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Contingencies Fund (No.2) Bill

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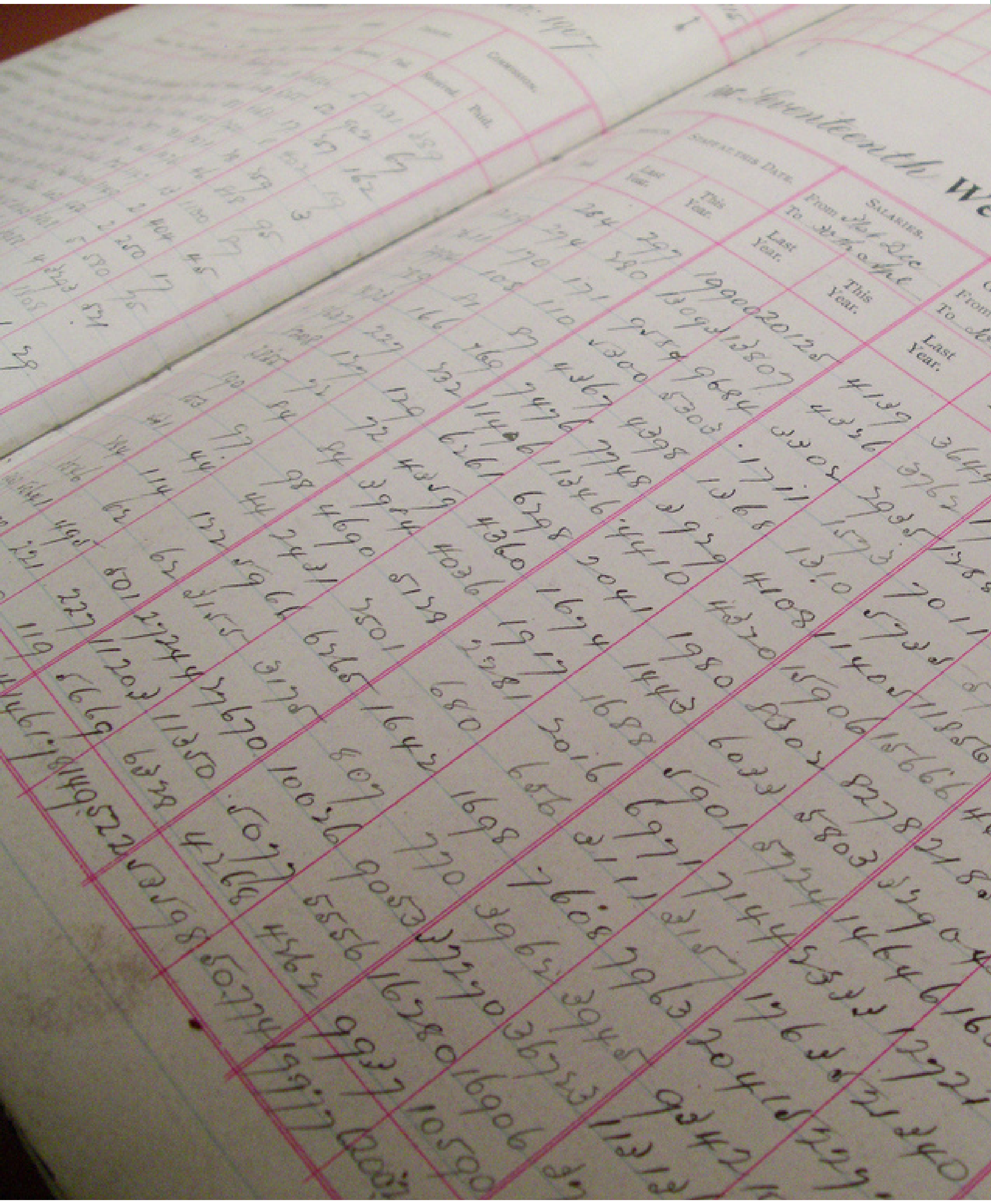

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Summary

The Contingencies Fund (No.2) Bill was introduced on Tuesday 9 March 2021, and will have all of its Commons stages on Thursday 11 March 2021. It is intended to increase the amount of money that can be advanced to Government departments for spending ahead of its approval by Parliament, from 2% of the previous year's total approved spending to 12%.

In normal times, the Contingencies Fund is a standard part of Parliament's control of public spending, and allows for Government departments to receive advances for unapproved spending (these advances are then paid back in the same year using money approved through the Estimates process). Between 2010 and 2019 the Fund paid out advances of a few billion pounds per year.

During the Covid-19 pandemic, the Contingencies Fund was used to provide the large amounts of emergency funding required to deliver the new public services that helped to cope with the pandemic's impact. The Contingencies Fund Act 2020 raised the normal 2% limit to 50%, allowing for up to £266 billion to be advanced to Government departments. This change was time-limited to a single year, expiring on 31 March 2021.

The 2020-21 Supplementary Estimates showed that the actual usage of the Fund was £102 billion, 38% of the allowable maximum. This is over 11 times higher than the Fund's usage in any year since at least 2010.

The UK Parliament generally has less control and influence over public spending than many other parliaments around the world. While the UK is not alone in finding ways to give government more flexibility to spend in response to the pandemic, continued sustained and substantial use of the Contingencies Fund may attract criticism if it further weakens financial scrutiny without adequate justification.

The current Bill proposes to raise the Contingencies Fund limit for a further year, but this time it would be raised to 12% of the previous year's approved spending. This would come to a total of £105 billion. When combined with the Vote on Account, the other mechanism by which Government departments receive money ahead of approval (and which has also increased due to higher spending on Covid-19), the Government would theoretically have access to up to £469 billion in 2021-22 without this spending needing to be approved beforehand by Parliament. This is somewhat less than in 2020-21, but still much higher than in previous years.

1. Background: The Contingencies Fund

1.1 Parliamentary control of spending

The Contingencies Fund was established in 1862, and is a normal part of Parliament's control of public spending.[1]

As a general rule, all public spending is subject to Parliament's approval. The principle, according to Erskine May, is that "the Crown requests money, the Commons grant it, and the Lords assent to the grant."[2] This approval comes in several stages:

- Parliament votes on a financial resolution before considering any legislation to authorise new types of spending;
- That legislation, once passed, then gives the Government the authority, in principle, to spend money in the ways specified;
- Twice a year, Supply Estimates are presented by the Treasury to Parliament, setting out specific proposals for spending limits by each Department for a given financial year, under powers already authorised through past legislation. These Estimates form the basis of Supply resolutions which are put to the House for approval;
- Once approved, these resolutions are in turn followed by Supply and Appropriation Acts which, when passed, authorise Government departments, for a given financial year, to receive money up to the limits specified from the Consolidated Fund (effectively the Government's bank account) and apply such sums for the purposes specified in the Estimates. The authority to draw and spend such sums lapses at the end of the financial year to which the Act relates.[3]

Supply and Appropriation Acts are usually passed twice a year (July and March), based on sums and purposes set out in Main Estimates (published in April, May or June) or Supplementary Estimates (published in February).[4]

Sometimes, however, urgent spending is required before Parliament has had the opportunity to formally authorise the Estimates through Supply and Appropriation Acts. There are a few different methods by which this can happen:

- Before the new financial year starts, and before the Main Estimates have been presented, Parliament authorises a "Vote on Account" through the March Supply and Appropriation Act. This advances to each department a sum of 45% of last year's approved spending limits, to cover spending on existing services

1 Contingencies Fund Bill 2020, Explanatory Notes, paragraph 10
2 Erskine May, Financial relations between the Crown and Parliament, paragraph 33.2
3 This is a simplified explanation – much more detail is available in chapter 33 of Erskine May, particularly paragraph 33.11.
4 For more on the Supply Estimates, see the Library's briefing on Revised Government spending plans for 2020/21.

until the Main Estimates are approved through the July Supply and Appropriation Act. The amount sought in the July Act reflects the Main Estimates, less sums already advanced through the Vote on Account.

- If departments go above their spending limits or spend on areas where there was no Parliamentary authorisation to do so, this spending can be retrospectively approved through Excess Votes. The procedure for this is complex, involving reports from the Comptroller and Auditor General and the Committee of Public Accounts, and approval through "votes on excesses" in the March Supply and Appropriation Act, following the year in question;[5]
- The Contingencies Fund allows departments to receive advances of money for unapproved spending. These advances are then paid back, in year, from money subsequently approved as part of the Estimates process through Supply and Appropriation Acts. Cash is generally advanced through the Contingencies Fund in two main sets of circumstances:
  - Where existing amounts authorised by Parliament through Supply and Appropriation Acts are likely to be insufficient to meet urgent demands;
  - Where legislation establishing enabling powers to spend money in a certain way has yet to receive Royal Assent, is expected to do so soon (the legislation should have reached second reading stage and there should be an expectation that it will be passed), and the spending is required urgently.

  In both cases there should be a written statement made to the House at the earliest opportunity setting out the sums and the purpose of the advance, and the Estimate subsequently presented, from which the advance is to be repaid, should be footnoted to reference the advance already announced.

The Treasury's Supply Estimates guidance manual goes into some detail on the Contingencies Fund, and (among other things) makes it very clear that it is not intended to be used to avoid normal authorisation:

> **5.7** The use of the Contingencies Fund to finance expenditure which, either as a matter of law or of constitutional propriety, requires specific legislation is an exceptional course. The fact that the Fund exists ought never to weigh in favour of the postponement of legislation or other parliamentary authority: this course would constitute a serious abuse of the Fund and of the purposes for which it exists. Use of the Fund must be regarded as particularly exceptional for a new service, since Parliament has not previously been asked to approve spending on this activity. It is always preferable to wait for Parliament to vote the necessary provision if at all possible.
>
> **5.8** Use of the Fund can only be considered where it would clearly be contrary to the public interest to delay expenditure until parliamentary approval has been obtained and where there are no reasonable grounds to doubt that Parliament is willing to approve

5 Erskine May, Procedure on Excess Votes, paragraph 34.21

any necessary enabling legislation, the increased net cash requirement and any associated resource or capital provision.[6]

1.2 The Contingencies Fund in recent years

The Contingencies Fund Act 1974 set a limit on the total amount that could be issued from the Contingencies Fund at any one time – this was 2% of the total amount of spending authorised by Parliament in the previous financial year. The Fund has generally been used in cases where money needed to be spent ahead of income being received, and Government departments therefore found themselves in difficulty in terms of cash flow.[7]

Throughout the 2010s, the Fund provided a few billion pounds per year in cash advances, and rarely came anywhere near its limit:

The Contingencies Fund rarely provides more than a few billion pounds per year

Advances from the Fund, £ billions, not adjusted for inflation

Source: HM Treasury, Contingencies Fund accounts, multiple years

1.3 Use in the Covid-19 pandemic

The unusual nature of the Covid-19 pandemic in 2020 – its rapid onset and the large amounts of funding required – resulted in the Government introducing the Contingencies Fund Bill on 24 March 2020, which was "intended to ensure that the government can access the funding necessary in order to put appropriate safeguards in place to manage the effects of a covid-19 pandemic in the UK."[8] This Bill temporarily changed the maximum amount of funding that could be provided via the Contingencies Fund, increasing it to £266 billion (formally, the limit was raised from 2% to 50% of the previous year's

6 HM Treasury, Supply Estimates: a guidance manual, July 2011, paragraphs 5.7 and 5.8

7 For example, Contingencies Fund accounts for recent years show that some of the largest recent advances from the Fund have been in respect of the Department for Transport (where income had yet to be received from train operating companies), the Department for the Environment, Food and Rural Affairs (where money was paid out from the Rural Payments Agency to farmers and then reimbursed through the EU's Common Agricultural Policy), and NHS pension payments.

8 Contingencies Fund Bill 2020, Explanatory Notes, paragraph 20

authorised spending, which was £533 billion). The Bill raised the limit only for 2020-21, so it has no effect after 31 March 2021.

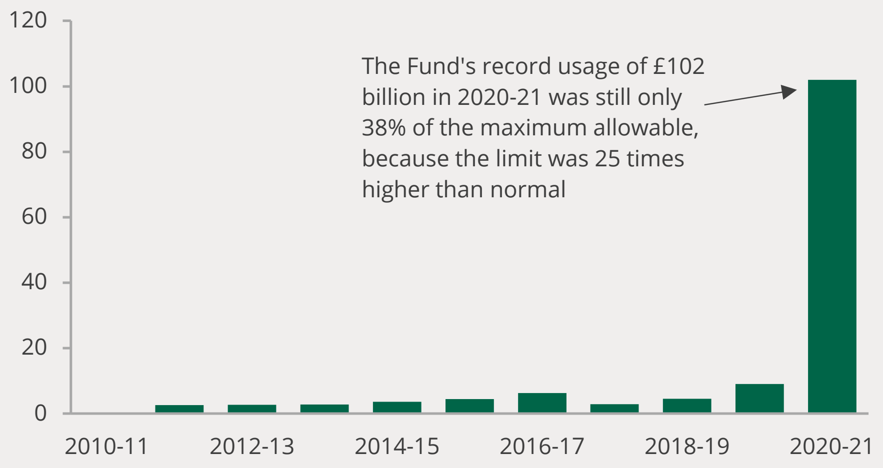
The Bill was fast-tracked through Parliament, completing all of its stages in the Commons and Lords in two days (24-25 March 2020). It was 'nodded through' at all stages (that is, no-one in either the Commons or the Lords voted against it). However, there was some concern expressed in debate (particularly from Sir Edward Davey MP) that the use of the Fund in this way was a continuation of a lack of Parliamentary scrutiny over Government spending:

> **Sir Edward Davey**: This legislation is part of the almost anachronistic supply process in this House. […] [T]his House rarely, if ever, looks at the estimates properly, analyses them in Select Committees and makes proposals about draft spending decisions. […] Our approach undermines the value for money and undermines what we are here for, and we really need to look at the estimates procedure.
>
> That is why this Bill looks so weird in many ways; it is called the Contingencies Fund Bill and we are not used to doing this sort of thing, because we have given up control over supply—it is just nodded through. The last time MPs voted against a spending request of the Government was in 1919, more than 100 years ago. We have given up properly controlling the draft estimates. Although I will be supporting the Bill tonight, because it is really important that we let this one through, I just want to say to the Minister that I hope we can reflect on this.[9]

The Supplementary Estimates for 2020-21, published on 22 February 2021, included details of the Contingencies Fund advances that had been paid out over the past year (and which were being repaid in the Estimates). These came to a total of £102 billion, over 11 times higher than its usage in any year since at least 2010.

The Fund was used more in 2020-21 than ever before

£ billions, not adjusted for inflation



Source: HM Treasury, Contingencies Fund accounts, multiple years, and Library analysis of Supplementary Estimates 2020-21, 22 February 2021

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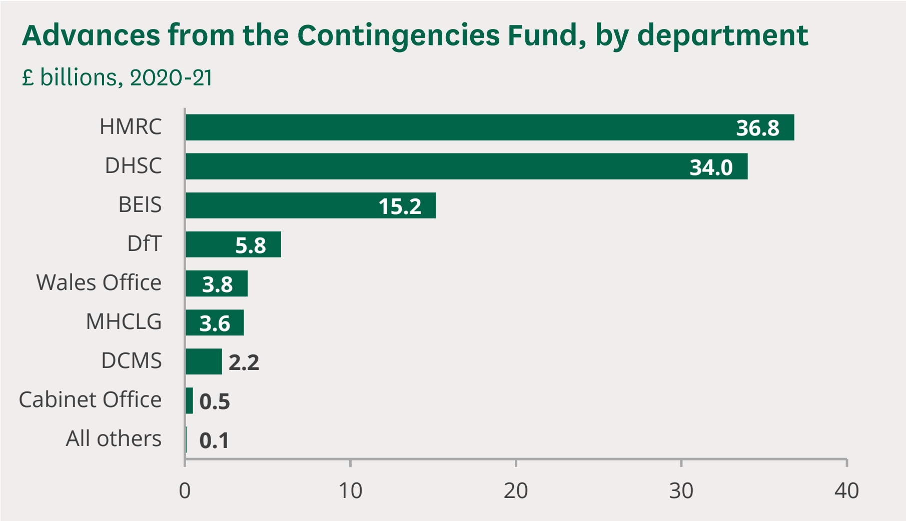
9 HC Deb 24 March 2020, c282

The departments which used the Fund the most in 2020-21 were generally those which had the highest new pressures due to the Covid-19 pandemic. The two largest were HMRC (which was responsible for the Coronavirus Job Retention Scheme, providing furlough payments) and the Department for Health and Social Care (which had much higher spending on providing healthcare).



Source: Library analysis of HM Treasury, Supplementary Estimates 2020-21, 22 February 2021

2. Effectiveness of financial scrutiny in Parliament

The UK Parliament generally has less control and influence over public spending than many other parliaments around the world. In a 2010 book chapter by OECD budget expert Joachim Wehner, the UK placed 30th out of 36 on an "index of legislative budget institutions", which ranked legislatures based on their ability to influence Government spending.[10] This took various factors into account, such as the ability of the legislature to amend the national budget, time available for scrutiny, committee capacity, and the amount of budgetary information available to parliaments.

Another paper (in the OECD Journal on Budgeting) has an even lower opinion of the House of Commons' control over budgeting, describing its "vaunted power of the purse" as having been "reduced to hollow ritual" by the 18th century and saying that "it is a model that few legislatures have emulated but most have rejected".[11] It also suggests that this is partly due to Parliament's method of approving spending late in the year – the original intention was to make the executive more wary of spending because it could not be certain of having its plans approved, but in practice it meant that Parliament was reduced only to approving spending that had already occurred rather than shaping the process.

The House of Commons has itself taken note of its lack of ability to influence spending. A report of the Procedure Committee in 1998 described the House's control over spending as very limited ("if not a constitutional myth, it is close to one"). It identified several specific issues, including the lack of time to debate Estimates and the fact that the motions on Estimates do not allow the House to influence them.[12]

Although there have been some recent changes to Estimates days debates (such that the Estimates themselves are now debated, rather than select committee reports related to them),[13] many of these issues remain. The vast majority of the Estimates cannot be amended or even debated under the current procedure, and Parliament is left with the stark choice of either accepting the Government's spending plans in full or rejecting them in full (which would almost always be treated as a matter of confidence and might therefore result in a new Government or a general election).

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10 Wehner, J., Assessing the Power of the Purse: An Index of Legislative Budget Institutions (2010)

11 Schick, A. (2002), "Can National Legislatures Regain an Effective Voice in Budget Policy?", *OECD Journal on Budgeting*, vol. 1/3, https://doi.org/10.1787/budget-v1-art15-en.

12 Procedure Committee, *Resource Accounting and Budgeting*, 31 March 1998, HC 438 1997-18

13 For more information on this, see the Library's Insight post Estimates Day debates: scrutinising spending plans from February 2018.

More recently, the Procedure Committee came to the following conclusions in its 2019 inquiry Should there be a Commons Budget Committee?

> The comparative lack of *ex ante* financial scrutiny disadvantages the House in its ability to hold Government to account, and lessens the obligation on Government to explain transparently how it decides and embarks upon expenditure. The lack of any structure for systematic quality assurance and scrutiny of Estimates means that in practice Departments are rarely required to justify in advance the requests they make for expenditure.[14]

The Committee proposed that a budget committee could carry out annual scrutiny of the Estimates, periodic scrutiny of Spending Reviews, and scrutiny of departmental Annual Reports and Accounts to check whether spending plans are carried out in reality.[15] These tasks would cover areas where there is currently comparatively little Parliamentary scrutiny, but would not intrude on the valuable work already carried out by select committees in scrutinising the work of Government departments after the fact.

Box 1: Select committees and *ex post* scrutiny

The UK Parliament's poor reputation when it comes to scrutinising and influencing spending decisions before they happen (so-called *ex ante* scrutiny) should not detract from the work done by committees in looking at the spending of departments after the fact (*ex post* scrutiny). The Treasury Committee scrutinises the work of HM Treasury and HM Revenue and Customs – this is a broad remit, and the Procedure Committee has concluded that "it discharges its heavy workload with great diligence and effectiveness". It had similar praise for the work of the Public Accounts Committee, supported by the National Audit Office, noting that "90% of the Public Accounts Committee's recommendations during the 2018–19 financial year were accepted" and describing this as a "formidable rate of success."[16]

There are other routes by which scrutiny of spending takes place in Parliament after the fact. Departmental select committees carry out scrutiny of individual projects; the National Audit Office publishes value-for-money assessments of a wide range of Government activities; and a number of debates take place in the House on financial matters.

Parliament does also have mechanisms for *ex ante* scrutiny. The Budget resolutions are debated for four days each year ahead of their approval, and the Treasury Committee undertakes inquiries into Budgets and Spending Reviews before they take effect. The flexibility of select committees in their ability to carry out inquiries into any relevant subject means that they are also able to look at spending plans. In general it is the formal ability to influence spending plans ahead of their approval which is particularly lacking within the UK's system.

The increased use of the Contingencies Fund during the Covid-19 pandemic means that even less of the Government's spending than usual has needed to be approved through the Estimates process before it can be spent. The introduction of this Bill means that this state will continue into 2021-22, albeit to a lesser extent.

Other countries have brought in a range of measures to deal with the unexpected spending pressures of the pandemic – a recent paper from the OECD summarises several different approaches, including:

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14 Procedure Committee, Should there be a Commons Budget Committee?, 9 July 2019, paragraph 36

15 Ibid., paragraph 94

16 Ibid., paragraphs 28 and 31

- Bringing in supplementary budget bills (although in some cases the requirements for economic forecasts or analysis alongside them were dropped);
- Using contingency reserves (the Contingencies Fund is an example of this, as is Norway's withdrawal of extra money from its sovereign wealth fund);
- Improvising budget procedures, sometimes using emergency powers such as decrees from heads of state to bypass the usual procedures;
- Allowing spending advances with retroactive approval under special procedures – the Netherlands, Australia and Switzerland all took measures to permit this.[17]

The same paper points out that a number of parliaments brought in extra measures to ensure oversight of these unusual procedures. One in four OECD members set up specific committees, and many legislatures added special monitoring or reporting requirements to the new funding provided; the UK did not.

[17] OECD, Legislative budget oversight of emergency responses: Experiences during the coronavirus (COVID 19) pandemic, 25 September 2020

3. The effect of the Bill

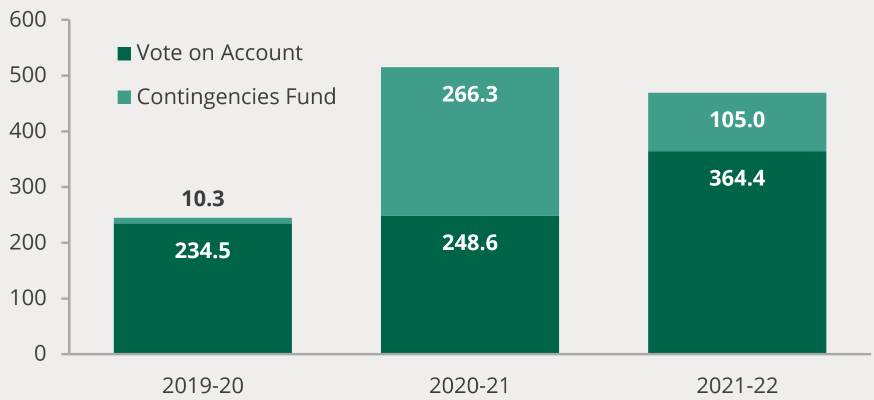
Much like the equivalent Bill passed last year, which is now the Contingencies Fund Act 2020, this Bill contains two clauses (the second of which only gives the Bill its short title, so won't be discussed here).

The first clause would set the maximum capital of the Contingencies Fund – that is, the maximum amount that can be issued from the Fund at any one time – to 12% of the previous year's authorised supply expenditure, up from the normal 2% but down from 2020-21's 50%. Total authorised supply expenditure in 2020-21 was £874.6 billion,[18] which means that if this Bill is passed, the maximum capital of the Fund in 2021-22 will be £105.0 billion, less than half of what it was in 2020-21.

Although the amount available from the Contingencies Fund would be much lower than it was in 2020-21, the fact that the amount of money provided through the Vote on Account procedure is dependent on the amount spent in the previous year (see section 1.1) means that Government departments will have much more money than usual from this source. Taken together, the Government would theoretically have access to advances of up to £469 billion from these sources, without any Parliamentary approval required in advance.

Total funding available in advance of Parliament's approval

£ billions, maximum amount theoretically available rather than amount used



Source: Library calculations based on HM Treasury, Supplementary Estimates for 2018-19, 2019-20 and 2020-21, and Vote on Account for 2019-20, 2020-21 and 2021-22

The Bill's first clause also includes a time limit, in that it would only have effect after 31 March 2021 and before 1 April 2022. After this point, the capital limit would revert to its usual 2%. If this limit were in place instead of the proposed 12%, the Contingencies Fund's capital limit for 2021-22 would be £17.5 billion.

18 HM Treasury, Supplementary Estimates 2020-21, 22 February 2021 – the relevant figure is the total net cash requirement.

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