



BRIEFING PAPER

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Ministerial Directions

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Ministerial directions are a potential part of the process of approving expenditure of public money. If a UK Government Minister decides to instruct a Departmental Accounting Officer (a senior civil servant) to proceed with spending, contrary to the advice which has been given by the Accounting Officer, the written instruction is called a ministerial direction. Use of ministerial directions is rare, but preparations for Brexit have included an instruction to Accounting Officers to include them in planning for approving spending in advance of Royal Assent to relevant legislation. This note provides a short guide to ministerial directions and to sources of further information. The procedures detailed below apply to the UK government. Devolved administrations have their own, similar, procedures and guidance.^{1 2 3}

1. Definition of ministerial direction

1.1 What is a ministerial direction?

If a Government Minister is contemplating proceeding contrary to the advice of the Department's Accounting Officer (the Head of Department) about the financial propriety or regularity of a course of action the Accounting Officer will set out in writing his or her objection to the proposal, the reasons for the objection and the duty to inform the Comptroller and Auditor General (the Head of the National Audit Office) should the advice be overruled. If the Minister decides nonetheless to proceed, the Accounting Officer will seek a written instruction to take the action in question. This written instruction is the ministerial direction. Although this procedure arises from the responsibility first placed on accounting officers by the *Exchequer and Audit Department Act 1866*, ministerial directions are not statutory.

1.2 When might a ministerial direction be needed?

The Treasury document *Managing Public Money*⁴ sets out the possible reasons as:

- Regularity: if a proposal is outside the legal powers, parliamentary authority, or Treasury delegations; or incompatible with the agreed spending budgets.
- Propriety: if a proposal would breach parliamentary control procedures or expectations.

¹ Scottish Government, [Scottish Ministerial Code](#), February 2018, paras 6.6-6.7

² Welsh Government, [Ministerial Code](#), November 2017, paras 3.9-3.10

³ Northern Ireland Executive, [Managing public money Northern Ireland](#), January 2013, para 3.4

⁴ HM Treasury, [Managing Public Money](#), July 2013 (rev March 2018).

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- Value for money: if an alternative proposal, or doing nothing, would deliver better value, eg a cheaper, higher quality or more effective outcome for the Exchequer as a whole.
- Feasibility: where there is a significant doubt about whether the proposal can be implemented accurately, sustainably, or to the intended timetable.

A direction may be sought on more than one ground. Analysis by the Institute for Government shows that the vast majority of ministerial directions have been issued on the grounds of value for money.⁵

The Comptroller & Auditor General, Sir Amyas Morse, in giving oral evidence to the Public Administration and Constitutional Committee in November 2017 commented on the issues involved in seeking a direction:

The issue is that accounting officers have a clear responsibility to obtain value for money, but they also have conflicting responsibilities to support their Ministers and carry through their policy. There is no very clear statement about how those two are supposed to be reconciled. I believe that one of the important things that the accountability system does is create some countervailing pressure on accounting officers to really think about the value-for-money aspect of their responsibilities, and I think increasingly they do that.⁶

1.3 What happens to a ministerial direction?

An Accounting Officer in receipt of a ministerial direction is required to comply with the Minister's instructions, inform the Treasury of what has occurred and send the papers to the Comptroller and Auditor General. These procedures exist to protect the relationship between Ministers and officials while at the same time enabling the Comptroller and Auditor General to consider, on behalf of Parliament, whether further investigation is required. Similar procedures apply where the Accounting Officer has concerns about the value for money of a proposed course of action.

Currently the correspondence forming the ministerial direction is usually put into the public domain by being published on the Gov.uk website. This publication can be rapid but there have been instances where it has taken several months.

2. Accounting officers

2.1 Role of an accounting officer

The role of the Accounting Officer in government departments is set out in the Treasury manual, *Managing Public Money*, as:

3.1.1 Each organisation in central government – department, agency, trading fund, NHS body, NDPB or arm's length body – must have an accounting officer. This person is usually its senior official. The accounting officer in an organisation should be supported by a board structured in line with the *Corporate Governance Code*.

3.1.2 Formally the accounting officer in a public sector organisation is the person who parliament calls to account for stewardship of its resources. [...] The equivalent senior business managers of other public sector organisations are expected to deliver equivalent standards.⁷

⁵ Institute for Government, [Following the pound: the Accounting Officer in Central Government](#), 2013.

⁶ Public Administration and Constitutional Affairs Committee, [Civil service effectiveness](#), 7 November 2017, HC 497 2017-19, Qq 63-70.

⁷ Ibid p.18

The Treasury manual makes it clear that the Accounting Officer is personally responsible for their actions and must be able to assure parliament and the public of “high standards of probity in the management of public funds”.⁸ This personal responsibility includes that:

the accounting officer must personally sign:

- the accounts
- the annual report
- the governance statement ;

and [...] must personally approve:

- voted budget limits; and
- the associated Estimates Memorandum⁹

2.2 History of accounting officers

The terms “accounting officer” was first identified in a Treasury minute to the Commons Committee of Public Accounts in 1872. The Treasury used this term to clarify that the senior officer of the Department was responsible for signing departmental accounts. The title distinguished the role from that of the accountants, who prepared the accounts.

The legislative basis for accounting officers can be traced to the *Exchequer and Audit Departments Act 1866*, which brought together a process for granting the approval of Parliament for public spending by departments. Departments were required by the Act to produce annual “appropriation accounts” detailing proposed spending, and to submit these accounts to Parliament. The current legislative basis is the *Government Resource and Accounts Act 2000*.

The Public Accounts Committee described the role of the Accounting Officer in a report in 2011:

The personal accountability of the Accounting Officer forms the foundation of Parliament’s ability to hold the Executive to account for public spending. Ministers are answerable to Parliament for policy decisions and the actions of the departments and their executive agencies. The Accounting Officer, normally the Permanent Secretary in the department, is personally responsible for the regularity and propriety of expenditure, robust evaluation of different mechanisms for delivering policy objectives, value for money, the management of risk, and accurate accounting for the use of resources. To support these responsibilities the Accounting Officer requires an effective assurance regime.

We, the Committee of Public Accounts, hold Accounting Officers to account for the delivery of these objectives by considering the reports of the Comptroller and Auditor General (C&AG). The C&AG audits the accounts of all government departments and agencies as well as a wide range of other public bodies and reports to Parliament on the value for money – the economy, efficiency and effectiveness – with which these bodies have used public money. This system of accountability to Parliament has been agreed between the Treasury and this Committee for many decades.¹⁰

⁸ Ibid p.15

⁹ Ibid p.19

¹⁰ Public Accounts Committee, [Accountability for public money](#), 28th report of session 2010-11, HC 740, 5 April 2011, paras 2-3

2.3 Comptroller & Auditor General

The office of the Comptroller and Auditor General (C&AG) was also created by the 1866 Act. Under the terms of the Act, the C&AG authorised the issue of money to departments (the comptroller function) and was given the new task of examining departmental accounts and reporting the results to Parliament. The C&AG is appointed by the monarch.

An Accounting Officer in receipt of a ministerial direction is required to comply with the Minister's instructions, inform the Treasury of what has occurred and send the papers to the Comptroller and Auditor General. This is known as an Accounting Officer's minute. On the receipt of such material it is for the Comptroller and Auditor General to determine what action to take.

These procedures exist to protect the relationship between Ministers and officials while at the same time enabling the Comptroller and Auditor General to consider, on behalf of Parliament, whether further investigation is required.

3. Ministerial guidance

The [Ministerial Code](#)¹¹ provides details on when a Ministerial Direction would be required in a section on the role of accounting officers:

5.3 Heads of departments and the chief executives of executive agencies are appointed as Accounting Officers. This is a personal responsibility for the propriety and regularity of the public finances for which he or she is responsible; for keeping proper accounts; for the avoidance of waste and extravagance; and for the efficient and effective use of resources. Accounting Officers answer personally to the Committee of Public Accounts on these matters, within the framework of Ministerial accountability to Parliament for the policies, actions and conduct of their departments.

5.4 Accounting Officers have a particular responsibility to see that appropriate advice is tendered to Ministers on all matters of financial propriety and regularity and more broadly as to all considerations of prudent and economical administration, efficiency and effectiveness and value for money. In line with the principles set out in *Managing Public Money*, if a Minister in charge of a department is contemplating a course of action which would involve a transaction which the Accounting Officer considers would breach the requirements of propriety or regularity, the Accounting Officer will set out in writing his or her objections to the proposal, the reasons for the objection and the duty to inform the Comptroller and Auditor General should the advice be overruled.

5.5 If the Minister decides nonetheless to proceed, the Accounting Officer will seek a written instruction to take the action in question. The Accounting Officer is obliged to comply with the instructions and send relevant papers to the Comptroller and Auditor General. A similar procedure applies where the Accounting Officer has concerns about whether a proposed course of action offers value for money. This notification process enables the Committee of Public Accounts to see that the Accounting Officer does not bear personal responsibility for the actions concerned.

Former Cabinet Office minister, Lord Maude (Francis Maude) commented on his experiences of how a minister could be challenged, when giving evidence to the Commons Public Administration and Constitutional Affairs Committee, as:

[..] there is a safety valve on important things, which, to be technical, is the right of an accounting officer to ask for a written direction.

¹¹ For more information see [The Ministerial Code and the Independent Adviser on Ministers' Interests](#). Commons Library Briefing Paper SN03750, 17 January 2018.

What is sad for me is that that has become a kind of nuclear relationship or become seen as that, and it only gets used towards the end of a Government. I would like that to be much more routine. A confident Minister, who is confident that what he or she is doing is right, should be perfectly willing to defend it publicly when the accounting officer says, "I am sorry, I don't think this represents good value for money" or "There are risks in this". Ministers should be willing to take that on the chin and defend what they are doing. For me it is a great pity. One of the things I would want to see is that to become much more common, particularly early in a Parliament, and for it not to be a kind of nuclear option.¹²

4. Ministerial directions and Brexit

4.1 Ministerial directions 1990-2017

The Institute for Government (IfG) has carried out analysis of the use of ministerial directions. In their report *Following the pound: the Accounting Officer in Central Government*¹³ they included figures on the number of directions issued, by reason, by Department and by year, across governments. This was followed up by the Institute in 2015 with a blog post which provided a spreadsheet listing every ministerial direction issued between 1990 and July 2015.¹⁴ A further blog post was published in May 2018.¹⁵ The number of directions issued 1990-2017 was 60.

In the 2013 report the IfG concluded:

Directions are quite rare: there were 37 during the Labour government between 1997 and 2010, and there haven't been any since the 2010 general election. They are more common before an expected change of government, and are most frequently issued due to concerns about value for money. Directions are not necessarily signs of failure. There can be understandable policy reasons why a direction may be necessary. Directions allow democratically-elected ministers to have their decisions implemented, but registered publicly when this contradicts Treasury and parliamentary rules by publishing a direction's existence.¹⁶

4.2 Ministerial directions to prepare for Brexit

In October 2017, the permanent secretaries of the Treasury and the Department for Exiting the European Union [wrote to other department accounting officers](#) telling them to seek ministerial directions to authorise spending to implement new systems needed for after the UK leaves the EU, if they were unsure of whether they had legislative approval to go ahead.

The letter was announced to the Commons in a [Written Statement](#) from Liz Truss, Chief Secretary to the Treasury:

It is important that departments can start spending to prepare for Brexit when they need to do so. Managing Public Money requires that expenditure on new services must rest on specific legislation. However, delaying spend until legislation has reached Royal Assent could jeopardise readiness for Brexit.

¹² Public Administration and Constitutional Affairs Committee, [Civil service effectiveness](#), 6 November 2017, HC 497 2017-19, Qq 233-4.

¹³ Institute for Government, [Following the pound: the Accounting Officer in Central Government](#), 2013.

¹⁴ Institute for Government, [A sense of direction](#): when permanent secretaries object to ministerial decisions, blog post, 6 July 2015.

¹⁵ Institute for Government, [Ministerial directions](#), blog post, 29 May 2018.

¹⁶ *ibid* p2

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To address this, for the small proportion of spending affected, ministers can issue a technical direction, allowing critical spending to be incurred ahead of Royal Assent, whilst ensuring transparency to Parliament.

In these cases, the use of a Direction will be a matter of timing. Departments will still need to ensure spending is in all other respects regular, proper, feasible and good value for money, in the usual way. I have asked my officials to write to all departments explaining this process. They will also write to the Public Accounts Committee - this letter will be published to ensure full transparency.¹⁷

Two departments sought ministerial directions for EU exit spending in advance of Royal Assent for the *EU (Withdrawal) Bill*:

- [Spending on EU exit preparations in advance of the EU Withdrawal Bill gaining Royal Assent \(Defra\)](#) (January 2018)
- [Spending on EU exit preparations in advance of the EU Withdrawal Bill gaining Royal Assent \(BEIS\)](#) (March 2018)

Defra Permanent Secretary [Clare Moriarty's letter to Mr Gove](#) of 18 January 2018 requesting the direction states:

I welcome your close engagement with Defra's preparations for EU Exit. We are implementing a major programme of work at pace in order to be ready for a range of scenarios including the possibility of a 'no deal' exit without a transition period.

We want our future relationship with the EU to be a deep and special partnership, taking in both economic and security cooperation. We are confident that such a partnership is in the interests of both sides, so we approach these negotiations anticipating success – we do not want or expect a 'no deal' outcome.

The House of Commons Environmental Audit Committee (EAC) received [clarification](#) from Mr Gove about the Ministerial Direction. The Direction authorised planned building work under six projects including a new, national animal import system.

The Department for International Trade sought ministerial directions for EU exit spending in advance of Royal Assent for the Trade Bill.

The Department for Transport sought ministerial direction for EU exit spending in advance of Royal assent for the Haulage Payments and Trailer Registration Bill.

There have also been two other ministerial directions issued in 2018, which were not related to preparations for EU exit.

The use of these "technical directions" has raised the profile of the existence of ministerial directions, as part of the process of management of public money. As the 2017 letter to accounting officers is an instruction to use this process, it can also be seen to differ from other instances of the use of ministerial directions, which some senior civil servants have described as "a last resort".

¹⁷ [HC Deb 12 October 2017, HCWS162.](#)

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