LEGAL AUTHORITY AND FINANCIAL AUTHORITY

There are two aspects to any governmental action involving the expenditure of public money—that is, to the incurring of expenses or of capital expenditure.

The first aspect is the legal authority of the Government or its agents to take the proposed action (in respect of which the expenditure or expenses are to be incurred) at all. This legal authority may be an inherent legal power possessed by the Government, it may be one conferred by statute, or it may be a combination of both.

The second aspect is the authority to expend public money for the purpose of performing the action, should this be required. Ministers do not have authority to make payments out of public funds, even for activities that may otherwise be lawful, without parliamentary authority. A payment made out of public funds without parliamentary authority is unlawful. Authority to expend public money can be obtained only by Parliament making an appropriation for the proposed action or otherwise authorising the payment. An appropriation is a legislative provision that permits amounts of expenses or capital expenditure to be incurred for activities that fall within the defined scope of the provision. A financial authority for public money to be expended may be given separately rather than through an appropriation. Principally this is done by means of a grant of imprest supply. However, such an authority lacks the specificity and accountability attendant on an appropriation. Therefore it is of temporary effect and is required to be absorbed into the regular appropriation process.

Thus, whatever the derivation of the Government’s legal authority to perform an action, that authority is distinct from the appropriation enabling it to discharge financial liabilities arising from the action. The concepts of legal authority and appropriation can be explicitly linked if the provision of an appropriation is made a necessary legal condition of the activity in question; for example, where a Government contract was made “subject to” an appropriation being made by Parliament, and where a subsidy was made payable out of moneys standing in a particular account and insufficient funds had been appropriated to the account.

1 Public Finance Act 1989, s 5; R (Khan) v Secretary of State for Health [2003] EWCA Civ 1129, [2004] 1 WLR 971 at [91].
2 Public Finance Act 1989, s 4A.
3 Victoria v Commonwealth (1975) 134 CLR 338 at 396.
4 Commonwealth v Colonial Ammunition Co Ltd (1924) 34 CLR 198 at 224–225.
5 Churchward v R (1865) LR 1 QB 173.
6 Desailly v Brunker (1888) 9 LR NSW (L) 536.
But even in such a case, there is still a conceptual distinction between the enabling authority and the spending authority, though the former may be defined by reference to the latter. However, defining the legal power to do something by reference to the financial authority to effect it is comparatively rare.

Sometimes the same statute provides, in separate sections, the legal authority for both the activity and the appropriation. This type of appropriation is known as “permanent legislative authority”. More often the statute conferring the legal authority on the Government to undertake certain activity does not make the appropriation itself, but contains a section contemplating the subsequent appropriation by Parliament (through its annual appropriations) that is necessary to discharge the financial obligations arising from the activity. In this case the need for an annual appropriation is made clear explicitly in the legislation, but the effect is the same even if the statute is silent on the matter; an annual appropriation is still necessary to give any financial authorisation necessary to carry out the activity.

In any case where “expenses” are incurred under the authority of an appropriation, this means expenses measured in accounting, not necessarily legal, terms. However, any expenses incurred may well constitute legal liabilities too. Indeed the fact that a legal liability exists may be an important element in determining, in accounting terms, whether there is an expense needing to be recognised in the Crown’s accounts, and thus requiring an appropriation.

**EFFECT OF AN APPROPRIATION**

An appropriation has only a limited effect. It is facilitative; it allows the Crown to incur expenditure or satisfy a financial obligation that could not otherwise be incurred or satisfied. But while an appropriation enables the Government to spend public money and discharge its financial commitments, it does not require the Government to take these actions. An appropriation imposes no general duty on the Government to exercise the spending power thus granted, nor does it in itself confer a contractual right to receive a payment. A direction from Parliament requiring something actually to be done is effected separately from the appropriation process.

An appropriation does not enable the Crown, a department or anyone else to do something they are not otherwise legally authorised to do; the existence of an appropriation does not make lawful something that is unlawful. Thus, the fact that appropriations had been made in respect of certain departmental activities did not authorise the department to undertake those activities when they were not within the department’s functions as defined in its parent legislation. The Auditor-General consequently refused to sanction expenditure on them, even though there was an appropriation for them. Nor does the fact that Parliament has appropriated funds for a particular purpose render disbursements pursuant to that appropriation immune from judicial review. The presumption is that Parliament in appropriating funds intends that they be used in a manner that complies with the legal principles developed by the courts to apply to anyone exercising a public power.

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7 Public Finance Act 1989, s 2(1).
8 Archives and Records Association of New Zealand v Blakeley [2000] 1 NZLR 607 (CA) at [70] and [79].
9 New South Wales v Commonwealth (1908) 7 CLR 179 at 190 per Griffith CJ.
10 R v Colonial Treasurer (1878) 4 NZ Jur (NS) 47 (SC); Awatere Road Board v Colonial Treasurer (1887) 5 NZLR SC 372.
13 R v Criminal Injuries Compensation Board, ex parte P [1995] 1 All ER 870 (CA) at 883.
It also follows from the requirement for an appropriation to be made before public money can be expended that the fact that a statute has imposed an obligation on the Crown or its agents to pay money (for example, to pay benefits) does not in itself authorise that payment unless an appropriation for it has been made. For this reason statute now makes a standing appropriation allowing Crown liabilities to be settled. But even apart from this provision, the Crown is not excused from legal liabilities arising from statute, contract or otherwise, merely because no appropriation has been made to satisfy them. Judgment could still be entered against the Crown in these circumstances. Nevertheless, parliamentary control of public expenditure was formerly thought to be important, since an appropriation was specially required to satisfy a judgment debt where no other legal appropriation for it existed. In theory Parliament could have repudiated liability by refusing to provide an appropriation to satisfy the judgment. Now, however, it is provided that a judgment debt entered against the Crown following legal proceedings is sufficient authority for payment to be made even where Parliament has made no specific appropriation for the purpose. That is, the debt is subject to a standing appropriation under permanent legislative authority.

**PAYMENT OF PUBLIC MONEY**

Money may only be paid out of a Crown Bank Account or a departmental bank account in accordance with an appropriation or other statutory authority. Formerly there was a requirement for periodic certification from the Auditor-General before funds could be released. This was repealed in 2004 as largely symbolic in an accrual accounting context and offering little practical check on public expenditure.

The Treasury is required to report continuously to the Auditor-General on all actual expenses and capital expenditure incurred (whether under an appropriation or other authority) and to relate this expenditure to the amounts of authorised expenditure. The Auditor-General may direct the Minister of Finance, the Treasury or a department, as the case may be, to stop payments out of a Crown Bank Account or a departmental bank account that the Auditor-General considers to be unlawful. If the Auditor-General considers that expenditure has been incurred that was not lawful or was in excess of legal authority, the Auditor-General may direct the Minister concerned to report this opinion to the House within 20 working days. But the Minister may also set out in the report any contrary opinion on the Minister’s part about the legality of the expenditure. The Auditor-General has exercised the power to direct a Minister to report to the House on one occasion. The Auditor-General, in auditing public accounts, also checks for

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14 Public Finance Act 1989, s 6(d).
15 New South Wales v Bardolph (1934) 52 CLR 455.
16 Crown Suits Act 1908, s 32.
17 Rayner v R [1930] NZLR 441 (CA) at 457–458.
19 Public Finance Act 1989, s 65V(1).
21 Public Finance Act 1989, s 65Y.
22 Public Finance Act 1989, s 65ZA.
23 Public Finance Act 1989, s 65ZA.
assurances that an entity has operated within the scope of an appropriation. In practice, this audit of appropriations or other authorities is the most important way in which the Auditor-General examines whether funds have been properly applied or committed.

In exercising these “controller” functions, the Auditor-General is not concerned only with the existence of an appropriation or authority; the Auditor-General is also concerned to establish that the purpose to which any money to be paid from the Crown Bank Account is to be put is itself lawful. Where the proposed use of public money is not itself lawful, the Auditor-General may exercise the power to forbid payment, notwithstanding the existence of an appropriation.25

The Auditor-General’s opinion as to the validity of expenditure is not conclusive should the expenditure be subsequently challenged as not having been authorised.26 If Parliament fails to pass detailed appropriations early in the financial year, this can seriously compromise the Auditor-General’s ability to carry out the controller function.27 The House’s financial procedures are now designed to ensure that detailed appropriations are made early enough in the financial year to prevent this occurring. A lack of specification for appropriations effected by way of imprest supply can undermine the effectiveness of the Auditor-General’s role, though this is ameliorated by the requirement since 2005 for continuous reporting to the Auditor-General on all expenses incurred.28

DURATION OF APPROPRIATIONS

Permanent

Parliament is not limited to a particular period in specifying the duration of an appropriation. In respect of some matters, the Act that provides for the activity itself goes on to authorise an appropriation for the purpose of the activity for an indefinite period. Expenditure of such a kind, permanent legislative authority, does not lapse (though the appropriation provision may, of course, be repealed). The exact proportion of total Government expenditure that is permanently appropriated in this way varies each year. In the 2013/14 financial year it was 14.5 per cent; in the 2014/15 financial year it was 15.1 per cent.29 Permanent appropriations are not new. The New Zealand Constitution Act 1852 (UK) provided for defraying certain expenses without the necessity of seeking an annual appropriation from Parliament. The expenses covered in this way included the salaries of the Governor and the judges, and the cost of collecting State revenues.

Judges’ salaries are an example of expenditure for which there is permanent legislative authority.30 The putting of the authority to pay judicial salaries on a permanent basis rather than leaving them to be voted annually is of high symbolic importance, as it demonstrates the independence of the judiciary from financial pressures. Parliament could, of course, repeal the section of the Act that makes judicial salaries a permanent charge on public funds, but to do that it must take a highly visible (and probably controversial) positive legislative action, rather than merely omitting an item from the annual Estimates. Other expenditure made under permanent legislative authority includes the salaries and allowances of Ministers and other members of Parliament;31 the salaries of the Ombudsmen, the Controller and Auditor-General and the Deputy Controller and Auditor-

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26 Auckland Harbour Board v The King [1924] AC 318 (PC).
28 Public Finance Act 1989, s 65Y.
29 Information supplied by the Parliamentary Library, February 2016.
30 Judicature Act 1908, s 9A.
31 Members of Parliament (Remuneration and Services) Act 2013, s 8(4).
General, the Government subsidy to various superannuation schemes and the repayment and the servicing of debt. Debt is payable under permanent legislative authority as an assurance to those from whom the Government borrows that the sums required to discharge its liabilities will automatically be forthcoming each year. But the fact that permanent legislative authority for an appropriation exists does not preclude Parliament making additional appropriations for the same activity on an annual basis if it sees fit.

While there may be good reasons for permanent appropriations in particular cases, in general permanent appropriations are disapproved of as reducing Parliament’s annual control of public expenditure. All expenditure under permanent legislative authority must be reported to the House along with the annual Estimates documents presented with the main Appropriation Bill.

Annual
The standard appropriations are annual appropriations limited to the financial year to which the Appropriation Act under which they are made relates. They lapse at the end of that year. These annual appropriations include money already spent and expenses already incurred in that year under interim authorisations. An Appropriation Act passed near the start of the financial year enacts the main appropriations, but usually a set of supplementary appropriations relating to the financial year is made before the year closes. Most Government expenditure is appropriated annually in these ways.

Multi-year
Rather than appropriations being made annually or for an indefinite period, appropriations can be expressed to apply for a defined period covering a number of years. In the early years of responsible government there were two years (1857 and 1859) in which Parliament did not meet, and for these periods, in the expectation of a long gap before Parliament would sit again, supply was voted for more than 12 months. For a few years afterwards there was no automatic assumption that Parliament would meet every year and a section was inserted in the annual Appropriation Act allowing the Act’s conditional extension for up to a further year if Parliament had not met sooner. The practice of including such a section in the Appropriation Acts ceased in 1865.

There is a provision in the public finance legislation contemplating the possibility that Parliament might make appropriations for more than one year—that is, a multi-year appropriation. It is always open to Parliament in making an appropriation to express it as applying for any number of years. In that sense a provision contemplating multi-year appropriations is of no legal significance. But it does acknowledge the existence of a new standard type of appropriation that may last for up to five years. Almost all multi-year appropriations have a specified commencement and expiration date; however, Budget 2014 introduced nine multi-year appropriations under Vote Parliamentary Service where the period of the appropriation was the “Term of the 51st Parliament”.

The first multi-year appropriation was made in the 1994/95 financial year to provide for the settlement of claims under the Treaty of Waitangi over the following five years. In the next year this multi-year appropriation was extended by a year.
The use of multi-year appropriations has increased significantly in recent years. The 2008 Budget included 20 multi-year appropriations; this increased to 46 such appropriations in Budget 2015. Because of concern that multi-year appropriations are not subject to annual parliamentary scrutiny, a select committee has sought the Auditor-General’s clarification of such a proposed appropriation and assurances that the risks to the Crown of the appropriation proving insufficient towards the end of the period were minimal.41

Akin to multi-year appropriations, although made outside the normal appropriation process, are funding agreements between the Minister of Finance and the Governor of the Reserve Bank concerning the income of the bank that may be applied in meeting its expenditure. These agreements are usually for five-year periods and are not effective unless ratified by a resolution of the House.42

INTERIM AUTHORISATIONS

Parliament could decide before the financial year commences upon the amounts to be appropriated for the coming year and appropriate them accordingly, so that from 1 July the expenditure of public money could proceed on a settled basis. In practice, it has not been found possible to settle all the matters relating to a financial year before the year begins, and Parliament does not finish making the basic financial provision for the current year until some months of it have elapsed. Indeed, until 1985 it was uncommon for parliamentary sessions even to commence before the beginning of a new financial year (then commencing on 1 April), making it impossible to provide for public expenditure prospectively on an annual basis. Even when Parliament did meet some time before the financial year commenced, it showed no inclination to alter the usual cycle of financial business by making detailed appropriations prospectively.

In these circumstances an interim or temporary spending authority, called imprest supply, is used to confer authority to incur expenditures up to a specified limit43 from 1 July (when the previous year’s annual appropriations lapse) until new annual appropriations are made. In practice, other interim spending authorities may be necessary during the financial year. They authorise expenses and capital expenditure separately from and ahead of any annual appropriations that are made.44 Imprest supply is a distinct and separate spending authority from the appropriations made by the Appropriation Acts or other legislation.45 Occasionally interim authority to incur such expenditures in advance of an Appropriation Act may be given by legislation other than imprest supply.46

An Appropriation Act supersedes any Imprest Supply Acts applying to the financial year. The first Imprest Supply Act for each year contains provision for the sections authorising imprest supply to be repealed when the main Appropriation Act for the year comes into force. The second and any subsequent Imprest Supply Acts for the year will also include repeal provisions, usually for repeal at the close of 30 June of the financial year in question. Their interim authority is superseded by the final Appropriation Act for the financial year.47 Imprest Supply Acts anticipate their temporary nature by expressly referring to the interim authorities that they make being charged in the manner to be set out in an Appropriation Act.

42 Reserve Bank of New Zealand Act 1989, s 161(2); see, for example: (4 June 2015) 706 NZPD 4346–4355.
44 Archives and Records Association of New Zealand v Blakeley [2000] 1 NZLR 607 (CA) at [71].
45 Archives and Records Association of New Zealand v Blakeley [2000] 1 NZLR 607 (CA) at [77] and [78].
46 See, for example: New Zealand Public Health and Disability Act 2000, s 113 (setting up of district health boards).
47 Appropriation (2014/15 Supplementary Estimates) Act 2015, ss 6(6)(a) and 8(4)(a).
In this way they have been described as making “fictional” appropriations.\footnote{49} They then either expire or are spent when an Appropriation Act is passed. If no Appropriation Act were to be passed, the Imprest Supply Acts for the year would operate as distinct authorisations for expenses to be incurred and money to be paid on the bases set out in those Acts.\footnote{50}

An Imprest Supply Act does not specify in detail how the authorisations that it makes are to be exercised; it confers a general authority to spend up to a specified amount. This lack of information as to how the authority granted under imprest supply is to be used has been criticised by the Auditor-General as the constitutional equivalent of a blank cheque.\footnote{51}

However, no legal authority is unfettered. The Auditor-General’s ability to question the lawfulness of the objects of expenditure incurred under imprest supply is unimpaired; an Imprest Supply Act, like an Appropriation Act, does not authorise expenditure that it is not otherwise lawful for the Government or its agencies to incur. Furthermore, there may be extrinsic evidence of the purposes of the imprest supply authorisations that can be taken as factors in the legal definition of the scope of the authority given by an Imprest Supply Act. Thus the explanatory note to the bill may set out how the authorisations are to be charged;\footnote{52} and there must be a distinct Cabinet decision authorising the use of imprest supply for each particular purpose.

The Treasury’s obligation to report continuously during the financial year on actual expenses and capital expenditure incurred includes any incurred under the authority of imprest supply.\footnote{53} The Auditor-General is entitled to insist on a Cabinet decision being produced as authority for funds to be devoted to particular expenditure under the authority of an Imprest Supply Act. In this way the Government takes explicit responsibility for the way it uses imprest supply.

**Types of Appropriation**

Seven types of appropriation are contemplated for the annual appropriations made by Parliament.\footnote{54} Separate appropriations must be made for each category of expenses or capital expenditure falling into each of these types. The appropriations are set out in detail in the Estimates and other supporting information presented to the House in respect of each Appropriation Bill.\footnote{55} An appropriation made by any other Act is managed and accounted for in the same way as these types of appropriation.\footnote{56} Within each type of appropriation there are a number of separate appropriations. Each particular appropriation is limited in its scope, and can be applied only to activities falling within the scope as defined.\footnote{57}

The seven types of appropriation are:

- appropriations for output expenses
- appropriations for benefits or other unrequited expenses
- appropriations for borrowing expenses
- appropriations for other expenses
- appropriations for capital expenditure

\footnote{48 For example: Imprest Supply (First for 2015/16) Act 2015, s 8.}
\footnote{49 Archives and Records Association of New Zealand v Blakeley [2000] 1 NZLR 607 (CA) at [77].}
\footnote{50 New South Wales v Bardolph (1934) 52 CLR 455 at 479 per Evatt J; Archives and Records Association of New Zealand v Blakeley [2000] 1 NZLR 607 (CA) at [78].}
\footnote{52 See, for example: Imprest Supply (Third for 2001/02) Bill (168–1) (explanatory note, 4 December 2001) (funding a capital injection into Air New Zealand Ltd).}
\footnote{53 Public Finance Act 1989, s 65Y.}
\footnote{54 Public Finance Act 1989, s 7A.}
\footnote{55 Public Finance Act 1989, ss 4–15F.}
\footnote{56 Public Finance Act 1989, s 11(2).}
\footnote{57 Public Finance Act 1989, s 9(1). For guidance in writing scope statements for appropriations, see: Treasury “A Guide to Appropriations” (November 2013) at 11–12.
appropriations for expenses and capital expenditure to be incurred by an intelligence and security department
  - multi-category appropriations.

The first four of these types of appropriation relate solely to operating expenditure.

**Appropriations for output expenses**

These are the payments for the cost of producing the goods and services that a department or third party is to supply to the Government to contribute to realising the Government’s desired outcomes. They consist of policy advice, regulatory functions, inspection and administrative services and generally the “core” activities of Government. They are organised into discrete groupings of similar products, called classes of outputs. An output expense appropriation covers a single class of outputs. The output may itself be supplied by a Government department or a non-departmental source.  

**Departmental outputs**

How the Government decides what outputs it wishes departments to supply is a matter for it to determine. From 1993/94 to 2002/03, Ministers entered into annual purchase agreements with chief executives of their departments. These agreements specified the individual outputs the department was to supply, defined the standards against which the department’s performance in delivering the outputs was to be judged and specified the costs involved. While called agreements, they were not legally binding contracts, as both parties to them (the Minister and the departments) were elements of the same entity—the Crown; but they could form an element of a legally binding direction by the Minister to the chief executive.

From the 2003/04 financial year onward, purchase agreements were replaced by outputs plans setting out detailed information about the service performance intentions of departments and linking these services explicitly with the outcomes set out in the department’s longer-term statement of intent. They are still regarded as an agreement between the Minister and the chief executive and thus an accountability document for the purpose of assessing the department’s performance against the Government’s expectations; but there is less emphasis in output plans than there was in purchase agreements on the contractual nature of the relationship, and more on the Government’s strategic goals, which the department is expected to contribute towards achieving.

While output plans may still be produced when Ministers require them, they have largely been replaced by the Treasury’s requirement for departments to provide concise explanations for appropriations and reportable outputs in terms of what is intended to be achieved and how performance will be assessed, in the Estimates documentation and in their statements of strategic intentions and performance expectations.

**Non-departmental outputs**

Besides outputs supplied by departments, the Government may obtain services from other organisations, for which appropriations are made. The extent to which it does so will depend to some degree upon the organisation of the public sector—and in particular the extent to which services are delivered by public sector organisations.

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58 Public Finance Act 1989, s 7A(2).
60 For example: under the Defence Act 1990, s 25(2)—see Douglas White Qc and Graham Ansell, report to the State Services Commissioner on review of the performance of the Defence Force (20 December 2001) at [18].
service departments as distinct from Crown entities. A shift of appropriations from outputs supplied by departments to outputs supplied by non-departmental sources, particularly Crown entities (which have been described as forming a “second tier” of Government agencies), has been remarked.\(^{62}\) Some of these organisations the Government may effectively control—as it does certain (but by no means all) Crown entities, for example—while others are entirely independent of the Government.

Crown entities must also prepare statements of intent setting out their medium-term intentions, and statements of performance expectations on an annual basis, which together provide an accountability base.\(^{63}\) There may also be a purchase agreement between the Minister and the provider specifying the outputs to be supplied. The management of such purchase agreements is often undertaken by the Minister’s department on the Minister’s behalf. Purchase agreements entered into between a Minister and a Crown entity may have legal force, unlike those between a Minister and a department.\(^{64}\) Where outputs are supplied by a non-departmental entity that is not required by legislation to report to the House on its service performance (most Crown entities are now required to do so), the Minister responsible for the appropriation must report end-of-year performance information on what has been achieved with the appropriation.\(^{65}\)

### Appropriations for benefits or related expenses
These appropriations consist of transfer payments that do not require the recipient to provide any goods or services (outputs) in return. They consist mainly of benefits (such as social welfare benefits) paid to people who have a legal entitlement to them. They also include any discretionary grants that are disbursed.

### Appropriations for borrowing expenses
These appropriations consist of payments of interest or other financing expenses in respect of any loan or public security.

### Appropriations for other expenses
Appropriations for other expenses include those incurred by a department other than in the production of a good or service—for example, the costs of restructuring, or losses incurred in selling or disposing of departmental assets at below market value. They include expenses incurred by the Crown (other than by a department) in the disposal or extinguishment of a Crown asset at less than fair market value, such as land or resources transferred in settlement of a claim under the Treaty of Waitangi.\(^{66}\) However, if a Crown asset had no market value when sold or extinguished, any loss does not require an appropriation.\(^{67}\) Grants to non-Governmental organisations to develop their capacity rather than to produce deliverable outputs also fall under this category. Overseas development aid is appropriated under this type of appropriation. Other ex gratia payments and gifts may be appropriated under the other expenses category too.

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\(^{63}\) Crown Entities Act 2004, ss 138, 139, 149B and 149C.


\(^{65}\) Public Finance Act 1989, s 15G(2)(b), (3).

\(^{66}\) See, for example: Appropriation (1995/96 Supplementary Estimates) Act 1996, s 9 (gift of pounamu to Ngāi Tahu).

Appropriations for capital expenditure and capital injection authorisations

Capital expenditure means the cost of assets acquired or developed (including tangible, intangible, or financial assets and any ownership interest in entities, but excluding inventories). Capital expenditure means the cost of assets acquired or developed (including tangible, intangible, or financial assets and any ownership interest in entities, but excluding inventories). Departments (except for intelligence and security departments) can fund routine capital expenditure from their balance sheet without any further appropriation. Departments may incur capital expenditure from the proceeds of the sale of departmental assets or from disposing of their own working capital. If a department or Office of Parliament seeks an increase in its balance sheet, a capital injection must be authorised, and information on the purpose, nature, and amount of the injection is included in the information supporting the Estimates. Capital injections may also be authorised on an interim basis under an Imprest Supply Act.

All capital expenditure on non-departmental assets and all equity or loan finance contributed by the Crown to non-departmental bodies or other persons is appropriated under this head. Thus payments to provide for the purchase or development of capital assets (but not inventories) to be held as non-departmental assets are appropriated as capital expenditure. Such assets (for example, State highways and national parks) are regarded as part of the Crown estate but do not contribute to the production of outputs by a department. Any loan made by the Crown to another person or to the Government of another country requires a capital expenditure appropriation.

Appropriations for expenses and capital expenditure to be incurred by an intelligence and security department

All of the above types of appropriations for expenses and capital expenditure are aggregated into a single appropriation for each intelligence and security department.

Multi-category appropriations

Multi-category appropriations consist of two or more categories of spending within a single appropriation. The categories of spending must be of the output expense, other expense, or non-departmental capital expenditure appropriation types. The expenditure in a multi-category appropriation must all contribute to a single overarching purpose. The Minister of Finance must approve the creation of a multi-category appropriation.

These appropriations form a structure that affords a degree of flexibility to the funding of various activities, with a focus on achieving specific results. In approving such an appropriation, the House agrees to the total amount of the multi-category appropriation, and the scope of each of the various categories of spending within the appropriation is defined. In addition, the budget documentation will indicate the amount of spending to be targeted to each category of spending; however, the appropriation Minister can shift appropriated funding between categories within the appropriation the better to achieve the desired outcome, without a need for Parliament to approve the shift in resources.

68 Public Finance Act 1989, s 2(1).
69 Public Finance Act 1989, s 24(1).
70 Public Finance Act 1989, ss 12A and 15E.
71 Public Finance Act 1989, s 12B.
72 Public Finance Act 1989, s 65P.
73 Public Finance Act 1989, s 7A(1)(g).
74 Public Finance Act 1989, s 7B(b).
75 Public Finance Act 1989, s 7B(a).
AGGREGATIONS OF APPROPRIATIONS

Although Parliament makes hundreds of individual appropriations in the Appropriation Acts, it is convenient for these appropriations to be grouped for the purposes of administration and presentation. For this reason appropriations are grouped into votes. Each vote includes appropriations that are the responsibility of a designated Minister or Ministers, and it is administered by one department (the appropriation administrator), though a department may administer more than one vote.\(^{76}\) In order to facilitate collaboration between departments, departments other than the appropriation administrator can incur expenses against appropriations for departmental expenses or multi-category appropriations; this must be done under the direction of the appropriation Minister or with the agreement of the appropriation administrator.\(^{77}\)

In the case of the Offices of Parliament, the Office of the Clerk and the Parliamentary Service, the Minister responsible for the votes administered respectively by them is the Speaker.\(^{78}\) Select committees, in their examination of the Estimates, may seek explanations of the need for the creation of a particular vote.\(^{79}\)

TRANSFERRING APPROPRIATIONS

Though appropriations for different classes of outputs are separate appropriations, transfers of amounts appropriated from one class of outputs to another class within the same vote can be made by Order in Council.\(^{80}\) This procedure is used to deal with a small number of matters arising at the end of the financial year. They are usually confined to matters recognised after the Supplementary Estimates have been prepared.\(^{81}\)

The amount transferred by Order in Council cannot increase an appropriation for a class of outputs by more than five per cent in any year, and the total amount appropriated for all classes of outputs in a vote must be the same. Only one transfer to another class of outputs can be made under this power in any one year.\(^{82}\) The Order in Council transferring appropriations between classes of outputs must be made before the end of the financial year.\(^{83}\) A clause confirming such an Order in Council must be included in an Appropriation Bill introduced in the next financial year.\(^{84}\) This bill is usually called the Appropriation (Confirmation and Validation) Bill. However, a transfer of an appropriation by Order in Council is valid whether or not confirming legislation is introduced or enacted.\(^{85}\)

LENDING

Except as expressly authorised by any Act, the Crown must not lend money to a person or organisation.\(^{86}\) The Minister of Finance may lend money if it appears to him or her necessary or expedient in the public interest to do so, and may lend money to a foreign Government for the purposes of economic development or

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\(^{76}\) Public Finance Act 1989, s 2(1).
\(^{77}\) Public Finance Act 1989, s 7C(2)(c).
\(^{78}\) Public Finance Act 1989, ss 2(1) and 7C(3), (4).
\(^{80}\) Public Finance Act 1989, s 26A.
\(^{81}\) Archives and Records Association of New Zealand v Blakeley [2000] 1 NZLR 607 (CA) at [81].
\(^{82}\) Public Finance Act 1989, s 26A(1).
\(^{83}\) See, for example: Public Finance (Transfers Between Outputs) Order 2015.
\(^{84}\) Public Finance Act 1989, s 26A(2).
\(^{85}\) Archives and Records Association of New Zealand v Blakeley [2000] 1 NZLR 607 (CA) at [80].
\(^{86}\) Public Finance Act 1989, s 65K.
otherwise to assist the inhabitants of that country. Any such loans must be made from a capital expenditure appropriation or under other statutory authority.

**EMERGENCY EXPENSES AND CAPITAL EXPENDITURE AND CAPITAL INJECTIONS**

Expenses and capital expenditure may be incurred to deal with emergencies. The Minister of Finance may approve the incurring of expenses or capital expenditure when any state of emergency or civil defence emergency is declared or any other situation arises that affects the public health or safety of New Zealand or any part of it, and which the Government declares to be an emergency. Public money may then be spent in accordance with the approval even though it has not been appropriated. In the case of an emergency or disaster, capital injections may also be approved by the Minister of Finance without being authorised by an Appropriation Act, but a statement about such injections must be included in the Government’s annual financial statements and an Appropriation Bill. Provisions to incur expenses or capital expenditure were used in 2010/11 immediately after the Christchurch earthquake of February 2011.

There is no requirement for the emergency to have arisen after the passing of the Appropriation Acts, nor is there any limit on the amount that might be expended under this section (until 1953 there was a limit on the amount that could be expended in any year). The Minister may approve emergency expenses or capital expenditure even where Parliament has appropriated money for the same purpose. All emergency expenses and expenditure must be included in the annual financial statements of the Government and in the following year’s Appropriation Bill for confirmation by Parliament though this does not affect the validity of such expenditure.

**APPROVAL OF EXCESS EXPENSES AND CAPITAL EXPENDITURE**

After Parliament has passed the Appropriation Acts for the current financial year, it may become apparent that, notwithstanding the Supplementary Estimates, the amounts appropriated are insufficient to cover expenditure under a particular appropriation. The Minister of Finance has authority to approve the incurring of expenses or capital expenditure in respect of any appropriation in the last three months of the year in these circumstances. The Minister’s approval must be given during the financial year or within three months of its end.

The amounts the Minister may approve under this provision in any financial year must not exceed $10,000 or more than two per cent of the total amount appropriated for that appropriation, whichever is the greater.

All such expenses or capital expenditure must be included in an Appropriation (Confirmation and Validation) Bill for confirmation by Parliament (though its validity does not depend on confirmation). A statement of such excess expenses or expenditure must also be included in the annual financial statements of the

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87 Public Finance Act 1989, ss 65L and 65M.
88 Public Finance Act 1989, s 65P.
89 Public Finance Act 1989, s 25(1), (2).
90 Public Finance Act 1989, s 25(4).
91 Public Finance Act 1989, s 25A.
93 Public Finance Act 1989, s 25(5).
94 Public Finance Act 1989, s 26B(1), (2).
95 Public Finance Act 1989, s 26B(2).
96 Public Finance Act 1989, s 26B(4), (5).
Government and in the annual report of the department administering the vote concerned.97

**UNAPPROPRIATED OR UNAUTHORISED EXPENSES AND CAPITAL EXPENDITURE**

It is unlawful for expenses or capital expenditure to be incurred without appropriation or other authority from Parliament.98 Wherever any such expenses or expenditure are incurred, any person or persons responsible may themselves incur liability for the illegality. However, where the illegality was perpetrated in good faith (and not, for instance, dishonestly), it is likely that Parliament will wish to regularise the position, remove any legal liability arising, obviate recovery action being initiated in respect of any unauthorised payments that have been made, and provide for obligations that have been entered into to be satisfied out of lawfully appropriated funds.

Therefore, an Appropriation (Confirmation and Validation) Bill (or other legislation) may seek to validate such expenses or expenditure.99 Where validation of unappropriated expenses is sought by means of an Appropriation Bill, the Minister of Finance must present a report to the House setting out the amount of each category of expenses or capital expenditure so incurred and an explanation from the Minister responsible for them.100 A statement of such unappropriated or unauthorised expenses must also be included in the annual financial statements of the Government and in the annual report of the department administering the relevant vote.101

Unless and until validated by Parliament, unappropriated or unauthorised expenses and capital expenditure remain unlawful.

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97 Public Finance Act 1989, s 26D.
98 Public Finance Act 1989, ss 4(1) and 26C(1).
99 See, for example: Appropriation (Parliamentary Expenditure Validation) Act 2006, s 5 (validating expenditure under Vote Parliamentary Service that may have been outside the scope or purpose of an appropriation or other enactment; see also: discussion under “Payment of public money” p 525 and footnote 24); Appropriation (1997/98 Financial Review) Act 1999, s 7 (validating an unquantified portion of expenses incurred in providing business capability improvement grants outside the scope of the appropriation for such grants).
100 Public Finance Act 1989, s 26C(2).
101 Public Finance Act 1989, s 26D.