.5 In most cases, only Ministers can propose legislation to the Assembly to use public funds to pursue their policy objectives. Specific primary legislation is normally required to spend public funds (see Section 2.1). Similarly public funds may be drawn, only with Assembly authority, and only as the Assembly has authorised. Legislation can also be proposed however through a Private Members Bill gaining such a recommendation by negotiation from the Finance Minister and by extension the Executive.

1.3. The Assembly

1.3.1 The Assembly approves the legislation which empowers Ministers to carry out their policies. It also allows finance for services when it approves each year's Estimates. See the *Northern Ireland Estimates Manual* for more information.

1.3.2 From time to time, the Assembly may examine Executive activity. Departmental Committees examine policies, expenditure, administration and service delivery in defined areas. The Public Accounts Committee (PAC) (see Section 3.6) examines financial accounts, scrutinises value for money and generally holds the Executive and its public servants to account for the quality of their past administration.

1.4. The Department of Finance (DoF)

1.4.1 The Assembly looks to DoF to make sure that:

- departments use their powers only as it has intended; and
- revenue is raised, and the resources so raised spent, only within the agreed limits.

1.4.2 Hence it falls to DoF to:

- set the ground rules for the administration of public money; and
- account to the Assembly for doing so.

1.4.3 This document sets out how DoF seeks to meet these Assembly expectations. The key requirements are regularity, propriety, value for money and feasibility (see Box 3.2). DoF:

- manages the Northern Ireland financial planning system and budget process;
- oversees the operation of the Estimates through which departments obtain authority to spend year by year;
- sets the standards to which NI central government organisations publish Annual Reports and Accounts in line with HM Treasury's *Government Financial Reporting Manual (FReM)*. This adapts International Financial Reporting Standards (IFRS) to take account of the public sector context; and
- sets Accounts Directions for the different kinds of central government organisations whose Annual Report and Accounts are laid in the Assembly.

1.5. Departments

1.5.1 Within the standards expected by the Assembly, and subject to the overall control and direction of their Ministers, departments have considerable freedom about how they organise, direct and manage the resources at their disposal. It is for the Accounting Officer in each department, acting within Ministers' instructions, and supported by their boards, to control and account for the department's business.

1.5.2 A departmental board, normally chaired by the departmental Accounting Officer, helps lead and manage the business of each department. Boards can bring to bear skills and experiences from elsewhere in, and outside of, the public sector (see Section 4.1).

1.5.3 Within each department, its staff, resources and assets should be organised to deliver the agreed Programme for Government (PfG). There should be adequate delegations, controls and reporting arrangements to provide assurance to the board, the Accounting Officer[1] and ultimately Ministers about what is being achieved, to what standards and with what effect. These arrangements should provide timely and prompt management information to enable plans to be adjusted as necessary. Similarly Ministers should have enough evidence about the impact of their policies to decide whether to continue, modify or end them. This is discussed further in Chapter 4.

1.5.4 In supporting Ministers, civil servants should provide politically impartial advice. Should they be asked to carry out duties which appear incompatible with this obligation, the Accounting Officer should take the matter up with the Minister concerned (*see* also the NICS Code of Ethics*)*.

[1] If there is a change of Accounting Officer in the course of the year, the Accounting Officer in place at the year end takes responsibility for the whole of the year's Annual Report and Accounts, using assurances as necessary.

1.5.5 Departments often operate with and through a variety of partners to deliver their Ministers' policies. It is important that these relationships operate in the public interest: see Chapter 7.

1.6. The Comptroller and Auditor General for Northern Ireland (C&AG)

1.6.1 Supported by the Northern Ireland Audit Office (NIAO), the Comptroller and Auditor General for Northern Ireland (C&AG) operates independently to help the Assembly scrutinise how public funds have been used in practice. Further information about the role of the NIAO is available on their website and in Annex 1.1.

1.6.2 The C&AG provides the Assembly with two sorts of audit:

- financial audit of the accounts of departments, agencies and the majority of ALBs covering:
  - assurance that accounts have been properly prepared and are free of material misstatements; and
  - confirmation that the underlying transactions have appropriate Assembly authority;
- Value for Money (VFM) reports assessing the economy, efficiency and effectiveness with which public money has been deployed in selected areas of public business. A programme of these reviews covers a variety of subjects over a period, taking account of the risks to value for money and the Assembly's interests.

1.6.3 The C&AG has a general right to inspect the books of a wide variety of public organisations to further these investigations. When the NIAO investigates any public sector organisation, it should get full co-operation in the provision of papers and other information. It is good practice to draw NIAO's attention to the confidentiality of any sensitive documents provided in this process. The Treasury Officer of Accounts can provide advice around any issues on sensitive information, and can also engage with the C&AG if necessary. It is however for the independent C&AG to judge what material can be published in the public interest.

1.6.4 In addition, the C&AG publishes other independent reports to the Assembly. The PAC (see Section 3.6) may hold hearings to examine evidence on any of these reports and on other related matters.

1.7. The Northern Ireland Public Services Ombudsman (NIPSO)

1.7.1 Public sector organisations are expected to deliver reliable services of good quality. Independent of both the government and the health service, the Northern Ireland Public Services Ombudsman (NIPSO) provides a service to the public by investigating complaints that government departments, a range of other public organisations and the health service in Northern Ireland have not acted properly or fairly, or have provided a poor service. The role of the NIPSO is discussed further in Section 4.12.

Annex 1.1 The Comptroller and Auditor General for Northern Ireland

A1.1 Annex 1.1 The Comptroller and Auditor General for Northern Ireland

Supported by staff of the Northern Ireland Audit Office (NIAO), the Comptroller and Auditor General for Northern Ireland (C&AG) is the independent auditor of nearly all central government organisations. Using extensive statutory rights of access to records, the C&AG provides direct advice and assurance to the Assembly.

A1.1.1 The C&AG is appointed by The King on the nomination of the Assembly. They are responsible for the audit of most NI central government organisations. This work is carried out under their direction by NIAO staff or by contracting out. NIAO is in the public sector but independent of central government.

A1.1.2 The C&AG can only be removed from office by The King if the Assembly so resolves and the resolution is passed with the support of at least two thirds of Assembly members. The C&AG has complete discretion in the discharge of their statutory audit functions. Responsibility for all audit opinions and judgements rest with the C&AG alone. The C&AG is a corporation sole and the NIAO supports the C&AG in the discharge of their functions.

A1.1.3 The NIAO, created by the Audit (Northern Ireland) Order 1987 is funded by the Assembly. The C&AG prepares an Estimate and submits it to the Assembly's Audit Committee, which after examining it and agreeing any modifications with the C&AG, lays it before the Assembly.

Audit

A1.1.4 In order to carry out financial audit work, the C&AG has extensive statutory rights of access to information held by a wide range of public sector organisations. This material is also required to compile Whole of Government Accounts (WGA), and extends to the records of many contractors and recipients of grants. The C&AG also has a right to obtain information about, and explanations of, any of this evidence.

A1.1.5 The C&AG is responsible for the financial audit of virtually all central government organisations, both their expenditure and revenue, and reports on them to the Assembly. The C&AG may be appointed the auditor of government companies as a requirement of statute or on an 'agreement' basis with an individual entity as necessary. Financial audits are carried out in accordance with International Standards on Auditing (UK and Ireland).

A1.1.6 In addition, by virtue of Article 8 of the Audit (Northern Ireland) Order 1987 the C&AG may carry out audits of particular areas of central government expenditure to establish whether public funds have been used economically, efficiently and effectively. Selection of studies within NIAO's public reporting programme – having taken account of any proposals made by the Public Accounts Committee – is entirely at the C&AG's discretion, as is the manner in which they are carried out and reported. The C&AG has the same level of access for these examinations as for financial audit. Central government bodies must ensure that

such access is provided for within the terms and conditions of contracts and agreements with third party contractors, sub-contractors and grant recipients.

A1.1.7 However, the Order does not entitle the C&AG to question the merits of the policy objectives of the department or body concerned. Papers primarily concerned with the formulation of policy by Ministers will not normally be relevant to VFM studies or other public reports, therefore, the C&AG is not generally given access to Executive Committee papers or minutes (or those of Executive sub-groups). Requests for such papers should be discussed in the first instance with the Treasury Officer of Accounts, who will then engage with TEO as necessary.

A1.1.8 The Public Accounts Committee (PAC) may decide to invite witnesses to discuss the findings of both NIAO's financial and other public reports. The PAC may also initiate other hearings on related matters. The role of the PAC is further discussed in Chapter 3.

The Comptroller function

A1.1.9 A small but important part of the C&AG's responsibilities is oversight of payments from the Northern Ireland Consolidated Fund (NICF). In response to requests from DoF, NIAO staff establish that the sums paid out of the NICF each business day are made in accordance with legislation. Once the authorisations (credits) are given, DoF may make drawings from these funds to finance the Executive's commitments.

2 Use of Public Funds

This Chapter explains the process for Assembly authorisation of public resources. The Assembly consents in principle to the use of public funds through legislation to enable specified policies. It then approves use of public resources to carry out those policies year by year by approving Estimates. Only rarely can lesser authority suffice. At the close of each financial year, the Assembly expects a clear account of the use of the public funds it has authorised. The Assembly expects the Department of Finance (DoF) to oversee the operation of these controls. The Public Accounts Committee (PAC) may investigate specific issues further.

2.1. Power to commit public funds

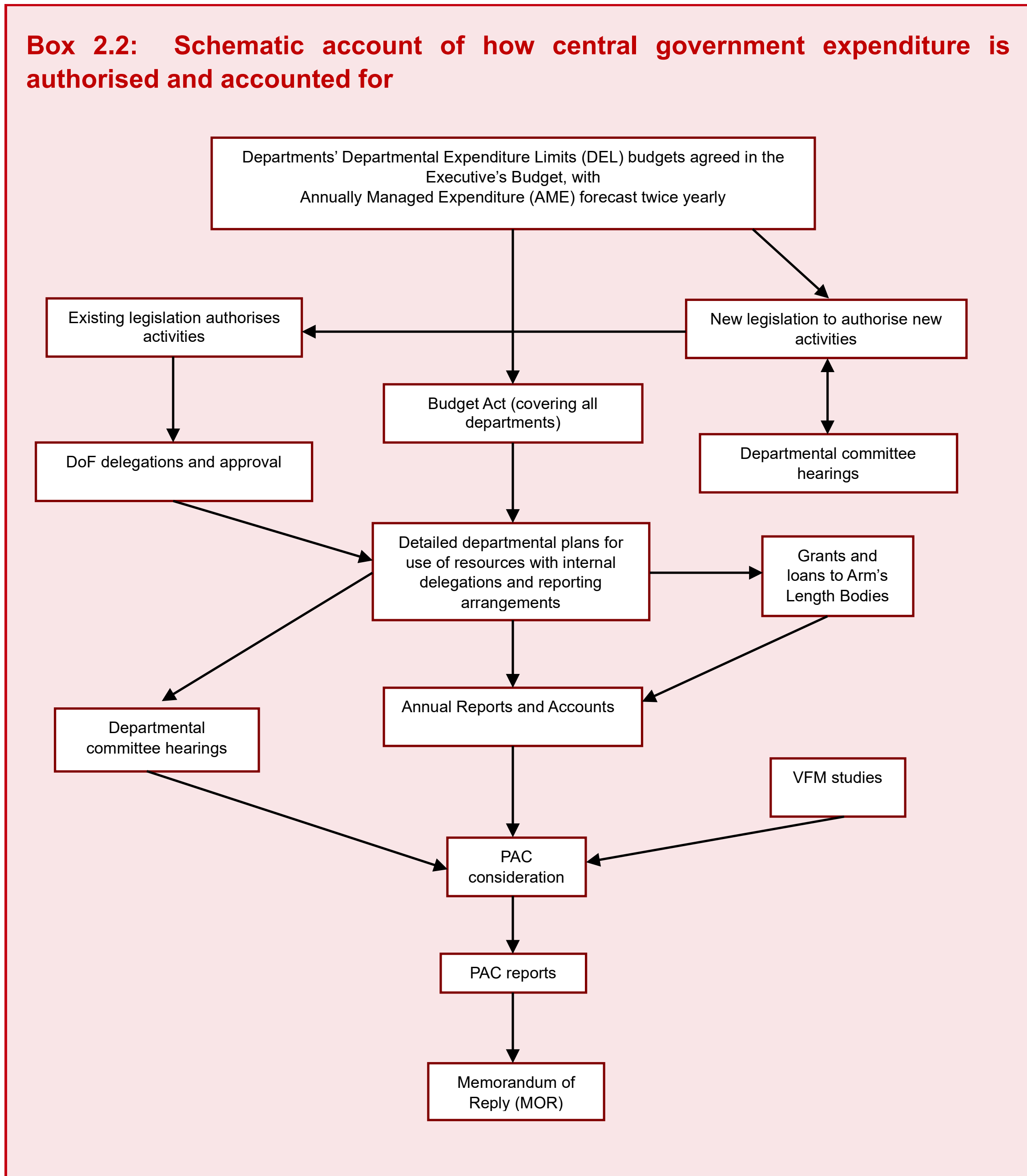
2.1.1 The Northern Ireland departments are statutory corporations and as such have no powers except those which are conferred on them by or under statute. Even if they have the legal power to do something they will only be able to pay for it if they have the financial authority to expend the money. This must be provided through the Assembly which provides the necessary resources through the Estimate system and confirming Budget Act unless, exceptionally, a statute authorises a direct charge on the Northern Ireland Consolidated Fund (NICF). In the Concordat of 1932 (see Annex 2.3) HM Treasury undertook to aim that departments would respect this requirement. DoF has agreed to observe this principle. Therefore for expenditure to be properly incurred, there should be specific statutory authority for the activity or service as well as authority through the Budget Act for the related expenditure.

Box 2.1: Requirements for use of public funds

- budget cover agreed in the Executive's budget process;
- with a few exceptions, Assembly authorisation for each year's drawdown of funds through the Estimate, which is then approved as a Budget Act (see Section 2.2);
- adequate DoF consents (see Section 2.3);
- assurance that the proposed expenditure is regular and proper (Section 2.4); and
- sufficient specific legal powers - though see Section 2.6 for some limited exceptions.

2.1.2 DoF runs the control process because the Assembly expects DoF to control public expenditure. This includes ensuring spending controls are adhered to, the requirements of regularity and propriety are met and relevant guidance is applied, e.g. the *Consolidated Budgeting Guidance* and the *In-year Monitoring of Public Expenditure Guidelines*, published each year by DoF. As DoF controls public expenditure, therefore all legislation with expenditure implications, both primary and secondary, must have the support of DoF (see Annex 2.1).

2.1.3 Box 2.2 outlines how public expenditure is controlled by DoF, authorised by the Assembly and accounted for in public. It is important to note that budget provision in the Executive's Budget does not alone provide adequate authorisation, nor does the existence of specific legal authority. Assembly approval for expenditure, and issue funds to finance it is also essential. The PAC process is further examined in Chapter 3. The Estimates process is designed to achieve this. Chapter 5 examines this further.



Box 2.2: Schematic account of how central government expenditure is authorised and accounted for

2.2. Using the Estimate

2.2.1 The requirements in Box 2.1 are to some extent interrelated. The Accounting Officer of a department (see also Chapter 3) is responsible for ensuring that:

- the Estimate(s) presented to the Assembly for the department's annual expenditure are within the statutory powers and within the Executive's expenditure plans;
- the use of resources is within the ambit of the vote and consistent with the Estimate(s); and
- they answer to the Assembly for stewardship of these responsibilities.

2.3. DoF consent

2.3.1 Departments also need DoF consent before undertaking expenditure or making commitments which could lead to expenditure (see Annex 2.2). Usually DoF agrees some general approvals for each department subject to delegated limits and/or exclusions.

2.3.2 Some common approaches to setting delegations are shown in Box 2.3 and are discussed further in Annex 2.2. It is good practice to review delegations from time to time to make sure that they remain up to date and appropriate. Delegations can be tightened or loosened at reviews, depending on experience.

Box 2.3: Examples of approaches to delegated authorities

- A delegated limit, below which consent is delegated to the department, and above which spending proposals still require specific DoF consent;
- objective criteria for exceptions requiring specific DoF scrutiny or approval; and
- a sampling mechanism to allow specimen cases to be examined.

2.3.3 In turn departments should agree with each of their Arm's Length Bodies (ALBs – the public sector organisations they sponsor or finance) a similar set of delegations appropriate to their business (see also chapter 7). Delegations to ALBs should never be greater than the delegated limits agreed between the Treasury and the sponsor department.

2.3.4 There is an important category of expenditure commitments for which DoF cannot delegate responsibility. It is transactions which set precedents, are novel, potentially contentious or could cause repercussions elsewhere in the public sector. Box 2.4 gives examples. DoF consent to such transactions should always be obtained before proceeding, even if the amounts in question lie within the delegated limits. If there is any doubt as to whether DoF approval is required, departments should discuss the issue with DoF, as it is ultimately DoF, on behalf of the Assembly, which determines what falls into this category.

Box 2.4: Examples of transactions requiring explicit DoF consent

- extra statutory payments similar to but outside statutory schemes;
- extra statutory payments in settlement of legal disputes out of court;
- ephemeral ex gratia payment schemes, e.g. payments to compensate for official errors;
- special severance payments, e.g. compromise agreements in excess of contractual commitments;
- non-standard payments in kind;
- unusual financial transactions, e.g. imposing lasting commitments or using tax avoidance; and
- unusual schemes or policies using novel techniques.

2.3.5 It is improper for a public sector organisation to spend or make commitments outside the agreed delegations and if occurs will likely result in a finding that that spend is irregular. DoF may subsequently agree to give retrospective consent, but only if the expenditure in question would have been agreed if permission had been sought at the right time.

2.3.6 Sometimes legislation calls for explicit DoF consent, e.g. for large or critical projects. In such cases it is unlawful to proceed without DoF consent - and DoF consent cannot be given retrospectively.

2.3.7 Neither unlawful nor irregular expenditure can be authorised by Assembly approval for the relevant Estimate, so the Annual Report and Accounts must be noted accordingly. When such expenditure comes to light, both DoF and the NIAO should be alerted. If DoF gives retrospective consent to irregular expenditure, the transaction is treated in the Annual Report and Accounts as if it had achieved consent in time. Where there is a statutory requirement for DoF consent, however, retrospective authority for improper (unlawful) expenditure is not possible, Section 5.4 explores this further.

2.4. Regularity and Propriety

2.4.1 The concepts of regularity and propriety, fundamental to the right use of public funds, are set out in Box 2.5. The term regularity and propriety is often used to convey the idea of probity and ethics in the use of public funds – that is, 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 - 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.

Box 2.5: Regularity and Propriety

Regularity: compliant with the relevant legislation and wider legal principles such as subsidy control and procurement law, delegated authorities and following the guidance in this document.

Propriety: meeting high standards of public conduct, including robust governance and the relevant Assembly expectations, especially transparency.

2.4.2 Each departmental Accounting Officer should make sure that the Minister(s) in their 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 secure value for public money.

2.4.3 Should a Minister seek a course of action which the Accounting Officer cannot reconcile with any aspect of these requirements, they should seek instructions in writing from the Minister (known as a Ministerial Direction) before proceeding (see Chapter 3).

2.4.4 Should departments need to resolve an issue about regularity or propriety, they should consult the relevant DoF Supply Officer. Similarly, ALBs should consult their sponsor departments about such issues, and the department concerned may in turn consult DoF.

2.4.5 Neither improper nor irregular expenditure achieves the standards that the Assembly expects. So any such expenditure must be noted in the department's Annual Report and Accounts. If the discrepancy is material it can result in a qualification to the accounts. When any expenditure of this kind comes to light, it should be drawn to the attention of both the NIAO and DoF. The immediate follow up action is to identify the source of any systematic problems so that there is no recurrence. The PAC may also call the Accounting Officer to explain the matter at a public hearing.

2.5. Securing adequate legal authority

2.5.1 The Assembly usually authorises spending on a specific policy or service by approving bespoke legislation setting out in some detail how it should work. Departments should ensure that both they and their ALBs have adequate legal cover for any specific actions they undertake.

2.6. Using the authority of the Budget Act

2.6.1 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 the Budget Act. Such Acts cover the whole range of voted expenditure in the Estimates. The Assembly 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.

2.6.2 The Budget Act for a given year provides Assembly 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 Assembly 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 2.6. The list is not exhaustive.

Box 2.6: Resource use which a Budget Act may authorise

- expenditure on administration: employment costs, rent, cleaning etc;
- lease agreements, e.g. 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; and
- resources used under prerogative powers such as international treaty obligations.

2.6.3 With DoF approval, it is sometimes possible to rely on the Budget Act alone for certain other expenditure in order to avoid an undue burden on the Assembly timetable. So the Assembly is routinely prepared to authorise certain expenditure through the Budget Act alone, subject to the conditions:

- services or initiatives lasting no more than two years, e.g. a pilot study or one off intervention
- expenditure of no more than £1.5m a year (amount adjusted from time to time)

Provided that there is no specific legislation covering these matters before the Assembly and existing statutory restrictions are respected.

These conditions are demanding. DoF consent is required before they may be relied on.

2.7. New services

2.7.1 When Ministers decide on a new activity, such a new service normally requires both specific legislative authority and cover in the Budget Act. However, the authority of the Budget Act alone can suffice if the conditions in Paragraph 2.6.3 are satisfied.

2.7.2 Nevertheless, sometimes Ministers are anxious to make an early start on a new activity which is expected to continue but for which explicit Assembly 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 the Assembly has assented. Specific Assembly consent is always required.

2.7.3 Relying on the Budget Act for a new service ahead of full and specific legal authority is controlled by DoF and must pass two main tests:

- the proposed expenditure must be genuinely urgent and in the public interest, i.e. there must be wider benefits to outweigh the convention of awaiting Assembly authority; and
- the planned legislation must be certain, or virtually certain, to pass into law, for example, the Bill must have successfully passed Second Stage in the Assembly i.e. there is an Assembly expression of support for the principle of the Bill.

Annex 2.1	DoF approval of legislation
Annex 2.2	Delegated authorities
Annex 2.3	PAC Concordat of 1932
Annex 2.4	New services

A2.1 Annex 2.1
DoF approval of legislation

This Annex sets out how departments should clear proposed legislation with DoF 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 the Legislation Programme Secretariat (LPS), TEO and departmental Assembly clerks.

Consulting DoF

A2.1.1 When preparing legislation, departments must consult DoF:

- about any provisions to be included in legislation with financial and public service resource implications at the key stages where Ministerial and/or Executive approval is required. These are:
  - before any policy proposals for legislation with financial implications are submitted to the Executive for approval;
  - before instructions are sent to the Office of Legislative Counsel (OLC) for the drafting of legislation;
  - before the issue of draft legislation for consultation; and
  - before the making and laying of subordinate legislation in the Assembly, or the introduction of a Bill to the Assembly.

  In the case of subordinate legislation, further DoF approval is not required where this has been given at primary legislation stage and provides sufficient cover for the proposed expenditure.
- on the terms of Explanatory and Financial Memoranda; and
- subsequently about any changes that are proposed to the agreed financial provisions, e.g. during a Bill's passage through the Assembly.

A2.1.2 Departments should make sure that they achieve DoF agreement early in the process and in any event before drafting instructions to OLC are prepared.

Box A2.1A: Examples of legislation matters which require explicit DoF approval

- expenditure falling on the Northern Ireland Consolidated Fund (NICF);
  - as a direct charge (a Consolidated Fund Standing Service);
  - indirectly “out of monies to be provided by the Assembly” (through Estimates); or
  - as an advance under Paragraph 6 of the Financial Provisions (Northern Ireland) Order 1998.
- expenditure falling on the NICF for loans issued and provisions for writing off loans debt;
- any other expenditure proposals affecting public expenditure as defined in the current public expenditure planning total;
- potential contingent liabilities, including powers to issue indemnities or to give guarantees;
- the use of Public Dividend Capital (PDC);
- any provisions involving the assets and liabilities of the NICF;
- borrowing powers;
- fees and charges, including changes in coverage;
- the form of government accounts and associated audit requirements;
- public service manpower;
- the pay or conditions (including superannuation and early severance benefits) of civil servants;
- the pay or conditions (including superannuation and early severance benefits) of board members of statutory organisations whose remuneration is met mainly out of public funds;
- the creation of new statutory bodies or the alteration of the nature or status of existing statutory bodies (for example by privatisation) and related financial arrangements;
- provisions affecting the financial policies of Ministers or departments towards third parties in receipt of public funds – for example, bodies in receipt of grants-in-aid;
- rights of inspection provisions or audit by the C&AG.

DoF consent

A2.1.3 In addition, DoF should be consulted about the need for express provision to be included in legislation for “DoF consent” to, or “DoF approval” of, matters for which DoF has a central responsibility. Provision for DoF consent is generally necessary where legislation gives Ministers the power to make decisions on the matters described in Box A2.1A above.

A2.1.4 No resources can be properly committed, nor expenditure properly incurred, without the approval of DoF. In principle, DoF’s authority is protected in the case of Supply Finance, by the need for DoF approval of Estimates before they are presented to the Assembly and by the fact that resources consumed or expenditure incurred are not properly chargeable to the accounts if it does not have DoF approval. A statutory requirement of consent in legislation will make the position clear and will protect DoF’s authority.

Explanatory and Financial Memoranda (Bills) and Explanatory Memoranda (Statutory Rules)

Explanatory and Financial Memoranda (Bills)

A2.1.5 Explanatory and Financial Memoranda in accordance with Assembly Standing Order 39 must accompany all Bills introduced in the Assembly. The department sponsoring the Bill is responsible for drafting the Explanatory and Financial Memorandum. Any that contain details of financial manpower effects must be cleared with DoF in draft before being submitted to OLC. OLC (which is responsible for drafting the Bill) will check that the draft Memorandum is consistent with the Bill. Following Royal Assent, the Memorandum is updated by the department to “Explanatory Notes” and will normally be published alongside the Act to which it relates. Detailed guidance on the preparation, content and format of a Memorandum is given in LPS guidance on Executive Bills.

Explanatory Memoranda (Statutory Rules)

A2.1.6 The financial implications of subordinate legislation should be explained in the Explanatory Memorandum accompanying the Rule. Guidance on the completion of Explanatory Memoranda is available at Part 10 of the Handbook on Subordinate Legislation.

A2.1.7 Explanatory and Financial Memoranda (Bills) and Explanatory Memoranda (Statutory Rules) should explain the proposals in the legislation. They must be strictly factual, neutral in tone, contain no argument and must be prepared in the form provided for in the relevant template. The main financial items to be covered are set out in Box A2.1B.

Box A2.1B: Effects of the legislation

a Financial effects of the legislation:

i. Estimates of expenditure expected to fall on

- the NICF for Standing Services;
- charges to be met from Estimates;
- loans from the NICF; or
- advances from the NICF under Paragraph 6 of the Financial Provisions (Northern Ireland) Order 1998.

ii. Estimates of any other financial consequences in terms of total public expenditure (i.e. in addition to costs which would fall on the NICF) as defined in the current public-expenditure planning total;

iii. Estimates of any effects on local government expenditure.

b Effects of the legislation on public service manpower:

i. forecasts of any changes (or postponement of changes) on staff numbers in government departments expected to result from the legislation; or

ii. forecasts of the likely effects on other public-service manpower levels, for example in Non-Departmental Public Bodies and district councils.

Consultation with the Northern Ireland Audit Office (NIAO)

A2.1.8 The NIAO should be consulted about the relevant draft provisions in cases where DoF has agreed that there should be specific statutory provision that the accounts of a body should be subject to examination and certification by the C&AG, or that the C&AG should have rights of inspection (see Box A2.1A above).

A2.2 Annex 2.2 Delegated authorities

This Annex expands on the requirement for departments to obtain DoF consent to their public expenditure and the process of delegated authorities.

A2.2.1 DoF approval for expenditure is one aspect of the convention that the Assembly expects DoF to control all other departments in matters of finance and public expenditure. In addition, many statutes contain a requirement for DoF approval or consent. Where legislation specifically requires DoF consent, any expenditure or resource consumption without such consent is unlawful. Accounting Officers are responsible (see first bullet of Section 3.3.3) for ensuring that prior DoF approval is obtained in all cases where it is needed. Where there is no statutory requirement for DoF approval, expenditure or resource consumption (outside of delegated authorities) without DoF approval is irregular.

A2.2.2 The need for DoF approval embraces all the ways in which departments might make public commitments to expenditure, not just Estimates or legislation, important as they are. Box A2.2A identifies the main ways in which the need can arise. It may not be exhaustive.

Box A2.2A: Where DoF approval is required

- public statements or other commitments which might imply a willingness to use public resources beyond the agreed budget plans;
- guarantees, indemnities or letters of comfort which could create contingent liabilities;
- any proposals outside the department's delegated limits;
- all expenditure which is novel, potentially contentious or repercussive, irrespective of size, even if it appears to offer value for money taken in isolation;
- where legislation requires it; and
- fees and charges.

Where DoF approval has been overlooked, the case should immediately be brought to DoF's attention.

A2.2.3 DoF approval:

- must be confirmed in writing, even where initially given orally;
- cannot be inferred in the absence of a reply; and
- must be sought in good time to allow reasonable consideration before decisions are required.

A2.2.4 Departmental Ministers should be made aware when DoF consent is required in addition to their own. Even if the resource or expenditure has the approval of a departmental Minister, it cannot go ahead until DoF approval has been given; if DoF approval is withheld, the Minister should be informed.

Delegation

A2.2.5 Formally, DoF consent is required for all expenditure or resource commitments. In practice, DoF delegates to departments the authority to enter into commitments and to spend within predefined limits without specific prior approval from DoF (but see A2.2.11 for exceptions). Delegated authorities may also allow departments to enter into commitments to spend (e.g. contingent liabilities) and to deal with special transactions (such as some write-offs) without prior approval.

A2.2.6 Such delegated authorities strike a balance between DoF's need for control in order to fulfil its responsibilities to the Assembly and the department's freedom to manage within its agreed budget limits and Assembly provision.

A2.2.7 Departments should not take general DoF approval of an Estimate as approval for specific proposals outside delegated limits even if provision for them is included in the Estimate.

Setting delegated authorities

A2.2.8 While the standard terms for inclusion in delegated authorities are set out in Box A2.2B, DoF has produced a delegations framework to set out the delegated limits for central government departments and DoF. Departments should also agree a similar set of delegations with their ALBs. Departments should appreciate that delegated authorities for certain kinds of expenditure can be modified or removed entirely if DoF is not satisfied that the department is using them responsibly.

A2.2.9 In establishing delegated authorities, DoF will:

- agree with the department how it will take spending decisions (e.g. criteria and/or techniques for investment appraisal, project management and later evaluation);
- establish a mechanism for checking the quality of the department's decision-taking (e.g. by reviewing cases above a specified limit, or giving full delegation but requiring a schedule of completed cases of which a sample may be examined subsequently); and
- encourage delegation of authority within the department to promote effective financial management. In general, authority should be delegated to the point where decisions can be taken most efficiently. It is for the Accounting Officer to determine how authority should be delegated to individual managers.

Box A2.2B: Standard terms for delegated authorities

- a clear description of each item delegated;
- the extent of each delegation, usually in financial terms, but potentially also in qualitative terms, e.g. all items of a certain kind to require approval, including any particular conditions;
- any relevant authorities, e.g. the enabling legislation or reference to any relevant DoF letter;
- the relevant budget provision;
- the relevant section of the department's Estimate;
- any effective dates; and
- arrangements for review.

A2.2.10 In turn departments should agree delegated authorities with their Arm's Length Bodies (ALBs). Delegations to ALBs should be no greater than departments' own delegated authorities. Departments must seek DoF approval for the delegated authorities they agree with their ALBs. In some cases express DoF agreement may be required for some of their expenditure, e.g. very large projects.

A2.2.11 There are some areas of expenditure and resource commitments which DoF cannot delegate: see Box A2.2C.

Box A2.2C: Where authority is never delegated

- items which are novel, potentially contentious or repercussive, even if within delegated limits;
- items which could exceed the agreed budget and Estimate limits;
- contractual commitments to significant spending in future years for which plans have not been set;
- items requiring primary legislation (e.g. to write off National Loan Fund (NLF) debt or Public Dividend Capital (PDC));
- any item which could set a potentially expensive precedent;
- where DoF consent is a specific requirement of legislation; or
- would exceed the general threshold for major capital expenditure projects currently in force (unless other delegations specifically allow).

A2.2.12 DoF cannot delegate its power of approval where there is a statutory requirement for DoF approval or consent. However, it can be acceptable for DoF to give the departments detailed and objective criteria as to where DoF approval would be given. The department can then assess each case against these criteria: if it meets them DoF can be deemed to have given approval. This may be appropriate to avoid a great deal of detailed case-by-case assessment. DoF may ask for intermittent sampling to check that this arrangement is operating satisfactorily.

A2.2.13 DoF must be consulted on any proposal outside the department's delegated authority.

Failure to obtain DoF authority

A2.2.14 All expenditure which falls outside a department's delegated authority and has not been approved by DoF, is **irregular**. It cannot be charged to departmental Estimates or funds. Similarly, any resources committed or expenditure incurred in breach of a condition attached to DoF approval is **irregular**.

A2.2.15 Where resource consumption or expenditure is **irregular**, DoF may be prepared to give retrospective approval if it is satisfied that:

- it would have granted approval had it been approached properly in the first place; and
- the department is taking steps to ensure that there is no recurrence.

Requests for retrospective approval should follow the same format as requests submitted on time. However, the request should also include the reason why approval was not sought at the appropriate time and details of the measures in place to avoid a recurrence.

A2.2.16 If DoF does not give retrospective approval or authorise write-off of irregular expenditure, DoF will inform the NIAO. DoF may also draw the matter to the attention of the responsible Accounting Officer. The C&AG may then qualify their opinion on the relevant account and the PAC may decide to hold an oral hearing.

A2.2.17 It is unlawful to commit resources or incur expenditure without DoF consent, where such consent is required by statute. In such cases retrospective consent cannot confer legality. Such consumption cannot, therefore, be regularised.

A2.2.18 In cases of unlawful expenditure, the responsible Accounting Officer must note the relevant account accordingly and notify the NIAO. It will then be for the C&AG to decide whether to report on the matter to the Assembly with the relevant accounts and whether to draw it to the attention of the PAC.

A2.2.19 The C&AG and DoF co-operate closely on questions of authority for expenditure. The C&AG may bring a department's attention to any cases where the department:

- has ignored or wrongly interpreted a DoF ruling;
- is attempting to rely on a mistaken delegated authority, e.g. where the delegation has been changed or where consent was given orally only; or
- has committed resources or incurred expenditure which DoF might not have approved had it been consulted.

A2.2.20 It is the responsibility of the Accounting Officer to inform the NIAO of any cases of irregular expenditure within their departments. Departments should also bring such cases to the attention of DoF, and DoF and NIAO will engage with each other in these instances.

A2.3 Annex 2.3
PAC Concordat of 1932

Chapter 2 explains that the Assembly expects both specific legislation and Assembly authority for each year's expenditure to be in place for continuing expenditure. It expects DoF to police this requirement. Although the Concordat was made between HM Treasury and the Public Accounts Committee (PAC) at Westminster, DoF has agreed to aim to observe this principle. This Annex sets Parliament's concerns in context.

A2.3.1 The PAC has had long standing concerns about how the government gains authority from Parliament for each area of spending.

A2.3.2 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.

A2.3.3 By 1885 the PAC had become concerned that the authority of the Estimate and its successor the Appropriation Act (the equivalent of the Budget Act in Northern Ireland) 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 ..."

A2.3.4 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".

A2.3.5 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".

A2.3.6 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".

"… while … the 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".

A2.3.7 With this Concordat, the matter still lies.

A2.3.8 Use of the Budget Act as authority for expenditure is discussed in Annex 2.4.

A2.4 Annex 2.4
New services

This annex sets out the propriety considerations to be made when delivering new services.

A2.4.1 Chapter 2 (box 2.1) sets out the essential conditions for authorisation of public spending. New services are exceptions, i.e. services for which the Assembly 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.

When the Budget Act suffices

A2.4.2 Notwithstanding the general rules in box 2.1, in some circumstances it is not necessary to have specific enabling legislation in place. The Assembly accepts that agreement to the Estimate and authority of the associated Budget Act is sufficient for the kinds of expenditure listed in box 2.6 and laid out in 2.6.3. The content of these boxes is reproduced in box A2.4A. They can all be considered part of business as usual.

Box A2.4A: Expenditure the Assembly accepts may rest on a Budget Act

- routine administration costs: employment costs, rent, cleaning etc
- lease agreements, e.g. for photocopiers
- temporary services or continuing services of low cost, provided that there is no specific legislation covering these matters before the Assembly and existing statutory restrictions are respected, specifically
- initiatives lasting no more than two years, e.g. a pilot study or one-off intervention
- expenditure of no more than £1.5m a year (amount adjusted from time to time).

A2.4.3 It is important not to exceed these limits, so departments shall consult DoF before relying upon them.

Anticipating a Bill

A2.4.4 In addition, the Assembly is prepared to accept that departments may undertake certain preparatory work while a bill is under consideration and before Royal Assent. Examples are listed in box A2.4B.

Box A2.4B: 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; and
- work on the legislative process associated with the new service.

A2.4.5 Departments may be able to finance activities such as those in box A2.4B out of their existing resources. When this happens, departments shall make sure that the ambit of the relevant Estimate covers the planned expenditure.

A2.4.6 It is also important to understand in which areas of new business the Assembly does expect the normal rigour for authorisation (box 2.1) to apply. For the avoidance of doubt, some examples are shown in box A2.4C.

Box A2.4C: Expenditure which may not normally incurred before Royal Assent

- significant work associated with preparing for or implementing the new task enabled by a bill, e.g. renting offices hiring expert consultants or designing or purchasing significant IT equipment
- recruitment of chief executives and board members of a new public sector organisation
- recruitment of staff for a new public sector organisation

Providing for a new service

A2.4.7 Some new services go well beyond the examples in box A2.4B. They include such things as paying a new grant, providing a new registration service, transforming the delivery of existing service or setting up a new public sector organisation. Even if a bill providing for a new service is before the Assembly, the activity the bill provides for cannot normally go ahead before royal assent. It is therefore good practice to plan the timetable for achieving the new service so that it is compatible with the bill timetable.

A2.4.8 Sometimes it is convenient to use a paving bill to provide the necessary powers to get a new service under way quickly. A paving bill can provide powers to allow expenditure which would be nugatory if the subsequent detailed legislation for the new service does not proceed, e.g. employing consultants to design a significant IT or regulatory system. Paving bills are usually short, though they may be contentious (and time consuming) as they can prompt Assembly discussion of the underlying substance of the measure.

A2.4.9 Departments which do not use paving bills may want to make an early start on legislation contained in a bill during its passage through the Assembly. Usually the spending in question lacks both adequate statutory underpinning and authorisation in Estimates.

A2.4.10 In these circumstances there is a risk that allowing the spending to proceed might be wasteful if royal assent is not achieve as expected. So it is good practice to try to find other ways of making progress with the policy without anticipating royal assent.

Providing for a new service

A2.4.11 The instances described in this annex all mean that the Assembly has less control over certain items of public expenditure than it would normally expect. Departments should therefore take great care to keep the Assembly informed of what is happening and why.

A2.4.12 A timely written ministerial statement giving the amounts involved and their timing is the essential minimum, and if possible, an oral explanation at second reading, or a separate oral statement, is desirable. In addition there shall be:

- notes in the explanatory memorandum and impact assessment to the relevant bill
- notes in the relevant Estimate - especially important if a department wants to anticipate secondary legislation which a bill will empower.

A2.4.13 If the effect of the measure changes significantly, the Assembly should be given timely information to keep it abreast of developments.

A2.4.14 It is also good practice to keep DoF informed of the disclosure intended.

Directions

A2.4.15 The exceptions in this annex to the requirements of box 2.1 provide a lot of scope for pragmatic progress of essential Executive business. The advice in this annex may be regarded as judicious extensions of the requirements of propriety, and acceptable only if the Assembly is not misled.

A2.4.16 But sometimes even these easements are not enough. If the Accounting Officer is unable to design the minister's policy to fit within the standards in this annex, they will need to seek a Ministerial Direction (see section 3.5). The usual rules about Ministerial Directions of course apply.

3 Accounting Officers

This Chapter sets out the personal responsibilities of all Accounting Officers in central government. Essentially Accounting Officers must be able to assure the Assembly and the public of high standards of probity in the management of public funds. This Chapter is drawn to the attention of all Accounting Officers when they are appointed.

3.1. Introduction

3.1.1 Each organisation in central government – department, agency, trading fund, Health and Social Care body, Non-Departmental Public Body (NDPB) or other significant Arm's Length Bodies (ALBs) – must have an Accounting Officer. This person is usually its senior official. In line with the *Corporate Governance Code* (available at [Governance and risk guidance | Department of Finance (finance-ni.gov.uk)]), it is now usual for the Accounting Officer to be supported by a board whose structure should be agreed with the responsible Minister(s) where it is not set in statute.

3.1.2 Formally the Accounting Officer in a public sector organisation is the person who the Assembly calls to account for stewardship of its resources. The standards the Accounting Officer is expected to deliver are summarised in Box 3.1. The equivalent senior business managers of other public sector organisations are expected to deliver equivalent standards.

3.2. Appointment of Accounting Officers

3.2.1 DoF appoints the permanent head of each central government department to be its Accounting Officer. Where there are several Accounting Officers in a department, the permanent head is the principal Accounting Officer.

3.2.2 Within departments, DoF also appoints the Chief Executive of each trading fund as its Accounting Officer.

3.2.3 In turn the principal Accounting Officer of each department normally appoints the permanent heads:

- of its executive agencies, as agency Accounting Officers for their agencies; and
- of other ALBs (including all NDPBs[1]), as Accounting Officers for these bodies; and

[1] In certain NDPBs with small budgets, an Accounting Officer in the sponsor department may assume the role of the Accounting Officer for the NDPB.

- at their discretion, additional Accounting Officers for defined part(s) of the department's business, for example where there may be a conflict. Advice should be sought from the Treasury Officer of Accounts in DoF.

3.2.4 In the case of the appointment of the principal Accounting Officers of departments and Accounting Officers of Trading Funds, the Accounting Officer appointment letter is drawn up by the TOA and issued in the name of the TOA. This is normally prepared a week in advance and issued on the same day the Accounting Officer is due to take up their role.

3.2.5 In the case of the appointment of Accounting Officer for an Arm's Length Body, the body should liaise with its sponsoring department to arrange a letter of appointment from the principal Accounting Officer. Again, this should be prepared a week in advance before the Accounting Officer is due to take up their role and issued the same day they take up their appointment. The private office of the principal Accounting Officer should forward a copy of any appointment letters to the TOA and the Chief Executives Forum.

3.2.6 These actions ensure that the register of Accounting Officers is kept up-to-date and that appropriate training can be arranged.

3.2.7 If the timeframes above cannot be met, or in the event of a temporary gap between the standing down of an Accounting Officer and the appointment of a new Accounting Officer, the department should contact the TOA to discuss the appropriate mechanism to ensure accountability arrangements are maintained.

3.2.8 Template letters of appointment can be found on the Accountability and Financial Management section of the DoF website. The TOA team is happy to assist in the preparation of these letters.

3.2.9 DoF and sponsor departments should ensure that there are no occasions when more than one person is designated with the personal responsibilities of an Accounting Officer. In any circumstances whereby an Accounting Officer is suspended and therefore unable to fulfil their duties, their Accounting Officer designation should be immediately withdrawn.

3.2.10 In any circumstance whereby the Board of an Arm's Length Body is considering the suspension of a Chief Executive, the relevant sponsor department should be made aware of this in advance. Sufficient time should be allowed to enable the department to withdraw the Accounting Officer designation, and appoint an interim Accounting Officer.

3.2.11 The Treasury Officer of Accounts (TOA) in DoF should be notified of any such instances of above circumstances along with an outline of what action is being taken and associated timeframe. The TOA can also provide advice as appropriate.

3.3. Special responsibilities of Accounting Officers

3.3.1 It is important that each Accounting Officer takes personal responsibility for ensuring that the organisation they manage delivers the standards in Box 3.1. In particular, the Accounting Officer must personally sign:

- the Accounts;
- the Annual Report; and
- the Governance Statement (see Annex 3.1)

and having been satisfied that they have been properly prepared to reflect the business of the organisation, must personally approve voted budget limits and the associated Estimates Memorandum.

Box 3.1: Standards expected of the Accounting Officer's organisation

Acting within the authority of the Minister(s) to whom they are responsible, the Accounting Officer shall ensure that the organisation, and any ALBs it sponsors, operates effectively and to a high standard of probity. The organisation should:

Governance

- have a governance structure which transmits, delegates, implements and enforces decisions;
- have trustworthy internal controls to safeguard, channel and record resources as intended;
- work co-operatively with partners in the public interest;
- operate with propriety and regularity in all its transactions;
- treat its customers and business counterparties fairly, honestly and with integrity;
- offer appropriate redress for failure to meet agreed customer standards; and
- give timely, transparent and realistic accounts of its business and decisions, underpinning public confidence.

Decision-making

- support its Ministers with clear, well-reasoned, timely and impartial advice;
- make all its decisions in line with the strategy, aims and objectives of the organisation set by Ministers and/or in legislation;
- take a balanced view of the organisation's approach to managing opportunity and risk;
- manage its staff fairly, with inclusive policies designed to promote and integrate diversity having regard to Section 75 of the Northern Ireland Act;
- communicate its decisions openly and transparently; and
- impose no more than proportionate and defensible burdens on business.

Financial management

- use its resources efficiently, economically and effectively, avoiding waste and extravagance;
- meet DoF's requirements about limits on use of public resources;
- plan to use its resources on an affordable and sustainable path, within agreed limits;
- carry out procurement and project appraisal objectively and fairly, using cost benefit analysis and generally seeking good value for the public sector as a whole;
- use management information systems to gain assurance about value for money and the quality of delivery and so make timely adjustments;
- avoid over defining detail and imposing undue compliance costs, either internally or on its customers and stakeholders;
- have practical documented arrangements for controlling or working in partnership with other organisations, as appropriate; and
- use internal and external audit to improve its internal controls and performance.

3.3.2 The Accounting Officer of a corporate ALB should arrange for a board member to sign the Annual Report and Accounts as well as signing them themselves, if they are (unusually) not a member of the board.

3.3.3 There are several other areas where Accounting Officers shall take personal responsibility:

- *regularity and propriety* (see Box 2.5) including securing DoF approval for any expenditure outside the normal delegations or outside the subheads of the department's Estimate;
- *affordability and sustainability* respecting agreed budgets and avoiding unaffordable longer term commitments, taking a proportionate view about other demands for resources;
- *value for money* ensuring that the organisation's procurement, projects and processes are systematically assessed to provide confidence about suitability, effectiveness, prudence, quality, sustainability and good value, judged for the public sector as a whole, not just for the Accounting Officer's organisation, and from a broad Northern Ireland perspective;
- *selection, appraisal, evaluation and management of programmes and projects* using the relevant guidance (e.g. *Better Business Cases NI (available at* [Better Business Cases NI | Department of Finance (finance-ni.gov.uk)](finance-ni.gov.uk)) - *previously NIGEAE)* and relevant supporting guidance to evaluate alternatives, and good quality project and programme management techniques, such as Gateway Reviews, to track and where necessary adjust progress;
- *control:* the Accounting Officer shall personally approve and confirm their agreement to major project or policy initiatives before they proceed. Additionally principal Accounting Officers, shall personally approve and confirm their agreement to all Executive papers from their own Minister;
- management of *opportunity and risk* to achieve the right balance commensurate with the organisation's business and risk appetite;
- *learning from experience* by using internal feedback, undertaking ex-post evaluations and drawing on experience from right across the public sector; and
- accounting accurately for the organisation's *financial position* and *transactions* to ensure that its published financial information is transparent and up to date and that the organisation's efficiency in the use of resources is tracked and recorded.

3.3.4 In the case of principal Accounting Officers, these responsibilities apply to the business of the whole departmental group.

3.4. Working with other organisations

3.4.1 It often makes sense for two or more departments to work together to deliver public services. In such circumstances, each Accounting Officer remains personally responsible for the resources of their own organisation. It is good practice for participating bodies to document their respective responsibilities, for example by way of a memorandum of understanding. Further details are set out in Chapter 7.

3.4.2 It may also be the case that, in assessing a project or proposal, the Accounting Officer will want to draw on expertise from another department or public body. Where this happens, the Accounting Officer may ask the organisation to provide written assurances of

the robustness of the analysis and any underlying methodology. However, the ultimate judgement in each case lies with the Accounting Officer personally.

3.5. Directions

3.5.1 The Accounting Officer cannot accept the Minister's aims or policy without examination**.** Each departmental Accounting Officer should take care to bring to the attention of their Minister(s) any conflict between the Minister's instructions and their duties as set out in this Chapter. Examples of concerns where this procedure is appropriate are in Box 3.2 but the ultimate judgement must lie with the Accounting Officer personally. The acid test is whether the Accounting Officer could justify the proposed activity if asked to defend it.

Box 3.2: When Accounting Officers should seek a direction

- **Regularity**: if a proposal is outside the legal powers, Assembly authority, or DoF delegations; or incompatible with the agreed spending budgets.
- **Propriety**: if a proposal would breach Assembly control procedures or expectations.
- **Value for money**: if an alternative proposal, or doing nothing, would deliver better value, e.g. a cheaper, higher quality or more effective outcome for the public sector as a whole.
- **Feasibility**: where there is a significant doubt about whether the proposal can be implemented accurately, sustainably and to the intended timetable.

3.5.2 Where a departmental Accounting Officer has one or more concerns such as those laid out in Box 3.2 for any policy, project or programme, the best next step is to consider whether the policy or proposed course of action can be modified in order to address those concerns. If not, and the Minister decides it is nevertheless appropriate to continue with the proposal, the Accounting Officer shall ask their Minister for a formal written direction to proceed. An oral direction shall be confirmed promptly in writing.

3.5.3 There is no set form for requesting a Direction, though the Accounting Officer should be specific about the nature of their objections and where possible set these out in writing. Before doing so it is good practice for an Accounting Officer to discuss the matter with DoF if time permits. It may also be necessary to discuss the issue with officials from TEO to determine if the matter needs to be brought to the Executive under the terms of the Ministerial Code.

3.5.4 Such a Direction means that the associated expenditure is novel or contentious and therefore outside of the departmental delegated expenditure. Having received a Direction from the departmental Minister the Accounting Officer should seek approval from the DoF Minister for the expenditure to be regular.

3.5.5 A Minister may decide, in these circumstances, that the issue should be discussed by the Executive. If this happens and the decision reached at the Executive is to agree to the course of action proposed by the departmental Minister it will be recorded in the minutes which can be treated as formal approval. The DoF Minister, as part of the Executive, is bound by this decision and in these circumstances, it will not be necessary for the Accounting Officer to seek a formal written approval from DoF. If the Executive decides not to proceed, the Accounting Officer shall abide by the Executive's decision and not undertake any course of action which could be seen as contrary to the decision.

3.5.6 When a Ministerial Direction is confirmed by the DoF Minister or Executive as appropriate, the Accounting Officer shall:

- follow the Minister's direction without further ado;
- Promptly write to the C&AG with the relevant details of the issue, within four weeks at the latest. This correspondence should be copied to the TOA in DoF. The C&AG will normally draw the matter to the attention of the PAC, who will attach no blame to the Accounting Officer;
- if asked, explain the Minister's/Executive's course of action. This respects Ministers' rights to frank advice, while protecting the quality of internal debate;
- engage with DoF to arrange for a copy of the Direction and background information note to be published as soon as possible on the DoF website, and
- arrange for the existence of the Direction to also be published in the next Annual Report and Accounts, unless the matter must be kept confidential.

3.5.7 It is important to note that a direction does not permit unlawful action and does not protect against a court finding unlawfulness.

3.5.8 Where a direction has been issued, this does not represent a continuing mandate to dispense with the concerns the Accounting Officer may have had. The Accounting Officer has a responsibility to ensure any such concerns as those laid out in box 3.2 are met on an ongoing basis. The Accounting Officer should seek to bring the policy in line at the earliest opportunity if possible, and if circumstances change should consider whether the existing direction provides sufficient cover to justify the policy. It may be appropriate to revisit with the Minister if the direction is still supported at appropriate stages of policy implementation.

3.6. Public Accounts Committee (PAC)

3.6.1 The PAC may hold public hearings on the accounts of central government organisations laid in the Assembly (see Section 1.6). In practice most PAC hearings focus on NIAO VFM studies and other NIAO reports such as impact reports, emerging issues etc. NIAO seeks to agree the text of these reports with the Accounting Officer(s) concerned so there is a clear undisputed evidence base for PAC scrutiny. Guidance on the public audit process including PAC is contained in the *Guidance on NI Public Audit Process including PAC Scrutiny of Public Spending* (available at PAC related guidance | Department of Finance (finance-ni.gov.uk)) .

3.6.2 Witnesses to PAC hearings sometimes find that there is supplementary material which would be helpful to the Committee, in addition to the NIAO report. When this happens it is good practice to submit it to the Committee with adequate time to consider it, clearing it first with the NIAO. If time does not permit this, witnesses or their representatives should discuss the best approach with the PAC Clerk. Advice should also be sought from the TOA.

3.6.3 When a hearing is scheduled, the PAC normally invites the Accounting Officer(s) of the relevant organisation(s) to attend as witness(es). An Accounting Officer may be accompanied by appropriate officials. Where it is appropriate, and the PAC agrees, an Accounting Officer may send a substitute although this would be rare. The Chairs of Boards may also be called to give evidence. The PAC may also invite other witnesses who may not be public servants to give insight into the background of the subject in hand.

3.6.4 In answering questions, the Accounting Officer should take responsibility for the organisation's business, even if it was delegated or if the events in question happened before they were appointed Accounting Officer. In response to specific PAC requests, previous Accounting Officers may also be required to attend relevant PAC hearings. Recalls of this kind should be assessed case by case, depending on the circumstances.

3.6.5 The PAC expects witnesses to give clear, accurate and complete evidence. If evidence is sensitive, witnesses may ask to give it in private. Witnesses may offer supplementary notes if the information sought is not to hand at the meeting. Any such notes should be provided within two weeks unless the PAC is willing to grant an extension. They should do so without delay.

3.6.6 The DoF Treasury Officer of Accounts (TOA) (or an alternate) attends all PAC hearings. This enables the PAC to explore any more general issues arising out of the hearing.

3.6.7 The evidence given by Accounting Officers at public hearings feeds into reports published by the PAC. These reports detail its findings, conclusions and recommendations.

3.6.8 For each PAC report, there is a formal response to recommendations by means of a DoF Memorandum of Reply (MOR) presented to the Assembly in the name of the DoF Minister, indicating those recommendations accepted and those not accepted. For those it accepts, MORs will include target implementation dates. For those not accepted, they will set out the reasons for non-acceptance. Accounting Officers shall ensure that deadlines set by DoF for preparing MORs are adhered to.

3.6.9 It is important that departments implement any commitments given in response to PAC reports in MORs as they are generally aimed at either improving value for money or improving governance. Departments should therefore ensure they regularly monitor and report on their progress until they are deemed to be complete. To support Accounting Officers in their role, it is recommended that internal audit programmes should include the review of progress against PAC commitments. Accounting Officers should also consider an oversight role for departmental audit and risk assurance committees and Boards where appropriate.

3.6.10 In addition, the PAC may ask for an update on progress on an annual basis and will expect departments to respond promptly and transparently. Accounting Officers shall ensure the internal clearance processes withing their organisation, including any Ministerial clearances the Accounting Officer decides are needed, are arranged to fit with the deadlines for responses.

3.7. When the Accounting Officer is not available

3.7.1 Each public sector organisation must have an Accounting Officer available for advice or decision as necessary at short notice. When the Accounting Officer is absent and cannot readily be contacted, another senior official should deputise.

3.7.2 If a significant absence of more than four weeks is planned, the Accounting Officer should invite DoF (or the sponsor department, as the case may be) to appoint a temporary acting Accounting Officer.

3.7.3 In these circumstances, a temporary acting Accounting Officer stands in the shoes of the principal Accounting Officer. They are not acting on behalf of the principal Accounting Officer but are personally responsible to the Assembly in their own right. Their decisions are not subject to ratification by the principal Accounting Officer and their role shall only be activated if the principal Accounting Officer is unable to fulfil their obligations. To all intents

and purposes the temporary acting Accounting Officer replaces the principal Accounting Officer.

3.7.4 A similar logic can also apply for an Accounting Officer in an Arm's Length Body (ALB), whereby the arrangement must be agreed and formalised between the department and the ALB.

3.8. Conflicts of interest

3.8.1 Sometimes an Accounting Officer faces an actual or potential conflict of interest. There must be no doubt that the Accounting Officer meets the standards described in Box 3.1 without divided loyalties. Possible ways of managing this issue include:

- for a minor conflict, declaring the conflict and arranging for someone other than the Accounting Officer to make a decision on the issue(s) in question;
- for a significant but temporary conflict, inviting DoF (or the sponsor department, as the case may be) to appoint an interim Accounting Officer for the period of the conflict of interest; or
- for serious and lasting conflicts, resignation.

3.9. Arm's Length Bodies (ALBs)

3.9.1 There should be a culture of partnership working between departments and ALBs which should be based on a mutual understanding of strategic aims and objectives; clear accountability; and a recognition of the distinct roles each party contributes. Underpinning the arrangements to be set out in Partnership Agreements, are the principles set out in the "Partnerships between Departments and Arm's Length Bodies: NI Code of Good Practice" (available at NI Code of Good Practice v3 (300323).pdf (finance-ni.gov.uk))which should be read in conjunction with the template, and is included as an Annex to the template.

3.9.2 The responsibilities of Accounting Officers in departments and in ALBs are essentially similar. Accounting Officers in ALBs must also take account of their special responsibilities and powers. In particular, they must respect the legislation (or equivalent) establishing the organisation and terms of the Partnership Agreement or equivalent document agreed with the sponsor department. See Chapter 7 for more information.

3.9.3 The Partnership Agreement (or equivalent) agreed between an ALB and a department is essentially a 'relationship document' setting out the partnership arrangements between an ALB and the Department. It should explain the overall governance framework within which an individual ALB operates, including the framework through which the necessary assurances will be provided to stakeholders. Roles/responsibilities of partners within the overall governance framework are also outlined. The Annual Engagement Plan (Annex 2 of the template) further sets out the timing and nature of engagement between an ALB and the Department. It will also reference the agreed management and financial information to be shared over the course of a year e.g. by monthly returns, standard delegations and exception reporting.

3.9.4 The sponsor department's accounts consolidate those of its ALBs so its Accounting Officer must be satisfied that the consolidated accounts are accurate and not misleading.

3.9.5 ALBs are also required to follow the principles, rules, guidance and advice in Managing Public Money Northern Ireland and should refer to their sponsor departments any activities which set precedents, appear novel, potentially contentious or repercussive; in turn the sponsor department should seek DoF consent.

3.9.6 Overall the Accounting Officer of a sponsor department (who designates the senior officials of their ALBs as their Accounting Officer) shall make arrangements to satisfy themselves that their ALBs have systems adequate to meet the standards in Box 3.1. Similarly, the Accounting Officer of an ALB with a subsidiary should have meaningful oversight of the subsidiary sufficient to exercise their AO responsibilities. It is not acceptable to establish ALBs, or subsidiaries to ALBs, in order to avoid or weaken Assembly scrutiny.

3.9.7 Exceptionally, the Accounting Officer of a sponsor department may need to intervene if an ALB drifts significantly off track, e.g. if its budget is threatened, its systems are badly defective or it falls into disrepute. This may include replacing some or all of the leaders of the ALB, possibly even its Accounting Officer.

3.9.8 There are sensitivities about the role of the Accounting Officer in an ALB which is governed by an independent fiduciary board, e.g. a charity or company. The ALB's Accounting Officer, who may be a member of the board, must take care that their personal legal responsibilities do not conflict with their duties as a board member. In particular, the Accounting Officer should vote against any proposal which appears to cause such a conflict; it is not sufficient to abstain.

3.9.9 Moreover, if the chair or board of such an ALB is minded to instruct its Accounting Officer to carry out a course inconsistent with the standards in Box 3.1, then the ALB Accounting Officer should make their reservations clear in writing, and seek appropriate legal advice. If the board is still minded to proceed, the ALB Accounting Officer should then:

- ask, (preferably in writing), the Accounting Officer of the sponsor department to consider intervening to resolve the difference of view, who in turn should seek advice from DoF;
- if the board's decision stands, seek its written direction to carry it out, asking the sponsor department to seek DoF approval;
- proceed to implement without delay;
- inform the C&AG; and
- arrange for the existence of the direction to be published, no later than in the next Annual Report and Accounts, unless the matter must be kept confidential.

3.9.10 This process is similar to what happens in departments (see Section 3.5), allowing for the special position of the organisation's board, which is often appointed under statute.

3.10. In the round

3.10.1 It is not realistic to set firm rules for every aspect of the business with which an Accounting Officer may deal. Sometimes the Accounting Officer may need to take a principled decision on the facts in circumstances with no precedents. Should that happen, the Accounting Officer should be guided by the standards in Box 3.1 in assessing whether there is a case for seeking a direction for any of the factors in Box 3.2. It is essential that Accounting Officers seek good outcomes for the public sector as a whole, respecting the key principles of transparency and Assembly approval for management of public resources.

3.10.2 In addition, there may be occasions where it is necessary to respond urgently to events, reducing the time available for analysis and requiring the Accounting Officer to make an assessment. In such circumstances, all available options may carry more uncertainty and more risk than would be acceptable in more normal times.

3.10.3 Here, in assessing value for money and feasibility, the Accounting Officer must assess the relative merits and costs of alternatives (including doing nothing).

3.10.4 Sometimes, it is possible to do no more than identify the scale of the problem to be tackled and then examine why the proposed action should both be effective and have tolerable cost. Wherever proposals or projects are taken forward, Accounting Officer shall identify and assess risks, and design and operate the most effective risk treatment activities (including controls) possible in the time available.

3.10.5 Where time permits, DoF stands ready to help Accounting Officers think such issues through. It is good practice to document decisions where the Accounting Officer has had to strike difficult judgements, especially where they break new ground.

Annex 3.1 The Governance Statement

A3.1 Annex 3.1 The Governance Statement

It is fundamental to each Accounting Officer's responsibilities to manage and control the resources used in their organisation. The Governance Statement, a key feature of the organisation's Annual Report and Accounts, manifests how these duties have been carried out in the course of the year. It should encompass discussion of both corporate governance and risk management matters.

Purpose

A3.1.1 Each Accounting Officer delegates responsibilities within their organisation so as to control its business and meet the standards set out in Box 3.1 (see Chapter 3). The systems used to do this should give adequate insight into the business of the organisation and its use of resources to allow the Accounting Officer to make informed decisions about progress against business plans and if necessary steer performance back on track. In doing this the Accounting Officer is usually supported by a board.

A3.1.2 These responsibilities are central to the Accounting Officer's duties. To carry them out the Accounting Officer needs to develop a keen sense of the risks and opportunities the organisation faces. In the light of the board's assessment of the organisation's appetite for risk, the Accounting Officer needs to decide how to respond to the evolving perceived risks.

A3.1.3 The Governance Statement, for which the Accounting Officer takes personal responsibility, brings together all these judgements about use of public resources as part of the Annual Report and Accounts. It should give the reader a clear understanding of the dynamics and control structure of the business. Essentially, it records the stewardship of the organisation. Supplementing the accounts, it should provide a sense of the organisation's vulnerabilities and resilience to challenges.

Preparing the Governance Statement

A3.1.4 The Governance Statement is published in each organisation's Annual Report and Accounts. It should be assembled from work through the year to gain assurance about performance and insight into the organisation's risk profile, its responses to the identified and emerging risks and its success in tackling them.

A3.1.5 There is no set template for the Governance Statement.

A3.1.6 The Accounting Officer and the board have a number of inputs into this process:

- the board's annual review of its own processes and practices, informed by the views of its audit and risk assurance committee on the organisation's assurance arrangements;
- insight into the organisation's performance from internal audit, including an audit opinion on the quality of the systems of governance, management and risk control;

- feedback from the delegation chain(s) within the organisation about its business, its use of resources, its responses to risks, the extent to which in year budgets and other targets have been met, and any other internal accountability mechanisms; including:
  - bottom-up information and assessments to generate a full appreciation of performance and risks as they are perceived from within the organisation;
  - end-to-end assessments of processes, since it is possible to neglect interdependent and compounded risks if only the components are considered;
  - a high level overview of the organisation's business so that systemic risks can be considered in the round;
  - any evidence from internal control failures or poor risk management;
  - potentially, information from whistleblowers; and
- material from any ALBs connected with the organisation which may shed light on the performance of the organisation or its board.

A3.1.7 It is important that the Governance Statement covers the material factors affecting the organisation in the round, not neglecting the more serious (if remote) risks, emerging technology and other cutting edge developments. It should also mention any protective security concerns in suitably careful terms, with details reported to the external auditor.

Content of the Governance Statement

A3.1.8 With the board's support, it is for the Accounting Officer to decide how to:

- organise the Governance Statement;
- take account of input from within the organisation and from the board and its committees; and
- where relevant, integrate information about the organisation's ALBs, some of which may be material to the consolidated organisation.

A3.1.9 Box A3.1A summarises subjects that should always be covered.

A3.1.10 All the items in this Box are important. The risk assessment is critical. This is where the Accounting Officer, supported by the board, should discuss how the organisation's risk management and internal control mechanism work, and why they were chosen to deliver reasonable assurance about prevention, deterrent or other appropriate action to manage the actual and potential problems or opportunities facing the organisation. Avoiding lengthy description of process, it should assess the evidence about the effectiveness in practice of the risk management processes in place. In doing so it should face up to any revealed deficiencies as risks have materialised.

Box A3.1A: Essential features of the Governance Statement

- the governance framework of the organisation, including information about the board's committee structure, its attendance records, and the coverage of its work;
- the board's performance, including its assessment of its own effectiveness;
- highlights of board committee reports, notably by the audit and risk assurance committee;
- an account of corporate governance, including the board's assessment of its compliance with the *Corporate Governance Code*, in particular the key area of leadership and how a clear vision for the organisation is articulated and giving clarity about how policy activities contribute to achieving this vision, including setting risk appetite and managing risk. The assessment should include explanations of any departures from the Code;
- the board's compliance with its Section 75 equality and good relations duties including adherence to the arrangements contained in its equality scheme when developing and/or reviewing policies, including its assessment of its own compliance;
- information about the quality of the data used by the board, and why the board finds it acceptable; and
- a risk assessment (see Annex 4.3), including the organisation's risk profile, and how it is managed, including, subject to a public interest test:
- any newly identified risk;
- a record of any Ministerial Directions given; and
- a summary of any significant lapses of protective security (e.g. data losses).

A3.1.11 In putting together the Governance Statement, the Accounting Officer needs to take a view on the extent to which items are significant enough to the welfare of the organisation as a whole to be worth recording. There are no hard and fast rules about this. Some factors to take into account are suggested in Box A3.1B.

Box A3.1B: Deciding what to include in the Governance Statement

- might the issue prejudice achievement of the business plan? – or other priorities?
- could the issue undermine the integrity or reputation of the organisation?
- what view does the board's audit and risk assurance committee take on the point?
- what advice or opinions have internal audit and/or external audit given?
- could delivery of the standards expected of the Accounting Officer (Box 3.1) be at risk?
- might the issue make it harder to resist fraud or other misuse of resources?
- does the issue put a significant programme or project at risk?
- could the issue divert resources from another significant aspect of the business?
- could the issue have a material impact on the accounts?
- might national security or data integrity be put at risk?

External audit

A3.1.12 The organisation's external auditor will review the Governance Statement for its consistency with the audited financial statement. The external auditor may report on:

- any inconsistency between evidence collected in the course of the audit and the discussion of the Governance Statement; and/or

- any failure to meet the requirement to comply with or explain departures from the *Corporate Governance Code* or any other authoritative guidance.

4 Governance and Management

Public sector organisations shall have good quality internal governance and sound financial management. Appropriate delegation of responsibilities and effective mechanisms for internal reporting should ensure that performance can be kept on track. Good practice should be followed in procuring and managing resources and assets; hiring and managing staff; and deterring waste, fraud and other malpractice. Central government departments have some specific responsibilities for reporting, including to the Assembly.

4.1 Introduction

4.1.1 Each public sector organisation shall establish governance arrangements appropriate to its business, scale and culture. The structure shall combine efficient decision making with accountability and transparency.

4.1.2 In doing so, central government departments shall be guided by the *Corporate Governance Code.* Each public sector organisation needs clear leadership, normally provided by a board. Box 4.1 sets out best practice for departmental boards.

Box 4.1: Best practice for boards in central government departments

- chaired by the department's Accounting Officer;
- includes a number of non-executive members and a professionally qualified Finance Director (see Annex 4.1);
- meeting at least quarterly;
- sets the department's strategy to implement Ministers' policy decisions;
- leads the department's business and determines its culture;
- ensures good management of the department's resources – financial, assets, people;
- decides risk appetite and monitors emerging threats and opportunities;
- steers performance to keep it on track using regularly updated information about progress; and
- keeps an overview of its Arm's Length Bodies' (ALBs) activities.

4.1.3 It is good practice for ALBs to use similar principles. In many ALBs some structural features, such as board composition, derive from statute but considerable discretion may remain. In some organisations it is usual, or found valuable, for the board to include members with designated responsibility or expertise, e.g. for specialist professional skills.

4.1.4 In order to carry out its responsibilities each board needs to decide, and document, how it will operate. Box 4.2 outlines the key decisions. It is not exhaustive. Once agreed, the working rules should be reviewed from time to time to keep them relevant. Boards should

challenge themselves to improve their working methods, so that their processes can achieve and maintain good modern business practice.

Box 4.2: Key decisions for boards

- mission and objectives;
- delegations and arrangements for reporting performance;
- procedures and processes for business decision making;
- scrutiny, challenge and control of significant policies, initiatives and projects;
- risk appetite and risk control procedures, e.g. maintaining and reviewing a risk register;
- control and management of associated ALBs and other partnerships;
- arrangements for refreshing the board;
- arrangements for reviewing the board's own performance;
- accountability – to the general public, to staff and other stakeholders (see Section 4.13);
- how the insights of non-executives can be harnessed; and
- how often the board's working rules will be reviewed.

4.2 Working methods

4.2.1 The Accounting Officer of each organisation is accountable to the Assembly for the quality of the administration of the organisation that they lead. The administrative standards expected are set out in the NICS *Code of Ethics* (available at NICS Code of Ethics | Department of Finance (finance-ni.gov.uk)) and the Parliamentary and Health Service Ombudsman's (PHSO) *Principles of Good Administration* (available at Principles of Good Administration (ombudsman.org.uk)) (which has been adopted in full by the NIPSO). They allow considerable flexibility to fit with each organisation's obligations and culture. It is against these standards that failure to deliver is assessed.

4.2.2 Another fundamental concept is DoF's leadership position in managing public expenditure, and setting the rules under which departments and their ALBs should deploy the assets, people and other resources under their control. In turn each public sector organisation shall have robust and effective systems for their internal management. Box 4.3 outlines the key decisions each organisation needs to make.

4.2.3 To help DoF carry out this task properly:

- departments shall provide DoF with accurate and timely information about in-year developments - their expenditure, performance against objectives and evolution of risk (e.g. serious unforeseen events or discovery of fraud);
- ALBs shall provide their sponsor departments with similar information; and
- the established mechanisms for controlling and reporting public expenditure, including DoF support or approval where necessary, shall be respected.

4.2.4 In particular, departments shall consult DoF (and ALBs their sponsor departments) at an early stage about proposals to undertake unusual transactions or financing techniques. This applies especially to any transactions which may have wider implications elsewhere in the public sector (see Paragraph 2.3.4 and Box 2.4).

4.2.5 Working with the Accounting Officer, the Finance Director of each public sector organisation has special responsibility for seeing that the standards described in this chapter are respected. Annex 4.1 sets this out in more detail.

Box 4.3: Essentials of effective internal decision making

Choice

- active management of the portfolio of risks and opportunities;
- appraisal of alternative courses of action using the techniques in the *Green Book* and Better Business Cases NI, and including assessment of feasibility to achieve value for money;
- where appropriate, use of models (see Annex 4.2) or pilot studies to provide evidence on which to make decisions among policy or project choices;
- active steering of initiatives, e.g. reviews to take stock at critical points of projects; and
- appropriate internal delegations, with a single Senior Responsible Owner (SRO) for each significant project or initiative, and a single senior person leading each end to end process.

Process

- prompt, regular and meaningful management information on costs (including unit costs), efficiency, quality and performance against targets to track progress and value for money;
- proportionate administration and enforcement mechanisms, without unnecessary complexity;
- use of feedback from internal and external audit and elsewhere to improve performance; and
- regular risk monitoring, to track performance and experience and make adjustments in response.

Afterwards

- mechanisms to evaluate policy, procurement, project and programme outputs and outcomes, including whether to continue, adjust or end any continuing activities; and
- arrangements to draw out and propagate lessons from experience.

4.3 Opportunity and risk

4.3.1 Embedded in each public sector organisation's internal systems there shall be arrangements for recognising, tracking and managing its opportunities and risks. Each organisation's governing body should make a considered choice about its desired risk appetite, taking account of its legal obligations, Ministers' policy decisions, its business objectives, and public expectations of what it should deliver.

4.3.2 This can mean that different organisations take different approaches to the same opportunities or risks.

4.3.3 There should be a regular discipline of reappraising the opportunities and risks facing the organisation since both alter with time and circumstances, as indeed may the chosen responses. This process should avoid excessive caution, since it can be as damaging as unsuitable risk taking. The assessment should normally include:

- maintaining a risk register, covering identified risks and contingent risks from horizon scanning;

- reputational risks, since poor performance could undermine the credibility, and ultimately the creditworthiness, of the public sector as a whole;
- consideration of the dangers of maintaining the status quo;
- plans for disaster recovery; and
- appraisal of end-to-end risks in critical processes and other significant activities.

4.3.4 In making decisions about how to manage and control opportunity and risk, audit evidence and other assurance processes can usefully inform choice. Audit, including internal audit, can provide specific, objective and well-informed assurance and insight to help an organisation evaluate its effectiveness in achieving its objectives. It is good practice for the audit and risk assurance committee to advise the governing board of a public sector organisation on its key decisions on governance and managing opportunities and risks. It is also a good discipline for this process to include evaluating progress in implementing PAC recommendations, where they have been accepted.

4.3.5 In turn the board shall support the Accounting Officer in drawing up the Governance Statement, which forms part of each organisation's Annual Report and Accounts. See Annex 3.1. Further guidance about managing risks is in Annex 4.3 and *The Orange Book* (available at The Orange Book – Management of Risk – Principles and Concepts (publishing.service.gov.uk)).

4.4 Insurance

4.4.1 In the private sector risk is often managed by taking out insurance. In central government it is generally not good value for money to do so. This is because the public sector has a wide and diverse asset portfolio; a reliable income through its ability to raise revenue through taxation; and access to borrowed funds more cheaply than any in the private sector. In addition commercial providers of insurance also have to meet their own costs and profit margins. Hence the public purse is uniquely able to finance restitution of damaged assets or deal with other risks, even very large ones. If the government insured risk, public services would cost more.

4.4.2 However, there are some limited circumstances in which it is appropriate for public sector organisations to insure. They include legal obligations[1], and occasions where commercial insurance would provide value for money[2]. Further information about insurance generally is in Annex 4.4.

4.5 Control of public expenditure

4.5.1 DoF co-ordinates a system through which departments are allocated budget control totals for their public expenditure. Each department's allocation covers its own spending and that of its associated ALBs. Within the agreed totals, it has considerable discretion over setting priorities to deliver the public services for which it is responsible.

4.5.2 Each public sector organisation shall run efficient systems for managing payments (see Box 4.4). It shall also keep its use of public resources within the agreed budgets, take

[1] e.g. ALBs should insure vehicles where the Road Traffic Act requires it.
[2] e.g. where private sector contractors take out single-site insurance policies because they are cheaper than each individual party insuring themselves separately.

the limits into account when entering into commitments, and generally ensure that its spending profile is sustainable.

4.5.3 Any major project, programme or initiative should be led by a SRO. It is good practice to aim for continuity in such appointments (see Annex 4.5).

Box 4.4: Essentials of systems for committing and paying funds

- selection of projects after appraisal of the alternatives (see the *Green Book* and Better Business Cases NI), including appropriate approvals;
- open competition to select suppliers from a diverse range, preferably specifying outcomes rather than specific products, to achieve value for money (see Annexes 4.6 and 4.7);
- where feasible, procurement through multi-purchaser arrangements, shared services and/or standard contracts to drive down prices;
- effective internal controls to authorise acquisition of goods or services (including vetting new suppliers), within any legal constraints;
- separation of authorisation and payment, with appropriate controls, including validation and recording, at each step to provide a clear audit trail;
- checks that the goods or services acquired have been supplied in accordance with the relevant contract(s) or agreement(s) before paying for them;
- payment terms chosen or negotiated to provide good value;
- accurate payment of invoices: once and on time, avoiding lateness penalties (see Annex 4.8);
- a balance of preventive and detective controls to tackle and deter fraud, corruption and other malpractice (see Annex 4.9);
- integrated systems to generate automatic audit trails which can be used to generate Annual Report and Accounts and which both internal and external auditors can readily check; and
- periodic reviews to benefit from experience, improve value for money or to implement developments in good practice.

4.6 Receipts

4.6.1 Public sector organisations shall have arrangements for identifying, collecting and recording all amounts due to them promptly and in full. Outstanding amounts should be followed up diligently. Key features of internal systems of control are suggested in Box 4.5.

4.6.2 Public sector organisations should take care to track and enforce debts promptly. The presumption should be in favour of recovery unless it is uneconomic to do so.

Box 4.5: Essential features of systems for collecting sums due

- adequate records to enable claims to be made and pursued in full;
- routines to prevent unauthorised deletions and amendments to claims;
- credit management systems to manage and pursue amounts outstanding;
- controls to prevent diversion of funds and other frauds;
- clear lines of responsibility for making decisions about pressing claims increasingly more firmly, and for deciding on any abatement or abandonment of claims which may be merited; and
- arrangements for deciding upon and reporting any write-offs (see Annex 4.10). Audit trails which can readily be checked and reported upon both internally and externally.

4.7 Non-standard financial transactions

4.7.1 From time to time public sector organisations may find it makes sense to carry out transactions outside the usual planned range, e.g.:

- **write-offs** of unrecoverable debts or overpayments;
- recognising **losses** of stocks or other assets; and
- **long term loans** or **gifts** of assets.

4.7.2 In each case it is important to deal with the issue in the public interest, with due regard for probity and value for money. Annexes 4.10 to 4.12 set out what is expected when such transactions take place in central government, including notifying the Assembly.

4.7.3 Where an organisation discovers an underpayment, the deficit should be made good as soon as is practicable and in full. If there has been a lapse of time, for example caused by legal action to establish the correct position, it may be appropriate to consider paying interest, depending on the nature of the commitment to the payee and taking into account the reputation of the organisation and value for money for the public sector as a whole (see also Section 4.11).

4.7.4 Similarly, public sector organisations may have reason to carry out current transactions which would not normally be planned for. These might be:

- extra contractual payments to service providers;
- extra-statutory payments to claimants (where a similar statutory scheme exists);
- ex gratia payments to customers (where no established scheme exists); or
- severance payments to employees leaving before retirement or before the end of their contract and involving payments above what the relevant pension scheme allows.

4.7.5 Again it is important that these payments are made in the public interest, objectively and without favouritism. The disciplines the Assembly expects of central government entities are set out in Annex 4.13, which explains the notification procedure to be followed for larger one-off transactions of this kind. The steps to be considered when setting up statutory or extra-statutory compensation schemes are discussed in Annex 4.14 and departments should always consult DoF when drawing up such schemes. It is important to note that in most

cases, DoF approval will be required for such transactions as they would fall within the definition of "novel or contentious".

4.8 Unusual circumstances

4.8.1 Sometimes public sector organisations face dilemmas in meeting their commitments. They may have a legal or business obligation which would be uneconomic or inappropriate to carry out assiduously to the letter. In such cases it can be justifiable to seek a pragmatic, just and transparent alternative approach, appropriately reported to the Assembly in the organisation's Annual Report and Accounts. One-off schemes of this kind are always novel and so require DoF approval, not least because they may also require legislation or have to rest on the authority of the Budget Act (see Section 2.5). Box 4.6 suggests precedented examples.

Box 4.6: Examples of one-off pragmatic schemes

- A court ruling could mean that a public sector organisation owed each of a large number of people a very small sum of money. The cost of setting up and operating an accurate payment scheme might exceed the total amount due. The organisation could instead make a one-off payment of equivalent value to a charity representing the recipient group.
- A dispute with a contractor might conclude that the contractor owed a public sector organisation an amount too big for it to meet in a single year while staying solvent. The customer might instead agree more favourable payment terms, with appropriate safeguards, if this arrangement provides better value for money.

4.9 Staff

4.9.1 Each public sector organisation should have sufficient staff with the skills and expertise to manage its business efficiently and effectively. The span of skills required should match the organisation's objectives, responsibilities and resources, balancing professional, practical or operational skills and policy makers, and recognising the value of each discipline. Succession and disaster planning should ensure that the organisation can cope robustly with changes in the resources available, including unforeseen disruption.

4.9.2 Public sector organisations should seek to be fair, honest and considerate employers. Some desirable characteristics are suggested in Box 4.7.

4.9.3 Similarly public sector employers have a right to expect good standards of conduct from their employees. The qualities and standards expected of civil servants are set out in the NICS *Code of Ethics*. Other public sector employees should strive for similar standards, appropriate to their context.

Box 4.7: Public sector organisations as good employers

- selection designed to value and make good use of talent and potential of all kinds;
- fairness, integrity, honesty, impartiality and objectivity;
- professionalism in the relevant disciplines, always including finance;
- arrangements to make sure that staff posts are loaded cost effectively;
- management techniques balancing incentives to improve and disciplines for poor performance;
- diversity valued and personal privacy respected;
- mechanisms to support efficient working practices, both normally and under pressure; and
- arrangements for whistleblowers to identify problems privately without repercussions.

4.10 Assets

4.10.1 All public sector organisations own or use a range of assets. Each organisation needs to devise an appropriate asset management strategy to define how it acquires, maintain, track, deploy and dispose of the various kinds of assets it uses. Annex 4.15 discusses how to set up and use such a strategy.

4.10.2 It is good practice for public sector organisations to take stock of their assets from time to time and consider afresh whether they are being used efficiently and deliver value for public funds. If there is irreducible spare capacity there may be scope to use part of it for other government activities, or to exploit it commercially for non-statutory business.

4.11 Standards of service

4.11.1 Poor quality public services are not acceptable. Public sector organisations should define what their customers, business counterparties and other stakeholders can expect of them.

4.11.2 Standards can be expressed in a number of ways. Examples include guidelines (e.g. response times), targets (e.g. take-up rates) or a collection of customer rights in a charter. Even where standards are not set explicitly, they may sometimes be inferred from the way the provider organisation carries out its responsibilities; so it is normally better to express them directly.

4.11.3 Whatever standards are set, they should be defined in a measurable way, with plans for recording performance, so that delivery can be readily gauged. It is good practice to use customer feedback, including from complaints, to reassess from time to time whether standards or their proxies (milestones, targets, outcomes) remain appropriate and meaningful.

4.11.4 Where public sector organisations fail to meet their standards, or where they fall short of reasonable behaviour, it may be appropriate to consider offering remedies. These can take a variety of forms, including apologies, restitution (e.g. supplying a missing licence) or, in more serious cases, financial payments. Decisions about financial remedies – which should not be offered routinely - should include taking account of the legal rights of the other party or parties and the impact on the organisation's future business.

4.11.5 Any such payments, whether statutory or ex gratia, should follow good practice (see Annex 4.13). Since schemes of financial redress often set precedents or have implications

elsewhere, they should be cleared with DoF before commitments are made, just as with any other public expenditure out of the normal pattern (see Sections 2.1 to 2.4).

4.12 Complaints

4.12.1 Those public sector organisations which deal with customers directly should strive to achieve clear, accurate and reliable standards for the products and services they provide. It is a statutory requirement for all bodies within the remit of the Northern Ireland Public Services Ombudsman (NIPSO) to signpost a complaint about performance to NIPSO within two weeks of the conclusion of their internal complaints process.

4.12.2 NIPSO has the statutory power to publish model Complaints Handling Procedures (CHPs) for NI public bodies that are within legislative remit. Once public bodies are subject to a model CHP published by NIPSO they are under a statutory obligation to comply with the model CHP arrangements Public bodies within the remit of NIPSO may also be subject to investigation by NIPSO when a complainant remains dissatisfied following the end of the public body's internal complaints procedure. After investigation of cases of specific complaint, NIPSO can decide whether injustice or hardship arises due to maladministration, and may recommend a range of remedies, either for individual cases or for groups of similar cases. Departments or their statutory agencies proposing to reject a NIPSO recommendation should, before doing so, copy the correspondence to their DoF Supply Officer. If a body fails to remedy an injustice found by NIPSO, the Ombudsman may lay a special report before the Assembly, and the body may be called to give evidence. The Ombudsman also has the power to initiate an investigation, without having first received a complaint, where they have a reasonable suspicion of systemic maladministration.

4.13 Transparency

4.13.1 All public sector organisations shall operate as openly as is compatible with the requirements of their business. In line with the statutory public rights[3], they should make available timely information about their services, standards and performance. This material should strike a careful balance between protecting confidentiality and open disclosure in the public interest.

4.13.2 All public sector organisations shall adopt a publication scheme routinely offering information about the organisation's activities. They shall also publish regular information about their plans, performance and use of public resources.

4.13.3 The published information should be in sufficient detail, and be sufficiently regular, to enable users and other stakeholders to hold the organisation and its Ministers to account. Benchmarks can help local users to evaluate local performance more easily.

4.13.4 The primary document of record for central government departments is the Annual Report and Accounts, which shall consolidate information about the relevant ALBs. It shall include a Governance Statement (see Annex 3.1).

4.13.5 In addition, HM Treasury is responsible for publishing certain aggregate information about use of public resources, for example Whole of Government Accounts consolidating all central and local government organisations' accounts and comparisons of outturn with

[3] e.g. Freedom of Information Act 2000, Data Protection Act 1998, Environment Information Regulations 2004 and the Re-use of Public Sector Information Regulations 2005.

budgets. The Office for National Statistics (ONS) also uses input from data gathered by HM Treasury to publish the national accounts.

4.13.6 In certain areas of public business it is also important or desirable to provide adequate public access to physical assets. Unnecessary or disproportionate restrictions should be avoided. Managed properly, this can be a valuable mechanism to promote inclusion and enhance public accountability.

4.14 Dealing with initiatives

4.14.1 Public sector organisations need to integrate all the advice in this handbook when introducing new policies or planning projects. Each is unique and will need bespoke treatment. The checklist in Box 4.8 brings the different factors together. It applies directly to central government organisations but the principles will be of value elsewhere.

Box 4.8: Factors to consider when planning policies or projects

Design

- Has the proposal been evaluated against alternative options, including doing nothing?
- Should there be pilot testing before full roll out?
- Are the controls agreed and documented clearly? Have the risks and opportunities been considered systematically? Is the change process resilient to shocks? What contingencies might arise?
- Is the intended intervention proportionate to the identified need?
- What standards should be achieved? How will performance be tracked and assessed? Could the proposal be simplified without loss of function?
- If partner(s) are involved, is the allocation of responsibilities appropriate?
- Will the proposal be efficient, effective and offer good value for money?
- Is the policy sustainable in the broadest sense? Should it have a sunset clause?
- Does the planned activity meet high standards of probity, integrity and honesty?
- Will the proposal deliver the desired outcome to time and cost?
- Does the Accounting Officer assess the initiative as compatible with public sector standards?
- Has due diligence been performed on any calls for evidence? Is there an appropriate balance of information from independent sources? Has account been taken of submissions from individuals or organisations with vested financial interests, as these can carry greater risks?
- If relevant, has the wider impacts of adopting GB based legislation/policies been considered? Has the need to engage with equivalent bodies in other UK regions been considered from an early stage to feed into the legislative process from an NI context?

Control

- What prior agreement is required, if any?
- How will internal governance and delegation work? Will it be effective? Is it transparent? Should there be an SRO?
- Is there adequate legislation? If not, what is needed to make the action lawful?
- Is there any conflict with European law, including limits on State aid/Subsidy Control?
- Is the public authority providing a subsidy that falls within the scope of the Subsidy Control Act 2022 and/or the EU's State aid rules?
- How will the proposal be financed? Is there budget and Estimate cover? Is it appropriate to charge to help finance the service? Are charges set within the law?
- Is the proposed action within the department's delegated authorities?
- What financial techniques will be used to manage rollout, implementation and operation?
- Are project and programme management techniques, including Independent Assurance Reviews, likely to be useful?
- How will the intended new arrangements be monitored and efficiency measured?
- How will feedback be used to improve outcomes?
- Does the design inhibit misuse and counter fraud? What safeguards are needed?
- Has the risk of fraud been assessed to help inform policy or project design?
- How will the associated risks be tracked and the responses adjusted?
- What intervention will be possible if things go off track?
- Would it be possible to recover from a disaster promptly?

Accountability

- How should the Assembly/Executive/Departmental Committee be told of the proposal and kept informed of progress?
- What targets will be used? Are they sufficiently stretching?
- Is public access called for? How?
- Is the policy or service fair and impartial?
- Will its administration be open, transparent and accessible?
- Should there be customer standards? How are complaints used to improve performance?
- Should there be arrangements for redress after poor delivery?

- Is enforcement required? If so, is it proportionate?
- Is an appeal mechanism needed?
- Is regulation called for?
- Learning lessons
- What audit arrangements (internal and external) are intended?
- What information about the activity will be published? How and how often?
- When and how will the policy or project be evaluated to assess its cost and benefits and to determine whether it should continue, be adjusted, replaced or ceased?

Annex 4.1	Finance Directors
Annex 4.2	Use of models
Annex 4.3	Risk
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A4.1 Annex 4.1 Finance Directors

It is government policy that all departments should have professional Finance Directors reporting to the Permanent Secretary with a seat on the departmental board, at a level equivalent to other board members. It is good practice for all other public sector organisations to do the same, and to operate to the same standards. This Annex sets out the main duties and responsibilities of Finance Directors.

The finance function

A4.1.1 The Finance Director of a public sector organisation should:

- be professionally qualified[4];
- have board status equivalent to other board members;
- report directly to the permanent head of the organisation; and
- be a member of the senior leadership team, the management board and the executive committee (and/or equivalent bodies).

A4.1.2 This demanding leadership role requires a persuasive and confident communicator with the stature and credibility to command respect and influence at all levels through the organisation. Its main features are described in Box A4.1A. Many of the day-to-day responsibilities may in practice be delegated, but the Finance Director should maintain oversight and control. In large part, these duties consist of ensuring that the financial aspects of the Accounting Officer's responsibilities are carried through to the organisation and its Arm's Length Bodies (ALBs) in depth.

[4] The term professional Finance Director in this context means both being a qualified member of one of the five bodies comprising the Consultative Committee of Accounting Bodies (CCAB) in the UK and Ireland, i.e. the Chartered Institute of Public Finance and Accountancy, the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland, the Chartered Accountants Ireland, the Association of Chartered Certified Accountants, or having equivalent professional skills and/or qualifications; and having relevant prior experience of financial management in either the private or the public sector.

Box A4.1A: The role of the Finance Director

Governance

- financial leadership, both within the organisation and to its ALBs, at both a strategic and operational level;
- ensuring sound and appropriate financial governance and risk management;
- leading, motivating and developing the finance function, establishing its full commercial contribution to the business;
- planning and delivering the financial framework agreed with DoF or sponsoring organisation against the defined strategic and operational criteria; and
- challenging and supporting decision makers, especially on affordability and value for money, by ensuring policy and operational proposals with a significant financial implication are signed-off by the finance function.

Internal controls

- co-ordinating the planning and budgeting processes;
- applying discipline in financial management, including managing banking, debt and cash flow, with appropriate segregation of duties;
- preparation of timely and meaningful management information;
- ensuring that delegated financial authorities are respected;
- selection, planning and oversight of any capital projects;
- ensuring efficiency and value for money in the organisation's activities;
- provision of information and advice to the audit and risk assurance committee; and
- leading or promoting change programmes both within the organisation and its ALBs.

External links

- preparing Estimates, Annual Report and Accounts and consolidation data for the Whole of Government Accounts (WGA);
- liaison with the external auditor; and
- liaison with PAC and the relevant Departmental Committee(s).

A4.1.3 The finance function should maintain a firm grasp of the organisation's financial position and performance. Supporting the Accounting Officer, the Finance Director shall ensure that there is sufficient expertise in depth, supported by effective systems, to discharge this responsibility and challenge those responsible for the organisation's activities to account for their financial performance. It is important that financial management is taken seriously throughout each public sector organisation.

Financial leadership

A4.1.4 The Finance Director is responsible for leadership of financial responsibilities within the organisation and its ALBs. They shall ensure that the information on which decisions about the use of resources are based is reliable. Box A4.1B explains some specific responsibilities of the role.

Box A4.1B: Financial management leadership

- providing professional advice and meaningful financial analysis enabling decision makers to take timely and informed business decisions;
- maintaining a long-term financial strategy to underpin the organisation's financial viability within the agreed framework;
- developing and maintaining an effective resource allocation model to optimise outputs;
- ensuring financial probity, regularity and value for money;
- developing and maintaining appropriate asset management and procurement strategies;
- reporting accurate and meaningful financial information about the organisation's performance to the Assembly, DoF and the general public; and
- setting the strategic direction for any commercial activities.

Internal financial discipline

A4.1.5 The Finance Director shall maintain strong and effective policies to control and manage use of resources in the organisation's activities. This includes improving the financial literacy of budget holders in the organisation. Similarly, they shall ensure that there are similar disciplines in the organisation's ALBs. These shall all draw on best practice in accounting and respect DoF's requirements, including, where relevant, Accounts Directions. These responsibilities are described in Box A4.1C.

Box A4.1C: Financial control

- enforcing financial compliance across the organisation while guarding against fraud and delivering continuous improvement in financial control;
- applying strong internal controls in all areas of financial management, risk management and asset control;
- establishing budgets, financial targets and performance indicators to help assess delivery;
- reporting performance of both the organisation and its ALBs to the board, DoF and other parties as required;
- value management of long term commercial contracts; and
- ensuring that the organisation's capital projects are chosen after appropriate value for money analysis and evaluation using the *Green Book* and Better Business Cases NI.

A4.1.6 Individual Finance Director posts will of course have duties specific to their organisations and contexts in addition to those set out in this Annex. But all Finance Director posts should seek to operate to these standards as an essential minimum.

A4.2 Annex 4.2 Use of models

In modern government modelling is important. It can guide policy development; help determine implementation plans; and suggest how policies may evolve. Models should be controlled and understood in their proper context, with effective quality assurance, so that they can be used to good effect.

Control and governance

A4.2.1 Supported by the board, the Accounting Officer of a central government organisation should oversee the use and Quality Assurance (QA) of models within the organisation. There should be sufficient feedback for the Accounting Officer to be able to track progress and adjust the process.

A4.2.2 Each business critical model should be managed by a Senior Responsible Owner (SRO) of sufficient seniority and experience, supported by experts and specialists, to understand the use of the model in context. Project and programme management techniques can be useful. It is good practice to avoid changing the SRO frequently.

A4.2.3 Each model is limited by the quality of its input data and founding assumptions. So the results of any model need to be treated with a degree of scepticism. It is vital to build sufficient governance into each model to help its users understand the value and weaknesses of its results. The apparent precision of mathematical models should not mislead users into putting more weight on them than can be justified. Transparency should be the norm in the development and use of all models.

Quality Assurance (QA)

A4.2.4 Whatever the complexity of the model, its governance should include an element of structured critical challenge to provide a sense check. It can take a number of forms: for example a steering group, a project board or outside assessment. New or untried models tend to require more QA than those using recognised techniques.

A4.2.5 In an organisation using a great deal of modelling, it is good practice for the Accounting Officer to appoint a QA champion. Effective QA demands dispassionate scrutiny by people disengaged with the project but with sufficient knowledge and experience to help steer the model into a successful approach. There may be a case for ensuring that different models in different parts of the organisation use consistent approaches.

A4.2.6 It is always good practice to evaluate the risks associated with any model so that the ultimate users of the model can appreciate what it can and cannot deliver. Sophisticated models may demand specialist expertise and leadership but the vital element of constructive lay oversight should never be skimped. Otherwise there can be a danger that flaws are overlooked because the experts concentrate on the technical complexities.

A4.2.7 In managing a model, the SRO should consciously decide how it can provide good value for money. There is no point, for instance, in data collection to a high degree of

accuracy if the assumptions used in the model cannot be exact. Similarly, there is a stronger case for investing in a model if it forms a central part of a decision making process.

A4.2.8 More information on QA of government models can be found at the gov.uk website. Guidance on actuarial modelling can be found on the Government Actuary's Department's section of the gov.uk website.

A4.3 Annex 4.3 Risk

Each public sector organisation should have systems for identifying and managing risk – both opportunities and threats – suited to its business, circumstances and risk appetite. The board should lead the assessment and management of risk, and support the Accounting Officer in drawing up the Governance Statement (see Annex 3.1).

The case for managing risk

A4.3.1 Every public sector organisation faces a variety of uncertainties, both positive and negative, which can affect its success in delivering its objectives, budget and value for money. So the board of each public sector organisation should actively seek to recognise both threats and opportunities, and to decide how to respond to them, including how to set internal controls.

A4.3.2 Managing risk should be integrated into the normal management systems of each public sector organisation so that it can achieve its goals and maintain a reputation of credibility and reliability. It is for each Accounting Officer, supported by the board, to decide how.

A4.3.3 The board should make a strategic choice about the style, shape and quality of risk management within each organisation. This is risk tolerance, i.e. the extent to which the organisation is willing to accept loss or detriment either in the performance of its regular services or in order to secure better outcomes. Different risk tolerances will apply to different circumstances, e.g. mission critical programmes or policies might find service failure scarcely tolerable, whereas investment bodies may care more about achieving financial success even at the price of some failures. Boards should be willing to take a proportionate approach so that less important risks do not crowd out the vital ones.

Risk management in practice

A4.3.4 The board's strategic guidance on risk appetite should permeate each organisation's programmes, policies, processes and projects. It should determine how delegations and reporting arrangements work so that departures from plan can be picked up and dealt with promptly.

A4.3.5 Feedback from working level should also inform each board reassessment of risk. Thus risk management should be a continuous cycle of assessment and feedback, responding to new information and developments. The essentials of the process are summarised in Box A4.3A.

A4.3.6 Each organisation should decide how this cycle should work, in line with its circumstances, priorities and working practices. The final word must always be for the Accounting Officer supported by the board, taking a broad and connected view across the whole organisation.

Box A4.3A: Outline of the risk management cycle

1. The board defines the organisation's risk tolerance.
2. The organisation identifies and categorises its risks.
3. The organisation assesses the risks identified: how likely their possible impact, identifying which are beyond tolerance and when.
4. The board scans the horizon for any remote overlooked risks.
5. The board decides which risks matter and what action should be taken, if any.
6. Downward delegation of management, coupled with upward reporting of risks through the organisation enables the board to track performance.
7. Using this feedback, the board takes a rounded overview, and may adjust decisions e.g. on tolerance or on response.
8. Back to step 1 and iterate as the board chooses.

Identifying risks

A4.3.7 It is important to capture all the organisation's risks so that they can be evaluated properly in context.

A4.3.8 There is value in getting each part of the organisation to think through its own risks. At working level operational risks may loom large. It may only be at board level that it is really possible to scan the horizon for emerging trends, problems or opportunities that might change the organisation's working environment. Some of the critical risks that are easily overlooked are shown in Box A4.3B.

Box A4.3B: Examples of risk which are easily missed

- **information security** risks: unsecured digital information can be misplaced or copied;
- **high impact low probability** risks: remote risks with serious effect if they happen;
- **opportunity** risks: where some choices may close off other alternatives;
- **end to end** risks: which emerge when an operational chain fails simultaneously in several places in a linked set of processes;
- **inter-organisational** risks: which can cause failure of the organisation's business because of links to partners, suppliers and other stakeholders; and
- **cumulative** risks: which happen if several risks precipitate at once, e.g. in response to the same trigger.

A4.3.9 As well as drawing on risk assessment from within the organisation, it may be valuable to use an external source to make sure that nothing important has been overlooked. Sometimes different public sector organisations can help each other out in this way, to their mutual advantage. And it can be useful to get staff to work together to consider the subject, e.g. in facilitated groups.

A4.3.10 Once the organisation's risks have been identified, it is possible to draw up a risk register. This is a list of recognised risks which can be kept up to date and which the board can review regularly. Each organisation needs to decide how to prioritise its total risk exposure so that the board can take an informed strategic approach to risk for the organisation as a whole.

Responding to risk

A4.3.11 Each organisation needs to decide whether, and if so how, to respond to its identified risks. Some standard responses are listed in Box A4.3C.

Box A4.3C: Some standard responses to risk

Treat: a common response. Treatment can mean imposing controls so that the organisation can continue to operate; or setting up prevention techniques. See Box A4.3D for possible treatments.

Transfer: another organisation might carry out an activity in which it is more expert. Insurance is not usually open to public sector organisations (see Annex 4.4) but other forms of transfer are, e.g. using a payroll bureau. Some risks cannot be transferred, especially reputational risk. So delegating organisations should retain oversight of their agents, with scope for remedial action when necessary.

Terminate: it may be best to stop (or not to start) activities which involve intolerable risks or those where no response can bring the residual risk to a tolerable level, e.g. failing projects where it is cheaper to start again. This option is not always available in the public sector, which sometimes has to shoulder difficult risks – typically remote but potentially serious ones – which the private sector can choose to avoid.

Tolerate: for risks where the downside is containable with appropriate contingency plans; for some where the possible controls cannot be justified (e.g. because they would be disproportionate); and for unavoidable risks.

Take the opportunity: boards may embrace some risks, accepting their downside perhaps with controls or preventative action, in the expectation of beneficial outcomes. Avoiding all risk can be as irresponsible as disregarding risk.

A4.3.12 In choosing responses, the acid test is whether the residual risk can be made acceptable after action. All controls should be realistic, proportionate to the intended reduction of risk, and offer good value for money. The more common types are listed in Box A4.3D.

Box A4.3D: Common controls

Preventive action: measures to eliminate or limit undesirable outcomes, e.g. improving training or risk awareness; or stopping transfer of digital information using data sticks. Beware of imposing unnecessary costs or damaging innovation.

Corrective controls: measures to deal with damaging aspects of realised risks, e.g. clauses to recover the cost of failure of a contract. Includes contingency planning.

Directive controls: measures designed to specify the way in which a process is carried out to rule out some obvious potential damage, e.g. hygiene requirements.

Detective controls: measures to identify damage so that it can be remedied quickly. Especially useful where prevention is not appropriate, but can be a useful cross check elsewhere, e.g. stock controls.

A4.3.13 However it is treated, it is usually impossible to eliminate all risk. It would often be poor value for money to do so were it possible. So it is good practice to associate application of controls with contingency planning to cope with resolution of damage when risks precipitate. Many organisations find it useful to dry run these plans: first to check that they work, second to make sure they are proportionate and third to remove any unnecessary features they may have.

The Board

A4.3.14 Risk management is a key governance task for the board. It should take a strategic view of risk in the organisation in the round[5], factoring together all the relevant input it can reasonably use. For example, it may consider to what extent risks interact, cumulate or cancel each other out. Consideration of risk should feature in all the board's significant decisions.

A4.3.15 It is good practice for the board to consider risk regularly as part of its normal flow of management information about the organisation's activities. It is good practice for each layer of management to give upward assurance about its performance, so reinforcing responsibility through the structure.

A4.3.16 It is up to each board to decide how frequently it wants to consider risk. Some set regular timetables to consider the whole risk register, while some choose to look at parts of the risk register in a regular sequence. Scrutiny of this kind enables the board to assess developments in context and make confident decisions about their relevance and significance.

A4.3.17 It is good practice for the board to make these assessments on the advice of its audit and risk assurance committee, though it should form its own view. Audit and risk assurance committees can also add value by chasing up implementation of the organisation's responses to PAC reports. Each audit and risk assurance committee should be chaired by a non-executive board member, drawing on input from the organisation's internal reporting and internal audit functions.

A4.3.18 Having weighed the identified risks, the board should also seek to distinguish unidentified risks, some of which may be remote. Box A4.3B offers some possibilities though it is not exhaustive. This process may lead the board to reconsider its strategy on risk tolerance.

A4.3.19 A useful focus of board risk work is supporting the Accounting Officer in preparation of the Governance Statement for publication in its Annual Report and Accounts (see Annex 3.1). It should include an account of how the organisation has responded to risk and what it is doing both to contain and manage risk; and also to rise to opportunities.

A4.3.20 More generally, the board should make sure that lessons are learned from the organisation's experience. This applies particularly to perceived failures, e.g. an unforeseen risk or a crystallised risk which turned out more damaging than expected. But it is equally true of successes, especially those where risk was managed well, to see whether there is anything to be gained by repeating effective techniques elsewhere.

A4.3.21 Finally, the board should consider whether the organisation's risks are being treated appropriately. If damage has been prevented, it may be possible to adjust the existing response to risk to achieve equally successful results by less expensive or less invasive techniques, e.g. replacing physical controls with security cameras.

Departmental groups

A4.3.22 Nearly all government departments sponsor one or more Arm's Length Bodies (ALBs) for which they take ultimate responsibility while allowing them a degree of (or sometimes considerable) independence (see Chapter 7). The accounts of these ALBs are

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[5] For example using enterprise risk management or an equivalent technique for embedding risk management in organisational management such as that on the Institute of Risk Management website.

consolidated with their sponsor department's accounts, emphasising that the sponsor stands behind them.

A4.3.23 It follows that each departmental board should consider the group's risk profile including the businesses of its ALBs. The potential liabilities of some ALBs can be so great that they may overshadow the department's own, so this is essential hygiene.

A4.3.24 References:

The Orange Book - available on the Accountability and Financial Management section of the DoF website.

A4.4 Annex 4.4
Insurance

Central government organisations should not generally take out commercial insurance because it is better value for money for the taxpayer to cover its own risks. However, there are some circumstances where commercial insurance is appropriate. This Annex sets out the issues to be considered. This guidance applies to departments and their Arm's Length Bodies (ALBs).

A4.4.1 Central government organisations shall not normally buy commercial insurance to protect against risk. Since the government can pool and spread its own risks, there is little need to pay the private sector to provide this service. In general it is cheaper for the government to cover its own risks.

A4.4.2 However, in certain circumstances, as part of forming a risk management strategy, the Accounting Officer in a public sector organisation may choose to purchase commercial insurance to protect the organisation's assets or reduce exposure to liabilities crystallising. Such decisions shall always be made after cost benefit analysis in order to secure value for money for the public sector as a whole. Some acceptable reasons for using insurance are set out in Box A4.4A.

Box A4.4A: Where commercial insurance may provide value for money

Building insurance as a condition of the lease and where the lessor will not accept an indemnity: commercial insurance may be taken out where the cost of accommodation, together with the cost of insurance, is more cost effective than other accommodation options.

Overall site insurance: private sector contractors and developers usually take out a single-site insurance policy because it is cheaper than each individual party insuring themselves separately. So a client organisation may be able to cover its risks at little or no extra cost.

Insurance of boilers and lifts: which may be a condition of taking out a lease, and typically involves periodic expert inspection designed to reduce the risk of loss or damage.

Commercial initiatives: because these activities are outside the government's core responsibilities, losses on a department's discretionary commercial activities could reduce resources available for its core activities (see Chapter 7). It may therefore make sense to insure them. Any goods used for services sold to other parts of central government should not, however, be insured.

Where commercial insurance is integral to a project: e.g where private contractors insist, it may be appropriate to purchase insurance even if the net benefit is negative. But this may be a sign that the project needs restructuring to avoid any requirement to buy commercial insurance, perhaps through letters of comfort or statements of support. The costs and benefits of taking out insurance should be included in the appraisal of the project as a whole.

Where commercial insurance is required: e.g. vehicles where the road Traffic Acts require it.

Appraising the options

A4.4.3 Decisions on whether to buy insurance shall be based on objective cost-benefit analysis, using guidance in the Green Book and Better Business Cases NI. Box A4.4B outlines some factors which are often worth considering in such assessments.

Box A4.4B: Costs and benefits which could be included in assessments

Costs:

- the insurance premium which may be paid – comprising the expected cost, expenses, cost of capital, profit and others.
- the administrative cost of managing claims with the insurance company.
- the cost of brokerage to secure the insurance, potentially included in the premium.

Benefits:

- transfer of risk, valued at the expected compensation for the insured losses, i.e. reflecting all possible scenarios and their probability of arising – note this will depend significantly on how the insurance is structured and its features.
- services bundled with the insurance as outlined in other considerations below.

Other considerations:

- Additional services that could either be provided as part of insurance cover or sourced separately:
    - Claims handling and administration – Managing claims as they arise through to settlement, including assessment of damages and legal defence. This could also include post event advice, with pre-arranged contracts and plans for accelerated recovery.
    - Recoveries – Pursuing liable parties for damages.
    - Risk mitigation – Actions, advice and investment to pro-actively reduce the risk of loss and manage losses effectively when they arise.
- Project or stakeholder requirements – For example insurance may be required as part of taking out a lease, in these cases it is also worth considering whether the insurance requirement changes the value for money analysis of this option, suggesting an alternative may be preferred.
- Data and systems ownership – Where government has risks that are spread across a number of central government bodies, there is value in collating and analysing the risk exposure and experience data. This may be possible with or without insurance, but when retaining the risk this can synergise with necessary administrative activity.
- Alternative options – Insurance is not the only option when looking to manage risk. In line with the Orange Book, once identified and assessed, risk management should look at mitigation in combination with accepting, avoiding or transferring the risk. All options should be considered to secure the best value for money.

Setting fees and charges

A4.4.4 If a central government organisation insures risks arising in supplying a service for which a fee or charge is levied, the actual premium payments shall be included in the calculation of costs when deciding the fee or charge. Similarly, where a central government organisation self-insures, the notional cost of premium payments shall be taken into account. See Chapter 6 for further details.

Reporting

A4.4.5 Where commercial insurance is both explicitly required by statute and represents the bare minimum cover required to comply with that statute, DoF approval is not required but DoF needs to be notified when commercial insurance needs to be purchased for this purpose. Departments should therefore inform their DoF Supply Officer of:

- any decision to use the services of commercial insurance companies for these purposes; and
- any reviews of insurance, or alternatives to insurance, that might contain lessons of wider application.

A4.4.6 In turn ALBs should consult their sponsor departments in similar circumstances.

Dealing with uninsured losses (except traffic accidents)

A4.4.7 Where a loss occurs or a third party claim is received, public sector organisations should initially consider whether the loss should be made good or the claim accepted. Thus:

- **loss of or damage to assets**: the question of repair or replacement should always be carefully considered, taking account of the need for the asset and current policies. This decision is, in effect, a new investment decision and should be appraised accordingly; and
- **third party claims**: the justification for the claim should be carefully considered with appropriate legal advice.

A4.4.8 If the organisation decides to repair or replace an asset, or meet a third party claim, it should normally expect to meet the cost from within its existing allocations. Similarly, ALBs should not normally expect their sponsor departments to meet claims for reimbursement of loss.

Insured losses

A4.4.9 Public sector organisations should make insurance claims in accordance with the terms of the policy.

A4.4.10 ALBs may retain amounts paid under commercial insurance policies to meet expenditure resulting from losses or third party claims. If it is decided not to replace or to repair an insured asset, the sponsor department may reduce any grant in aid payable to the ALB.

Claims between public sector organisations

A4.4.11 If two uninsured departments are involved in an incident causing loss to one or other, it is immaterial to the Northern Ireland public sector whether one claims on the other for the damage. For small claims it would not be value for money for central government to make interdepartmental adjustments in the case of minor damage. Similar waiver arrangements should apply up to mutually agreed limits between other public sector organisations. But waiver arrangements of this kind are not appropriate where there are rights of claim against third parties. It will always be regarded as novel, contentious, or repercussive for one central government organisation to seek legal redress from another central government organisation through the courts, meaning that DoF consent is always required.

A4.4.12 Box A4.4C shows how to proceed when one central government organisation makes a larger claim against one or more others.

Box A4.4C: Handling claims between public sector organisations

Insurance status	Settlement of claims
All insured	Insurers settle claims
All uninsured	Organisation(s) at fault negotiate about whether to reimburse the other(s)
Organisation at fault uninsured, other organisation(s) insured	Insured organisation claims on its insurance policy. Uninsured organisation(s) deal with claims from the insurers on the basis of strict legal liability
Organisation at fault insured, other organisation(s) uninsured	Uninsured organisation(s) seek financial satisfaction through the insurers of the organisation(s) at fault

Vehicles

A4.4.13 Most ALBs insure third party vehicle claims to comply with the Road Traffic Acts. Public sector organisations that are not insured or otherwise protected for traffic accidents should refer any third party claims, either for or against, to the Departmental Solicitor's Office.

A4.4.14 Many claims between public sector organisations involving damage to, or loss caused by, vehicles, can be handled using the arrangements in Paragraph A4.4.13.

A4.4.15 Vehicles travelling in other countries must comply with local requirements. These may require vehicles operating in another's territory to be covered by insurance to the extent required by the legislation in territory of the journey, unless there are acceptable alternative arrangements, e.g. indemnities.

Loans

A4.4.16 When government assets are loaned to a body other than a public sector organisation which does not insure, it is important to protect the interests of the lending organisation. So the borrower should insure against damage or loss of the assets from the time of receipt and against claims by third parties including its own employees. An indemnity by the borrower is an acceptable substitute if the lender is satisfied that the borrower could and would meet any damage or other loss.

A4.4.17 Public sector organisations are usually expected to meet the cost of insuring any government assets (e.g. equipment or stores) held by a contractor in the normal course of business, if the contractor is not comfortable relying on a government indemnity. The cost of any insurance against risks arising from negligence or wilful misconduct by the contractor's employees should be borne by the contractor. These arrangements should be explicitly set out in the relevant contract.

A4.4.18 Public sector organisations which borrow objects of value from a non-government body should normally offer the owner an indemnity against damage or loss. Such indemnities should leave no doubt as to the extent and duration of the borrowing organisation's liability. And they may need to be approved and reported if they fall within Assembly reporting requirements (see Annex 5.2).

A4.4.19 Borrowers should only take out commercial insurance for loaned items of value if the owner insists upon it, or if the borrower has reason to believe that commercial insurance would be more cost effective than giving an indemnity.

Employers' liability

A4.4.20 The Crown is not bound by the Employers' Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972 ("the 1972 Order") and consequently departments are not statutorily required to insure the risks which may arise under Part III of the Order. Any decision to insure or not to insure should be taken on value for money grounds.

A4.4.21 Generally, NDPBs which are not Crown bodies, and which are employers, are statutorily required, by the 1972 Order to insure against liability for personal injury suffered by their employees, unless:

- the NDPB is one of the employers listed in Article 7(a) of the 1972 Order, or
- the NDPB is listed in exemption Regulations made by the Department for the Economy (DfE) under the 1972 Order / Employer's Liability (Compulsory Insurance) Regulations (Northern Ireland) 1999, as amended.

A4.4.22 It is therefore possible for sponsor departments to seek exemption for their NDPBs by way of inclusion in exemption Regulations. DfE is responsible for amending legislation where sponsor departments, on behalf of NDPBs, seek exemption under the Regulations. Such exemption should only be considered and sought where the department responsible for sponsoring the body is prepared to provide a guarantee which should take the form set out in Box A4.4.E.

A4.4.23 Again, the decision on whether to insure will depend on a value for money assessment. If the organisation chooses not to insure, responsibility for the issue of certificates in accordance with the Act rests with the department responsible for paying grant in aid, provided that it is satisfied that this is the appropriate course.

A4.4.24 The scope of the certificate should be strictly confined to the risks with which the Employers' Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972 ("the 1972 Order") is concerned, and may not be extended to any other risks. It should be in the form set out in Box A4.4D. Departments should ensure that the circumstances in which certificates have been issued are reviewed from time to time, so that certificates may be revoked if circumstances change.

Box A4.4D: Form of exemption certificate

" The …[here specify the department]…hereby certifies that any claim established against….[here specify body or person]…in respect of any liability to …[here specify the employees involved]… of the kind mentioned in Article 5(1) of the Employer's Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972 will, to any extent to which it is otherwise incapable of being satisfied by the aforementioned employer, be satisfied out of moneys provided by the Northern Ireland Assembly."

A4.5 Annex 4.5 Senior Responsible Owner Accountability

This annex sets out how Senior Responsible Owner accountabilities interact with Accounting Officers and the Assembly.

A4.5.1 Senior Responsible Owners (SRO) for Programmes and Projects are in a special position in that they are expected to account for and explain the decisions and actions they have taken to deliver the projects for which they have personal responsibility. This line of accountability should be made clear to SROs in their appointment letter.

A4.5.2 Where a committee wishes to take evidence from an SRO of one of these major projects it will be on the understanding that the SRO will be expected to account for the implementation and delivery of the project and for their own actions. Appointment letters will make clear the point at which an SRO becomes directly accountable for the implementation of the project in question. The SRO will also be able to disclose to the Committee where a Minister or official has intervened to change the project during the implementation phase in a way which has implications for cost and/or timeline of implementation. In this respect the SRO should also be able to disclose their advice about any such changes.

A4.5.3 Accounting Officers are ultimately accountable for the performance of all the business under their control, including major projects for which an individual SRO has direct accountability and responsibility. And in this respect, if a Departmental Committee calls for evidence from an SRO, the Accounting Officer of the department may also be called to support the SRO at a hearing.

A4.5.4 This line of direct accountability for SROs does not alter the special position and relationship of accounting officers with the PAC.

A4.5.5 The recommended standard for the Northern Ireland Public Sector for programme management is Managing Successful Programmes (MSP®) and for project management is PRINCE2®. An SRO should refer to these standards to ensure the breadth of practices required for successful delivery are used.

A4.5.6 Further information on the appointment, roles and responsibilities of a SRO is available on the Programme and Project Management guidance section of the DoF website.

A4.6 Annex 4.6 Procurement

It is important to secure value for money in asset management through sound procurement. Public sector organisations should normally acquire goods and services through fair and open competition, acting on Construction and Procurement Delivery (CPD) or another Centre of Procurement Expertise advice. This Annex provides an overview of the policy framework for public procurement.

A4.6.1 Good procurement practice demands that public sector organisations buy the goods, works and services they need using fair and open procurement processes, guarding against fraud and corruption and meeting the standards in this document (*MPMNI*). European Union (EU) law, World Trade Organisation (WTO) and Government Procurement Agreements (GPA) underpins these principles. The specific responsibilities are set out in Box A4.6A.

Box A4.6A: Checklist of key procurement responsibilities

General

- value for money, normally through competition;
- compliance with legal obligations including those imposed by international agreements; and
- follow Northern Ireland Public Procurement Policy.

Management approach

- leadership on the importance of efficient and effective procurement in delivering objectives;
- define roles and responsibilities of key staff, with adequate separation of duties; and
- promote awareness (including in ALBs of the importance of procurement policy and CPD guidance).

Planning and engagement

- clarify objectives of procurement from the start;
- there should be no "like for like" procurement. When a contract is approaching its end there should be a full review of policy intent or need, the market, and available innovative solutions in developing the procurement strategy and specification;
- ensure the integration of social value, environmental, and economic objectives into the business case in accordance with the Public Procurement Policy Note 01/21 (Scoring Social Value);
- consider how the procurement strategy could attract a diverse range of suppliers including SMEs and civil society organisations;
- consider collaborative or shared procurement with other organisations to maximise purchasing power;
- design procurement strategy and engage with the market early and well before competition starts; and
- consult CPD/Departmental Solicitor's Office on any difficult legal issues.

Skills

- use procurement professionals throughout; and
- ensure that there is sufficient commercial skills capacity for undertaking and managing procurements, including contract management activity.

Review

- apply the Gateway™ review process (where appropriate); and
- draw issues which may have wider implications to the attention of the relevant Centre of Procurement Expertise (CoPE).

A4.6.2 This guidance is intended to be fully consistent with the UK's international obligations. It does not create any rights or legal obligations.

Value for money

A4.6.3 Value for money is a key concept (see Paragraph 3.3.3 and Box A4.6B). It means securing the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought. It is not about minimising up front prices. Whether in conventional procurement, market testing, private finance or some other form of public private partnership, finding value for money involves an appropriate allocation of risk.

Box A4.6B: Securing value for money

Cost: the key factor is whole life cost, not lowest purchase price. Whole life cost takes into account the cost over time, including capital, maintenance, management, operating and disposal costs. For complex procurements, whole-life cost can be very different from initial price.

Quality: paying more for higher quality may be justified if the whole life cost is better, for example, taking into account maintenance costs, useful life and residual value. The purchaser should determine whether increased benefits justify higher costs.

Perspective: each public sector organisation's procurement strategy should seek to achieve the best value outcome for the public sector as a whole, not just for the organisation itself. This should be designed in before the invitation to tender is published.

Collaborative procurement: in the vast majority of cases, standardising and aggregating procurement requirements will deliver better value for money. Public sector organisations, including smaller ones, should therefore collaborate as far as possible on their procurement activity.

A4.6.4 Purchasers need to develop clear strategies for continuing improvement in the procedures for acquisition of goods, works and services. Public sector organisations should collaborate with each other, following guidance, in order to secure economies of scale, unless they can achieve better value for the public sector as a whole some other way. Smaller suppliers should have fair access to see if they are able to deliver better value for money.

Legal framework

A4.6.5 Public sector organisations are responsible for ensuring that they comply with the law on procurement (see Box A4.6C) taking account of CPD guidance.

The user's requirement

A4.6.6 Procurement should help deliver relevant departmental and government-wide strategies and policies. The procuring organisation should establish that the supply sought is really needed, is likely to be cost effective and affordable. And the published specification should explain clearly what outcomes are required, since this is crucial to obtaining the supply required. Once it is decided that third party procurement appears better value for money than provision in-house, a range of models should be considered, for example employee-led mutuals and joint ventures as well as more traditional outsourcing.

Box A4.6C: The legal framework for public procurement

- international obligations, notably WTO agreements;
- domestic legislation, including subordinate legislation implementing directives;
- contract and commercial law in general; and
- relevant case law.

The procurement process and suppliers

A4.6.7 Competition promotes economy, efficiency and effectiveness in public expenditure. Works, goods and services should be acquired through competition unless there are convincing reasons to the contrary, and where appropriate should comply with domestic advertising rules and NI Public Procurement Policy as well as relevant obligations imposed on the UK by its international agreements. The form of competition chosen should be appropriate to the value and complexity of the goods or services to be acquired.

A4.6.8 Public sector organisations should aim to treat suppliers responsibly to maintain good reputations as purchasers (see Box A4.6D).

Box A4.6D: Relationships with suppliers

- high professional standards in the award of contracts;
- clear procurement contact points;
- adequate information for suppliers to respond to the bidding process;
- the outcome of bids announced promptly;
- feedback to winners and losers on request on the outcome of the bidding process;
- high professional standards in the management of contracts; and
- prompt, courteous and efficient responses to suggestions, enquiries and complaints.

A4.6.9 In carrying out efficient sourcing projects, central government should follow best practice.

A4.6.10 One such approach is the LEAN approach whose principles are designed to make doing business with government more efficient and cost effective (for both buyers and suppliers) to support economic growth.

A4.6.11 During the evaluation stage of sourcing, it is important for public sector procuring organisations to:

- establish the propriety of candidate suppliers – taking account of the requirement to exclude those convicted of, for example, fraud, theft, fraudulent trading or cheating HMRC;
- assess suppliers' economic and financial standing to gain confidence of their capacity to carry out fully what the buyer requires within the pre-determined timescale and deliver value for money; and
- secure value for money (see Box A4.6B), using relevant and consistent criteria for evaluating the key factors (cost, size, sustainability, design etc).

Contracts

A4.6.12 In drawing up contracts, purchasers should, where possible:

- use model terms and conditions developed in the light of collective experience and which may help avoid prejudicing the position of others using the same supplier; and
- avoid variation of price clauses in contracts of less than two years' duration; and
- include prompt payment clauses.

A4.6.13 Purchasers cannot enter into contracts with other parts of the legal entity to which they belong, so different parts of the Crown cannot contract with each other. Instead internal agreements which fall short of being contracts are used (typically a Memorandum of Understanding (MoUs)) or Service Level Agreements (SLAs)). These may have all the hallmarks of contracts other than scope for legal enforcement.

Central purchasing bodies and agencies

A4.6.14 Central government organisations are required to use the services and collaborative procurement agreements managed by CPD/the relevant COPE.

A4.6.15 If public sector purchasers employ private sector agents to undertake procurement on their behalf they should:

- require compliance with the law (see Box A4.6C);
- ensure clear allocation of responsibilities; and
- where appropriate, obtain the agent's indemnity against any costs incurred as a result of its failure to comply with the legal framework on its behalf.

Taxation

A4.6.16 Central government bodies shall:

- base procurement decisions independent of any tax advantages that may arise from a particular bid;
- avoid contractors using offshore jurisdictions, consistent with international obligations and the government's stated objectives on tax transparency and openness;
- be vigilant in not facilitating tax arrangements with suppliers or their agents that are detrimental or disadvantageous to the public sector. Public sector

organisations need to take special care in relation to tax arrangements (see Cabinet Office guidance[6]); and

- employ internal management processes to ensure that transactions that give rise to questions of propriety of tax arrangements are brought to the Accounting Officer's or, if necessary, Ministers' attention.

A4.6.17 In the case of bids under the Private Finance (PF2), it is particularly important to ensure that comparisons of competing bids take account of any tax planning by bidders. The Treasury's Green Book provides for a tax adjusted Public Sector Comparator to allow for the (usually) material tax difference between a PF2 option and the wholly public sector alternative. It would be inappropriate to apply this to bids where tax planning has cancelled out this effect.

A4.6.18 Public procurement projects involving the transfer of real estate or assets that are likely to appreciate in value can often give rise to specific tax issues, in particular liability to capital gains tax. If public sector organisations are negotiating with bodies that wish to structure procurement proposals in this way, they should consult DoF and HMRC at an early stage to identify the likely tax implications and assess the proposal for propriety generally.

Further guidance

A4.6.19 Procurement Policy Notes can be found on the Construction and Procurement Delivery (CPD) section of the DoF website.

[6] *Cabinet Office guidance*: Procurement Policy Note – Tax arrangements of Public Appointees

A4.7 Annex 4.7
Subsidy control/State Aid

Subsidy control regimes set rules, procedures and processes that allow public authorities to award subsidies to achieve public policy objectives, whilst also limiting the negative effects of subsidies on domestic and international competition and investment.

Until the UK left the European Union, the EU's State aid rules controlled how UK and discretionary EU funding was provided to enterprises and entities that engage in economic activities. Now the UK has left the EU, the UK Subsidy Control Act 2022 sets the rules and the EU's State aid rules only apply when the enterprise receiving the subsidy is within the scope of the Windsor Framework (previously known as the NI Protocol).

In NI it is recommended that any questions relating to subsidy control or State aid are directed towards the Subsidy Control Advice unit (SCAU) within the Department for the Economy (DfE). This is particularly important because there are now two subsidy control regimes in play in Northern Ireland and additional time may be required in order to allow proper consideration of proposals to ascertain if a subsidy/State aid is present, which regime is in play, and if required how legal cover for the public expenditure can best be provided.

A4.7.1 Public expenditure usually falls within the scope of a subsidy control regime when it is provided directly or indirectly to certain enterprises or entities that engage in economic activities, provides these with an economic advantage and has or could have an effect on trade and competition internationally or within the UK. So the first thing to be ascertained is does the measure involve enterprises, economic actors or undertakings? Essentially, does it involve organisations that engage in economic activities (i.e. are offering goods or services on a market). In addition to businesses that manufacture or trade goods or provide services, such organisations could also include public bodies such as universities, councils, public owned companies, special purpose vehicles, as well as social economy enterprises and charities. It should also be noted that when an entity engages on both economic and non-economic activities (e.g. a university, council or charity), only the public expenditure that is supporting or incentivising economic activities has to comply with the rules of the subsidy control regime. However, when this is the case, public authorities must ensure public expenditure provided for the non-economic activities cannot be used to cross-subsidise the economic activities.

A4.7.2 As detailed in UK Government guidance, public expenditure must comply with the UK's commitments on subsidy control in all international trade agreements. However, in practice, a subsidy has to comply with either the Subsidy Control Act 2022 (the Act) ***or*** the EU's State aid rules.

Box A4.7A: How does the Act define a subsidy?

In the Act, a subsidy means financial assistance which—

(a) is given, directly or indirectly, from public resources by a public authority,

(b) confers an economic advantage on one or more enterprises,

(c) is specific, that is, is such that it benefits one or more enterprises over one or more other enterprises with respect to the production of goods or the provision of services, and

(d) has, or is capable of having, an effect on—

(i) competition or investment within the United Kingdom,

(ii) trade between the United Kingdom and a country or territory outside the United Kingdom, or

(iii) investment as between the United Kingdom and a country or territory outside the United Kingdom.

Box A4.7B: What is State Aid and when does Article 10 of the Windsor Framework apply?

State Aid is public expenditure that is subject to the EU's State aid rules.

Articles 107 and 108 of the Treaty on the Functioning of the European Union provide the legal basis for the rules on State aid.

State Aid is any advantage granted by public authorities through state resources on a selective basis to any organisations that could potentially distort competition and trade in the European Union (EU).

Article 10 of the Windsor Framework provides that EU State aid rules will continue to apply to the UK in respect of measures which affect trade in goods between NI and the EU (including the production of and trade in agricultural products) and the production of wholesale electricity in NI (i.e. measures impacting on the Single Electricity Market).

For the State Aid rules to apply, the effect on trade between Northern Ireland and the European Union cannot be merely hypothetical, presumed, or without a genuine and direct link to Northern Ireland. It must be established why the measure is liable to have such an effect on trade between Northern Ireland and the European Union, based on the real foreseeable effects of the measure.

Box A4.7C: further guidance

Department for the Economy advice, guidance and information

https://www.economy-ni.gov.uk/topics/economic-policy/state-aid-and-subsidy-control

Guidance and information on the UK subsidy control regime

https://www.gov.uk/government/collections/subsidy-control-regime

European Commission State aid overview

https://competition-policy.ec.europa.eu/state-aid/state-aid-overview_en

UK and EU guidance on the circumstances in which Article 10 of the Windsor Framework will apply

https://www.gov.uk/government/publications/complying-with-the-uks-international-obligations-on-subsidy-control-guidance-for-public-authorities/guidance-on-the-scope-and-application-of-article-10-of-the-windsor-framework

https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52023XC0609(03)

DfE Subsidy Control Advice unit contact details

subsidycontrol@economy-ni.gov.uk

A4.8 Annex 4.8 Expenditure and payments

As part of the process of authorising and controlling commitments and expenditure of public funds, public sector organisations should time their expenditure and payments to provide good value for public money.

A4.8.1 Public sector organisations should use good commercial practice in managing the flows of expenditure and commitments they deal with. Box 4.3 has some sound high level principles. These need to be interpreted in the context of each organisation's business, in line with current legislation and using modern commercial practice. The actual techniques used may thus change from time to time and from place to place.

A4.8.2 In particular, public sector organisations should:

- explain payment procedures to suppliers;
- agree payment terms at the outset and stick to them;
- pay bills in accordance with agreed terms, or as required by law;
- tell suppliers without delay when an invoice is contested; and
- settle quickly when a contested invoice gets a satisfactory response.

A4.8.3 Public sector organisations are also bound by legislation[7] aiming to ensure that in commercial transactions, the payment period does not exceed 30 calendar days after the debtor receives an invoice. Further advice is available from DoF.

A4.8.4 However, the Northern Ireland Executive recognises that the public sector should set a strong example by paying promptly. Public sector organisations should aim to pay suppliers wherever possible within 10 working days. They should also include a clause in their contracts requiring prime contractors to pay their suppliers within 30 days. The principles in Box 4.4 must still be applied to all payments. Further guidance is available on the Accountability and Financial Management section of the DoF website.

Payments outside the normal pattern

A4.8.5 Payments in advance of need shall be exceptional, and shall only be considered if a good value for money case for central government can be made. Even then, as advance payments lead to higher financing costs, such payments are novel and contentious and require specific DoF approval. Advance payment shall never be used to circumvent expenditure controls or budgetary limits.

A4.8.6 In particular, it is not good value for money for public sector organisations to act as a source of finance to contractors who have access to other forms of loan finance. So advance

[7] The Late Payment of Commercial Debts (Interest) Act 1998 (as amended by The Late Payment of Commercial Debt Regulations 2002 (SI 1674) and the Late Payment of Commercial Debt Regulations 2013).

payments to contractors (i.e. payments made before equivalent value is received in return) should only be considered if, for example, a price discount commensurate with the time value of the funds in question can provide a good value for money case. Exceptions to these guidelines, which would not normally require specific DoF approval, include:

- service and maintenance contracts which require payment when the contract commences, provided that the service is available and can be called on from the date of payment;
- grants to small voluntary or community bodies where the recipient needs working capital to carry out the commitment for which the grant is paid and private sector finance would reduce value for money;
- minor services such as training courses, conference bookings or magazine subscriptions, where local discretion is acceptable; and
- prepayments up to a modest limit agreed in advance with DoF, where a value for money assessment demonstrates clear advantage in early payment.

A4.8.7 Interim payments may have an element of prepayment and so public sector organisations should consider them carefully before agreeing to them. However, if they are genuinely linked to work completed or physical progress satisfactorily achieved, preferably as defined under a contract, they may represent acceptable value for public funds. Taking legal advice as necessary, organisations should, however, consider whether:

- the contractor's reduced need for working capital shall be reflected in reduced prices; and
- the contractor should provide a performance bond in the form of a bank guarantee to deal with possible breach of contract.

A4.8.8 Public sector organisations should not, however, use interim payments to circumvent public spending controls. For example, it is not acceptable to make payments where value has not been received, simply to avoid underspending.

A4.8.9 Deferred payments are generally not good practice. They normally mean paying more to compensate the contractor for higher financing costs and are thus poor value for money (at the margin the public sector can always borrow more cheaply than the private sector). So any proposal for deliberate late payment is potentially novel and contentious. Any central government organisation considering deferred payments must thus seek DoF approval before proceeding.

A4.9 Annex 4.9 Fraud

Governance in public sector organisations includes arrangements for preventing, countering and dealing with fraud. This Annex provides further detail.

A4.9.1 Accounting Officers are responsible for managing public sector organisations' risks, including fraud. Each organisation faces a range of fraud risks specific to its business, from internal and external sources. The Fraud Act 2006 recognises that a criminal offence of fraud arises from causing a loss to an individual or legal entity through the intentional misdeclaration of information; knowingly withholding information; or through an abuse of position. The risk of a given fraud is usually measured by the probability of its occurring and its impact in monetary and reputational terms should it occur. Fraud can also have other impacts including undermining the delivery of government policy objectives and outcomes and physical or societal harm.

A4.9.2 In broad terms, managing the risk of fraud involves:

- assessing the organisation's overall vulnerability to fraud;
- identifying the areas most vulnerable to fraud risk;
- evaluating the scale of fraud risk;
- responding to fraud risk;
- detecting fraud;
- measuring the effectiveness of the fraud risk strategy; and
- reporting fraud to DoF and the Comptroller and Auditor General NI (C&AG).

A4.9.3 The most effective way to manage the risk of fraud is to prevent it from happening, by developing an effective anti-fraud culture.

A4.9.4 For guidance on all these areas, see Managing the Risk of Fraud (NI) – A Guide for Managers and Tackling External Fraud - both available on the Accountability and Financial Management section of the DoF website.

Assessing vulnerability to fraud

A4.9.5 Each organisation shall identify and assess at different levels how it might be vulnerable to fraud, with reference to guidance available on the Accountability and Financial Management section of the DoF website. Fraud should be always considered as a risk for the department's risk register.

Evaluating the scale of fraud risk

A4.9.6 For any new major area of spend, departments shall assess the risk of and impact from fraud at the outset when the spending is being proposed. This shall identify the potential for fraud and the different impacts that fraud could have for this spend area. Once spending is approved this shall result in the development and continued maintenance of a detailed fraud risk assessment.

Responding to fraud risk

A4.9.7 The organisation's response to fraud risk should be customised to the risks it faces. Typically it will involve some or all of the following:

- Developing a fraud policy statement, an anti-fraud strategy and a Fraud Response Plan (key documents that every organisation should have);
- Developing and promoting an anti-fraud culture, e.g. through a clear statement of commitment to ethical behaviour to promote awareness of fraud. Recruitment screening, training and maintaining good staff morale can also be important;
- Allocating responsibilities for the overall and specific management of fraud risk so that these processes are integrated into management;
- Establishing cost effective internal systems of control to prevent and detect fraud;
- Developing the skills and expertise to manage fraud risk effectively and to respond to fraud effectively when it arises;
- Establishing well publicised avenues for staff and members of the public to report suspicions of fraud;
- Responding quickly and effectively to fraud when it arises;
- Establishing systems for investigations into allegations of fraud – including the need to liaise with, or refer cases to, the police where appropriate;
- Using the government's Counter Fraud Function and/or Internal Audit to advise on fraud risk and drawing on their experience to strengthen control;
- Taking appropriate action (criminal, disciplinary) against fraudsters and seeking to recover losses;
- Continuously evaluating the effectiveness of anti-fraud measures in reducing fraud;
- Working with departments and other stakeholders to tackle fraud through intelligence sharing, joint investigations, etc.;
- Having a programme of fraud risk assessment, and fraud measurement; and
- Having systems to report to the centre all instances and values of prevented and detected fraud from across the organisation.

A4.9.8 It is good practice to measure the effectiveness of actions taken to reduce the risk of fraud. Assurances about these measures can be obtained from internal audit, stewardship reporting, control risk self assessment, monitoring or from other review bodies.

Reporting fraud

A4.9.9 NICS departments should report immediately, to DoF and the C&AG, all cases of fraud[8] (attempted, suspected or actual) which affect their departments, agencies and ALBs. This includes cases where public funds are disbursed by other parties/organisations.

A4.9.10 Departments should also submit an annual return of cases when requested to do so by DoF. DoF will collate these returns and produce an Annual Theft and Fraud report. The report will be agreed with the NI Fraud forum, presented to the NI Assembly's PAC and published on the DoF website.

[8] While the Fraud Act 2006 provides a legal definition for fraud, reports should be made for all cases falling within the wider common definition of "fraud" e.g. cases categorised as false accounting, bribery and corruption, misappropriation, forgery, abuse of position etc. It also includes cases of straightforward theft.

A4.10 Annex 4.10 Losses and write-offs

This Annex sets out what is expected when departments and their Arm's Length Bodies (ALBs) incur losses or write off the values of assets, including details of when to notify the Assembly.

A4.10.1 As the Assembly does not agree or approve advance provision for potential future losses when voting money or passing specific legislation, such transactions when they arise are subject to greater scrutiny and control than other payments. Public sector organisations should only consider accepting losses and write-offs after careful appraisal of the facts (including whether all reasonable action has been taken to effect recovery – see Annex 4.11) and should be satisfied that there is no feasible alternative. In dealing with individual cases, departments must always consider the soundness of their internal control systems, the efficiency with which they have been operated, and take any necessary steps to put failings right.

A4.10.2 The guidance in this chapter relates to cash and fiscal losses. It is not intended for losses that do not impact on the fiscal position. For example, erroneous debit balances that result in an accounting adjustment but not a cash loss should not be disclosed in the losses statement.

Levels of delegation

A4.10.3 Departments have delegated authority to deal with all losses, unless there are specific delegations put in place, subject to Paragraph A4.10.4. Box A4.10A provides examples of the different categories of loss.

Box A4.10A: Examples of losses

Losses

- cash losses: physical losses of cash and its equivalents (e.g. credit cards, electronic transfers);
- realised exchange rate and hedging losses: losses due to fluctuations in exchange rates or hedging instruments;
- losses of pay, allowances and superannuation benefits paid to civil servants, members of the armed forces and ALB employees: including overpayments due to miscalculation, misinterpretation, or missing information; unauthorised issues; and other causes;
- losses arising from overpayments: of social security benefits, grants, subsidies etc; and
- losses arising from failure to make adequate charges: e.g. for the use of public property.

Losses of accountable stores

- losses through fraud, theft, arson or any other deliberate act; and
- losses arising from other causes.

Fruitless payments and constructive losses

Claims waived or abandoned

Consulting DoF

A4.10.4 When departments identify losses and write-offs, they shall consult DoF, using the guidance in Box A4.10B, irrespective of the amount of money concerned, if they:

- involve important questions of principle;
- raise doubts about the effectiveness of existing systems;
- contain lessons which might be of wider interest;
- are novel or contentious;
- might create a precedent for other departments in similar circumstances; or
- arise because of obscure or ambiguous instructions issued centrally.

A4.10.5 Similarly, ALBs shall consult their sponsor departments about similar cases. In turn departments may need to consult DoF.

Box A4.10B: Consulting DoF on losses

Departments should consult DoF as soon as possible, outlining:

- the nature of the case, the amount involved and the circumstances in which it arose;
- the reasons for the proposed write-off, including any legal advice;
- the reason for consulting DoF;
- whether fraud (suspected or proven) is involved;
- whether the case resulted from dereliction of duty;
- whether failure of supervision is involved;
- whether appropriate legal and/or disciplinary action has been taken against those involved including supervisors, and, if not, why not;
- whether those primarily involved will be required to bear any part of the loss; and
- whether the investigation has shown any defects in the existing systems of control and, if so, what action will be taken.

Notification to the Assembly

A4.10.6 Losses shall be brought to the Assembly's attention at the earliest opportunity, normally by noting the department's Annual Report and Accounts, whether or not they may be reduced by subsequent recoveries. For serious losses, departments should also consider the case for a written statement to the Assembly. Departments shall not hesitate to notify the Assembly of any losses which it would be proper to bring to their attention.

Losses and claims records

A4.10.7 Public sector organisations should maintain an up-to-date record of losses. The record shall show:

- the nature, gross amount (or estimate where an accurate value is unavailable), and cause of each loss;
- the action taken, total recoveries and date of write-off where appropriate; and
- the Annual Report and Accounts in which each loss is to be noted.

A4.10.8 A losses statement is required in the Annual Report and Accounts where total losses exceed £300,000. Individual losses of more than £300,000 should be noted separately. Losses shall be reported on an accruals basis.

A4.10.9 Where efforts are still being made to secure recovery of cash losses formally written off, charged to the accounts and noted, public sector organisations shall consider including them in a record of claims to ensure that recovery is not overlooked.

Accounting for cash losses

A4.10.10 Cash losses may initially be accounted for as debtors in Annual Report and Accounts pending recovery or write-off.

A4.10.11 When a department incurs a cash loss it shall charge it to the appropriate subhead in the Estimate, and in the Annual Report and Accounts recognise the cost in accordance with the *FReM*.

A4.10.12 Where a cash loss is wholly or partly recovered by reducing the amounts of pay or pension[9] which would otherwise be due, or under statutory or other specific powers[10], only the resulting outstanding balance is treated as a loss to be written off. The sum(s) are charged to the relevant budget boundary as if they had been paid to the individual concerned who then used the money to pay the claim.

A4.10.13 Similarly, where the loss is wholly or partly met by voluntary payments by the person responsible or by a payment from an insurance company or other non-public source, only the net loss is written off. If, however, there are no powers to apply the sums withheld by non-issue of pay etc, the gross amount of the loss is written off.

A4.10.14 Generally, no note is necessary if the net loss is nil by the time the Annual Report and Accounts are finalised. There may, however, be exceptions (e.g. losses arising from culpable causes) where the circumstances of the loss are such as to make it proper to bring them to the notice of the Assembly by inclusion in the Losses Statement.

Stores losses

A4.10.15 Stores losses are, in effect, money spent without the authority of the Assembly. In establishing the amount of the loss, and hence whether the Annual Report and Accounts should be noted, the net value of the loss after crediting any sums recovered will be the determining factor.

A4.10.16 Losses of stores arising from culpable causes shall be noted in departmental records, in accordance with normal practice. Such losses shall also be noted in the Annual Report and Accounts, to ensure that such losses are brought to the attention of the Assembly in the appropriate manner, and to aid departmental management in managing and accounting for stores.

[9] Tax must be deducted from pay or pension subject to PAYE withheld in settlement of a loss, to arrive at the amount attributed to debt repayment.
[10] For example, King's Regulations

A4.10.17 Where there is an identifiable claim against some person, the loss need not be noted immediately. However, if the department subsequently decides to waive the claim, or finds that it cannot be presented or enforced, the loss should be treated as an abandoned claim (see Paragraph A4.10.24) and noted accordingly.

A4.10.18 Any loss recoverable from a third party, where a decision is taken to waive recovery because of a knock for knock agreement, shall be noted as a stores loss.

A4.10.19 Where stores are to be written off, gifted, or transferred to other departments, they should be valued in accordance with the *FReM*, unless circumstances justify exceptional treatment, or other arrangements have been agreed.

Fruitless payments

A4.10.20 A fruitless payment is a payment which cannot be avoided because the recipient is entitled to it even though nothing of use to the department will be received in return. Some examples are in Box A4.10C.

A4.10.21 As fruitless payments will be legally due to the recipient, they are not regarded as special payments. However, as due benefit has not been received in return, they shall be treated as losses, and brought to the attention of the Assembly in the same way as stores losses.

Box A4.10C: Examples of fruitless payments

A **fruitless payment** is a payment for which liability ought not to have been incurred, or where the demand for the goods and services in question could have been cancelled in time to avoid liability, for example:

- forfeitures under contracts as a result of some error or negligence by the department;
- payment for travel tickets or hotel accommodation wrongly booked or no longer needed, or for goods wrongly ordered or accepted;
- the cost of rectifying design faults caused by a lack of diligence or defective professional practices; and
- extra costs arising from failure to allow for foreseeable changes in circumstances.

Constructive losses

A4.10.22 A constructive loss is a similar form of payment to stores losses and fruitless payments, but one where procurement action itself caused the loss. For example, stores or services might be correctly ordered, delivered or provided, then paid for as correct; but later, perhaps because of a change of policy, they might prove not to be needed or to be less useful than when the order was placed.

A4.10.23 Constructive losses need not be noted in the Losses Statement in the Annual Report and Accounts unless they are significant.

Claims waived or abandoned

A4.10.24 Losses may arise if claims are waived or abandoned because, though properly made, it is decided not to present or pursue them. Some examples are in Box A4.10D.

A4.10.25 The following should not be treated as claims waived or abandoned:

- any claims wrongly identified or presented, whether in error or otherwise. A claim should not, however, be regarded as withdrawn where there is doubt as to whether it would succeed if pursued in a court of law, or if the liability of the debtor has not or cannot be accurately assessed;
- waivers or remission of tax. HMRC have special rules about remissions of tax. Departments should consult DoF about treatment when a case arises; or
- a claim for a refund of an overpayment which fails or is waived. This should be regarded as a cash loss.

A4.10.26 Waivers shall be noted in the Annual Report and Accounts in accordance with the *FReM*. In addition:

- a claim not presented should normally be noted at its original figure; and
- where more than one department is involved, each should note its records to the extent of its interest, without attempting spurious accuracy.

A4.10.27 There is no need to note Annual Report and Accounts if claims between departments are waived or abandoned. These are domestic matters.

Box A4.10D: Examples of waived and abandoned claims

- where it is decided to reduce the rate of interest on a loan, and therefore to waive the right to receive the amount of the reduction;
- claims actually made and then reduced in negotiations or for policy reasons;
- claims which a department intended to make, but which could not be enforced, or were never presented;
- failure to make claims or to pursue them to finality, e.g. owing to procedural delays allowing the Limitations (Northern Ireland) Order 1989 (Annex 4.11.11) to become applicable;
- claims arising from actual or believed contractual or other legal obligations which are not met (whether or not pursued), e.g. under default or liquidated damages clauses of contracts;
- amounts by which claims are reduced by compositions in insolvency cases, or in out-of-court settlements, other than reductions arising from corrections of facts;
- claims dropped on legal advice, or because the amounts of liabilities could not be determined; and
- remission of interest on voted loans.

A4.11 Annex 4.11 Overpayments

This Annex discusses how, and how far, public sector organisations should seek to recover overpayments – one case of special payments outside normal Assembly process (Section 4.7). In difficult cases it is important to act on legal advice.

A4.11.1 Even good payment systems sometimes go wrong. Most organisations responsible for making payments will sometimes discover that they have made overpayments in error. In principle public sector organisations should always pursue recovery of overpayments, irrespective of how they came to be made. In practice, however, there will be both practical and legal limits to how cases should be handled. So each case should be dealt with on its merits. Some overpayment scenarios are outlined in Box A4.11A. Where recovery of overpayments is not pursued the guidance in Annex A4.10 shall be followed.

Box A4.11A: Possible reasons for overpayment

Contractors and suppliers

Overpayments in business transactions shall always be pursued, irrespective of cause. It is acceptable to recover by abating future payments if this approach offers value for money and helps preserve goodwill. If the contractor resists, the overpaying organisation should consider taking legal action, taking account of the strength of the case, and of legal advice.

Grants and subsidies

Overpayments to persons or corporate bodies shall be treated as business transactions and a full refund sought. The overpaying organisation should ask recipients to acknowledge the amount of the debt in writing.

Pay, allowances, pensions

Overpayments to the below groups should be pursued, taking proper account of how far recipients have acted in good faith. Similar cases should be treated consistently. After warning recipients, recovery through deduction from future salary or pension is often convenient. Legal advice is often wise to make sure that proper account has been taken of any valid defence against recovery recipients may have. These groups are:

- civil servants;
- members of the armed forces;
- employees of ALBs;
- retired teachers and Heath and Social Care (HSC) employees; and
- the dependants of any of these.

A4.11.2 When deciding on appropriate action, taking legal advice, organisations should consider:

- the type of overpayment;
- whether the recipient accepted the money in good or bad faith;
- the cost effectiveness of recovery action (either in house or using external companies). Advice that a particular course of action appears to offer good value may not be conclusive since it may not take account of the wider public interest;
- any relevant personal circumstances of the payee, including defences against recovery;
- the length of time since the payment in question was made; and
- the need to deal equitably with overpayments to a group of people in similar circumstances.

A4.11.3 It is good practice to consider routinely whether particular cases reveal concerns about the soundness of the control systems and their operation. It is important to put failings right.

Payments made without Assembly authority

A4.11.4 Sometimes overpayments are made using specific legal powers but making mistakes of fact or law. These are legally recoverable, subject to the provisions of the Limitations Order (Northern Ireland) 1989 and other defences against recovery (see below). The presumption should always be that recovery should be pursued, irrespective of the circumstances in which it arose.

Good faith

A4.11.5 The decision on how far recovery of an overpayment should be pursued in a particular case will be influenced by whether the recipient has acted in good or bad faith:

- where recipients of overpayments have acted in good faith, e.g. genuinely believing that the payment was right, they may be able to use this as a defence (though good faith alone is not a sufficient defence); or
- where recipients of overpayments have acted in bad faith, recovery of the full amount overpaid should always be sought.

A4.11.6 Recipients may be inferred to have acted in bad faith if they have wilfully suppressed material facts or otherwise failed to give timely, accurate and complete information affecting the amount payable. Other cases, e.g. those involving recipients' carelessness, may require judgement. And some cases may involve such obvious error, e.g. where an amount stated is very different from that paid, that no recipient could reasonably claim to have acted in good faith.

A4.11.7 In forming a judgement about whether payments have been received in good faith, due allowance should be made for:

- the complexity of some entitlements, e.g. to pay or benefits;

- how far the payment depended on changes in the recipient's circumstances of which they were obliged to tell the payer; and
- the extent to which generic information was readily available to help recipients understand what was likely to be due.

Fraud

A4.11.8 If a public sector organisation is satisfied that the circumstances of an overpayment involved bad faith on the part of the recipient, it should automatically consider the possibility of fraud in addition to recovery action. For example, the recipient may have dishonestly given false information or knowingly failed to disclose information. If there is evidence of fraudulent intent, prosecution or disciplinary action should be undertaken where appropriate and practicable. A criminal conviction in such a case will not eliminate the public debt which had resulted from the overpayment, and so recovery of the debt should also be pursued by any available means. All suspected cases of fraud must be reported immediately to DoF (see Annex 4.9).

Cost effectiveness

A4.11.9 Public sector organisations should take decisions about their tactics in seeking recovery in particular cases on the strength of cost benefit analysis of the options. Decisions not to pursue recovery should be exceptional and taken only after careful appraisal of the relevant facts, taking into account the legal position. The option of abating future payments to the recipient should always be considered.

Defences against recovery

A4.11.10 Defences which may be claimed against recovery include:

- the length of time since the overpayment was made;
- change of position;
- estoppels;
- good consideration; and
- hardship.

Lapse of time

A4.11.11 There can be time limitations on recovery. A recipient might plead that a claim is time-barred under the provisions of the Limitation (Northern Ireland) Order 1989. Proceedings to recover overpayments must generally be instituted within six years (twelve years if the claim is against the personal estate of a deceased person) of discovery of the mistake or the time when the claimant could, with reasonable diligence, have discovered it.

A4.11.12 When public sector organisations claim against a private sector organisation or people who ignore or dispute the claim, the organisation should take legal advice about proceeding with the claim in good time so that it does not become time barred.

A4.11.13 If someone claims that they have overpaid a public sector organisation, they should be told promptly if the claim is time barred. But if, on its merits, the recipient organisation decides that there is a case for an ex gratia payment, it should obtain DoF consent if the amount involved is outside the organisation's delegated powers. Similarly,

there may be a case for ex gratia payments to make good underpayments to government employees unless they were dilatory in making their claims.

Change of position

A4.11.14 The recipient of an overpayment may seek to rely on change of position if they have in good faith reacted to the overpayment by relying on it to change their lifestyle. It might then be inequitable to seek to recover the full amount of the overpayment. The paying organisation's reaction should depend on the facts of the case. The onus is on the recipient to show that it would be unfair to repay the money. This defence is difficult to demonstrate.

Estoppel

A4.11.15 A recipient who has changed their position may also be able to rely on the rule of evidence estoppel if the paying organisation misled the recipient about their entitlement, even if the overpayment was caused by a fault on the part of the recipient. However, a mistaken payment will not normally of itself constitute a representation that the payee can keep it. There must normally be some further indication of the recipient's supposed title other than the mere fact of payment.

A4.11.16 The paying organisation can be prevented from recovery even where it has made no positive statement to the payee that the latter is entitled to the money received. If, following a demand for repayment, the recipient can give reasons why repayment should not be made, then silence from the paying organisation would almost certainly entitle the recipient to conclude that the reply was satisfactory and that they could keep the money.

A4.11.17 It is essential for public sector organisations to seek legal advice where change of position or estoppel is offered as defence against recovery.

Good consideration

A4.11.18 Another possible defence against recovery is where someone makes a payment for good consideration, i.e. where the recipient gives something in return for the payment. For example, payment might be made to discharge a debt; or where the payment is part of a compromise to deal with an honest claim. If such payments are later found to be more than was strictly due, the extent to which the paying organisation was acting in good faith should be taken into account.

Hardship

A4.11.19 Public sector organisations may waive recovery of overpayments where it is demonstrated that recovery would cause hardship. But hardship should not be confused with inconvenience. Where the recipient has no entitlement, repayment does not in itself amount to hardship, especially if the overpayment was discovered quickly. Acceptable pleas of hardship should be supported by reasonable evidence that the recovery action proposed by the paying organisation would be detrimental to the welfare of the debtor or the debtor's family. Hardship is not necessarily limited to financial hardship; public sector organisations may waive recovery of overpayments where recovery would be detrimental to the mental welfare of the debtor or the debtor's family. Again, such hardship must be demonstrated by evidence.

Collective overpayments

A4.11.20 If a group of people have all been overpaid as a result of the same mistake, the recipients should be treated in the same way. However, that does not mean that recovery of all such overpayments should be automatically written off. For example, it may be legitimate

to continue to effect recovery from those who have offered to repay, or some may not be subject to the same level of hardship.

A4.11.21 Public sector organisations should decide how best to handle collective overpayments so that they do not inhibit the maximum recovery possible. If it is deemed impractical to pursue recovery from some members of an equivalent group, there should be no inhibition on pursuing others who may be able to pay. There is no obligation to inform the group generally about what action is being taken against particular members since all have the same legal obligation. Any differential treatment should be based on advice.

A4.11.22 If a public sector organisation is minded to forgo recovery of the whole or any part of a collective overpayment, it should consult DoF (or its sponsor department, as the case may be) before telling the recipients of the overpayments. DoF will need to be satisfied that a collective waiver is defensible in the public interest or as value for money. And any such waivers should be exceptional.

A4.12 Annex 4.12 Gifts

This Annex explains how departments should notify the Assembly of gifts, both given and received. It is important to assure the Assembly that propriety has been respected through transparent reporting.

A4.12.1 A gift is something voluntarily donated, with no preconditions and without the expectation of any return. In this document, the term gift includes all transactions which are economically indistinguishable from gifts: see Box A4.12A. It is also important to be clear about transactions which do not score as gifts. For example:

- transfers of assets between government departments should generally be at full current market value; assets transferred under a transfer of functions Order to implement a Machinery of Government change are generally made at no charge. In neither case are such transfers regarded as gifts; and
- grants and grants-in-aid are not gifts as they are made under legislation, subject to conditions, with some expectation that the government will receive value through the furtherance of its policy objectives.

Box A4.12A: Definition of gifts

Gifts include all transactions economically equivalent to free and unremunerated transfers from departments to others, such as:

- loan of an asset for its expected useful life;
- sale or lease of assets at below market value (the difference between the amount received and the market value is the value of the gift);
- donations by departments; and
- transfers of land and buildings, or assignment of leases, to private sector bodies at less than market price (the gift is valued at the difference between the price agreed and the market price).

Approval

A4.12.2 DoF approval is needed for all gifts not covered by a department's delegated authorities. Similarly, ALBs shall consult their sponsor departments about gifts, and the department concerned may need in turn to consult DoF.

A4.12.3 As the Assembly does not provide for gifts when voting the Estimates or passing specific legislation, Assembly approval for gifts worth more than £300,000 should be sought.

Ideally this should be through the Estimates. Alternatively, where time does not permit, a Minute should be presented in the Assembly.

Reporting

A4.12.4 If the Estimates timetable permits, departments planning to make a gift worth more than £300,000 should notify the Assembly in their Estimates (Main or Supplementary depending on timing), providing details of the gift and its cost.

A4.12.5 Where Departments wish to make a gift over £300,000 and have been unable to include it in their Estimate they should notify the Assembly by presenting a Minute. This should happen even if Assembly authority will be sought in a subsequent Estimate for funds to replace an existing asset to be given. DoF approval must be obtained before a departmental Minute is presented.

A4.12.6 The Minute must then be presented before the Assembly at least fourteen working days (excluding weekends) before the department proposes to make the gift. In cases of special urgency, it is permissible, exceptionally, for all or part of the fourteen day notice period to fall during an adjournment or recess, or for a shorter notice period to be given. In such cases, with DoF approval, the reasons for urgency should be explained in the Minute.

A4.12.7 The Minute must contain the standard opening and closing paragraphs in Box A4.12B. These terms have the PAC's endorsement and can be changed only with DoF approval.

Box A4.12B: Standard paragraph for a departmental gift Minute

Opening paragraph:

It is the normal practice when a government department proposes to make a gift of a value exceeding £300,000, for the department concerned to present to the Assembly a Minute giving particulars of the gift and explaining the circumstances; and to refrain from making the gift until fourteen working days (excluding weekends) after the issue of the Minute, except in cases of special urgency.

Closing paragraph:

The Department of Finance has approved the proposal in principle. If, during the period of fourteen working days (excluding weekends) beginning on the date on which this Minute was presented before the Assembly, a Member objects in line with existing Assembly procedures, final approval of the gift will be withheld pending an examination of the objection.

A4.12.8 The Minute shall also set out briefly the nature of the gift, its value, the circumstances in which it is being given, and the recipient. Where the gift is to be replaced, information about the cost and nature of the replacement, when it is expected to be acquired, and the Estimate to which the expenditure will be charged should be included. In the case of non-voted expenditure, the Minute should quote the account to which the replacement cost will be charged.

Assembly objections

A4.12.9 During the fourteen working day period of notification a Member of the Assembly or Committee may raise an objection in line with existing Assembly procedures. DoF should be notified of the outcome of any representations made by Assembly Members. Approval to proceed with the gift will be withheld pending examination of the objection.

Noting Annual Report and Accounts

A4.12.10 Annual Report and Accounts should include a note on gifts made by departments if their total value exceeds £300,000. Gifts with a value of more than £300,000 shall be noted individually, with a reference to the departmental Minute. Exceptionally, where gifts are made between government departments, the receiving department should notate its Annual Report and Accounts, not the donor.

Gifts received

A4.12.11 Departments shall maintain a register detailing gifts they have received, their estimated value and what happened to them (whether they were retained, disposed of, etc). Gifts received need not be noted in the Annual Report and Accounts unless DoF or the department concerned considers there is a special need for them to be brought to the Assembly's attention.

A4.12.12 Donations, sponsorship or contributions, e.g. from developers should also be treated as gifts.

A4.12.13 Guidance on gifts made to or by Ministers is in the Ministerial Code. Guidance on gifts made to or accepted by staff is contained on the Accountability and Financial Management section of the DoF website.

A4.12.14 When offered services on a gratuitous basis, Accounting Officers should consider the potential for such services to give rise to future expenditure, as well as anti-competitiveness risks and propriety issues more broadly.

A4.12.15 For example, if services may be withdrawn in the future either at the discretion of the supplier or in the event of the supplier entering insolvency it may lead to a pressure to continue to provide such services on a fee paying basis in the future. It may also be that the provision of services may lead to an incumbency benefit for the supplier that puts them at competitive advantage in any future procurement.

A4.12.16 The fact there are no upfront costs to a proposal does not relieve the Accounting Officer of the need to consider future costs or the need for DoF consent for novel, contentious or repercussive transactions.

A4.13 Annex 4.13 Special payments

This Annex explains how public sector organisations should approach current transactions outside the usual planned range. It is often right, or essential, to consult DoF beforehand. In some cases, it is also important to notify the Assembly.

A4.13.1 In voting money or passing specific legislation, the Assembly does not and can not approve special payments outside the normal range of departmental activity. Such transactions are therefore subject to greater control than other payments.

A4.13.2 Departments should authorise special payments only after careful appraisal of the facts and when satisfied that the best course has been identified. It is good practice to consider routinely whether particular cases reveal concerns about the soundness of the control systems, and whether they have been respected as expected. It is also important to take any necessary steps to put failings right.

A4.13.3 Arm's Length Bodies (ALBs) should operate to similar standards as departments unless there are good reasons to the contrary, e.g. overriding requirements of the statutory framework for Companies Act companies. Departments should ensure that their oversight arrangements (see Chapter 7) enable them to be satisfied that their ALBs observe the standards.

Dealing with special payments

A4.13.4 Departments must always consult DoF about special payments unless there are specific agreed delegation arrangements in place (see Annex 2.2). So a department should seek DoF approval for any special payment for which it has no delegated authority, or which exceeds its authority.

A4.13.5 For the avoidance of doubt, DoF approval shall be sought before the offer of the special payment is made. If appropriate departments may seek a negotiation mandate in advance based on their assessment of a likely outcome.

A4.13.6 ALBs should consult their sponsor departments in comparable circumstances. In turn, the department may need to consult DoF.

A4.13.7 The special payments on which DoF may need to be consulted are summarised in Box A4.13A. The list is not exclusive. If a department is in doubt, it is usually better to consult DoF.

A4.13.8 In particular, it is important to consult DoF about any cases, irrespective of delegations, which:

- involve important questions of principle;
- raise doubts about the effectiveness of existing systems;
- contain lessons which might be of wider interest;
- might create a precedent for other departments;

- may be deemed novel, contentious, or repercussive; or
- arise because of obscure or ambiguous instructions issued centrally.

Box A4.13A: Special payments

- **extra-contractual payments**: payments which, though not legally due under contract, appear to place an obligation on a public sector organisation which the courts might uphold. Typically these arise from the organisation's action or inaction in relation to a contract. Payments may be extra-contractual even where there is some doubt about the organisation's liability to pay, e.g. where the contract provides for arbitration but a settlement is reached without it. (A payment made as a result of an arbitration award is contractual.)
- **extra-statutory and extra-regulatory payments** are within the broad intention of the statute or regulation, respectively, but go beyond a strict interpretation of its terms.
- **compensation payments** are made to provide redress for personal injuries (except for payments under the Civil Service Injury Benefits Scheme (Northern Ireland) 2003), traffic accidents, damage to property etc, suffered by civil servants or others. They include other payments to those in the public service outside statutory schemes or outside contracts.
- **special severance payments** are paid to employees, contractors and others outside of normal statutory or contractual requirements when leaving employment in public service whether they resign, are dismissed or reach an agreed termination of contract.
- **ex gratia payments** go beyond statutory cover, legal liability, or administrative rules, including:
  - payments made to meet hardship caused by official failure or delay
  - out of court settlements to avoid legal action on grounds of official inadequacy
- **payments to contractors outside a binding contract**, e.g. on grounds of hardship.

A4.13.9 DoF does not discount all special payments out of hand. Each needs to be justified properly in the public interest against the key public sector principles set out in Chapter 1, Box 1.1, with particular emphasis on value for money since there is no legal liability. Any proposal to keep a special payment confidential must be justified especially carefully since confidentiality could appear to mask underhand dealing. Also financial reporting requirements and Freedom of Information legislation should be complied with. DoF's default position is usually to ask the department to establish that the responsible Accounting Officer(s) would feel able to justify the proposed payment in the Assembly if challenged.

A4.13.10 Departments shall also consult DoF about proposals for special payments above the relevant delegated limits. They should explain:

- the nature and circumstances of the case;
- the amount involved;
- the legal advice, where appropriate;
- the management procedures followed;
- an assessment of the value for money of the case;
- any non-financial aspects; and
- whether the case in question could have wider impact.

Severance Payments

A4.13.11 Special severance payments when staff leave public service employment should be exceptional. They always require DoF approval because they are usually novel, contentious and potentially repercussive. So departments shall always consult DoF in advance when considering a special severance payment, whether or not the proposed amount falls within its delegated limit.

A4.13.12 DoF adopts a sceptical approach to proposals for special severance settlements, in particular:

- Precedents from other parts of the public sector may not be a reliable guide in any given case.
- Legal advice that a particular severance payment appears to offer good value for the employer may not be conclusive since such advice may not take account of the wider public interest.
- Even if the cost of defeating an apparently frivolous or vexatious appeal will exceed the likely cost of that particular settlement to the employer, it may still be desirable to take the case to formal proceedings.
- Winning such cases demonstrates that the Executive does not reward failure and should enhance the employer's reputation for prudent use of public funds.

A4.13.13 Severance payments will only be approved where they provide value for money for the public sector as a whole, rather than simply for the body concerned.

A4.13.14 Departments shall not treat special severance as a soft option, e.g. to avoid management action, disciplinary processes, unwelcome publicity or reputational damage. Box A4.13B sets out the factors DoF needs to evaluate in dealing with special severance cases.

A4.13.15 It is important to ensure that DoF approval is sought before any offers, whether oral or in writing, are made.

Box A4.13B: Factors to consider in special severance cases

Any case for special severance put to DoF shall explain:

- the circumstances of the case;
- any scope for reference to a tribunal with its potential consequences, including the legal assessment of the organisation's chances of winning or losing the case and likely scale of any award;
- the management procedures followed;
- the value for money offered by the possible settlement;
- any non-financial considerations, e.g. where it is desirable to end someone's employment without dismissal, perhaps because of restructuring; and
- whether the case could have wider impact, e.g. for a group of potential tribunal cases.

A4.13.16 Particular care should be taken to:

- avoid unnecessary delays which might lead to greater severance payments than might otherwise be merited;

- avoid offering the employee concerned consultancy work after severance unless best value for money can be demonstrated;
- ensure any undertakings about confidentiality leave severance transactions open to adequate public scrutiny, including by the NIAO and the Public Accounts Committee (PAC);
- ensure special severance payments to senior staff are transparent and negotiated avoiding conflicts of interest.

A4.13.17 Organisations seeking retrospective DoF approval for special severance payments should not take it for granted that approval will be provided, since such payments usually appear to reward failure and set a poor example for the public sector generally. Requests for retrospective approval will be considered as if the request had been made at the proper time and should contain the same level of detail as if the case had been brought to DoF in advance.

Retention Payments

A4.13.18 Retention payments, designed to encourage staff to delay their departures, particularly where transformations of ALBs are being negotiated, are also classified as novel and contentious. Such payments always require explicit DoF approval, whether proposed in individual cases or in groups. DoF approval must be obtained before any commitment, whether oral or in writing, is made.

A4.13.19 Organisations considering proposals for retention payments should subject them to strict value for money analysis. Sponsor departments shall submit a business case to DoF, supported by market evidence, together with an evaluation of the risks and costs of alternative options. DoF will always be sceptical of whether they are necessary.

Reporting

A4.13.20 As the Assembly does not normally provide for special payments when voting Estimates or passing specific legislation, special payments shall be brought to the Assembly's attention, usually through a note in the organisation's Annual Report and Accounts. Any special severance payments for senior staff will in any case be itemised in the Annual Report and Accounts.

A4.13.21 Notification is separate from accounting treatment, which will depend on the nature of the special payment. Special payments shall be noted in the Annual Report and Accounts even if they may be reduced by subsequent recoveries.

A4.13.22 Special payments shall be noted in the Annual Report and Accounts where the total value exceeds £300,000. Individual payments of more than £300,000 shall be noted separately.

A4.14 Annex 4.14 Remedy

Prompt and efficient complaint handling is an important way of ensuring customers receive the service to which they are entitled and may save public sector organisations time and money by preventing a complaint escalating unnecessarily.

If their services have been found deficient, public sector organisations should consider whether to provide remedies to people or firms who complain. This is separate from administering statutory rights or other legal obligations, e.g. to make payments to compensate. Remedies may take several different forms and should be proportionate and appropriate.

Dealing with complaints

A4.14.1 Public sector organisations should operate clear accessible complaints procedures. They are a valuable source of feedback which can help shed light on the quality of service provided, and in particular how well it matches up to policy intentions. So all complaints should be investigated. Guidance from the Northern Ireland Public Services Ombudsman on good complaints handling is available, following the commencement in May 2021 of its complaints standards function. Systems for dealing with complaints should operate promptly and consistently. Those making complaints should be told how quickly their complaints can be processed. Where groups of complaints raise common issues, the remedies offered should be fair, consistent and proportionate.

A4.14.2 Public sector organisations should seek to learn from their complaints. If an internal or external review, or a NIPSO's investigation, shows there are systemic faults, defective systems or procedures should be overhauled and corrected.

Remedies

A4.14.3 As Section 4.11 explains, when public sector organisations have caused injustice or hardship because of maladministration or service failure, they should consider:

- providing remedies so that, as far as reasonably possible, they restore the wronged party to the position that they would be in had things been done correctly; and
- whether policies and procedures need change, to prevent the failure reoccurring.

The remedies available

A4.14.4 Remedies can take a variety of forms, including (alone or in combination):

- an apology;
- an explanation;
- correction of the error or other remedial action;
- an undertaking to improve procedures or systems; or

- financial payments, e.g. one off or as part of a structured settlement.

A4.14.5 Financial remedies for individual cases are normally ex gratia payments. Where a pattern develops, and a number of cases raising similar points need to be dealt with, it may make sense to develop an extra statutory scheme (see Annex 4.13). If any such scheme seems likely to persist, the organisation concerned should consider whether to bring forward legislation to set it on a statutory footing (see Sections 2.5 and 2.6).

Designing remedies

A4.14.6 The normal approach to complaints where no financial payment is called for is to offer an apology and an explanation. This may be a sufficient and appropriate response in itself. People complaining may also want reassurance that mistakes will not be repeated.

A4.14.7 It may be more difficult to judge whether financial compensation is called for, and if so how much, especially if there is no measurable financial detriment. Great care should be taken in designing financial compensation schemes since they may set expensive precedents. DoF should be consulted in all cases.

A4.14.8 Where financial remedies are identified as the right approach to service failure, they should be fair, reasonable and proportionate to the damage suffered by those complaining. Financial remedies should not, however, allow recipients to gain a financial advantage compared to what would have happened with no service failure. Consideration should always be given by the public sector organisation that the circumstance of a complaint do not involve bad faith on the part of the complainant, and the possibility of fraudulent intent.

A4.14.9 Public sector organisations deciding on financial remedies should take into account all the relevant factors. Some which are often worth considering are outlined in Box A4.14A. The list may not be exhaustive.

Box A4.14A: Factors to consider in deciding whether financial compensation is appropriate

- whether a loss has been caused by failure to pay an entitlement, e.g. to a grant or benefit;
- whether someone has faced any additional costs as a result of the action or inaction of a public sector organisation, e.g. because of delay;
- whether the process of making the complaint has imposed costs on the person complaining, e.g. lost earnings or costs of pursuing the complaint;
- the circumstances of the person complaining, e.g. whether the action or inaction of the public sector organisation has caused knock on effects or hardship;
- whether the damage is likely to persist for some time;
- whether any financial remedy would be taxable when paid to the person complaining; and
- any advice from the NIPSO.

A4.14.10 If a compensation payment includes an element because the person complaining has had to wait for their award, it should be calculated as simple interest. The interest rate to be applied should be appropriate to the circumstances and defensible against the facts. Some rates worth considering are the rate HMRC pays on tax repayments and the rate used in court settlements.

A4.14.11 When a public sector organisation recognises that it needs a scheme for a set of similar or connected claims after maladministration or service failure, it should ensure that the arrangements chosen deal with all potential claimants equitably. It is important that such schemes take into account the *Principles of Good Administration*. They must be well designed since costs can escalate if a problem turns out to be more extensive than initially expected.

A4.14.12 If those seeking compensation have suffered injustice or hardship in a way which is likely to persist, it may not be appropriate to pay compensation as a lump sum. Instead it may make sense to award a structured settlement with periodic (e.g. monthly or annual) payments. Public sector organisations considering such settlements should seek both legal and actuarial advice in drawing them up.

A4.14.13 Essentially, designing a compensation scheme is no different from designing other services. Good management, efficiency, effectiveness and value for money are key goals (see Chapter 4). Some specific issues which may require special care for compensation schemes are outlined in Box A4.14B.

Box A4.14B: Issues to consider in designing compensation schemes

- clarify the coverage of the scheme;
- set clear scheme rules, with supporting guidance, to implement the policy intention;
- make the remedies fair and proportionate, avoiding bias, discrimination or prejudice;
- ensure the scheme's systems work, e.g. through pilot testing;
- design in sufficient flexibility to cope with the characteristics of the claimant population;
- check that the administration cost is not excessive – or simplify the scheme;
- if the scheme is novel, contentious or repercussive, make sure that it is approved through DoF Supply;
- inform the Assembly appropriately, e.g. through a written statement and/or in the Estimates/ Annual Report and Accounts;
- plan to evaluate the scheme at suitable point(s); and
- provide for closure of the scheme, unless there is good reason not to.

Consulting DoF

A4.14.14 When considering making individual remedy payments, departments need to consult DoF (and sponsored bodies need to consult their sponsor departments) about cases which:

- fall outside their delegated authorities; or
- raise novel or contentious issues; or
- could set a potentially expensive precedent or cause repercussions for other public sector organisations.

A4.14.15 Public sector organisations developing schemes to pay remedies should consult DoF before finalising them. Once a scheme is agreed, it is only necessary to consult DoF further about cases outside the agreed boundaries for the scheme, or the delegated authority applying to it.

Reporting ex gratia payments

A4.14.16 Departments should ensure that ex gratia payments have Estimate cover, and that the ambit of the vote concerned is wide enough for the purpose. Ex gratia payments score as special payments in departments' Annual Report and Accounts. Departments, agencies and ALBs should include summary information on compensation payments arising from maladministration in their Annual Report and Accounts.

A4.15 Annex 4.15 Asset management

Each public sector organisation is expected to develop and operate an Asset Management Plan (AMP) underpinned by a reliable and up to date asset register. The Board should review the Plan annually as part of the corporate or business plan.

A4.15.1 Accounting Officers of public sector organisations are responsible for managing their assets. This aspect of financial management covers the acquisition, use, maintenance, and disposal of assets for the benefit of the organisations and indeed for the public sector as a whole.

A4.15.2 Each organisation needs to have a clear grasp of:

- the content of its current assets base;
- the assets it needs to deliver efficient, cost effective public services;
- what this means for asset acquisition, use, maintenance, renewal, upgrade and disposal;
- whether any gains could be achieved through alternative use of individual assets;
- whether any gains could be achieved by working with other public sector organisations; and
- how the use of assets fits within and supports the corporate plan.

A4.15.3 Normally, these responsibilities will be dispersed in an organisation through a system of delegations with appropriate reporting arrangements. Similarly, departments should ensure that each of their sponsored organisations has equivalent arrangements.

Asset registers

A4.15.4 It is good practice for each organisation to draw up, and keep up to date, a register of all the assets it owns and uses. This will usually be needed for preparation of its Annual Report and Accounts. It is also essential to undertake regular stock taking of the organisation's current assets base and thus for planning change.

A4.15.5 The assets on an organisation's register should include both tangible and intangible assets, covering both owned assets and assets under its legal control such as leased or private finance assets. Box A4.15A lists the main groups of assets but is not exhaustive. Each organisation should decide on a meaningful valuation threshold in line with best practice.

A4.15.6 In drawing up the asset register, particular care should be taken with two sorts of asset:

- attractive items, such as works of art and items similarly susceptible to theft. These may be included even if they are below the valuation threshold, in line with guidance provided by the Art Management Section in Properties Division of DoF; and
- investments in the form of debentures and shares in commercial companies. These should be checked at least annually.

Box A4.15A: Main categories of public sector assets

tangible assets

- wholly owned land and buildings;
- leased fixed assets (including those acquired through private finance);
- raw materials;
- stocks and stores;
- plant, machinery, equipment, tools;
- furniture and fittings;
- assets under construction;
- donated physical assets;
- heritage assets;
- antiques and works of art; and
- economic infrastructure (including highways, railways, airports, utilities communication networks and power generation and transmission).

intangible assets

- copyrights, including Crown copyright;
- trademarks;
- franchises;
- patents and other intellectual property rights, including in house software;
- goodwill;
- data and information;
- knowledge and know-how;
- software licences;
- Public Dividend Capital;
- loans and deposits; and
- investments including shares and debentures in companies.

Asset Management Plans

A4.15.7 The Asset Management Plan (AMP) of a public sector organisation should be integrated into its corporate and annual business plans. It should thus be possible to help plan change in asset use or deployment when necessary. Box A4.15B suggests some key steps. The organisation's board should take stock of progress in delivering its AMP from time to time, and at least annually.

Box A4.15B: Steps for developing Asset Management Plans (AMPs)

- review the asset register to assess its adequacy for the organisation's objectives and functions;
- plan how retained assets will be used efficiently for the organisation's core functions;
- plan asset acquisitions, e.g. to extend, modify or replace the existing asset base;
- identify disposals and once decided upon, disposals should be as swift as the market will allow with reasonable value for money. DoF approval is required for spending or retaining receipts;
- plan any loans of assets, with charges and conditions for their return, liability, damage; and
- consider whether any retained assets have potential to generate revenue through commercial services.

> ***Note:*** *further detailed information can be found in the DoF LPS "Guidance Note: Departmental Asset Management Plans (AMPs), Contact DoF LPS Central Advisory Unit (CAU).*

A4.15.8 Assets should be managed like other parts of an organisation's business, with up to date and reliable information systems to provide feedback on performance, efficiency and value for money. The organisation is expected to:

- view value for money from the asset from the perspective of the NI public sector as a whole taking account of opportunities to work with other public sector organisations to minimise the government's overall required asset base;
- manage the assets in a way which aims to optimise cost sustainability through their effective lives based on whole life costing;
- use commercial terms for the delivery and support of assets;
- incorporate adequate flexibility to cope with the organisation's future change programme; and
- adhere to all legal, statutory and industry best practice requirements that pertain to its asset base.

A4.15.9 Knowledge assets (also known as intangible assets, some examples of which are listed above in Box A4.15A) should be considered as part of a public sector organisation's asset management plan. Proper management of such assets is essential for the efficient and effective use of resources within public sector organisations, and it is therefore important that organisations are able to identify, protect, and maximise the value of these assets. To assist with this, government has published guidance (*The Rose Book* – available at The Rose Book: Knowledge asset management in government - GOV.UK (www.gov.uk)) to support organisations and clarify best practice for public sector knowledge asset management, and recommends that organisations:

- develop a strategy for managing their knowledge assets, as part of their wider asset management plan
- appoint a Senior Responsible Owner for knowledge assets who has clear responsibility for the organisation's knowledge Asset Management Plan.

Efficiency improvements

A4.15.10 Efficiency in the use of workspace may make it possible for a public sector organisation to occupy less space. It is good practice to dispose of surplus property, or to share accommodation on the government estate with other public sector organisations where this is practicable. It may be necessary to consider a budget transfer between organisations, with DoF consent, to help meet the initial relocation costs.

A4.15.11 Public sector organisations should also make use of the following:

- NI Executive Asset Management Plan as supplemented by DoF guidance on the use of property controls detail the rules on lease extensions, lease renewals, acquisitions, disposals as well as required space standards associated with major refurbishments of buildings;

- The NI Central Government Energy Management Strategy;
- The DoF Government Land and Property Register (GLPR) Programme asset register; and
- latest guidance and advice available from DoF and Land and Property Services.

Transfer of property

A4.15.12 Public sector organisations may transfer operational land and property among themselves without placing the asset on the open market, provided they do so at market prices and in appropriate circumstances. They should follow the guidelines in Box A4.15C.

Box A4.15C: Protocol for transfers of assets

- consult GLPR, AMU and/or LPS Central Advisory Unit to determine if suitable properties exist in the government estate;
- instruct LPS to assess market value in accordance with RICS Global Standards and supplementary guidance; value assets at market prices using the Royal Institution of Chartered Surveyors' Red Book;
- the respective parties should work collaboratively to agree a 'transfer value' in the event of dispute an independent valuation to settle the price should be commissioned;
- the parties should seek appropriate legal advice, especially where sponsored organisations are involved as these may have specific legal requirements;
- Departments should seek to register property as part of any transfer;
- the terms of transfer should not normally involve either clawback (rights to share disposal proceeds) or overage (rights to share future profits on disposal) though see A4.15.16 below; and
- full legal title owned by a department should be transferred unless there is a strong case to retain control of land use.

A4.15.13 Sometimes transfers of assets result from machinery of government changes. The relevant legislation (e.g. a transfer of functions order) should prescribe the terms of any such transfers.

Disposals of property and land assets

A4.15.14 Public sector organisations should take professional advice when disposing of land and property assets. For full details refer to DoF (Land and Property Services) Disposal of Surplus Public Sector Property in Northern Ireland or consult with LPS Central Advisory Unit (CAU).

A4.15.15 Sometimes private finance projects involve disposals. Each such case should be evaluated as part of the private finance project, with due attention to the need to secure good value for money. Further guidance is in Annex 7.4.

A4.15.16 Public sector organisations which make grants to third parties for the acquisition of assets should normally include a clawback condition under which they can recoup the proceeds if the recipient of the grant later sells the asset. There is some scope for flexibility in this discipline: see Annex 5.2.

A4.15.17 Disposals to charities require particular care. Their trust deeds sometimes place restrictions on how they may use their assets. It is good practice to consider the possible disposal of assets by such recipients before making gifts to them.

Economic infrastructure assets

A4.15.18 Managing economic infrastructure affects the quality of delivery of services. It is also central to achievement of the infrastructure goals detailed in the Northern Ireland Executive Investment Strategy. These factors need to be incorporated into the business plans and objectives of public sector organisations which hold, use and manage such assets.

Central asset registers

A4.15.19 From time to time DoF gathers information on behalf of HM Treasury in order to publish a National Assets Register. Central government organisations and Health and Social Care (HSC) bodies should supply the information on their assets when requested.

A4.15.20 Under Crown copyright policy, certain public sector organisations are required to supply details for the official bibliographic database. See Annex 6.2 for further details.

A4.15.21 Other guidance available includes *DoF (Land & Property Services) Disposal of Surplus Public Sector Property in Northern Ireland; Property Controls within Appendix 1 of the Northern Ireland Executive's Asset Management Strategy; and DoF LPS "Guidance Note: Departmental Asset Management Plans (AMPs).*

5 Funding

This Chapter explores the means by which central government organisations may obtain funds in order to finance public expenditure. In line with the Concordat, DoF operates disciplines to respect Assembly's concern to prevent unauthorised expenditure.

5.1. The framework for public expenditure control

5.1.1 Most public expenditure is financed from centrally agreed budgets. An overall Departmental Expenditure Limit (DEL) budget envelope for Northern Ireland is set by HM Treasury through the UK Spending Review process. The DEL budgets of Northern Ireland departments are determined by the Executive through the local budget process. DoF oversees departments' use of their budget allocations. In the main, departments have considerable discretion about how they distribute these budget allocations, which are expressed net of relevant income. The main source of receipts to be netted off is fees and charges (see Chapter 6). Annually Managed Expenditure (AME) is a spending aggregate separate from DEL that covers programmes for which multi-year limits are not appropriate or possible, but which are taken into account in public expenditure planning. AME typically consists of programmes which are large, volatile and demand-led, and which therefore cannot reasonably be subject to firm multi-year limits.

5.1.2 DoF oversees and directs the rules that departments should respect in managing their budgets. Departments are expected to live within their DEL allocations for each financial year. The budgeting framework, including detail on type of income that a department may retain and record in budgets, is explained in the *Consolidated Budgeting Guidance,* published by HM Treasury, which is refreshed each year and the *In-year Monitoring of Public Expenditure Guidelines*, published each year by DoF.

5.2. Grants

5.2.1 Each central government department decides how much of its budget provision it should cascade to its Arm's Length Bodies (ALBs) in each year. Departments may pay them grants (for specific purposes) and grants-in-aid (non-specific support) to finance their spending; though it is the net spending of the ALB that scores in the departmental budget. Annex 5.1 explains more about grants.

5.2.2 Budgets and Estimates plan net spending and include all spending of ALBs[1] however it is financed. In general, it is sensible to consider arrangements for protecting the Northern Ireland Executive's interest through clawback of specific grants should the purposes for which they are agreed not materialise (Annex 5.2).

[1] With the exception of NI Water

5.3. Estimates

5.3.1 The agreed departmental budgets do not of themselves confer authority to spend or commit resources. That requires Assembly approval through the Estimates process and the Budget Acts. Departmental Estimates are put to the Assembly covering one financial year at a time. Each covers the net expenditure of a department and its ALBs (i.e. all spending in budgets and any voted spend outside of budgets) for the year ahead. The provision sought shall be taut and realistic, without padding.

5.3.2 Once agreed, the Estimates become the expenditure limits voted by the Assembly, set in the Budget Acts. These provide the legal authority for public expenditure within each ambit. Each ambit itemises a specific range of permitted activities and income streams for the year. There is some scope for transferring (through virement) provision from one section or subhead to another within any of the control limits in the same Estimate. Details are in the *Northern Ireland Estimates Manual*.

5.3.3 Statutory Committees may examine departmental witnesses on the plans contained in Estimates. Usually, such hearings take place after Estimates are laid in the Assembly but before they are voted into law.

5.3.4 Agreed Estimate provision for one year cannot be carried forward to the next. If a department needs to spend resources it did not consume in a previous year, and provided the budget will bear it, authority to spend in a subsequent year must be requested afresh.

5.3.5 Like budgets, Estimates are set net of income. But the Assembly needs to be made aware of receipts since Estimates authorise gross expenditure, normally using statutory powers. Annex 5.3 explains more about of types of receipt. Chapter 6 contains guidance about setting and adjusting fees and charges.

5.3.6 Exceptionally an Estimate (including a Supplementary Estimate) may set a negative limit for permitted resources. This happens if income is expected to exceed the relevant gross expenditure.

5.3.7 A department's Estimate for a year includes all spending within its agreed budget for that year, as well as any voted non-budget spending. Not all of this amount requires voted Assembly approval since some items, such as Consolidated Fund Standing Services, are paid direct from the Consolidated Fund. Hence only the voted parts of the Estimate requiring Assembly approval appear in the Budget Act. Of course, the disciplines on public funds (box 3.1) apply to all the activities described in the Estimate and accounts whether within the Act or not.

5.4. Excess Votes

5.4.1 Accounting Officers have an important role in overseeing the overall integrity of the department's Estimate for which they are responsible. In particular, Accounting Officers are responsible for ensuring that actual spending is within the ambits of each Estimate, is regular (see Box 2.5), and does not exceed the amount of Estimate provision.

5.4.2 If appropriate, DoF will present the Assembly with a Statement of Excesses to request retrospective authority for the unauthorised resources (or cash) used above the relevant limits or outside the ambits of the Estimate. The Assembly takes these excesses seriously. The PAC or statutory committee may call witnesses to account in person or ask for a written explanation.

5.4.3 This statement identifies two kinds of excess expenditure:

- spending above the voted control totals in an Estimate; and
- irregular expenditure outside the ambit, e.g. on an unauthorised service.

5.4.4 The Assembly would regard irregular expenditure as particularly unsatisfactory because it means that the department concerned has flouted the intentions that the Assembly has set in statute and may have defective systems of control. It is important to note that the Annual Report and Accounts may be noted for irregular expenditure for any spend not covered by suitable statutory powers, even if the total amount spent does not exceed the expenditure limits set in the Budget Act.

5.4.5 Expenditure in excess of provision is also to be avoided since the authority of the Budget Act is required just as much as specific statutory authority. It is possible, with DoF agreement, to raise the amount in an Estimate during the course of the year through a Supplementary Estimate. If need be, Accounting Officers should reduce, reprioritise or postpone use of resources to keep within the provision the Assembly has agreed for the year.

5.4.6 The Comptroller and Auditor General for Northern Ireland (C&AG) reports both kinds of Excess Vote to the Assembly. The Public Accounts Committee (PAC) may examine the responsible Accounting Officers to see whether there is evidence of some underlying weakness of control.

5.5. Commitments

5.5.1 The Assembly is not bound to honour ministers' commitments unless and until there are statutory powers to meet them and it authorises public funds to finance them (through an Estimate) in a given year. This discipline is especially important when ministers plan a new service.

5.5.2 Because commitments can evolve into spending, they shall always be scrutinised and appraised as stringently as proposals for consumption (Box 4.8 may help).

Box 5.1: Contingent liabilities: notifying the Assembly

- the Assembly shall be notified of uncertain liabilities in a meaningful way without spurious accuracy. It is good practice to notify the Assembly if a previously notified liability changes significantly or can be clarified. This shall be done by Ministerial Statement and departmental Minutes to the Assembly, drawn directly to the attention of the chairs of the PAC and relevant departmental committee;
- if a contingent liability affects several departments but cannot confidently be allocated among them, the relevant Ministers shall inform the Assembly in a pragmatic way. A single statement may well suffice;
- if, exceptionally, a new liability needs to remain confidential, the Minister shall inform the chairs of the relevant committee and the PAC; then inform the Assembly openly when the need for confidentiality lifts; and
- Ministers shall inform the Assembly if an ALB assumes a contingent liability which it could not absorb within its own resources, since the risk ultimately lies with the sponsor department's budget.

5.5.3 It is essential to give the Assembly prompt and timely notice of any significant new commitments, whether using existing statutory powers or to be honoured through future legislation. Non statutory contingent liabilities (above a specified threshold) shall always be notified in this way. The process is set out in Annex 5.4.

5.5.4 The general rule is to err on the side of caution in keeping the Assembly informed of emerging contingent liabilities. It is impossible to generalise about every possible set of circumstances but some guidance is in Box 5.1.

5.6. Tax

5.6.1 Public sector organisations shall not engage in, or connive at, tax evasion, tax avoidance or tax planning. If a public sector organisation were to obtain financial advantage by moderating the tax paid by a contractor, supplier or other counterparty, it would usually mean that the public sector as a whole would be worse off – thus conflicting with the Accounting Officer's duties (Section 3.3). Thus, artificial tax avoidance schemes shall normally be rejected. It shall be standard practice to consult HMRC[2] about transactions involving non-standard approaches to tax before going ahead.

5.6.2 There is of course no problem with using tax advisers to help meet normal legitimate requirements of carrying on public business. These include administration of VAT, PAYE and NICs, where expert help can be useful and efficient.

5.6.3 Proposals to create new taxes in order to assign their proceeds to new spending proposals are rarely acceptable. Taxation is an Excepted matter, except in certain circumstances permitted under Schedule 2 of the Northern Ireland Act 1998.

5.7. Public Dividend Capital (PDC)

5.7.1 Certain public sector businesses, notably trading funds can be set up with PDC in lieu of equity. Like equity, PDC should be serviced, though not necessarily at a constant rate.

5.7.2 PDC is not a soft option. In view of the risk it carries, it should deliver a rate of return comparable to commercial equity investments carrying a similar level of risk. There is scope for the return to vary to reflect market conditions and investment patterns; but persistent underperformance against the agreed rate of return should not be tolerated.

5.7.3 A department needs specific statutory power to issue PDC, together with supply cover to pay it out of the NICF. Sometimes instead of a specific issue of PDC, the legislation establishing (or financially reconstructing) a public sector business deems an issue of PDC to the new business. Dividends on PDC, and any repayments of PDC, are paid to the sponsor department of the business.

5.7.4 Further information about the use of PDC is in Section 7.9 (Trading funds).

5.8. Borrowing by public sector organisations

5.8.1 Some public sector organisations, e.g. certain trading funds, are partly financed through loans provided through the sponsor department's Estimate "Voted Loans"; or from the NICF. DoF consent and specific legal powers are always required. Limits and other conditions are common. Further discussion is at Annex 5.5.

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[2] HMRC customer relationship manager or customer co-ordinator

5.8.2 Every loan by a department should be made with reasonable expectation that it will be serviced and repaid on the agreed schedule. Departments are responsible for scrutinising borrowers' creditworthiness, not relying solely on their track record, in order to satisfy themselves that such loans are sound. If timely repayment could not realistically be expected, the loan could be unlawful.

5.8.3 Should a sponsor department become aware of concerns about the security of outstanding loans, it should warn DoF promptly and consider what action it can take to reduce or otherwise mitigate any potential loss. If a loan becomes irrecoverable, remedial treatment shall be agreed with DoF and then notified to the Assembly.

5.8.4 Arrangements for borrowing mirror closely those that apply in Great Britain and are subject to change. Details of these at any point in time can be obtained from Government Accounts Branch (GAB) in DoF which should also be consulted on any proposals for premature repayment.

5.8.5 As a general rule, departments should ensure that they obtain specific statutory powers to make loans. Departments are also responsible for ensuring that the borrower has any necessary statutory authority to borrow. Such loans should be made not only on the sole authority of the Budget Act but also only where the conditions specified by GAB within DoF would be satisfied and with the prior approval of the relevant Supply Officer in DoF.

5.8.6 Departments should consult the appropriate Supply Officer about any proposals for the premature repayment of loans.

5.8.7 The treatment of repayments and interest payments in the Estimates and Annual Report and Accounts is discussed in the *Consolidated Budgeting Guidance*, the *Northern Ireland Estimates Manual* and the *Government Financial Reporting Manual* (*FReM)*. DoF also accounts for NICF transactions in the Public Income & Expenditure Account. Any proposed write-offs must be notified to the Assembly after obtaining DoF agreement: see Annex 5.5.

5.9. External borrowing

5.9.1 A public sector organisation may only borrow from private sector sources if allowed under its relationship agreement with its sponsor department and only if the transaction delivers better value for money for the public sector as a whole. Because non-government lenders face higher costs, in practice it is usually difficult to satisfy this condition unless efficiency gains arise in the delivery of a project (e.g. Private Finance Initiative (PFI)). DoF agreement to any such borrowing, including by ALBs, is also essential. Nevertheless it can sometimes be expedient for public sector bodies to borrow short term, for example by overdraft.

5.9.2 When a sponsor department's ALB borrows, the department should normally arrange to guarantee the loan to secure a fine rate. This is not always possible, e.g. when a guarantee would rank as a State aid (see Annex 4.7). A department which guarantees a loan normally[3] needs a specific statutory power as well as Supply Estimate provision. On exceptional occasions temporary non-statutory loans may be possible. In either case, DoF Supply must be notified when a loan guarantee is given (before giving it in the case of non-statutory loans), using the reporting procedures in Annex 5.4. The Assembly should be notified in all cases where a loan is guaranteed.

[3] The PAC Concordat applies here in just the same way as to spending – see Annex 2.3

5.9.3 The case for a guarantee should be scrutinised as thoroughly as if indeed a loan were made. Since guarantees always entail entering into contingent liabilities, the Assembly must be notified when a loan guarantee is given, using the reporting procedures in Annex 5.4.

5.10. Multiple sources of funding

5.10.1 Sometimes public sector organisations derive funding from more than one source. Examples of funding other than voted funds include National Insurance contributions (which are dedicated to the Northern Ireland National Insurance Fund), lottery funding and charitable funding. All of these alternatives usually come with specific conditions attached.

5.10.2 Organisations in this position shall segregate and account separately for the different streams of funding so that they can apply the relevant terms and conditions to each. In particular, where a source of funding is designated to a particular purpose, it is rarely appropriate to use another instead. In those circumstances switching is novel and contentious and thus requires DoF approval.

5.10.3 When there is doubt about how to handle multiple streams of funding, it is good practice to consult DoF.

5.11. Banking and cash management

5.11.1 Together public sector organisations handle a very great deal of public money and carry out many financial transactions every working day. It is essential that these are handled in a way which is efficient and safe for the public sector as a whole.

5.11.2 Good cash management means having the right amount of cash available when needed, without inefficient unused surpluses. Public monies should be held centrally to the maximum possible extent consistent with value for money. Currently the bank accounts of departments, agencies and a number of other public bodies are part of a 'pool' arrangement whereby the balances of the accounts are aggregated/offset and managed as a total for limit and interest purposes. This allows the level of funding to be drawn down on any given day from the Northern Ireland Block Grant allocation to be tightly managed, minimising overall balances held outside the Exchequer and contributing towards the reduction of public sector debt as a whole.

5.11.3 It is essential for departments and ALBs to minimise the balances in their bank accounts. Were each to retain a significant sum in its own account with such banks, the amount of net government borrowing outstanding on any given day would be appreciably higher, adding to interest costs and hence worsening the fiscal balance.

5.11.4 Each central government organisation should establish a policy for its use of banking services. See Annex 5.6 for guidance. Sponsor departments should also make sure that their ALBs are aware of the importance of managing this aspect of their business efficiently and effectively (see Annex 7.2).

5.12. Other financing techniques

5.12.1 Depending on its circumstances, purposes and risk profile, a public sector organisation may, with appropriate DoF consents, consider using financial instruments provided by the financial markets. Accounting Officers must ensure there is a clear rationale evidencing the overall benefit before using these instruments.

5.12.2 Simpler examples of this type of activity are the use of credit or debit cards, in order to secure faster settlements. These simpler forms can be considered as being in the normal course of business.

5.12.3 The use of more complex types of financial instruments is only permitted with the explicit consent of DoF. Among these techniques are foreign currency transactions and various hedging instruments designed to control or limit business risks, for example those arising out of known requirements for specific future purchases of market priced commodities.

5.12.4 As with making decisions about other policies and projects, an organisation considering using unfamiliar financing techniques should evaluate them carefully, especially to assess value for money. The checklists in Boxes 4.3 and 4.8 have reminders of factors that may need to be considered. As such transaction(s) are almost always novel, contentious or repercussive, it is essential to consult DoF.

5.12.5 Any organisation using a new or non-standard technique shall ensure that it has the competence to manage, control and track its use and any resulting financial exposures, which may vary with time. In particular, departments should consult DoF before using derivatives for the first time (and ALBs their sponsoring departments).

5.12.6 When assessing an unfamiliar financing technique, it is important to remember that providers of finance and complex financial instruments intend to profit from their business. And providers' costs of finance are always inferior to the UK government's cost of borrowing. So it is usually right to be cautious about any novel techniques. DoF will always refuse proposals to speculate. Offers which appear too good to be true usually are.

5.12.7 As with managing other business, the Assembly may ask Accounting Officers to justify any decisions about use of financial transactions, especially if with hindsight they have not achieved good value for money.

5.12.8 Departments should ensure that financing instruments are appropriately scored in line with Consolidated Budgeting Guidance, and that DoF is consulted regarding losses in line with Annex 4.10, and the department's delegated authority letter.

Annex 5.1	Grants
Annex 5.2	Protecting the public sector interest (clawback)
Annex 5.3	Treatment of income and receipts
Annex 5.4	Contingent liabilities
Annex 5.5	Lending to public bodies
Annex 5.6	Banking and managing cash
Annex 5.7	The Northern Ireland Consolidated Fund (NICF)

A5.1 Annex 5.1 Grants

This Annex sets out how government departments should arrange and control grants, including to Arm's Length Bodies (ALBs) such as NDPBs.

A5.1.1 Central government departments normally offer two kinds of financial support to third parties, using statutory powers:

- **grants**: made for specific purposes, under statute, and satisfying specific conditions, e.g. about project terms, or with other detailed control; and
- **grants in aid**: providing more general support, usually for a NDPB, with fewer specific, but more general controls on the body, and less oversight by the funder.

A5.1.2 Grants should not be confused with contracts. A public sector organisation funds by grant as a matter of policy, not in return for services provided under contract.

Payment

A5.1.3 **Grants** should be paid on evidence of need or qualification, depending on the terms of the grant scheme. For example:

- the recipient may need to demonstrate financial viability and delivery capability;
- the recipient may need to submit a claim with evidence of eligibility;
- the recipient may need to show that it meets the conditions of the scheme, e.g. a farmer may need to disclose details of their business;
- there may be a timing condition; and
- third sector organisations may need to demonstrate a clear operational requirement for project funding to be made before grant is paid[4].

A5.1.4 **Grants in aid** shall also match the recipient's need. Significant sums should be phased through the year in instalments designed to echo the recipient's expenditure pattern. In this way the recipient organisation need not carry significant cash balances, which would be an inefficient use of public money.

Control

A5.1.5 Payment of both grants and grants in aid normally requires specific empowering legislation as well as cover in Estimates. There is scope for temporary ex gratia grant schemes to be financed on the authority of the Budget Act alone provided that the scheme meets the standard conditions (see Section 2.6).

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[4] *Improving Financial Relationships with the Third Sector: Guidance to Funders and Purchasers* which is available on the Accountability and Financial Management section of the DoF website.

A5.1.6 The Accounting Officer of the funding organisation is responsible for ensuring that grant recipients are eligible and use the grant in the way envisaged in the founding legislation, with terms and conditions set out in a grant funding agreement. For **grants in aid**, it is usual to arrange this by setting out terms and conditions in a framework document sent to recipients to explain their responsibilities. Such framework documents should strike an appropriate balance among:

- ensuring prudent management of grant in aid funds;
- achieving value for money;
- assuring funders that grants are used as envisaged;
- allowing recipients reasonable freedom to take their own decisions.

A5.1.7 However, care needs to be taken as general and wide ranging conditions attached to grant in aid can transfer control of a body to a funder for public sector classification purposes.

A5.1.8 Departments should understand enough about the other sources of a grant recipient's income to be satisfied that the same need is not funded twice, this should include an internal and cross-government check of grant funding awards. It is usually essential to segregate inflows from different recipients since they are usually intended for different purposes.

A5.1.9 Departments which provide grants of either kind to an ALB should document how the recipient is expected to handle the funds. See Annex 7.2 for more.

A5.1.10 Departments should ensure that they have adequate assurance arrangements in place, which take account of an assessment of fraud risk, and that the Comptroller and Auditor General for Northern Ireland has adequate access rights to grant recipients.

A5.1.11 A department asked by another part of government to pay a grant to an external organisation, such as a charity, from its own resources should ensure that its own Accounting Officer gives due consideration to the proposal before funding is committed.

Protecting the NICF

A5.1.12 If public sector organisations provide grants to private sector organisations to acquire or develop assets, suitable and proportionate steps should be taken to safeguard both their financial interests and those of the NICF. Donors should consider setting grant conditions designed to ensure that the NICF interest is not overlooked if the asset is not used as expected (see Annex 5.2).

Endowments

A5.1.13 Grants and grants in aid are normally paid to meet the needs of the recipients. Exceptionally, there may be a case for funding by way of endowment or dowry, i.e. a modest one-off grant to enable the recipient to set up a fund from which to draw down over several years. The recipient should then be able to make a clean break with the need for support.

A5.1.14 Departments contemplating such funding arrangements shall consult the relevant DoF Supply Officer (and in turn ALBs shall consult their sponsor departments) as this form of funding is always novel and contentious. DoF will need to consider the value for money case for this form of funding, including:

- the opportunity cost of locking public funds into a particular endowment, using investment appraisal techniques;
- the value of the particular programme or project against others. DoF will need to be satisfied that such funding would not protect any low-value projects or programmes from proper expenditure scrutiny;
- the sustainability of the funded body and whether such funding will remove future reliance on public funding;
- whether there are clear objectives, outputs and outcomes of the funding; and
- the risk of further call on public funds.

A5.1.15 Any such endowment shall:

- reflect genuine need for capital funding that could not be raised through other methods;
- be made only to recipients with the competence to manage the endowment over time; and
- avoid skewing public funding away from other projects that have genuine cash needs.

A5.1.16 The terms of an endowment shall:

- be clear that the funded body should not subsequently approach the donor for annual funding; and
- maintain clear boundaries between the funder and recipient.

A5.1.17 Endowments shall never be used as a way of bringing expenditure forward to avoid an underspend. Nor is it acceptable to make a string of endowment payments to a single recipient instead of taking specific provision in legislation to pay grants.

A5.1.18 Endowments are intended for situations where a clear financial break will be advantageous to both recipient and donor. Normally the recipient will be a civil society body or equivalent status.

A5.2 Annex 5.2 Protecting the public sector interest (clawback)

This Annex discusses how public sector organisations which provide grants to the private sector and others should protect their investments where grants are used to buy or improve assets.

Clawback

A5.2.1 Public sector organisations providing funds to others to acquire or develop assets should take steps to make sure that public sector funds are used for the intended purposes for which the grant is made. It is usual to consider setting conditions on such grants, taking into account the value of the grant, the use of the asset to be funded and its future value.

A5.2.2 A standard grant condition is clawback. This is achieved by setting a condition on the grant that gives the funding body a charge over the asset so that, if the recipient proposes to sell or change the use of the asset acquired with the grant, it must:

- consult the funder;
- return the grant to the funder; or
- yield the proceeds of sale (or a specified proportion) to the funder.

A5.2.3 However, a charge over the asset is not always essential. Some ground rules are suggested in Box A5.2A.

Box A5.2A: When to consider clawback

clawback desirable

- tangible or intangible assets, including intellectual property rights, crown copyright, patents, designs and database rights, financed directly, whether wholly or partly by grants or grants in aid;
- tangible or intangible assets developed by the funded body itself, financed indirectly by a grant for a related purpose or by grant in aid; and
- when administering EU funds, the funding organisation may be liable for any ineligible project expenditure not claimable from the European Commission.

clawback not always necessary

- procurement of goods and services, where any liability is adequately discharged once the goods and services have been provided; and
- where a grant has been provided for research and not specifically for the creation of physical asset, the successful conclusion of the research might be adequate return.

A5.2.4 Because funders, recipients and circumstances can vary so much, there is no single model for clawback. Bespoke terms are often desirable. They should allow as much flexibility as seems sensible. The aim should be to help recipients develop and provide services over the longer term while securing value for public funds. Drawing on the ideas in Box 7.3,

funders should always settle the terms of each grant with its recipient at the start of the relationship, consistent with its objectives.

Designing clawback conditions

A5.2.5 The design of clawback conditions for a grant should take account of its circumstances, the underlying policy objective(s) and the funder's approach to risk. A checklist of some common factors to consider is in Box A5.2B. Using this tailored approach can mean different organisations take very different approaches to the same risks.

Box A5.2B: Factors to consider in designing clawback terms

- the nature and purpose of the grant;
- how the asset will help secure the policy objectives behind the grant;
- the expected life of the asset;
- the extent to which the recipient is financed out of public funds;
- how the asset will be used by the recipient, e.g. scope for appreciation or generating profit;
- how long the funder should retain an interest in the asset;
- whether the asset may be sold, with any restrictions on disposal, e.g. as to price or purchaser;
- whether there is sense in reassessing after a certain period or on a given trigger;
- whether the terms of clawback should vary according to a factor such as the asset value (in which case the terms may need to provide for periodic valuations);
- when the policy objectives should be delivered;
- the funder's legal powers and the recipient's legal position (e.g. as a company or charity);
- any other relevant legal factors, e.g. EU rules on subsidy controls/State Aid; and
- when administering EU funded programmes, the financial risk (and potential liabilities) to the funder from non-compliance with EU or national rules. Additionally, EU Regulations may dictate specific repayment circumstances.

A5.2.6 In setting terms and conditions for grants, funders should consider what could happen if things do not proceed as intended, notably what should happen if:

- the recipient does not behave as expected; or
- external conditions are very different to plans; or
- the recipient goes into liquidation (e.g. should the funder take priority over unsecured creditors).

Duration of charge

A5.2.7 It can make sense to relate the funder's right to clawback to the policy objectives of making the grant rather than allowing it to persist indefinitely unchanged. Some policy options are outlined in Box A5.2C. If the clawback is linked to the value of an asset which is likely to appreciate, there is a risk that the recipient may face a disincentive to participate, so care and sensitivity may be needed.

A5.2.8 However, it can also make sense to moderate grants conditions by using terms such as:

- a break clause allowing the funder and recipient to consider whether the objectives of the funding have been achieved, triggering the end or reduction of the funder's interest in the asset;
- a review clause allowing scope to retain the charge and review the clawback period if the project has not met the agreed objectives; and
- releasing the funder's interest in the asset (and so permitting its disposal or use as collateral) at the end of the agreed charge or clawback period.

Box A5.2C: Options for clawback duration or assets as collateral

- keying it to the objectives of the grant;
- relating it to the period over which the intended benefits are to be delivered;
- settling clawback rights on a declining scale, e.g. falling to zero by the end of an agreed period, or the asset's useful life, or by when the policy objectives are deemed delivered; and
- allowing the recipient to use as collateral the difference between the market value of the asset and the original grant.

A5.2.9 It is common to prohibit recipients from using the assets they acquire or improve using grants as collateral in borrowing transactions. This is because the public sector funder might be forced to take up the recipient's legal liability to service debt should it fail. However, if a funder agrees that a recipient may use assets acquired or developed with grants as collateral, it should consider carefully what conditions it should apply. Some freedom of this kind may help the recipient make the transition to viability or independence. For example, a funder might allow a recipient to retain income generated by using spare capacity in the funded asset.

A5.2.10 But normally it is important for the funder to retain some control over any use of the funded asset outside the grant conditions. Typically the funder will require the recipient to obtain the funder's consent before raising funds on any part of a funded asset so long as the clawback period continues. Any further conditions should be proportionate, striking a proper balance between encouraging the recipient to be self-supporting and allowing the recipient to use public funds for its own purpose.

Enforcing a claim on a funded asset

A5.2.11 Where appropriate, funders should secure a formal legal charge on funded assets. This may be particularly important for high risk projects or to prevent the funder becoming exposed to assuming the recipient's debts. It is usual to take a registered charge on land under the Land Registration Act (Northern Ireland) 1970 and its Rules. If the recipient is a Companies Act company, it may make sense to secure a registered charge on the company's book debts.

A5.2.12 The form and intended duration of any charge should be recorded in the founding documents charting the relationship between the funder and recipient. Both parties will need legal advice, e.g. covering the statutory background, any relevant EU rules (e.g. on subsidy controls/State Aid) and on how the charge would be enforceable. Both parties should also keep track of their outstanding charges. It is good practice to register a land charge, so that it will automatically be taken into account during any sale process.

A5.2.13 Sometimes a funder may decide not to enforce clawback when a funded asset is sold, even though the agreed clawback period is still in force. Funders should take any such decision consciously on its merits, not letting it go by default. Reasons why a funder might take this approach include:

- the objectives of the grant may have been achieved;
- the recipient may propose to use the funded asset in an acceptable way different from the original purpose;
- the recipient may intend to finance an alternative asset or project within the objectives of the grant scheme out of the proceeds of the sale; or
- the funder might agree to abate future grants to the recipient instead of taking the proceeds of sale.

A5.2.14 If a department decides to waive a clawback condition, it should consider whether it needs to report that waiver as a gift. If so, it should follow the gift reporting requirements in Annex 4.12.

A5.2.15 If it is proposed to sell a grant recipient with a live charge, the funder should take legal advice on whether it can enforce the charge on the proceeds of the sale. The funder should consider the legal position of the proposed purchaser of the grant recipient, and in particular whether its objectives (e.g. charitable or as a social enterprise) are in line with the original grant conditions. If the funder becomes aware that such a sale is possible at the time the grant is awarded, it would usually be appropriate to require the recipient to obtain its consent before proceeding. And any request for endorsement of a sale should be evaluated objectively.

Clawback Provisions on the Sale of Surplus Property Assets

A5.2.16 The above is intended to cover clawback provisions relating specifically to public sector grant funding arrangements used to acquire or develop assets. However, it is recognised that similar provisions may be required from time to time, in a wider context, when disposing of public sector surplus assets.

A5.2.17 Land & Property Services Central Advisory Unit (CAU) is responsible for policy, advice and guidance on the disposal process and current disposals guidelines are available at Disposal of surplus public sector property in Northern Ireland - guidance (finance-ni.gov.uk). Section 12 'Sharing in Future Increases in Value' of the guidelines, provides details on the general requirements to consider and examples (including clawback provisions) of the measures that can be employed to mitigate against a real or perceived risk of not achieving best value on a sale.

A5.3 Annex 5.3 Treatment of income and receipts

The rules on use of income and receipts are designed to control the circumstances in which they can finance use of public resources.

A5.3.1 The Assembly controls departments' use of income and receipts. Departments should ensure that all income and associated cash is recorded in full and collected promptly.

A5.3.2 Most cash receipts are required by specific legislation to be paid into the Northern Ireland Consolidated Fund (NICF). It is a requirement that hereditary revenues are paid into the NICF.

A5.3.3 Hereditary revenue is:

- virtually all non-statutory receipts;
- cash receipts received by virtue of specific statutory authority; and
- receipts where statute does not say otherwise.

A5.3.4 Unless it can be established that a particular type of receipt or surplus cash is not hereditary revenue, the default position is that it is paid into the NICF.

A5.3.5 The main categories of income and associated receipts are shown in Box A5.3A.

Box A5.3A: The different kinds of central government income

- the proceeds of taxation: paid direct to the NICF, e.g. rates;
- repayment of principal and interest on NICF loans: paid direct to the NICF;
- sums due under bespoke legislation: paid as specified, e.g. the proceeds of national insurance contributions paid into the Northern Ireland National Insurance Fund;
- receipts of trading funds: treated as specified in the founding legislation; and
- sums due to departments financed through the Estimates in one of the following ways:
  - paid into the NICF as Consolidated Fund Extra Receipts (CFERs);
  - or applied to support spending in the Estimate if DoF agrees.

A5.3.6 Specific legislation, with the approval of DoF, is normally required to authorise use of income directly to meet resource consumption, i.e. to offset current or capital expenditure. In effect this process means that the department needs to seek less finance through Estimates because part of the cost of the service is met from income. The Assembly has an interest because otherwise resource consumption would require specific approval through the Estimates process.

A5.3.7 Following the Review of Financial Process reforms, there is no longer a specific legislative control over the amount of income that can be retained by departments and used to offset spending. However, it is controlled through the Executive's Budget/In Year Monitoring process.

A5.3.8 In order for a department to retain income to offset against spending within the Estimate it must be within the same budget boundary (i.e. classed by DoF as negative DEL or departmental AME) and be properly described in the Estimate. There must also be a direct relationship between the income and the spending, and departments may not use additional income on one part of the Estimate to offset shortfalls of income (or overspends) in another part of the Estimates without DoF approval. Such approval will only be given where the additional income has an appropriate relationship to the expenditure it is being used to finance.

A5.4 Annex 5.4 Contingent liabilities

The Assembly expects advance notice of any commitments to future use of public funds for which there is no active provision through Estimates. This Annex discusses how a number of different kinds of liability should be dealt with.

A5.4.1 Contingent or actual liabilities may arise as a result of a specific guarantee, indemnity, letter or statement of comfort. The Assembly is not bound in advance to authorise funds needed to honour any liabilities arising unless the liability has been charged by statute directly on the Northern Ireland Consolidated Fund (NICF). The Assembly expects to be notified of the existence of these commitments when they are undertaken. Should they eventually give rise to the need for public expenditure, they will require the authority of a Budget Act and frequently also specific enabling legislation. The Executive and the Public Accounts Committee (PAC) have therefore established reporting procedures which ensure, as far as possible, that the Assembly is not asked to vote funds to meet liabilities of which it has not had reasonable notice, and for which no justification has previously been provided.

A5.4.2 Departments cannot guarantee or indemnify one another, nor is it appropriate for them to issue letters of comfort or similar assurances to one another. This does not, however, preclude departments from agreeing which of those concerned would meet a particular liability from its Estimate if it matured.

A5.4.3 Some liabilities are uncertain. These contingent liabilities recognise that future expenditure may arise if certain conditions are met or certain events happen. That is, the risk of a call on NICF in the future will depend on whether or not certain events occur. In taking on such liabilities departments must be sure to consult DoF.

A5.4.4 Arm's Length Bodies (ALBs) sponsored by departments do not generally have powers to take on liabilities, because these would in effect bind their sponsoring departments. So the documentation governing the relationship between a department and an ALB (see Chapter 7 and Annex 7.2) should require the ALB to gain the sponsor department's agreement to any commitment, including borrowing, into which it proposes to enter. Departments should ensure that ALBs have systems to appraise and manage liabilities to the standards in this Annex, so that they can report to the Assembly any liabilities assumed by ALBs in the same way as they would their own.

Need for statutory powers

A5.4.5 It is good practice to enter into liabilities on the strength of specific statutory powers – as with items of expenditure. This is essential if a regular scheme of loan guarantees or other support is intended. Departments shall consult DoF about proposals for such legislation, which should include arrangements for reporting new liabilities to the Assembly. It may also be appropriate to put a statement to the Assembly when significant new statutory liabilities are undertaken. Provision in budgets and Estimates should be scored as the department's best assessment of the need to pay out in support of the liabilities.

A5.4.6 In the nature of giving liabilities, many will arise with little notice. Departments should report these to the Assembly at the earliest opportunity. There is a standard procedure for doing this: see Paragraphs A5.4.25 to A5.4.37 of this Annex.

A5.4.7 If a liability taken on in this way seems likely to persist, the department concerned should consider backing it with statutory cover. This is because any expenditure which arises because of it is subject to the same Assembly expectations about statutory powers as any other expenditure (see Section 2.1). If a contingent liability could give rise to a loan, the organisation should ensure that there is reasonable likelihood of the loan being serviced and repaid (see Section 5.8).

A5.4.8 There is an exception to the need for statutory powers for accepting liabilities. Commitments taken on in the normal course of business do not need specific cover, just as routine administrative expenditure does not (see Paragraph 2.6.2). The standard conditions for treating liabilities as undertaken in the normal course of business are set out in Box A5.4A, with some common examples. What may be the normal course of business for one department may not be the normal course of business for another.

Box A5.4A: Liabilities in the normal course of business

In order to treat a liability as arising in the normal course of business, the organisation concerned should be able to show that:

- the activity is an unavoidable part of its business; and/or
- the Assembly could reasonably be assumed to have accepted that such liabilities can rest on the sole authority of the Budget Act based on the activities it has previously authorised.

Examples of common liabilities arising in the normal course of business include:

- liabilities arising in the course of the purchase or supply of goods and services in the discharge of the department's business;
- contractual commitments to make payments in future years arising under long-term contracts, e.g. major building works;
- commitments to pay grants in future years under a statutory grant scheme; and
- contingent liabilities resulting from non-insurance (see Annex 4.4).

A5.4.9 If procurement in the normal course of business gives rise to proposals for liabilities outside the normal range (e.g. a cap on the contractor's liabilities), the public sector organisation should consider renegotiating. The acid test is whether two private sector bodies would use the same terms. In cases of doubt, DoF shall be consulted.

A5.4.10 Private Finance Initiative (PFI) contracts are a special case of procurement and so can cause departments to take on liabilities. There is no need to notify use of standard PFI terms to the Assembly, but any use of non-standard terms should be reported like any other.

A5.4.11 There are additional conditions for taking on non-standard conditions, namely:

- the need must be urgent and unlikely to be repeated; and
- it would be in the national interest to act even though there is no statutory authority.

Taking on liabilities

A5.4.12 Before accepting any liability, the organisation should appraise the proposal using the *Better Business Cases NI Guidance*, to secure value for money, just like a proposal to undertake any other project. The liability should be designed to restrict exposure to the minimum, e.g. by imposing conditions about duration.

A5.4.13 Many liabilities transfer risk from the private sector to the public sector. The starting basis in these cases should be that a risk-based fee is charged to the private sector (analogous to a guarantee fee or insurance premium). Charging fees in this way ensures the private sector has an incentive to mitigate risk and reduces taxpayers' exposure to liabilities crystallising.

A5.4.14 It will not always be possible or desirable to charge the private sector a fee. For example, if the department does not have the legal power to do so, or because the policy intervention is counter-cyclical. In these cases, DoF will need to be satisfied why not charging a fee is appropriate.

A5.4.15 Providing indemnities to contractors or limiting their liability in the event of their own negligence, or that of a sub-contractor, should only be undertaken following an assessment of the best value for money option for the NICF as a whole. Assessment of VFM should include consideration of the fact that requiring excessive liability caps, beyond what would be reasonable given the size and scope of the contract, is likely to result in potential contractors including pricing for excessive risk or choosing not to bid, thus reducing competition. The extreme case of unlimited liability should be used very sparingly and only after discussion with the relevant CoPE.

A5.4.16 When considering the use of unlimited liability clauses departments should consider whether the contractor could bear such losses without being rendered insolvent, resulting in the risk being passed back to the department. The Sourcing Toolkit - available at Sourcing Toolkit Section 2 - Preparing to go to Market [pdf version 30 Sept 22].PDF (finance-ni.gov.uk) (Section 2 – Preparing to Go to Market) gives further advice on identifying when to use liability caps and how to set the level of those caps and support should be sought from the relevant CoPE. Where the quantum or scope of the cap is a departure from normal commercial practice, or will give rise to a contingent liability, DoF consent shall be sought in the usual way for novel contentious and repercussive spend. For the avoidance of doubt limitations of liability that are prohibited or unenforceable in UK law, for example death or personal injury caused by negligence, fraud, or fraudulent misrepresentation or breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982, are not permitted.

A5.4.17 Subject to the statutory powers of the public sector organisation and its delegated authorities, it is important for an organisation contemplating assuming a new liability to consult DoF (or the sponsor department, as the case may be) before assuming it. Departments' delegated authorities for incurring liabilities include the liabilities of any sponsored bodies.

A5.4.18 DoF approval must be sought for all contingent liabilities that are novel, contentious or repercussive.

Types of liability

A5.4.19 Public sector organisations may take on liabilities by:

- issuing specific guarantees, usually of loans;
- writing a letter or statement of comfort; or
- providing indemnities.

A5.4.20 A guarantee or indemnity given by a department is a legally enforceable undertaking. A letter or general statement of comfort, while not necessarily giving rise to a legal obligation, may nevertheless impose a moral obligation on the Executive.

A5.4.21 Guarantees should normally arise using statutory powers. They typically involve guarantees against non-payment of debts to third parties.

A5.4.22 Letters of comfort, however vague, give rise to moral and sometimes legal obligations. They should therefore be treated in the same way as any other proposal for a liability. Great care should be taken with proposals to offer general statements of awareness of a third party's position, or oral statements with equivalent effect. Creditors could easily take these to mean more than intended and threats of legal action could result. DoF approval is essential.

A5.4.23 It is common to give certain kinds of indemnity to members of boards of central government departments or of NDPBs; or to civil servants involved in legal proceedings or formal enquiries as a consequence of their employment, perhaps by acting as a board member of a company. The standard form is set out in Box A5.4B. This cover is comparable to what is obtainable on the commercial insurance market. So it excludes personal criminal liability, reckless acts or business done in bad faith.

A5.4.24 Liabilities of this kind to individuals do not normally need to be reported to the Assembly unless they go beyond the standard form or are particularly large or risky.

Box A5.4B: Standard indemnity for board members

The government has indicated that an individual board member who has acted honestly and in good faith will not have to meet out of their personal resources any personal civil liability, including costs, which is incurred in the execution or the purported execution of their board functions, save where the board member has acted recklessly.

Notifying liabilities to the Assembly

A5.4.25 The rules for notifying the Assembly of liabilities are very similar to those for public expenditure. Generally speaking there is no requirement to inform the Assembly about any liability which:

- arises in the normal course of business;
- arises under statutory powers (subject to the bullets bellow); and
- would normally require notification (i.e. neither arising in the normal course of business nor under statutory powers) but is under £300,000 in value.

A5.4.26 There are some exceptions to this general rule. The Assembly shall be notified of any liability, even if it meets one or more of the criteria given in paragraph A5.4.25, which:

- arises as a result of a specific guarantee, indemnity or letter of comfort where the guarantee is not of a type routinely used in commercial business dealings;
- is of such a size, relative to the department's total budget, that the Assembly should be given notice;
- arises under specific statutory powers which require the Assembly to be notified; and
- is novel, contentious or potentially repercussive.

A5.4.27 It is important to note that undertakings in the normal course of business should be judged against the department's normal business pattern authorised by the Assembly. So what may be normal for some departments may not be normal for others. In cases of doubt it is best to report.

A5.4.28 Non-statutory liabilities which need to be reported to the Assembly should be notified by departmental Minute (see Box A5.4C). DoF approval is required before going ahead. It is sometimes necessary, with DoF agreement, to adapt the form of wording, e.g. if the liability arises immediately.

A5.4.29 Departmental Minutes shall:

- use the standard wording for the opening and closing paragraphs, which has been agreed with the PAC (Box A5.4C);
- describe the amount and expected duration of the proposed liability, giving an estimate if precision is impossible;
- explain which bodies are expected to benefit, and why;
- if applicable, explain why the matter is urgent and cannot observe the normal deadlines (Paragraph A5.4.30);
- explain that authority for any expenditure required under the liability will be sought through the normal Supply procedure;
- be copied to the Chairs of both the PAC and Departmental Committee; and
- in cases of particularly large or unusual liabilities, be accompanied by a Ministerial statement.

A5.4.30 The contingent liability should not go live until fourteen working days (excluding weekends) after the Minute has been presented. Every effort shall be made to ensure that the full waiting period falls while the Assembly is in session.

A5.4.31 If a Member of the Assembly or Committee objects in line with existing Assembly procedures, the guarantee or indemnity should be withheld pending an examination of the objection. Where an objection is made, departments may wish to advise their Ministers to take the initiative by making contact with the Member or Committee concerned. This may be particularly appropriate if the department proposes to issue the guarantee or indemnity promptly on expiry of the waiting period. DoF should be notified of any representations made by Members of the Assembly and the outcome of those representations.

A5.4.32 If, exceptionally, the guarantee or indemnity would give rise to an actual liability, the department shall consult DoF about the wording of the Minute. The department should

discuss the implications for the actual liability on its budget, Estimate and Annual Report and Accounts.

Box A5.4C: Standard text for departmental Minutes on liabilities

Opening paragraph

It is normal practice, when a government department proposes to undertake a contingent liability in excess of £300,000 for which there is no specific statutory authority, for the department concerned to present a departmental Minute to the Assembly giving particulars of the liability created and explaining the circumstances; and to refrain from incurring the liability until fourteen working days (excluding weekends) after the issue of the Minute, except in cases of special urgency.

The **body of the Minute** should include:

If the liability is called, provision for any payment will be sought through the normal Supply procedure.

Closing paragraph

The Department of Finance has approved the proposal in principle. If, during the period of fourteen working days (excluding weekends) beginning on the date on which this Minute was presented before the Assembly, a Member or Committee signifies an objection in line with Assembly procedures, final approval to proceed with incurring the liability will be withheld pending an examination of the objection.

The wording of the closing paragraph will need to be adapted if, for reasons of urgency, the department proposes to issue the guarantee or indemnity before the expiry of the normal fourteen-day period. The Minute should also include the following sentence: "If the liability is called, provision for any payment will be sought through the normal Supply procedure."

Non-standard notification

A5.4.33 Sometimes it is not possible to give details of a contingent liability with full transparency. In such cases DoF approval may be given to the department to write to the Chair of both the PAC and Departmental Committee to provide the same details as those outlined in Paragraph A5.4.29, with the same notice period. The letters shall explain the need for confidentiality. Any objection by either Chair should be dealt with using the procedure outlined in Paragraph A5.4.31. If departments continue to have concerns about writing to the Assembly, in particularly sensitive or confidential cases, they should seek advice from DoF.

A5.4.34 Sometimes departments want to report an urgent contingent liability providing less than the required fourteen working days' notice. In such cases, the department shall follow the procedure in Paragraph A5.4.28 and explain the need for urgency, agreeing revised wording to the closing paragraph (Box A5.4C) with DoF.

A5.4.35 Departments may also need to report a contingent liability during the period immediately before the end of an Assembly session, in which case provision of the usual fourteen working days' notice will not be possible. In such cases the same procedure as in Paragraph A5.4.33 should be used (excluding reference to the need for confidentiality). As a matter of record, when the Assembly reconvenes, a departmental Minute should be presented explaining what has happened, including any liabilities undertaken.

A5.4.36 The same procedure as in Paragraph A5.4.35 shall be used to report liabilities during an Assembly recess. In such cases the notice period should be fourteen working days' notice (excluding weekends).

A5.4.37 During the period between prorogation and formal dissolution of the Assembly, departments may, subject to urgency, notify the Chair of the PAC of any intentions to enter into non-statutory contingent liabilities, as in a recess. Once the Assembly is formally dissolved, however, the Chair is no longer regarded as an Assembly Member and the Committee ceases to exist. Following dissolution, departments should therefore avoid entering into non-statutory contingent liabilities until the Assembly reassembles. If a department considers that entering into a liability during dissolution is unavoidable, DoF should be consulted.

Reporting liabilities publicly

A5.4.38 Any changes to existing liabilities should be reported in the same way as they were originally notified to the Assembly, explaining the reasons for the changes. If an originally confidential liability (see Paragraph A5.4.33) can be reported transparently, the standard Minute (Paragraph A5.4.29) shall be presented.

A5.4.39 Departments shall report all outstanding single liabilities, or schemes of liabilities, in their Annual Report and Accounts unless they are confidential. Any which would fall as a direct charge on the NICF should be reported in the Public Income and Expenditure Account. The conventions in the *Government Financial Reporting Manual (FReM)* should be used.

A5.4.40 Estimates should similarly be noted with amounts of any contingent or actual liabilities. The figures quoted should be the best assessments possible at the time of publication. Actual liabilities should appear as provisions. The rubric should refer back to notification of the Assembly.

A5.4.41 When the conditional features of contingent liabilities are met, it is good practice to wait until the Assembly has approved the relevant Estimate before providing the necessary resources. But if providing support is more urgent, departments should apply for an advance from the NICF (see Annex 2.4 and the *Northern Ireland Estimates Manual*) under the usual conditions. If an advance is approved, a statement to the Assembly should explain what is happening, and in particular how the crystallised liability is to be met.

A5.5 Annex 5.5 Lending to public bodies

NI departments may borrow from the Estimate and the Northern Ireland Consolidated Fund (NICF) and then on-lend to third parties. There are some key disciplines required to protect the NICF from loss. It is also important to keep the Assembly informed, especially about risk exposures.

A5.5.1 The Executive provides loan finance to public sector (and some private sector) bodies through the NICF and departmental Estimates. The broad principles of this Annex also apply to Public Dividend Capital (PDC) and Executive loan guarantees.

Borrowing

A5.5.2 The NICF has powers to borrow both for temporary deficits and for longer term borrowings to fund loans from the Executive to specified bodies or persons. Alternatively loans may be made by departments from money which has been voted to them in Estimates ("voted loans"). Loans cannot be made without statutory authority and DoF approval. Whilst Departments are responsible for ensuring that necessary statutory powers are in place for the lender to lend and the borrower to borrow, DoF should be consulted about legislative proposals in good time before legislation is drafted.

A5.5.3 Arrangements for borrowing mirror closely those that apply in Great Britain and are subject to change. Details of these at any point in time can be obtained from DoF Government Accounts Branch (GAB).

Voted Loans

A5.5.4 Voted loans should only be made where there is reasonable expectation of their being properly serviced and repaid. Departments making voted loans should ensure that the conditions in the enabling legislation are met and that the Estimate provides for advances of the principal. If the legislation leaves the lending department with discretion over terms and conditions, interest rates should be set to reflect the cost to the government of borrowing.

A5.5.5 Voted loans are technically assets of the NI Consolidated Fund. So payments of interest and principal should normally be surrendered to the NI Consolidated Fund. However if there is related expenditure within the same budget boundary as the receipt, such payments may be retained if DoF agrees.

Repaying early and writing off loans

A5.5.6 The appropriate DoF Supply Officer shall be consulted about any proposals for the early repayment of loans. Premature repayment will not be approved where the loan would simply be replaced by another one at a lower rate of interest without payment of the appropriate premium.

A5.5.7 In all cases where the amount to be remitted exceeds £20 million in total, DoF approval is required. Remission of £20 million or less also requires prior DoF approval unless it is covered by specific delegation arrangements agreed by DoF. In all cases remissions should be reported to the Assembly in the lending department's Annual Report and Accounts.

A5.5.8 In addition, where it is proposed to remit all or part of the principal of a loan and the remission exceeds £20 million in total, DoF is required to present a Minute before the Assembly giving particulars of the remission and the circumstances. The opening and closing paragraphs of Minutes should be in the standard form (Box A5.5A) and the terminology of neither paragraph should be altered.

A5.5.9 Should a Member of the Assembly or Committee object to the write-off in line with existing Assembly procedures, DoF should be notified and approval to proceed will be withheld pending the outcome of the objection.

Box A5.5A: DoF Minute on loan write-offs: standard paragraph

Opening paragraph:

When a government department proposes to write off the repayment of a Northern Ireland Consolidated Fund loan whose principal outstanding exceeds £20 million, it is the normal practice for DoF to present to the Assembly a Minute explaining the circumstances and giving particulars of the write off. Except in cases of special urgency, DoF consent is withheld until fourteen working days (excluding weekends) after the issue of the Minute.

Closing paragraph:

DoF has approved the proposal in principle. If, during the period of fourteen working days (excluding weekends) beginning on the date on which this Minute was presented before the Assembly, a Member or Committee signifies an objection in line with existing Assembly procedures, final approval of the remission will be withheld pending an examination of the objection.

Lending to competitive organisations

A5.5.10 The requirements described above always apply to voted loans. Some additional disciplines apply to loans to public sector organisations which operate in commercial markets. These disciplines are justified by the need to:

- avoid distorting competition in the markets in which these organisations operate; and
- deliver VFM for the public sector as a whole by maximising the efficiency of the pooled borrowing approach and minimising subsequent cost of funds.

A5.5.11 The competitive organisations and transactions in the public sector to which these disciplines apply are:

- those organisations that compete with the private sector for more than 75% of their business;
- many organisations that compete for between 20% and 75% of their business, considered case by case; and

• usually organisations using loan finance for a particular discrete activity that would compete with the private sector.

A5.5.12 The disciplines required are all intended to ensure that the public sector organisations concerned do not exploit any competitive advantage they might otherwise enjoy through access to cheaper finance. They are set out in box A5.5B.

Box A5.5B: Disciplines for commercial lending

- All borrowing must be agreed with DoF Supply;
- The borrower, or its sponsor department, should obtain a credit rating, using independent financial advice and excluding any implicit or explicit government guarantees;
- Any guarantee of an organisation's borrowing should rest on explicit statutory powers. There may be terms and conditions, e.g. a cap on the amount;
- The borrower organisation should satisfy DoF that the proposed transactions are justified within its corporate plan and delivers value for money;
- Short term finance i.e. less than seven days, should be obtained from commercial providers, e.g. through overdrafts; and
- Longer term borrowing should be at interest rates comparable to what similar competitor firms in the private sector would pay, and must as a minimum cover the government's cost of borrowing. DoF will determine the interest rate to be applied.

External borrowing and government guarantees

A5.5.13 Public sector organisations sometimes undertake limited, short-term borrowing from the private sector, for example through a bank overdraft, in order to meet very short-term requirements not available through public sector lenders. Such borrowing should be explicitly guaranteed by the Executive to secure the finest terms unless there are good policy reasons otherwise.

A5.5.14 Guarantees should normally only be given with an explicit statutory power, which should specify:

- the circumstances in which guarantees may be given and the terms and conditions to be attached;
- a limit on the total sum which may be covered by guarantees at any one time, which may include power to raise the limit by Order within a further absolute ceiling specified in the primary legislation;
- a requirement for the Assembly to be notified once the guarantee has been given; and
- authority for any costs resulting from the guarantee to be met from Estimates.

A5.5.15 Even if the enabling legislation does not require the sponsor department to notify the Assembly of new guarantees, the department should follow the standard procedure for notifying the Assembly of contingent liabilities (Annex 5.4).

A5.5.16 In principle government guarantees may also be given for longer-term borrowing, including in foreign currencies. Such guarantees will only be considered where the guaranteed borrowing is on terms at least as fine as the government could obtain in its own name. This is a stringent test which individual public sector borrowers cannot often meet. Departments should therefore ensure that all their sponsored bodies consult them in advance about the terms of any proposed private sector or overseas borrowing. In no circumstances should any central government organisation borrow on terms more costly than those available to the Executive without DoF approval.

A5.5.17 As foreign borrowing may also have implications for the credit standing on the international money markets of the UK public sector as a whole, proposals for such borrowing must be cleared with DoF in advance. This applies not just to department’s sponsored bodies, but also to their subsidiaries and any associated companies where sponsored bodies have majority shareholdings.

A5.6 Annex 5.6 Banking and managing cash

Each public sector organisation should run its cash management and money transmission policies in line with the principles of value for money. For departments this usually means using the NI Banking Pool (the "Pool"), and providing DoF with accurate forecasts of cashflows. Any use of non-standard techniques should be kept within defined bounds and controlled carefully.

A5.6.1 Together public sector organisations process large volumes of cash each day in order to carry out their functions. It is essential that these are handled in a way which is efficient and safe for the public sector as a whole. Accounting Officers are responsible for the credit risk to which public funds are exposed when held in commercial banks. It is important that they manage this risk actively, so that it is kept to a minimum. Departments must also provide DoF with information about balances and transactions needed for central financial and economic management.

A5.6.2 Public monies should be held centrally to the maximum possible extent consistent with value for money. Under Section 25 of the Government Resources and Accounts Act (Northern Ireland) 2001, DoF determines the banks and the accounts in which NI departments keep public money. A procurement framework is in place for the provision of banking services to the Northern Ireland Civil Service Departments, Agencies, Non Departmental Public Bodies and other Participating Bodies. The banking services will entail the servicing of a range of bank account types and currencies, various payment and receipting methods, local banking branch facilities and access to an internet banking system.

A5.6.3 Departments and their agencies opening bank accounts must do so within the "Pool" which is an arrangement whereby a specified list of central and departmental accounts have their balances pooled for limit and interest purposes. This allows the level of funding to be drawn down on any given day from the Northern Ireland Block Grant allocation to be tightly managed, minimising overall balances held outside the Exchequer and contributing towards the reduction of public sector debt as a whole. Government Accounts Branch (GAB) within DoF is responsible for managing the 'Pool' arrangement. Only GAB may bring new accounts into or remove existing ones from the Pool. It should be rare for departments to require an account to be opened outside the Pool and it should only be done with the approval of GAB. Participation in the Pool does not absolve departments/agencies from their obligation to keep balances to a minimum and avoid overdrawing their accounts.

A5.6.4 To assist DoF to manage the Executive's daily cash flows, departments must submit monthly forecasts of cash requirements. In addition, Departments, Supply-financed agencies, trading funds and NDPBs operating accounts within the pool arrangement should notify GAB in advance when the overall funds held in relevant accounts are expected to increase or decrease by £1m or more on any one day.

A5.6.5 Public Bodies other than departments and agencies should have banking arrangements which represent good value-for-money for the public purse. This means using the most efficient and cost effective money transmission methods and securing the best terms possible from banks. Public bodies should seek the advice of their sponsor department before opening new bank accounts. Other banking services, outside of the framework, should only be used where a business case can be made to justify such action e.g. to provide a necessary service or ensure a legislative requirement.

Local banking policies

A5.6.6 Each public sector organisation should establish a banking policy for its control of its working balances and transmission of fund. It should cover at least the features outlined in Box A5.6A.

Box A5.6A: An organisation's banking policy

- where the main account(s) are to be held and how they should be operated;
- how and where working overnight balances required for day to day operation are to be held, if different;
- how the risks of fraud and overpayments are to be prevented, countered systemically and managed when discovered;
- how any non-public funds should be managed and kept separate from public money;
- The organisation's cut off times for processing payments (in line with DoF's core banking hours; authorising payments on their banking platforms by 12pm for high value payments and no later than 3pm for others)
- when and how payment by cheque, credit card or direct debit is acceptable;
- any use of non-standard financial instruments, e.g. agreeing foreign exchange hedging contracts with commercial banks; and
- record keeping, including frequent bank statement reconciliations.

A5.6.7 Once established, this policy should be reviewed regularly to make sure that it remains appropriate and up to date.

A5.6.8 As part of their banking policy some public sector organisations may operate one or more commercial bank accounts outside the Pool arrangement. Some guidelines for setting up and operating them are in Box A5.6B. For banking requirements in the UK, public sector organisations should use only members of the relevant UK clearing bodies. For more information see https://www.wearepay.uk/what-we-do/payment-systems/.

Box A5.6B: Guidelines for using commercial bank accounts outside the Pool

- select services which cannot be provided by the Pool or which offer better value for money for the NICF overall;
- ensure that cleared funds will reach accounts as early as possible in the relevant clearing cycle;
- obtain specific charges for money transmission and other services so that costs are transparent and comparable;
- obtain gross interest on cleared credit balances, at rates as close as possible to the Bank of England's interbank rate or better (subject to credit risk and other liquidity considerations);
- refuse arrangements that involve maintaining minimum balances since these increase NICF debt and raise NICF costs, even if the offer appears superficially attractive because of reduced charges;
- negotiate with care any indemnities that commercial banks may seek to replace their normal arrangements (e.g. to protect the bank from incorrect Bacs debits), after taking legal advice and obtaining clearance from DoF;
- surrender interest receipts as Consolidated Fund Extra Receipts;
- Minimise balances in commercial accounts without going overdrawn, holding only enough for immediate needs; and
- GAB should be consulted when bodies are considering opening accounts outside the Pool or government banking contract.

Money transmission

A5.6.9 Public sector organisations should generally use the cheapest, safest and quickest means of moving public funds, depending on the context. Generally this means adopting the hierarchy in Box A5.6C. Sometimes it is necessary to strike a balance among these desirable features to achieve the best outcome. For inward payments, it may be appropriate to apply credit controls or other safeguards.

Box A5.6C: Money transmission services ranked in order of choice

- internal transfers (requests for fund transfers) within the Pool;
- electronic methods (BACS, Faster Payments and CHAPS) in the commercial banking system including transfers to and from Pool accounts and direct debits;
  - where used for payments, with appropriate safeguards to prevent damage to the public sector;
  - where used for receipts, arrangements should be made for the payer to make payments as early as possible in the day;
- credit and other payment cards: only where accepting such payments represents value for money, e.g. in terms of faster or more certain credit of funds, and usually with safeguards such as limits on value or circumstances compared to the cost of commissions to the card user; and
- where these are not possible, payable orders and cheques;

but not usually

- cash, uncrossed cheques, order books or other methods involving high security risks.

Borrowing

A5.6.10 Public sector organisations should not normally rely on obtaining finance by borrowing from commercial banks as it is almost always more expensive than relying on the government's credit rating. Any expenditure financed by such borrowing would be considered irregular.

A5.6.11 Certain ALBs, such as public corporations and trading funds may, however, borrow from commercial banks for short term needs. This is only possible if it has been agreed in the founding documentation for the body (see Chapter 7).

Foreign exchange

A5.6.12 Foreign currency transactions can be complex and involve exchange risks. Departments using foreign exchange need to take account of the government's wider role in managing the value of the UK currency and its foreign currency assets efficiently and effectively. Departments should therefore minimise their exposure to foreign exchange risk and must not speculate on foreign exchange movements.

A5.7 Annex 5.7 The Northern Ireland Consolidated Fund (NICF)

This Annex describes departments' relationship with the Northern Ireland Consolidated Fund (NICF).

A5.7.1 The NICF is the Executive's current account through which most payments and receipts of the Executive pass. All payments out of the NICF must have legislative authority. They may be charged on the Fund directly by statute (known as Standing Services), or voted by the Assembly each year in the Budget Bills (Box A5.7A). Government Accounts Branch (GAB) within DoF controls the NICF, subject to authorisation of payments by the Comptroller and Auditor General for Northern Ireland (C&AG), and determines arrangements for payments into the NICF (Box A5.7B).

Box A5.7A: Payments out of the NICF

- **Consolidated Fund Standing Services** - payments for services which it has been decided by statute should be met directly from the NICF e.g. interest on loans from the National Loans Fund and the salary and pension of the C&AG;
- **Supply services -** payments required to meet other central government expenditure voted by the Assembly via the Estimates process. Statutory authority for the necessary payments from the NICF is given by the relevant Budget Act for the year in question; and
- **Capital payments –** loans to district councils, schools and other public bodies under statute; redemption of debt and other payments such as the investment of temporary cash surpluses.

Box A5.7B: Payments into the NICF

- **Regional Rates Income:** this is the element of rates income which is not distributed to district councils;
- **Consolidated Fund Extra Receipts and other sums due to the NICF:** these are receipts which are not the product of taxation and which the Assembly has not authorised to be used as income**;**
- **Block Grant:** this is paid by the Secretary of State for Northern Ireland out of money provided by the UK Parliament and is, subject to the limit set by HM Treasury, the balance required to bring the level of public income in NI up to the amount needed to cover public expenditure; and
- **Borrowing for capital purposes and the repayment of loans issued by the NICF:** the Exchequer and Financial Provisions Act (Northern Ireland) 1950 provides that all money raised by the creation of debt is payable into the NICF together with receipts representing loans made from the fund and interest on those loans.

A5.7.2 Departments should note that it is their responsibility to pay over the correct amount of receipts promptly to the NICF (the *Northern Ireland Estimates Manual* provides further guidance on receipts and CFERs). DoF has no responsibility for such receipts until they have been credited to the NICF. They are also responsible for ensuring that sufficient Supply is drawn down from the NICF to finance their voted expenditure and must provide forecasts of their cash flows and Supply requirements for the month ahead as required by GAB.

A5.7.3 If surplus Supply has been advanced in any financial year, DoF will normally deem the excess to have been repaid and reissued against Supply for the following year.

A5.7.4 Under the Exchequer and Financial Provisions Act (Northern Ireland) 1950, DoF is required to prepare for each year a Public Income and Expenditure Account which is certified by the C&AG and laid before the Assembly.

6 Fees, Charges and Levies

Charges for services provided by public sector organisations normally pass on the full cost of providing them. There is scope for charging more or less than this provided that Ministers choose to do so, the Assembly consents and there is full disclosure. Public sector organisations may also supply commercial services on commercial terms designed to work in fair competition with private sector providers. It is expected that there will be proper controls over how, when and at what level charges may be levied.

6.1 Introduction

6.1.1 Certain public goods and services are financed by charges rather than from general taxation. This can be a rational way to allocate resources because it signals to consumers that public services have real economic costs. Charging can thus help prevent waste through badly targeted consumption. It can also make comparisons with private sector services easier, promote competition, develop markets and generally promote financially sound behaviour in the public sector.

6.1.2 There are unavoidable reasons why policy on charging is important:

- charges substitute for taxation (or, in the short term, borrowing) as a means of government finance. Decisions on charging policy shall therefore be made with care;
- for this reason, the Assembly expects to consider legislation on whether charges shall be levied; how they should be structured; and on charge levels; and
- international standards[1] determine how income from charges is classified in the national accounts. Certain charges are treated as taxes.

6.1.3 As in other areas of managing public funds, the Assembly expects DoF to make sure that its interests are respected, including pursuit of efficiency and avoidance of waste or extravagance. Because Estimates and budgets are shown net of income, special effort is required to give the Assembly information about both gross and net costs, and about the sources and amounts of income.

6.2 Basic principle

6.2.1 The standard approach is to set charges to recover full costs. Cost should be calculated on an accruals basis, including overheads, depreciation (e.g. for start-up or improvement costs) and the cost of capital. Annex 6.1 sets out how to do this.

[1] Public accounts follow classification decisions taken by the Office for National Statistics (ONS), an independent organisation which is guided by the international standards set out in the European System of Accounts

6.2.2 This approach is simply intended to make sure that the Executive neither profits at the expense of consumers nor makes a loss for taxpayers to subsidise. It requires honesty about the policy objectives and rigorous transparency in the public interest.

6.2.3 As elsewhere, organisations supplying public services should always seek to control their costs so that public money is used efficiently and effectively. The impact of lower costs should normally be passed on to consumers in lower charges. Success in reducing costs is no excuse for avoiding the principles in this guidance.

6.2.4 This Chapter applies to all fees and charges set by Ministers and by an extensive range of public bodies: departments, trading funds, NDPBs, Health and Social Care bodies and most public corporations. Departments should be able to satisfy themselves that their Arm's Length Bodies (ALBs) can deliver the financial objectives for the services they charge for. This Chapter also applies when one public organisation supplies another with goods or services; and to certain statutory local government charges set by Ministers.

6.3 Setting a charge: standard practice

6.3.1 When a charge for a public service is to be made, it is normally necessary to rely on powers in primary legislation. The legislation should be designed so that Ministers decide, or have significant influence over, both the structure of the charge and its level. It is common to frame primary legislation in general terms, using secondary legislation to settle detail. Prior DoF approval is required for primary legislation empowering charges.

6.3.2 Even if the primary legislation does not call for it, the delegated authorities within which the organisation operates will often insist upon DoF consent for charges.

6.3.3 It is sometimes possible to rely on secondary legislation rather than primary to determine charges:

- an Order under s56 of the Finance Act 1973 can be used.
- restructuring of charges can sometimes be achieved by an Order under the Fees and Charges (Northern Ireland) Order 1988 No. 929 (N.I.8) (see Box 6.1).

Box 6.1: Restructuring charges using the Fees and Charges (Northern Ireland) Order 1988 No. 929 (N.I.8)

- the Order can extend or vary powers in existing primary legislation;
- it can permit restructuring by specifying factors to be taken into account when setting fees; and
- explicit prior DoF consent is always essential.

But

- the Order cannot create a power for new charges where no primary legislation exists;
- nor can it lift restrictions in (or in any other way undermine) primary legislation; and
- because such Orders amend primary legislation they would be unpopular in the Assembly and should therefore be rarely used.

6.3.4 When deciding the level of a charge, it is important to define:

- the range(s) of services for which a charge is to be made; and
- how any categories of service are to be differentiated, if at all, in setting charges.

6.3.5 The standard approach is that the same charge should apply to all users of a defined category of service, so recovering full costs for that category of service. Different charges may be set for objectively different categories of service costing different amounts to provide. Box 6.2 shows how this can work.

Box 6.2: How different charges can apply to different categories of service

Different categories could be recognised by:

- distinguishing supply differences, e.g. in person, by post or online;
- priorities, e.g. where a quicker service costs more;
- quality, e.g. charging more for a premium service with more features; and
- recognising structural differences, where it costs more to supply some consumers.

However, different groups of customers should not be charged different amounts for a service costing the same, e.g., charging firms more than individuals. Similarly, cross subsidies are not standard practice, e.g., charging large businesses more than small ones where the cost of supply is the same.

6.3.6 Charges within and among central government organisations shall normally also be at full cost, including the standard cost of capital. Any different approach would cause one party to make a profit or loss not planned in budgets agreed by Ministers collectively; while the customer organisation(s) would conversely face charges higher or lower than full costs. A number of objectionable consequences might flow from this. For instance, a question of subsidy controls/State aid could arise; or private sector consumers of the customer organisation might be charged distorted fees.

6.3.7 Shared services (Box 6.3) are a special case of charging within the public sector.

Box 6.3: Shared services

It is often possible to make economies of scale by arranging for several public service organisations to join together to deliver services cheaper, e.g. by using their joint purchasing power. One organisation supplies the other(s). Since all the parties should lower their costs, the Accounting Officer of each organisation should have no difficulty in recognising improved value for money for the Executive as a whole and so justify going ahead.

Public sector organisations supplying (or improving) shared services should consult DoF at an early stage of planning. Typically supplier organisations face the cost of setting up provision on a larger scale than they need for their own use. As with setting up any new service, plans in budgets should amortise initial costs so that they can be recovered over an appropriate period from the start of the service. More detail on shared services is in Section 7.5.

It is not acceptable for supplier organisations to plan to profit from, or subsidise, supply to customer organisations in the public sector. Nor is it acceptable for Accounting Officers to resist shared services just because the impact on their own organisation is not perceived to be favourable.

6.4 Setting a charge: non-standard approaches

6.4.1 Ministers' policy objectives for a service where a charge is levied may not fit the standard model in Section 6.3. In such cases it may be possible to deliver the policy objective in another way. Some ways of doing this are described below. Explicit DoF consent, and often formal legal authority, is always required for such variations. It is desirable to consult DoF at an early stage to make sure that the intended strategy can be delivered.

Charging below cost

6.4.2 Where Ministers decide to charge less than full cost, there should be an agreed plan to achieve full cost recovery within a reasonable period. Each case needs to be evaluated on its merits and obtain DoF clearance. If the subsidy is intended to last, this decision should be documented and periodically reconsidered.

Charging above cost

6.4.3 Office for National Statistics (ONS) normally classifies charges higher than the cost of provision, or not clearly related to a service to the charge payer, as taxes. Taxation is not generally a devolved matter and any proposal to use such charges requires explicit approval from the Chief Secretary to the Treasury.

Cross subsidies

6.4.4 Cross subsidies always involve a mixture of overcharging and undercharging, even if the net effect is to recover full costs for the service as a whole. So cross subsidised charges are normally classified as taxes. They always call for explicit Ministerial decision and Assembly approval through either primary legislation or use of the Fees and Charges (Northern Ireland) Order 1998 No. 929 (N.I.8).

Information services

6.4.5 In the public interest, information may be provided free or at low charge. This approach recognises the value of helping the general public obtain the data they require to function in the modern world. There are some exceptions - see Annex 6.2.

6.5 Levies

6.5.1 Compulsory levies, e.g. payments for licences awarded by statutory regulators, or duties to finance industry specific research foundations, are normally classified as taxation. Such levies may be justified in the wider public interest, not because they provide a direct beneficial service to those who pay them. Depending on the circumstances, DoF may allow such bodies to retain the fees charged if this approach is efficient and in the public interest.

6.5.2 As with other fees and charges, levies should be designed to recover full costs. If the legislation permits, the charge can cover the costs of the statutory body, e.g. a regulator could recover the cost of registration to provide a licence and of associated supervision. It may be appropriate to charge different levies to different kinds of licensees, depending on the cost of providing different kinds of licences (see Box 6.2).

6.6 Commercial services

6.6.1 Some public sector services are discretionary, i.e. no statute underpins them. Services of this kind are often supplied into competitive markets, though sometimes the public sector supplier has a monopoly or other natural advantage.

6.6.2 Charges for these services shall be set at a commercial rate. The rate shall deliver a commercial return on the use of the public resources deployed in supplying the service. So the financial target shall be in line with market practice, using a risk weighted rate of return on capital relevant to the sector concerned. The rate of return used in pricing calculations for sales into commercial markets shall be:

- for sales into commercial markets, in line with competitors' assessment of their business risk, rising to higher rates for more risky activities; or
- where a public sector body supplies another, or operates in a market without competitors, the standard rate for the cost of capital (see Annex 6.1).

6.6.3 If a publicly provided commercial service does not deliver its target rate of return, outstanding deficits should be recovered, e.g. by adjusting charges. Any objective short of achieving the target rate of return calls for Ministerial agreement and shall be approved by DoF. But discretionary services should never undermine the supplier organisation's public duties, including its financial objective(s).

6.6.4 It is important for public suppliers of commercial services to respect competition law. Otherwise public services using resources acquired with public funds might disturb or distort the fair operation of the market, especially where the public sector provider might be in a dominant position: see Annex 6.3.

6.7 Disclosure

6.7.1 It is important that the Assembly is fully informed about use of charges. Each year the Annual Report of the charging organisation should give:

- the amounts charged;
- full costs and unit costs;
- total income received;
- the nature and extent of any subsidies and/or overcharging; and
- the financial objectives and how far they have been met.

6.7.2 To keep the Assembly properly informed, Estimates should display details of expected income from charges. The *Northern Ireland Estimates Manual* explains how the controls work.

6.7.3 The *Government Financial Reporting Manual* (*FReM*) sets out the information public sector organisations should publish in their accounts. It should include analysis of income.

6.8 Taking stock

6.8.1 As with any other use of public resources, it is important to monitor performance so that the undertaking can be adjusted as necessary to stay on track. It is good practice to review the service routinely at least once a year, to check, and if appropriate revise, the

charging level. At intervals, a more fundamental review is usually appropriate, e.g. on a timetable compatible with the dynamics of the service. Box 6.4 suggests some issues to examine.

Box 6.4: Reviewing a public service for which a charge is made

- Is it still right for a public sector body to use public resources to supply the service?
- Are there any related services for which there might be a case for charging?
- Does the business structure still make sense?
- Are the assets used for the service adequate?
- How can efficiency and effectiveness be improved so that charges can be lower or offer better value?
- Is the financial objective right?
- For a statutory (or other public sector) service, if full costs are not recovered, why not?
- For a commercial service, does the target rate of return still reflect market rates?
- Is it still appropriate to net off against costs any agreed charges above cost?
- Is there scope to secure economies of scale by developing a shared service?
- What developments might change the business climate?
- Do any discretionary services remain a good fit for the business model and wider objectives?
- Should any underused assets be redeployed, used to make a commercial return, or sold?
- Would another business model (e.g. licensing, contracting out, privatising) be better?

Annex 6.1 How to calculate charges
Annex 6.2 Charging for information
Annex 6.3 Competition law

A6.1 Annex 6.1 How to calculate charges

This Annex discusses how to calculate the cost of public services for which a fee is charged.

Introducing a new or updated charge bearing service

A6.1.1 Public sector organisations planning to set up or update a service for which a fee may be charged shall ensure early engagement with DoF. Advice should be sought at the earliest opportunity if there are any variations on the standard model. Proposed variations may be agreed in certain instances, considering each on its merits. Each will need to be justified in the public interest and on value for money grounds.

A6.1.2 Practical issues which organisations will need to consider when setting up or refreshing a charge bearing service include: the definition of the service and its rationale; the proposed financial objective (for instance, full cost recovery; 70% of full cost plus a 30% public subsidy); how the service is to be delivered and which organisation is to deliver it; whether the provider should retain any income from charges; the proposed charging structure (for instance, a single service or several sub-services). Organisations will also need to refer to the checklist in Box 4.8 of factors to consider when planning policies and projects.

Measuring the full cost of a service

A6.1.3 With agreed exceptions, fees for services should generally be charged at cost, sometimes with an explicit additional element to match the returns of commercial competitors. So to set fees for public services it is essential to calculate the cost of providing them accurately.

A6.1.4 The main features to be taken into account in measuring the annual cost of a service are set out in Box A6.1A. Not everything in the list will apply to every service and the list may not be exhaustive. It is important that the calculation is comprehensive, including all relevant overheads and non-cash items.

A6.1.5 So far as possible the calculation should use actual costs, where they are known. For services just starting, there may be no alternative to using best estimates, geared to estimated consumption patterns.

A6.1.6 Start-up costs which are capitalised in the accounts and the cost of fixed capital items are scored in the accounts in full. These costs should be attributed to the cost of the service as the depreciated value each year.

A6.1.7 Start-up costs which cannot be capitalised in the accounts are scored as they are incurred. Such costs may be recovered through fees and charges by spreading them over the first few years of service provision. It is also good practice to set fees to recover costs which cannot be capitalised in the accounts and which have been incurred to improve efficiency and effectiveness so that charges are lower or offer better value. This needs explicit DoF agreement and may require statutory backing.

A6.1.8 For services which are charged at different rates, the same procedure should be used to set the different rates. That is, the cost of any premium service should be objectively justifiable by its additional cost (e.g. where faster shipping is offered); or conversely any discount should be justifiable by saving to the supplier (e.g. using the internet rather than over the counter). Note, however, that sometimes the legislation permits differential pricing unrelated to the relative underlying costs – though even then there should be good policy reason for the difference.

Box A6.1A: Elements to cost in measuring fees

- accommodation, including capital charges for freehold properties;
- fixtures and fittings;
- maintenance, including cleaning;
- utilities;
- office equipment, including IT systems;
- postage, printing, telecommunications;
- total employment costs of those providing the service, including training;
- overheads, e.g. (shares of) payroll, audit, top management costs, legal services, etc;
- raw materials and stocks;
- research and development;
- depreciation of start-up and one-off capital items;
- taxes: VAT, rates, stamp duty, etc;
- capital charges;
- notional or actual insurance premiums;
- fees to sub-contractors;
- distribution costs, including transport;
- advertising;
- bad debts;
- compliance and monitoring costs; and
- provisions.

but not

- externalities imposed on society (e.g. costs from pollution and crime);
- costs of policy work (other than policy on the executive delivery of the service);
- enforcement costs;
- replacement costs of items notionally insured; and
- start-up costs (those which are capitalised in the accounts) and one-off capital items.

Financial objectives

A6.1.9 The standard approach to setting charges for public services (including services supplied by one public sector organisation to another) is full cost recovery. It normally means recovering the standard cost of capital, currently 3.5% in real terms. Some exceptions are noted in Section 6.4.

A6.1.10 One other exception is commercial services, i.e. those services which compete or may compete with private sector suppliers of similar services. These should aim to recover full costs including a real rate of return in line with the rates achieved by comparable businesses facing a similar level of risk. The normal range of rates is 5-10% but rates as high as 15% may be appropriate for the very highest risk businesses.

A6.1.11 Great care should be taken in pricing commercial services where public sector suppliers have a natural dominant position. The market prices of competitors will often be a good guide to the appropriate rate of return if there is genuine competition in the market. Where there are limited numbers of buyers and sellers in a market, it may be better to take other factors into account as well. These might include past performance, the degree of risk in the underlying activity and issues bearing on future performance.

Accidental surpluses and deficits

A6.1.12 Despite every effort to measure and forecast costs, surpluses and deficits are bound to arise from time to time. Causes may include variations in demand, in year cost changes, and so on. It is good practice to consider mid-year adjustment to fee levels if this is feasible.

A6.1.13 It is also good practice to set fees to recover accumulated past deficits. This may require statutory backing through the use of the Fees and Charges (Northern Ireland) Order 1988 No 929 (N.I.8) (see Paragraph 6.3.3).

A6.1.14 Where significant surpluses have arisen, these should usually be refunded to the payees at the earliest opportunity.

A6.2 Annex 6.2
Charging for information

This annex discusses how public sector organisations should charge for the use and re-use of information, including data, text, images or sound recordings. Much information about public services is available for free. However, when charging for information, it is generally at full cost although there are exceptions.

A6.2.1 The policy is that much information about public services should be made available either free or at low cost, in the public interest. Most public organisations freely post information about their activities and services on the internet. There should be no additional charge for material made available to meet the needs of particular groups of people e.g. Braille or other language versions. More extensive paper or digital versions of information may carry a charge to cover the costs of production.

A6.2.2 Information products have an unusual combination of properties: typically, high cost of production combined with low cost of reproduction. So information products are frequently licensed for the use of many customers simultaneously rather than being sold or otherwise transferred. This can make for complex charging arrangements to recover costs accurately.

A6.2.3 It is good practice to make available sufficient recent legislation, public policy announcements, consultation documents and supporting material to understand the business of each public sector organisation.

A6.2.4 Anything originating in Crown bodies, including many public sector organisations, has the protection of Crown copyright. Most Crown copyright information is made available at no charge under Open Government Licence terms.

A6.2.5 Public sector organisations should maintain information asset registers as part of their asset management strategy.

Rights to access

A6.2.6 The terms on which information is made available should be made clear at the point of sale or licensing. There is a clear public interest in maximising access to much public sector material, and this should be borne in mind when deciding what charges should be levied. For this reason many publications can be re-used by others free of charge. However, public sector organisations should take account of copyright issues, using legal advice as necessary.

A6.2.7 Most public sector organisations choose, as a matter of policy, to make available on the internet copies of information disclosed in response to requests under the Freedom of Information Act 2000 and Environment Information Regulations 2004. Public sector bodies should also note the provisions of the amendments (introduced by the Protection of Freedoms Act 2012) to sections 11-11B and 19 of the Freedom of Information Act 2000 in respect of relevant datasets, where there are statutory duties relating to the format and supply of requested datasets and to their listing in publication schemes, and to charges under a specified licence.

Information carrying charges

A6.2.8 A number of public sector organisations supply information for which charges are made. These include:

- services commissioned in response to particular requests;
- services where there are statutory powers to charge;
- information sold or licensed by trading funds (although they must comply with the rules set out by the re-use regulations – see below);
- publications processing publicly gathered data for the convenience of the public, through editing, reclassification or other analysis; and
- retrieval software, e.g. published as a key to using compiled data.

A6.2.9 Public sector organisations can charge for supplying some information which recipients intend to process, e.g., for publication in another format. Licences supplied in this way may take a number of forms, including royalties on each additional copy sold in the case of the most commercial applications. The norm is:

- **Raw data:** license and charge at marginal cost.
- **Value added data** and information supplied by trading funds: charge at full cost including an appropriate rate of return where this is permitted under the re-use regulations (see paragraph A6.2.10).

The Re-use of Public Sector Information Regulations 2015

A6.2.10 The Re-use of Public Sector Information Regulations 2015 set out the circumstances where public sector bodies may charge above marginal cost for licensing the re-use of information. Where it is intended to charge for the re-use of information within the scope of the regulations, it is important to comply with those regulations, paying attention to the clauses that cover requirements to generate revenue.

A6.2.11 Trading funds, for example, may charge for information where the customer intends to duplicate or process (re-use) such material for profit. In such cases, Crown bodies need to apply for a delegation of authority from the Keeper of Public Records to license the information.

A6.2.12 The regulations set out that "charges for re-use must, so far as is reasonably practicable, be calculated in accordance with the accounting principles applicable to the public sector body". See Annex 6.3 for further detail on marginal cost pricing.

A6.3 Annex 6.3 Competition law

Public sector organisations need to take care if they provide services which compete with private sector suppliers of similar services, or may do so. It is important that they respect the requirements of competition law.

A6.3.1 UK competition law is founded on the Competition Act 1998 which prohibits business agreements that prevent, restrict or distort competition in trade in the UK. They also disallow market abuse on the part of any business in a dominant position[2] in a market.

A6.3.2 In particular, the following kinds of unfair competition are not allowed:

- very high prices that may exploit market power;
- very low prices that may exclude competitors;
- differential prices (or other terms and conditions of service) for the same product to different customers (except for objective reasons such as differences in quality or quantity) that distort competition; or
- refusing to supply competitors without objective justification such as poor customer credit worthiness.

Pricing in competitive markets

A6.3.3 Services should be costed in line with the normal rules for full cost recovery. Charges should be set to achieve the appropriate financial objective, normally at least recovering full costs.

A6.3.4 Some public sector organisations both supply data for use in providing public services and sell services using their data in competition with commercial firms. Such organisations need to take particular care not to abuse their competitive position in the market, especially if it is dominant. This could happen if a dominant supplier organisation allocated its costs in such a way that an efficient competitor could not operate profitably.

A6.3.5 There can be circumstances which merit departing from the normal principle of full cost recovery. The justification is normally to achieve greater efficiency and sensitivity in responding to patterns of demand or cost, e.g.:

- if the service cannot be expanded, but customers are willing to pay more, there may be a case for increasing the price;
- if there is excess capacity and customers are not willing to pay the current charge, there may be a case for reducing the charge or reducing output; or
- incentive charging, i.e. charging below cost to encourage demand, or above cost to discourage it.

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[2] A business is deemed to be in a dominant position if it can generally behave independently of competitive pressures in its field.

A6.3.6 If a public sector organisation decides not to recover full costs for a while, it should take care that:

- its prices are not reduced in such a way as to stifle competition (a rapid cut in prices could be unfair to private sector competitors);
- its products and services are not charged at less than their average variable costs or short run marginal costs (though this does not preclude charging at less than break even for a short period, e.g. to match competition);
- the charging strategy is compatible with full cost recovery over the medium term. This may mean ceasing to offer a service which has become unviable against the competition;
- any cross subsidies between services should not drive prices below average variable cost or short run marginal cost; and
- if, exceptionally, a supplier charges below full cost because it has surplus capacity, there must be broader benefits and prices should not fall below average variable or short run marginal cost.

Delivering financial objectives

A6.3.7 Public sector organisations should normally plan to achieve their financial objectives. If necessary this may mean adjusting prices or managing the cost structure of the supply to deliver adequate efficiency. In particular, if a public sector supplier forecasts a deficit, it should take remedial action promptly.

A6.3.8 If a public sector supplier moves away from full cost charging, there may be a case for reviewing its financial objective. Normally any such change needs the agreement of both the responsible Minister and DoF.

Taking things further

A6.3.9 More generally, it is good practice for bodies supplying goods or services into competitive markets to seek legal advice on the application of competition law at an early stage.

7 Working with Others

It often makes sense for public sector organisations to work with partners to deliver public services. This Chapter outlines how departments should work in partnership with their agencies and Arm's Length Bodies (ALBs), and where necessary control their activities. It is important that the public interest, value for public resources and the need to keep the Assembly informed are given priority in setting up and operating these relationships.

7.1 The case for working in partnership

7.1.1 Public sector organisations may be able to deliver public services more successfully if they work with another body. Central government departments may find it advantageous to delegate certain functions to agencies or ALBs that can be free to concentrate on them without conflict of interest. Or it may be helpful to harness the expertise of a commercial or voluntary and community sector organisation with skills and leverage not available to the public sector.

7.1.2 Any such relationship can inevitably entail tensions as well as opportunities. The autonomy of each organisation needs to be buttressed by sufficient accountability to give the Assembly and the public confidence that public resources are used wisely.

7.1.3 It can be important that an agency or ALB is demonstrably independent. This in itself does not determine the agency's or ALB's form or structure. Independence is achieved by specifying how the agency or ALB is to operate. Functional or policy independence is compatible with financial oversight by the agency or ALB's sponsor department and with accountability for the use of public resources.

7.1.4 It is generally helpful to deal with any potential conflicts head on by deciding at the outset how the relationship(s) between the parties should work. Departments and ALBs should work together to develop constructive and effective relationships/partnerships taking account of the principles set out in the *Partnerships between Departments and Arm's Length Bodies: NI Code of Good Practice* (the Code) published in 2019 which is available on the Accountability and Financial Management section of the DoF website. The Code contains five high level principles which are expected to act as a set of common standards for departments and their ALBs to live by and measure their relationships against. The key issues to tackle are set out in Box 7.1.

Box 7.1: Issues for partnerships with public sector members

- The decision to engage with a partner should rest on evaluation of a business case assessed against a number of alternatives, including doing nothing;
- Conflicts of interest should be identified so that handling strategies can be agreed, e.g. by establishing early warning processes or safeguards;
- The cultural fit of the partners should be close enough to give each confidence to trust the other; and
- Accountability for use of public funds should not be weakened.

The terms of engagement, including governance, should be documented in a relationship document e.g. a Framework Document (see outline terms in Box 7.2) for an agency or a Partnership Agreement or equivalent for an ALB.

7.2 Setting up new Arm's Length Bodies

7.2.1 When a department sets up a new agency or ALB, the nature of the new body will need to be determined. It is sensible for the functions of the new body to help determine this choice. Annex 7.1 offers advice and sources of guidance on setting up a new body and compares the characteristics of agencies, Non-Departmental Public Bodies (NDPBs) and Non-Ministerial Departments (NMDs). Departments should consult DoF about making the choice. When setting up a new body, departments should ensure the proper classification process is followed as the sector classification will dictate the budgeting treatment of the body. The Office of National Statistics (ONS) is responsible for the sector classification of bodies. However, more straightforward decisions may be taken by DoF or HM Treasury with ONS being informed. Departments should engage with DoF Supply in the early stages of establishing a new body. DoF will then liaise with ONS/HMT as appropriate.

7.2.2 In general, each new agency or ALB should have a specific purpose, distinct from its sponsor department. There should be clear perceived advantage in establishing a new organisation, such as separating implementation from policy making; demonstrating the integrity of independent assessment; establishing a specialist identity for a professional skill; or introducing a measure of commercial discipline. It is sensible to be sceptical about setting up a new agency or ALB, since it will often add to costs.

7.2.3 Agencies or ALBs cannot be given authority to make decisions proper to Ministers, nor to perform functions proper to departments. Only rarely is a NMD the right choice as NMDs have limited accountability to the Assembly[1].

7.2.4 Nor is it acceptable to seek to use a Royal Charter to establish a public sector body since such arrangements deny Assembly control and accountability.

7.2.5 A sponsor department cannot relinquish all responsibility for the business of its agencies or ALBs by delegation. It should have oversight arrangements appropriate to the importance, quality and range of the agency's or ALB's business. Normally new, large, experimental or innovative agencies or ALBs need more attention from the sponsor department than established or small agencies or ALBs doing familiar or low risk business. And the sponsor department always needs sufficient reserve powers to reconstitute the management of each agency or ALB should events require it (see Section 3.9).

[1] The sponsor department also has less control as each NMD has its own budget, Estimate and Annual Report and Accounts. So if a Ministerial department transfers work to an NMD, there is a greater risk of Excess Votes in each.

7.2.6 The sponsor department should plan carefully to make sure that its oversight arrangements and the internal governance of any new agency or ALB are designed to work together harmoniously without unnecessary intrusion. The agency or ALB also needs effective internal controls and budgetary discipline so that it can live within its budget allocation and deliver its objectives. And the sponsor department must have sufficient assurance to be able to consolidate its agency's and ALB's accounts with its own.

7.2.7 There is a good deal of flexibility about form and structure. It may be expedient, for example, to set up an organisation which is eventually to be sold as a Companies Act company. Or certain NDPBs may operate most effectively when constituted as charities. Mutual structures can also be attractive. Innovation often makes sense. The standard models are all capable of a good deal of customisation. Additional DoF approval for any innovative development will also be required.

7.2.8 If the PAC decides to investigate an agency or ALB, the Accounting Officers of both the agency/ALB and its sponsor department should expect to be called as witnesses. The Chair of the Board may also be called as a witness. The PAC will seek to be satisfied that the sponsor's oversight is adequate. The role of PAC is examined further in Chapter 3.

7.3 What to clarify

7.3.1 When documenting a relationship document (Framework Agreement/Partnership Agreement or equivalent document) with a delivery partner, public sector organisations taking cognisance of the Code, should analyse the relationship and consider how it might evolve. The relationship document should then be kept up to date as the partnership develops.

7.3.2 Partnership Agreement templates for use with NDPBs and other relevant bodies are available on the Accountability and Financial Management section of the DoF website. It is important that such documents are tailored to fit the business to which they relate (rather than following precedent or rigidly following the template). When drawing up individual Partnership Agreements (or equivalent documents), reference should be made to DoF's guidance on *Proportionate Autonomy for arm's length bodies* also available on the above section of the DoF website. Further information is provided in Annex 7.2.

7.3.3 In framing founding documentation, the partners should adopt a proportionate approach. The Assembly expects that public funds will be used in a way that gives reasonable assurance that public resources will be used to deliver the intended objectives.

7.3.4 In this process the aim should be to put the Accounting Officers of the parties in a position to take a well informed view on the current status of the relationship, enabling timely adjustments to be made as necessary. The Engagement Plan within the Partnership Agreement is an important element, as it is good practice to develop structured arrangements for regular dialogue between the parties to avoid misunderstandings and surprises and develop a partnership working approach.

7.4 Agencies

7.4.1 Each agency is either part of a central government department or a department in its own right. Agencies are intended to bring professionalism and customer focus to the management and delivery of central government services, operating with a degree of independence from the centre of their home departments. Some could also be trading funds (see Section 7.9).

7.4.2 Each agency is established with a framework document on the lines sketched out in Box 7.2. With the exception of those agencies which are trading funds (see Section 7.9), they are normally funded through public expenditure estimates process. DoF approval is required for agency relationship documents and departments should consult DoF at an early stage in the preparation of their framework document.

Box 7.2: Outline for Agency Framework documents

1. Purpose of document
2. Objectives
3. Classification

Purposes, aims and duties

4. Purposes
5. Powers and duties
6. Aims

Governance and accountability

7. Governance and accountability

[The Agency] governance structure

8. The Chief Executive
9. Board (if appropriate)/senior management structure

Management and financial responsibilities and controls

10. Delegations/spending authorities
11. Banking and managing cash
12. Procurement
13. Risk management
14. Counter fraud and theft

Business plans, financial reporting and management information

15. Corporate and business plans
16. Budgeting procedures
17. Annual report and accounts
18. Reporting performance to the department

Audit

19. Internal audit
20. External audit

Reviews and winding up arrangements

21. Review of Agency's status
22. Arrangements in the event that the Agency is wound up

Role of the department

23. The responsible Minister
24. The principal Accounting Officer
25. Oversight arrangements

7.4.3 Depending on the scale and nature of an agency's responsibilities, it may be appropriate for a senior official of an agency to be a member of the sponsor department's

departmental board. It may also be appropriate for a representative of the sponsor department to join the agency's board, as part of the sponsor department's responsibilities for strategy, performance, risk taking and delivery within the department.

7.5 Shared services and departments pooling resources

7.5.1 To promote better delivery and enhance efficiency, departments often find it useful to work with other government departments (agencies or ALBs). This can make sense where responsibilities overlap, or both operate in the same geographical areas or with the same client groups - arrangements loosely categorised as joined up government. Such arrangements can offer opportunities for departments to reduce costs overall while each partner plays to its strengths.

7.5.2 Such relationships can be constituted in a number of different ways. Some models are sketched in Box 7.3. The list is not exhaustive.

Box 7.3: Examples of joined up activities in central government

- one partner can act as lead provider delivering/selling services (such as IT, HR, finance functions) to other(s) as customers, operating under Memorandum of Understanding (MOU)/Service Level Agreements (SLA);
- cost sharing arrangements for common services (e.g. in a single building), allocated in line with an indicator such as numbers of staff employed or areas of office space occupied;
- joint procurement using a collaborative protocol;
- a joint venture project with its own governance, e.g. an agency or wholly owned company, selling services to a number of organisations, some or all of which may be public sector; and
- an outsourced service, delivering to several public sector customers.

7.5.3 Shared services often need funding to set up infrastructure, e.g. to procure IT. This could be agreed through the Executive's Budget process, or customers could buy in to the partnership by transferring budget provision to the lead provider. Each of the Accounting Officers involved should be satisfied that the project offers value for money for the public sector as a whole. The provider's charges should be at cost, following the standard fees and charges rules (see Chapter 6).

7.5.4 In any joint activity, there must be a single Accounting Officer to ensure that the lines of responsibility and accountability are clear. If the PAC decides to investigate, the Accounting Officers of each of the participants should expect to be summoned as witnesses.

7.6 Joint working and delivering cross-cutting programmes

7.6.1 Sometimes an Accounting Officer decision involves several public sector organisations. There are a number of different potential models for joint working, as set out below.

7.6.2 It is good practice for participating bodies to document their respective responsibilities via a memorandum of understanding.

Box 7.4: Models for joint working

Model 1: Collaboration

• Departments may collaborate in the development of policy in which they respectively have an interest.

• Accounting Officer responsibilities rest personally with the Accounting Officer whose department's resources are being used.

Model 2: One department leads, whilst formally accessing the expertise of other government departments or ALBs

• The Accounting Officer responsibilities rest personally with the Accounting Officer whose department's resources are being used.

• However, the Accounting Officer may require expertise, analysis or insights from another department or public body, in order to support their decision making.

The Accounting Officer may require the supporting organisation to provide written assurances of the robustness of any analysis provided and underlying methodologies.

• The ultimate judgement and accountability lies with the Accounting Officer incurring expenditure against their resources.

Model 3: Departments individually fund elements of a joint project or plan

• Departments individually contribute funding from their own Estimate and ambits to their own individual projects which make up the overarching plan.

• Accounting Officer responsibilities rest personally with the Accounting Officer of the department whose resources are being used for each element of the cross-cutting project or programme.

• Joint governance processes may be established (e.g. joint governance boards) to oversee co-ordination and delivery of the overarching plan.

• As in model two, Accounting Officers may rely upon expertise provided by other departments.

• Ministerial responsibility for the overarching plan is shared, with each minister having responsibility for their respective policy area.

Model 4: One department leads at programme level, with accountability and responsibility for individual projects sitting with different departments and ALBs

• An overall Senior Responsible Owner (SRO) at the programme level is responsible for the delivery of the programme as a whole.

• Individual project SROs are accountable to both the Accounting Officer of their department and the programme level SRO.

• Accounting Officer responsibilities rest personally with the Accounting Officer of the department whose resources are being used for each element of the cross-cutting project or programme (as with Model 3).

• Timely and high-quality information flows between the SROs and Accounting Officers are required to ensure the Accounting Officer can consider value for money of their projects in the context of the programme and the public sector as a whole.

Model 5: Support via budget cover transfers

• One department with an aim in common with another may transfer budget cover to the other department, in order to undertake activities that align with their respective objectives.

• The Accounting Officer transferring the budget cover cannot abdicate all their Accounting Officer responsibilities. The transferring AO must be confident that the budget cover will be used in line with the Assembly's expectations and the intent of the joint policy, and in compliance with the rules set out in MPMNI. This can be achieved through the use of Memoranda of Understanding or other governance documents between Accounting Officers.

• More elaborate governance structures may be appropriate if these transfers occur as part of a joint programme (as per Model 4 above).

• Accounting Officer responsibilities ultimately rest personally with the Accounting Officer of the department receiving the budget cover who incurs the spending.

• The recipient department must have appropriate ambit and vires to undertake the work.

Model 6: Machinery of government change

• Policy responsibility and funding transfer from one department to another by order of the relevant legislation (e.g. a transfer of functions order) which should prescribe the terms of any such transfers.

• Accounting Officer responsibilities rest with the Accounting Officer of the department receiving the policy responsibility, who will use their resources.

• In order to meet the requirements of regularity and propriety it may be necessary for the receiving department to:

- amend their ambit to ensure they have Assembly authority to incur spending on the new activity (see 2.2).
- bring forward primary legislation to ensure compliance with the new services rule (see 2.6).

7.7 Non-Departmental Public Bodies (NDPBs)

7.7.1 NDPBs may take a number of legal forms, including corporates and charities. Most executive NDPBs have a bespoke structure set out in legislation or its equivalent. This may specify in some detail what task(s) the NDPB is to perform, what its powers are, and how it should be financed. Sometimes primary legislation contains powers for secondary legislation to set or vary the detail of the NDPB's structure. Annex 7.1 has more information about NDPBs.

7.7.2 Each NDPB is a special purpose body charged with responsibility for part of the process of government. Each has a sponsor department with general oversight of its activity. The sponsor department's report and accounts consolidates its NDPBs financial performance.

7.7.3 NDPBs show considerable variety of structures and working methods, with scope for innovation and customisation. Some NDPBs may also need to work with other organisations as well as with their sponsor. All this should be documented in a Partnership Agreement or equivalent document.

7.7.4 NDPBs' sources of finance vary according to their constitution and function. Box 7.5 shows the main options available.

Box 7.5: Sources of finance for NDPBs

- one partner can act as lead provider delivering/selling services (such as IT, HR, finance functions) to other(s) as customers, operating under Service Level Agreement(s);
- specific conditional grant(s) from the sponsor department (and/or other departments);
- general (less conditional) grant-in-aid from the sponsor department;
- income from charges for any goods or services the NDPB may deliver/sell;
- income from other dedicated sources, e.g. lottery funding; and
- Public Dividend Capital (PDC).

7.7.5 In practice NDPBs always operate with some independence and are not under day-to-day Ministerial control. Nevertheless, Ministers are ultimately accountable to the Assembly for NDPBs' efficiency and effectiveness. This is because Ministers are responsible for NDPBs' founding legislation; have influence over NDPBs' strategic direction; (usually) appoint their boards; and retain the ultimate sanction of winding up unsatisfactory NDPBs.

7.8 Public corporations

7.8.1 Some departments own controlling shareholdings in public corporations or Companies Act companies, perhaps (but not necessarily) as a step toward disposal. Public corporations' powers are usually defined in statute; but otherwise all the disciplines of corporate legislation apply. Advice on shareholdings of this kind can be obtained from DoF.

7.8.2 Sponsor departments should define any contractual relationship with a public corporation in a relationship document adapted to suit the corporate context while delivering public sector disciplines. The financial performance expected should give the shareholder department a fair return on the public funds invested in the business. Box 7.6 offers suggestions. This approach may also be appropriate for a trading fund, especially if it is to become a Companies Act company in time.

7.8.3 A shareholder department may also use a company it owns as a contractor or supplier of goods or services. It is a good discipline to separate decisions about the company's commercial performance from its contractual commitments, so avoiding confusion about objectives. So there should be clear arm's length contracts between the company and its customer departments defining the customer-supplier relationship(s). Advice should be taken from Construction and Procurement Delivery or a relevant Centre of Procurement Expertise before contracting for services from a company owned to ensure the contract is compliant with the relevant procurement legislation.

Box 7.6: Outline terms for a relationship with a public corporation

- the shareholder's strategic vision for the business, including the rationale for public ownership and the public sector remit of the business;
- the capital structure of the business and the agreed dividend regime, with suitable incentives for business performance;
- the business objectives the enterprise is expected to meet, balancing policy, customer, shareholder and any regulatory interests;
- the department's rights and duties as shareholder, including:
  - governance of the business;
  - procedure for appointments (and un-appointments);
  - financial and performance monitoring;
  - any necessary approvals processes;
  - the circumstances of, and rights upon, intervention; and
- details of any other relationships with any other parts of government.

7.9 Trading funds

7.9.1 All trading funds are established under the Trading Funds Act 1973 and most are public corporations. Their activities are not consolidated with their sponsor department's business. They must finance their operations primarily from trading activity.

7.9.2 Each trading fund is set up through an Order subject to affirmative resolution. Before an Order can be laid in the Assembly, DoF needs to be satisfied that a proposed trading fund can satisfy the statutory requirement that its business plan is sustainable without additional funding in the medium term. A period of shadow operation as a pilot trading fund may help inform this assessment.

7.9.3 Each trading fund must be financed primarily from its trading income. In particular, each trading fund is expected to generate a financial return commensurate with the risk of the business in which it is engaged. In practice this means the target rate of return should be no lower than its cost of capital. The actual return achieved may vary a little from one year to the next, reflecting the market in which the trading fund operates.

7.9.4 The possible sources of capital for trading funds are shown in Box 7.7. They are designed to give trading funds freedom from the discipline of annual funding through the Estimates process. The actual mix for a given trading fund must be agreed with the sponsor department (if there is one) and with DoF, subject to any agreed limits e.g. on borrowing.

7.9.5 Further detail about trading funds is in Annex 7.3. Guidance on setting charges for the goods and services trading funds sell is in Chapter 6.

Box 7.7: Sources of capital for trading funds

- Public Dividend Capital (equivalent to equity, bearing dividends – see Annex 7.4);
- reserves built up from trading surpluses;
- long or short term borrowing (either voted from a sponsor department or borrowed from the Northern Ireland Consolidated Fund if the trading fund is a department in its own right);
- temporary subsidy from a sponsor department, voted in Supply Estimates; and
- finance leases.

7.10 Non-Ministerial Departments (NMDs)

7.10.1 A very few central government organisations are NMDs. It is important that there is some clear rationale for this status in each case.

7.10.2 NMDs do not answer directly to any Executive Minister. They have their own Accounting Officers, their own Estimates and Annual Reports and Accounts, and settle their budgets directly with the Executive through DoF/ relevant Assembly Committee. However, some Ministerial departments must maintain a watching brief over some NMDs so that a Minister of that department can answer for the NMD's business in the Assembly; and if necessary take action to adjust the legislation under which it operates. A framework document should define such a relationship.

7.10.3 This limited degree of Assembly accountability must be carefully justified. It can be suitable for a public sector organisation with professional duties where Ministerial input would be inappropriate or detrimental to its integrity. But the need for independence is rarely enough to justify NMD status. It is possible to craft arrangements for NDPBs which confer robust independence. Where this is possible it provides better Assembly accountability, and so is to be preferred.

7.11 Local Government

7.11.1 A number of central government departments make significant grants to local authorities. Some of these are for specific earmarked purposes. Some are not, allowing local authorities to set out their own priorities.

7.11.2 Nevertheless the Assembly expects assurances that such decentralised funds are used appropriately, i.e. that they are spent with economy, efficiency and effectiveness, and not wasted nor misused. The quality of the assurance available differs from that expected of central government organisations because local authorities' prime accountability is to their electorates.

7.11.3 For these relationships a framework document is not usually the most fruitful approach. Instead, central government departments shall draw up an annual account of how their Accounting Officers assure themselves that grants to local government are distributed and spent appropriately; and how underperformance can be dealt with. This account forms part of the governance statement in the report and accounts of each department affected (see Annex 3.1).

7.12 Innovative structures

7.12.1 Sometimes central government departments have objectives which more easily fit into bespoke structures suited to the business in hand, or to longer range plans for the future

of the business. Such structures might, for example, include various types of mutual or partnership.

7.12.2 Proposals of this kind are by definition novel and thus require explicit DoF consent. In each case, proposals are judged on their merits against the standard public sector principles after examining the alternatives, taking account of any relevant experience. DoF will always need to understand why one of the existing structures will not serve: e.g. the NDPB format has considerable elasticity in practice. Box 4.8 may help with this analysis.

7.13 Outsourcing

7.13.1 Public sector organisations often find it satisfactory and cost effective to outsource some services or functions to a third party supplier rather than delivering these internally. Outsourcing examples have included cleaning, security, catering, citizen contact services and grounds maintenance.

7.13.2 The first step in setting up any outsourcing agreement should be to specify the service(s) to be provided and the length of contract to be sought. At that stage it is usually desirable to draw up an outline business case to help evaluate whether outsourcing makes financial and operational sense. Any decision to outsource should then be made to achieve value for money for the public sector as a whole.

7.13.3 Outsourcing services will be subject to the normal procurement rules.

7.13.4 Contracting out does not dissolve public bodies from their responsibilities. Public sector organisations using a contractor should set in place systems to track and manage performance under the contract. It may be appropriate to plan for service credits or other contractual mechanisms to withhold payment or seek damages for disruption and/or failure if the contractor's performance falls below the standard expected. Organisations should be satisfied that the arrangements for contracting out entail sufficient accountability for the use of public funds.

7.14 Private finance

7.14.1 Until 2012, Public Finance Initiatives (PFI) was the government's preferred model of Public Private Partnership (PPP). Since 2012, the use of PFI has declined significantly due to concerns about value for money. Where properly constructed and managed, public sector organisations can use private finance arrangements to construct assets and/or deliver services effectively and efficiently. Structured arrangements where the private sector puts its own funds at risk can provide better incentivisation to ensure projects are delivered on time and within budget.

7.14.2 PPPs are long-term contractual arrangements between a public sector entity and a private sector provider.

7.14.3 The private sector provider is engaged to design, build, finance, maintain and operate infrastructure assets and related services. The risks associated with construction delay, cost overrun and maintenance of the asset are transferred to the private sector partner.

7.14.4 The public sector entity does not pay for the asset during construction, as the associated costs of construction are financed by the private sector. Once the asset is operational and services are being provided the public sector entity pays a monthly fee – sometimes referred to as a 'unitary charge' – to the private sector provider. This payment

includes the costs of construction, financing costs, lifecycle replacement expenditure, maintenance and services.

7.14.5 The payment is subject to performance, which means that payments are reduced if services are not delivered to the standards set out in the contract. This form of payment mechanism provides an incentive for the private sector provider to meet their performance obligations and underpins the transfer of risk to the private sector.

7.14.6 PPPs have been used to deliver investment in infrastructure across a wide range of sectors including hospitals, schools, roads, prisons, waste management and energy-from-waste infrastructure, housing, and military accommodation and equipment.

7.14.7 Managing the risks associated with PPPs requires specific skills and expertise to ensure the arrangements remain affordable over their expected duration or to avoid prohibitive exit provisions.

7.14.8 Advice should be sought from the Strategic Investment Board to assist with any business case where PPP is being explored as an option.

7.15 Commercial activity

7.15.1 When public bodies have assets which are not fully used but are to be retained, it is good practice to consider exploiting the spare capacity to generate a commercial return in the public interest. This is essentially part of good asset management.

7.15.2 Any kind of public sector asset can and should be considered. This includes both physical and intangible assets, for example land, buildings, equipment, software and intellectual property (see Annex 4.15). A great variety of business models is possible.

7.15.3 Such commercial services always go beyond the public sector supplier‘s core duties. Because these assets concerned have been acquired with public funds, it is important that services are priced fairly: see Chapter 6. It is also important to respect the rules on Subsidy controls/State aids: see Annex 4.7. Central government organisations should work through the checklist at Box 7.8. DoF’s advice should be sought and further advice can be obtained from Economic Strategy Group in DfE.

Box 7.8: Planning commercial exploitation of existing assets

- define the asset to be exploited;
- establish that any necessary vires and (if necessary) Estimate provision exist;
- identify any prospective business partners and run a selection process;
- if the proposed activity is novel, contentious, or likely to set a precedent elsewhere, obtain DoF approval; and
- take account of the normal requirements for propriety, regularity, procurement rules and value for money.

7.15.4 While it makes sense to make full use of assets acquired with public resources, such activity should not squeeze out, or risk damaging, a public sector organisation’s main objectives and activities. Similarly, it is not acceptable to acquire assets just for the purpose of engaging in, or extending, commercial activity. If a public sector supplier’s commercial activity demands further investment to keep it viable, reappraisal is usually appropriate. This should consider alternatives such as selling the business, licensing it, bringing in private

sector capital, or seeking other way(s) of exploiting the underused potential in the assets or business.

7.15.5 It is a matter of judgement when departments should inform the Assembly of the existence, or growth, of significant commercial ventures. It is good practice to consult DoF in good time on this point so that the Assembly can be kept properly informed and not misled.

7.16 Working with the voluntary and community sector

7.16.1 Central government organisations may find they can deliver their objectives effectively through relationships with the voluntary and community sector bodies: i.e. charities, social, voluntary or community institutions, mutual organisations, social enterprises or other not-for-profit organisations. Such partnerships can achieve more than either the public or the voluntary and community sector can deliver alone. For example, using a voluntary and community sector organisation can provide better insight into demand for, and suitable means of delivery of public services.

7.16.2 In this kind of relationship a public sector organisation may fund activities, make grants, lend assets, or arrange other transfers to a voluntary and community sector body performing or facilitating delivery of services. It is desirable to build in safeguards to ensure that resources are used as intended (see Annex 5.2). This gives the Assembly confidence that voted resources are used for the purposes it has approved.

7.16.3 The safeguards to be applied should be agreed at the start of the relationship. Customisation is nearly always essential. It is often right to require clawback, i.e. to agree terms in which public sector donors reclaim the proceeds if former publicly owned assets are sold.

7.16.4 The Concordat between the Voluntary and Community Sector and the Northern Ireland Government ("the Concordat") (available at Concordat between the voluntary and community sector and the NI government | Department for Communities (communities-ni.gov.uk)) formally sets out a shared vision on how the voluntary and community sector and government will work together as social partners to build a participative, peaceful, equitable and inclusive community in Northern Ireland. Progress against agreed objectives is formally reported to the Assembly each year.

Annex 7.1	Forming and reforming agencies and Arm's Length Bodies
Annex 7.2	Drawing up relationship documents
Annex 7.3	Government companies, Public Corporations and Trading funds
Annex 7.4	Using private finance

A7.1 Annex 7.1 Forming and reforming agencies and Arm's Length Bodies

This Annex covers the processes of setting up new agencies and Arm's Length Bodies (ALBs) and reshaping existing ones, either by merger, dissolution or other transformation. While the processes are flexible, there are some common themes centring on accountability and streamlining government processes.

Rationale for agencies and ALBs

A7.1.1 The Executive works through agencies and ALBs when there is a good reason to do so, usually when it is helpful for a specialist body to carry out a function where independence is important. Each agency or ALB has its own bespoke reason for existing and many are established under specific legislation determining their form, functions and powers.

A7.1.2 The two main kinds of ALBs are NDPBs and NMDs. Each has its strengths and is appropriate for a range of functions. Agencies and these two kinds of ALBs are compared in Box A7.1A.

Setting up a new agency or ALB

A7.1.3 It is good practice to decide early which kind of body is most appropriate when setting up a new agency/ALB (sources of guidance on setting up agencies/ALBs are in Box A7.1B). Hiving off functions into an agency/ALB should not diminish accountability. For that reason NMDs are rarely the right solution.

A7.1.4 It is important to remember that effective functional independence does not necessarily require a specific structure. Ministers can choose to stand back from the decisions made or opinions published by any ALB while maintaining financial control and oversight.

A7.1.5 The next step is to develop a relationship document setting out the relationship between the new agency/ALB and its sponsor department. Advice on this is in Annex 7.2. These should be periodically reviewed to keep abreast of experience and the changing context.

A7.1.6 Decisions on the form of any particular agency/ALB must ultimately be for Ministers. They will depend in part on perceptions of the function in question, and on the extent to which Ministers think it right to take a day to day interest in its affairs. Generally, the closer the ALB's functions are to the centre of government, the more likely it is to be an agency; while NMD status is appropriate for organisations of some size carrying out professional functions. The form and structure of the NDPB is very flexible, suiting specific and technical functions.

A7.1.7 When an agency/ALB is planned, it is essential to consult DoF about its powers, status and funding.

Box A7.1A: Comparison of agencies and the two main kinds of ALB in central government

Feature	Agency	Non-Departmental Public Body (NDPB)	Non-Ministerial Department (NMD)
Status	Part of a department	Independent organisation. May be a company and/or a charity	Department in its own right
Crown body	Yes	Not usually	Yes
Established by	Administrative action (usually quick and easy)	Usually bespoke primary legislation (may take time).	Administrative action, often supplemented by primary legislation (if needed, may take time)
Governance	CEO supported by a board	Independent board led by non-executive Chair	Accounting Officer supported by a board
Ministerial accountability	A Minister in the sponsor department makes key decisions on the agency's affairs	A Minister in the sponsor department decides key matters, e.g. whether to adjust functions, whether to wind up or replace	Rarely needed, but when necessary, a Minister in the sponsor department decides
Sponsor department	Has direct control	Subject to formally agreed memorandum, may be light touch	Remote
Funding	Supply Estimates and/or fee income	Grant(s) from department(s), and / or income from fees or levies	Supply Estimates and/or fee income
Employees	NICS Civil servants	Not NICS civil servants	Not NICS civil servants
Annual Report and Accounts	Publishes plans and accounts as part of sponsor department's central accounts	Publishes own plans and accounts Usually consolidated into sponsor departments	Publishes own plans and accounts
Assembly Accountability	CEO is agency Accounting Officer, oversight by departmental Accounting Officer	CEO is normally the Accounting Officer, oversight by departmental Accounting Officer	CEO is normally the Accounting Officer, In some cases a sponsor department's Accounting Officer could step in if required

A7.1.8 It is worth remembering that the two kinds of ALB (NDPBs and NMDs) in Box A7.1A are only the most common. Others are possible. DoF guidance on the categories of Public Bodies explains in more detail (see for example the *Public Bodies: A guide for NI Departments* available at Public bodies guidance including On Board Guide and public bodies guides | Department of Finance (finance-ni.gov.uk)). They include public corporations and various kinds of co-operative arrangements with the private or voluntary sector, some fairly loose. And there is scope to establish one-off arrangements for special bodies where circumstances demand something different. Special structures must of course be evaluated

carefully, on the strength of a comparative business case, to make sure that they will deliver value for money to the public purse.

A7.1.9 Whatever the legal status of an ALB, its sponsor department should have a mechanism for asserting an appropriate degree of control over it, especially in financial matters and in relation to issues of ethics in the use of public funds. In general, the greater the extent of public funding, the greater the degree of control called for.

A7.1.10 If legislation is required to set up an ALB, it is important to observe the new services rules (Section 2.7). Strictly this means that Royal Assent is required before resources can be committed to setting up the organisation. However, departments should engage with DoF should any issues arise.

A7.1.11 Whatever the approach taken to setting up the new organisation, it is often desirable to operate a period of shadow running before it starts in earnest. And do be aware that the process of preparation can take time – e.g. often a couple of years or more for an NDPB.

Box A7.1B: Sources of guidance

Accountability and Financial Management section of the DoF Website:

- **Public bodies and executive agencies – consideration of options for delivery, setting up, governance and accountability of NDPBs and executive agencies, their review and dissolution.**
- **Guide to the Establishment and Operation of Trading Funds.**
- **Corporate Governance in Central Government Departments**: extant version of *Code of Good Practice NI includes references to NDPBs and agencies.*

Commissioner for Public Appointments for Northern Ireland website:

- **Code of Practice for Ministerial Public Appointments in Northern Ireland.**

Gov.uk website:

- ***Government Financial Reporting Manual*** *(FReM)* – includes guidance for NDPBs and agencies, including form of Annual Reports and Accounts.
- ***Consolidated Budgeting Guidance*** – includes guidance in relation to NDPBs and public corporations.

Reforming ALBs

A7.1.12 Valuable as they can be, proliferation of ALBs is not good practice. It adds to administrative costs generally and can fragment accountability. So it can be necessary or desirable to wind up or merge ALBs in the light of experience.

A7.1.13 The process of decision making is similar to that for setting up a new ALB if there is to be a successor organisation. It is good practice to decide on a suitable shape for the new organisation and then plan legislation, if necessary, to achieve it.

A7.1.14 The predecessor organisation(s) must be wound up in an orderly fashion, with final Annual Report and Accounts to close its affairs (including a comprehensive list of assets and liabilities). If a closing organisation has no staff by the time the final Annual Report and Accounts are drawn up, it is usual for the Accounting Officer of the successor organisation, if there is one, to take responsibility for signing them off. If this is not possible, for example if there is no successor, the Accounting Officer of the sponsor department should sign them off.

A7.1.15 When staff are to be migrated into a new organisation, it is important to respect their statutory employment rights. Planning for this should form a key part of the transition preparations. Mistakes can be costly.

A7.2 Annex 7.2
Drawing up relationship documents

Departments need arrangements to monitor and understand their executive agencies' and ALBs' strategy, performance and delivery. This Annex offers a general outline of how relationship documents can be drawn up.

DAO guidance issued by DoF specifically provides a template for Partnership Agreements for use with NDPBs and a template for Corporate Sole type organisations. The main template may also be a useful starting point for developing relationship documents for other types of ALBs. Box 7.2 provides an outline for developing a framework document for Agencies.

A7.2.1 This Annex provides guidance on the framework documents for Agencies, NDPBs and Corporate Soles/Statutory Office holders and other ALBs. Each body will need a bespoke specification suited to its specific structure and responsibilities. The document should focus clearly on its relationship with the sponsor department, and with any other departments with interest(s) in the Agency's/ALB's business.

A7.2.2 Terminology may differ and while the majority will be referred to as Partnership Agreements it may be these documents are referred to as a memorandum of understanding, framework agreement etc depending on the nature of the document. While the content of documents should follow the specimen templates as far as possible, at the same time, they should be adapted as necessary to suit individual circumstances. The process set out below applies irrespective of the name of the document.

A7.2.3 An outline for a framework document between a Department and an Agency is provided at Box 7.2. This is to be used as a guide and covers the necessary areas to consider when drawing up such documents.

A7.2.4 DoF has published a Partnership Agreement template on the Accountability and Financial Management section of the DoF website which should be used for the majority of ALBs, adapted as necessary to suit individual circumstances. A specific template for use for bodies such as Corporate Soles or Statutory Office holders is also available. These templates are broadly similar representing consistent standards of accountability and governance and will be updated from time to time.

A7.2.5 A Partnership Agreement should explain the overall governance framework within which an individual ALB operates, including the framework through which the necessary assurances will be provided to stakeholders. Roles/responsibilities of partners within the overall governance framework are also outlined. Partnerships should be based on a mutual understanding of strategic aims and objectives; clear accountability; and a recognition of the distinct roles each party contributes. Underpinning the arrangements to be set out in Partnership Agreements, are the principles set out in the "*Partnerships between Departments and Arm's Length Bodies: NI Code of Good Practice*" which should be read in conjunction with the template, and is included as an Annex to the template.

A7.2.6 When drawing up Partnership Agreements, departments and ALBs should also consider DoF's guidance on Proportionate Autonomy for ALBs. The guidance is intended to help departments and ALBs assess the nature of their relationship when completing their individual Partnership Agreements. It is an important piece of complementary guidance that will focus on the challenges of achieving an appropriate balance between Departments and ALBs regarding the optimum level of autonomy, while taking account of the salient factors.

A7.2.7 The guidance on Proportionate Autonomy provides guiding principles, rather than being detailed and prescriptive, due to the different nature and challenges across all ALBs. It will therefore be for individual Departments and ALBs to develop their relationship and approach to Partnership Working, and associated departmental activities in a way that is consistent with the principles set out in the guidance, whilst focusing on the delivery of agreed outcomes. The agreed approach and level of autonomy should be reflected in the Engagement Plan within the Partnership Agreement.

A7.2.8 Framework documents are public documents which:

- shall be published online on the Agency/ALB departmental website; and
- placed in the Assembly Library.

A7.2.9 Where departments are of the view that departures from the templates are necessary these should be carefully considered, and it may be appropriate to seek advice from DoF.

A7.2.10 Framework documents/Partnership Agreements should be reviewed and updated as appropriate at least every 3 years unless there are exceptional reasons. It may be appropriate to update a framework document/Partnership Agreement sooner if there are significant changes to the ALB, e.g. reclassification, or the body taking on additional functions or being subject to a machinery of government change.

A7.2.11 Framework documents constitute a core constitutional document of ALB's and it is imperative that Accounting Officers, Board members and senior officials are familiar with them, ensure they are kept up to date and use them as guide to govern the partnership relationship between the ALB, the sponsor department and the rest of government.

A7.3 Annex 7.3

Government Companies, Public Corporations and Trading Funds

Companies are used across government as a way of delivering on government objectives which are better met by a more discrete legal entity with a clear accountability and governance structure. Government companies' objectives are diverse and as such their characteristics are equally diverse. The risk of such diversity is that it can lead to inconsistency in spending controls, governance arrangements and accountability. This annex is intended to consolidate existing guidance in relation to their responsibilities for public money and to provide some advice on common issues that arise.

What is a government company?

A7.3.1 A Government Company (often informally referred to as a "GovCo") is one in which the government is the majority or only shareholder. It can include situations both where the government has purposely set up the company up as a GovCo or where the government has acquired majority shareholder status of an existing company.

A7.3.2 Government may also have interests in companies where it does not hold majority shareholder status. This may be where the government is the sole or majority customer, where it holds preference shares, where the company is closely governed by a regulatory regime or where the company is provided support by the government such that government is deemed to hold significant control. Given this diversity, it is helpful to consider companies through more clearly defined criteria than the high-level label of "GovCo".

What is a government company?

A7.3.3 The initial question for determining what kind of controls and governance apply is whether the company is formally classified as public or private sector. Most GovCos will be public sector but government also has interests in private sector companies.

A7.3.4 Companies are classified to the public or private sector based on ONS criteria. The 'public sector' is defined by the Office of National Statistics ('ONS') with reference to the European System of Accounts 2010 in accordance with EU requirements for Governments to produce accurate public sector finances and national accounts. The National Accounts (or Sectoral) classification of entities as public or private depends on the level of government control over the general corporate policy of the entity being classified. This can be direct or indirect and may be evidenced by indicators that include:

- the ability to appoint those in control, or those who determine the policy of the entity;
- a right to be consulted over such appointments, or to have a veto over appointments;
- the provision of funding accompanied by rights of control over how that funding is spent; and
- a general right to control the day-to-day running of the body.

A7.3.5 ONS decisions on classification are definitive and are informed by common European standards. These classifications are published. ONS may take some time to

consider the classification of a particular government entity, in the meantime advice should be sought from DoF. Pending review by the ONS, the DoF view of classification, which may include engagement with HM Treasury, should be regarded as definitive and should inform the body's governance, reporting and accountability structures.

Classification of Government companies – central, local or public corporation?

A7.3.6 Once the ONS has classified a body as public sector it is classified to a sub-sector based on its characteristics. These sub-sectors in respect of companies are:

- Central Government Company (CGC)
- Local Government Company (LGC)
- Public Corporation (PC)

Central and Local Government companies

A7.3.7 Government companies which are classified by the Office of National Statistics (ONS) for the purposes of National Accounts as 'central government' are then administratively classified by DoF (usually as NDPBs).

A7.3.8 CGC's receive income wholly or in the majority from central government via grants or contracts, or receive the majority of their income by virtue of levies or taxation or funded by the recovery of their costs through the charging of fees.

A7.3.9 Central Government Companies should:

- be subject to Managing Public Money Northern Ireland;
- have an Accounting Officer appointed by the principal Accounting Officer of the sponsor department;
- have clear delegated spending authorities from the department agreed by DoF;
- follow government standards in governance, recruitment, procurement and transparency;
- appropriate board make-up and the balance of executive and non-executive functions; and
- have consolidated financial reporting.

A7.3.10 It is important to ensure that provisions in the Framework Document for any government company are consistent with the company's Articles of Association. If there are obligations that need to be legally imposed on the company (e.g. matter reserved for the Shareholder), these need to be included in the Articles (which are legally binding on the Company). Advice should be sought from DoF when drawing up such documents.

A7.3.11 Local Government Companies are outside the scope of Managing Public Money Northern Ireland.

Public Corporations

A7.3.12 Companies established by government that meet the "market body test" are classified by the ONS as Public Corporations. The "market body test" requires that the company derives more than 50 per cent of its production cost from the sale of goods or services at economically significant prices (that is, prices that have a substantial influence on

the amounts of products that producers are willing to supply and on the amounts of products that purchasers wish to acquire) for all or most of the goods and services they produce. Note that classification tests above refer primarily to Non-Financial Corporations. The classification rules for Financial Corporations are complex.

A7.3.13 Public Corporations' powers are usually defined in statute, but otherwise all the disciplines of corporate legislation apply. Sponsor departments should define any contractual relationship with a public corporation in a framework document adapted to suit the corporate context while delivering public sector disciplines. Public corporations do not have Accounting Officers and are not subject to Managing Public Money Northern Ireland as a matter of course.

A7.3.14 They should instead be subject to levels of control and governance that are deemed appropriate by the sponsor department and agreed in the context of the framework document. It may be the nature of the body is such that it would be appropriate to consider if a requirement for compliance with the principles of Managing Public Money Northern Ireland should be imposed. This should be achieved through the exercise of shareholder rights and is not the default position. If this outcome is sought it may be appropriate to appoint the Chief Executive as an accountable person mirroring the role of the Accounting Officer for central government bodies to ensure the Shareholder expectations in this regard are met.

A7.3.15 Public Corporations are subject to Consolidated Budgeting Guidance and in particular are expected to provide a return to government in respect of capital employed. In the case of PCs performing essentially government-type functions, 3.5% real will normally be appropriate. A PC competing in the market should typically be expected to return a higher rate to reflect the prevailing market rate.

Trading Funds

A7.3.16 Trading Funds are established under the Trading Funds Act 1973. Most trading funds are public corporations, but some may be central government companies. It is rare for new trading funds to be created and requires DoF consent. Unlike Public Corporations in general, trading funds have Accounting Officers appointed by DoF and are subject to Managing Public Money Northern Ireland by default. In addition, Departments should have careful regard to Consolidated Budgeting Guidance particularly regarding expected rates of return from trading funds.

A7.3.17 Further guidance may be found in DoF's *Northern Ireland Guide to the Establishment and Operation of Trading Funds* which is available on the Accountability and Financial Management section of the DoF website.

Legal status of Companies

A7.3.18 In addition to the classification decisions above, companies can be constituted either as companies limited by shares or as companies limited by guarantee. When planning on setting up a government company, officials should discuss with their legal advisors and with DoF the appropriate legal status for incorporation.

A7.3.19 A profit-making company will generally be better incorporated by shares and non-profit by guarantee. A company limited by shares may also be preferable in joint ventures where there is significant disparity between the capital contributed or the support provided through income or otherwise. Different levels of share capital can reflect such variation and further provide flexibility in the levels of control exercised by shareholders.

A7.3.20 Alternate legal structures are also available such as charities, community interest companies and mutual. If further advice is required, for example from the Commercial Models Team in Cabinet Office, departments should engage with DoF in the first instance. It is important that the model used follows the policy objective rather than seeking to force policy objectives to fit a model.

Framework Documents

A7.3.21 It is important to ensure that provisions in the framework document for any government company are consistent with the company's Articles of Association. If there are obligations that need to be legally imposed on the company (e.g. matter reserved for the Shareholder), these may need to be included in the Articles (which are legally binding on the Company).

Creation of new companies

A7.3.22 Companies are relatively easy to create by government departments through simple incorporation under existing legislation. However, departments should be wary of falling foul of the new services rules (see MPMNI 2.7). This is particularly likely to be the case if the company is due to perform functions that are not already part of the department's ambit of activity.

A7.3.23 Even where the new company performs pre-existing functions, it may be that the new delivery mechanism for that service is such that the new services rules may be engaged. This should be considered on a case by case basis.

A7.3.24 Creating a new company will generally be novel and as such will require DoF consent.

A7.3.25 It will also be appropriate to share relationship documents with DoF to set out proposed governance arrangements.

A7.3.26 As with the creation of all ALBs, departments should consider the guidance as set out in Annex 7.1.

Subsidiary companies

A7.3.27 Where ALBs establish subsidiary companies, the Accounting Officer of the parent ALB shall have meaningful oversight of the subsidiary. It is not acceptable to establish subsidiaries to ALBs in order to avoid or weaken Assembly scrutiny.

A7.3.28 For subsidiary companies classified as central government companies (CGCs), the responsibilities of the Accounting Officer of the parent ALB will also apply to any subsidiaries set-up by the ALB. Subsidiaries cannot have a different Accounting Officer to the Accounting Officer of the parent ALB.

A7.3.29 For subsidiaries classified as CGCs, the default position is that all the ALB's controls and delegations' cascade down to the subsidiary. These arrangements should be set out in the framework document between the ALB and the sponsor department, and in a separate document between the ALB and the subsidiary.

A7.3.30 ALBs can agree delegations to their subsidiary which are within their own delegations, issued to them by their sponsor department. The ultimate test in these cases will be whether the AO of the parent ALB would be comfortable defending the approach taken in the Assembly.

A7.3.31 Where the subsidiary companies are classified as a PC rather than CGC, the position is that the ALB's own delegations and controls do not apply by default, and the controls set out in A7.3.12 onwards apply.

A7.3.32 There are some commitments which can never be able to be delegated to subsidiaries, regardless of their classification. These are commitments which incur liabilities which would impact the ALB, and therefore engage the Accounting Officer's responsibilities, if they crystallised.

Box A7.3A: DoF consent for new subsidiaries

• If the subsidiary is being established to deliver the ALB's existing activities within its existing statutory powers and ambit, DoF consent will not be required – save where the expenditure undertaken breaches the department's delegations or other provisions of Managing Public Money Northern Ireland.

• Where subsidiaries are established to deliver additional activities, potentially outside of the ALB's existing statutory powers or ambit, DoF consent will always be required. Such expenditure is likely to be novel, contentious or repercussive and might engage the New Services Rule (see 2.7) or securing adequate legal authority (see 2.5).

Audit

A7.3.33 Companies in general are required by statute to have their accounts audited. It is expected that companies classified as NDPBs will be audited by the Comptroller and Auditor General. If the company is not for profit and the C&AG is appointed as Auditor by an order under the Government Resources and Accounts Act NI then the company is exempted from the requirement for a Companies Act audit. If the C&AG is appointed as auditor of the company by agreement between the company and the departmental Minister or by virtue of statute then any Audit must also fulfil the requirements of a Companies Act audit.

A7.3.34 Audit arrangements for Public Corporations, companies not classified as NDPBs or companies where the auditor is not appointed automatically by statute should be agreed with DoF. It will generally be good practice for the sponsor department to seek the views of NIAO as to whether they think it appropriate to take on the role of auditor. It should be noted that where a body is consolidated into a department's group accounts all elements of the group will be subject to the C&AG's opinion on regularity.

A7.4 Annex 7.4
Using private finance

Some public services are delivered in partnership with private sector providers, using some carefully controlled private finance. Because the private sector contractor puts its own funds at risk, it can incentivise delivery of assets and services to time and cost, and can offer value for money where the benefits of risk transfer and private sector delivery offset the additional cost of private finance. Such deals are not appropriate for every project. Private Finance Initiative (PFI) policy in NI is contained in "*Working Together in Financing our Future: Policy Framework for Public Private Partnerships in Northern Ireland*".

A7.4.1 Although the use of private finance in the delivery of public sector assets and services is one method of procurement, it is not suited to all types. Where it is used effectively it can offer a number of strengths in delivering public assets (see Box A7.4A). These stem from:

- sharing risk in delivering public projects within a structure in which the private sector contractor puts its own capital at risk;
- payment to the private sector being structured in such a way as to ensure the private sector is incentivised to deliver the required services or obligations under the arrangement; and
- the private sector being incentivised to grow market share in the joint delivery of services, or to grow the value in the joint management of assets.

A7.4.2 Contracts using private finance may include the ongoing maintenance and operation of the asset and the delivery of associated services to outcome specifications set by the public sector. Generally they are long term arrangements between the parties.

Box A7.4A: Strengths of using private finance to deliver public sector assets and services

- getting projects built to time and to budget;
- improving whole-of-life risk allocation and management, creating disciplines and incentives on the private sector to manage risk effectively;
- securing a greater focus on due diligence;
- securing better integration of design, construction and operational skills; and
- securing a greater focus on growing market share or value of a joint asset or business.

A7.4.3 Private finance does not suit every project. It should only be used after the rigorous scrutiny of all alternative procurement options, where:

- the use of private finance offers better value for money for the public sector compared with other forms of procurement. Annex 4.6 gives additional guidance on the value for money analysis that is required alongside the assurance and approval process;
- the structure of the project allows the public sector to define its needs after construction as service outputs that can be adequately contracted for in a way that ensures an effective and accountable delivery of long-term public services; and
- the public sector partner is able to predict the nature and level of its long term service requirements with a reasonable degree of certainty.

A7.4.4 Conversely, private finance is not usually suitable for:

- individual projects too small to justify the transaction costs; or
- large innovative IT projects, or other services where it is not practical to specify the requirements sufficiently firmly in advance or over the long time-frame of the prospective contract life.

A7.4.5 The main procurement principles continue to apply when using private finance. It is important that the output to be achieved is clearly specified rather than the method to be used in carrying out the contract, so that the supplier can innovate and manage risk effectively. However, it is sensible to clarify key areas of design early on, to prevent false starts and later misunderstandings.

A7.4.6 Public sector organisations should not, however, use standard contracts automatically. They should be intelligent customers, providing incentives to stimulate enough competition to achieve good value in procurement costs. They should also be aware that their own reputations may be at risk when privately financed contracts are carried out. Where contracts include the ongoing maintenance and operation of assets, public sector organisations need to commit sufficient resource to effective long term contract management, including monitoring performance and managing any service variation requirements or other contract delivery issues over the project life. Any organisation considering using private finance should consult with the Strategic Investment Board (SIB) about issues to be addressed.

A7.4.7 Once a major asset has been constructed, it may be possible for the private sector partner to refinance the project debt on more favourable terms than achieved at financial close. The contract should specify how the financial benefit of any refinancing should be shared with the public sector purchaser. HM Treasury has produced a standard refinancing protocol to achieve this.