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Treasury Circular 2018/05

Unrestricted Distribution

Directors of Finance/Chief Accountants

Contact for Enquiries: Treasury Vote Teams or Vote Managers

UNAPPROPRIATED EXPENSES AND CAPITAL EXPENDITURE 2017/18

1. This circular provides the information and templates for the 2017/18 unappropriated expenditure process. For simplicity, this circular uses the term 'unappropriated expenditure' to mean, except where stated otherwise:
 - expenses or capital expenditure in excess, or outside the scope, of existing appropriations
 - expenditure without appropriation, or
 - capital injection made without authority or approval

Mechanisms for Addressing Potential Unappropriated Expenditure

2. The following table outlines the provisions for avoiding and remedying potential unappropriated expenditure:

Type of approval	
Order in Council	Section 26A of the Public Finance Act (PFA) provides for fiscally neutral transfers of up to 5% between output expense appropriations within a vote . These transfers are effected by way of an Order in Council to be made prior to 30 June.
Minister of Finance approval	Section 26B of the PFA allows the Minister of Finance to approve expenses or capital expenditure in the last 3 months of any financial year up to the greater of \$10,000 or 2% in excess of an existing appropriation , but within the scope of that appropriation. The approval must then be confirmed by Parliament in the Appropriation (Confirmation and Validation) Act.
Validating legislation	Section 26C of the PFA states that any expenditure incurred in excess of or without appropriation, or other authority, is unlawful unless it is subsequently validated by Parliament in an Appropriation Act. 26CA states that capital injections made without authority or approval require validation by Parliament.

Interim authority under Imprest Supply

3. Approval should be obtained to incur expenditure in excess of appropriation before the expenditure is incurred. The timing of section 26A and 26C (and 26CA) approvals mean that they will necessarily occur after expenditure has been incurred, and therefore approval for interim authority under Imprest Supply should be sought in advance of the expenditure being incurred. In the case of section 26B approvals, the Minister of Finance's approval takes effect from when given, so no separate approval to use Imprest Supply is required.

Interim Authority under Imprest Supply	Interim authority under Imprest Supply for unappropriated expenditure may be sought from Cabinet, in advance of the expenses being incurred. The approval will then be confirmed by Order in Council (section 26A) or validated by Parliament in the Appropriation (Confirmation and Validation) Act (section 26C or 26CA) ¹ .
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4. The Controller and Auditor-General has powers under the PFA where breaches occur including directing the responsible Minister to report to Parliament on a breach, or stopping payments out of a Crown or Departmental Bank Account.

Process where unappropriated expenditure has occurred

5. Where unappropriated expenditure has occurred (either during the year or at year end), departments should submit the relevant template (attached to this circular) to Treasury. This includes an explanation from the Minister responsible for the unappropriated expenditure, in that Minister's voice. The explanation is included in the Report on Unappropriated Expenses and Capital Expenditure, which is tabled in Parliament alongside the Appropriation (Confirmation and Validation) Act.

6. The text must be suitable for inclusion in a report to Parliament. In the case of unappropriated expenditure that happens towards the end of the year, the explanation should be limited to factors that occurred after the close of the Supplementary Estimates. In the case of in-year unappropriated expenditure, the explanation should be limited to factors that gave rise to the in-year unappropriated expenditure. Cabinet minute references should not be included in explanations.

7. A statement of unappropriated expenditure under sections 26B, 26C, and 26CA of the PFA is included in the financial statements of the Government for that financial year. Departments must include a similar statement in their annual financial statements.

8. Where departments become aware of an issue that may result in potential unappropriated expenditure they should notify their Vote Analyst as soon as possible. In the event that actual unappropriated expenditure is incurred, in addition to notifying their Vote Analyst, the department is required to notify their auditor for follow up with the Controller-function auditors.

¹ Excludes the use of Imprest Supply where that use has subsequently been appropriated in the Appropriation (Supplementary Estimates) Act.

This circular is set out as follows:

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Attachments

The following templates can be found as attachments to this Circular in CFISnet Info Circulars.

Attachment	Due date
Section 26A template	28 May
Section 26B template	21 September
Section 26C template	21 September
Unappropriated certification form for all departments to complete	21 September

The preferred approach is for submissions to be uploaded to the CFISnet Info Module (in Word or PDF format). Alternatively, they can be emailed to Katie.Collier@treasury.govt.nz. For simplicity, please put completed templates into a single document.

To upload into CFISnet, follow this process:

CFISnet Info Document Sharing – Upload a new Document.

- a. Select Process = “Unappropriated-26A, 26B, 26C Supporting Docs”.
- b. Click the “Browse” button to browse for the relevant completed template to upload.
- c. If the name of file is not suitably descriptive please enter a Comment describing the content of the file.

Kamlesh Patel
for Secretary to the Treasury

Timetable

Date	Process for approval	Process for reporting	Responsibility
Friday 25 May	Last date for section 26A requests to be signed by Joint Ministers		Departments requiring transfers under s26A
COP Monday 28 May		Departments to submit section 26A templates	Departments requiring transfers under s26A
Wednesday 6 June	Report by Treasury to the Minister of Finance asking him to agree to an Order in Council for section 26A items that have been approved by Joint Ministers.		Treasury
Thursday 14 June	The Order in Council for section 26A proposals is lodged for LEG		
Thursday 21 June	The Order in Council for section 26A proposals is considered at LEG		
Monday 25 June	Cabinet and Executive Council consider the Order in Council for section 26A		Treasury to compile material based on transfers approved by the Minister of Finance
Thursday 28 June	This is the last date that interim authority under Imprest Supply can be given in advance of expenditure being incurred.		Departments seeking interim authority under Imprest Supply
Friday 21 Sep 1pm		All departments to submit to Treasury Certification of Unappropriated Expenditure. Where there is no unappropriated expenditure nil returns are required. Departments to submit completed templates for section 26B approvals and section 26C and 26CA, where unappropriated expenditure and/or unauthorised capital injections have occurred.	All departments
Friday 28 September	Last date the Minister of Finance can make section 26B approvals under the PFA	Departments should still aim to submit to 26B templates by September 21	
November	Omnibus report prepared by Treasury setting out the contents of the Appropriation (Confirmation and Validation) Bill and section 26C report to Minister of Finance.		Treasury

Section 26A – Transfer of resources between output expense appropriations

9. It is preferable to have expected unappropriated expenditure met from within existing resources in the Vote. Section 26A provides that:

- an Order in Council may transfer resources between output expense appropriations within a single vote
- the total of such transfers may not increase the recipient output expense appropriation by more than 5%, and
- the Order in Council must be made by 30 June.

10. Departments must obtain authority to incur expenses in advance. This means that, as the Order in Council will not be made until near the end of June, departments will need to seek interim authority under Imprest Supply (similar to seeking authority prior to passing of Supplementary Estimates during the year).

11. While the increase sought should be in relation to the Supplementary Estimates (ie the total authority for expenditure), the 5% limit relates to the Appropriation Act in force at the time of the approval. As both the Appropriation (Supplementary Estimates) Act and the Order in Council (that gives effect to the section 26A transfers) come into force in late June, it is not clear whether the Main or the Supplementary Estimates will be in force when the section 26A transfer takes place. For this reason, a conservative approach should be taken in calculating the 5% limit:

- If the appropriation is either **unchanged** or **increased** in the Supplementary Estimates, the **Main Estimates** figure should be used as the base for calculation, as follows:

		\$ million
Main Estimates Appropriation	A	100.000
Supplementary Estimates Addition		50.000
Cumulative Appropriation		150.000
Actual Expenditure		155.000
Value of Section 26A transfer sought	B	5.000
Percentage of Main Estimates	B/A =	5.000%

- If the appropriation is **reduced** in the Supplementary Estimates, the **Supplementary Estimates** figure should be used as the base for calculation, as follows:

		\$ million
Main Estimates Appropriation		100.000
Supplementary Estimates Addition		(50.000)
Cumulative Appropriation	A	50.000
Actual Expenditure		52.500
Value of Section 26A transfer sought	B	2.500
Percentage of Supplementary Estimates	B/A =	5.000%

12. Transfers cannot be made to or from multi-year appropriations, multi-category appropriations or permanent legislative authorities. A multi-category appropriation is not an output expense appropriation, even though it may contain output expense categories.

13. Transfers can be used only where expenses are within the current scope of the existing appropriations.

Process for section 26A approvals and reporting to Treasury

14. Where the potential for unappropriated expenditure is identified and it meets the criteria for a section 26A transfer, the Minister responsible for the appropriation should write to the Minister of Finance:

- outlining the reason for the proposed transfer, including why it was not in the Supplementary Estimates
- including any Treasury comment (please discuss with your Vote Team)
- including the following recommendations:

agree [details of transfers], and

agree that the changes to output expenses above be included in an Order in Council under section 26A of the Public Finance Act, and that, in the interim, these expenses be met from Imprest Supply.

15. To prepare the Order in Council, all approvals will need to be signed by **Friday 25 May 2018**. Departments then need to:

- complete a section 26A return for all approved items (see attachment for template)
- attach signed copies of approvals, and
- ***submit to Treasury prior to COP Monday 28 May***

Section 26B – Minister of Finance approval of expenses or capital expenditure in excess of an existing appropriation

16. The Minister of Finance may approve expenses or capital expenditure in excess of appropriation, within certain limits:

- expenditure must be within the scope of an existing appropriation
- the expenditure in excess of appropriation must be incurred in the last three months of the fiscal year, and
- the cumulative total of such approvals for a single appropriation may only be up to the greater of \$10,000 or 2% of the appropriation.

17. Section 26B does not apply to capital injections.

18. Where possible, section 26B approvals should be sought in advance of expenditure. Unlike section 26A, where Imprest Supply is required to cover the period prior to the Order in Council being made, Imprest Supply is not required for section 26B approvals as the Minister of Finance's approval takes effect from when given.

19. In different circumstances it will be appropriate to use different bases for calculating the \$10,000 or 2% limits.

- For section 26B requests to be approved **before** the Appropriation (Supplementary Estimates) Act has been passed in late June:
 - if the net effect of the Supplementary Estimates and/or any section 26A transfer is to either **increase** the appropriation or **leave it unchanged**, the **Main Estimates** figure should be used as the base for calculation, and
 - if the net effect of the Supplementary Estimates and/or any section 26A transfer is to **reduce** the appropriation, the **Supplementary Estimates** figure as amended by any section 26A transfers should be used as the base for calculation.
- For section 26B approvals to be approved **after** the Appropriation (Supplementary Estimates) Act and the Order in Council (giving effect to the section 26A transfers) have come into force in late June, the **Supplementary Estimates** figure, as amended by any section 26A transfers, should be used as the base for calculation.

20. Where a breach of greater than 2% or \$10,000 has been identified, the whole breach is to be remedied through section 26C.

21. The last date the Minister of Finance can make section 26B approvals is 30 September. However, as approvals made after 30 June will be for expenditure already incurred, Treasury will recommend that these be approved only in exceptional circumstances. In general, validation under section 26C will be more suitable for unappropriated expenditure identified after 30 June.

22. If a department is seeking a section 26B approval for expenditure already incurred, as well as discussing the circumstances with the Treasury Vote Team, the department should outline why it was not possible to identify the overspend in advance.

23. Retrospective approvals should be avoided, as the expenditure will be unlawful when it is being incurred.

Process for section 26B approvals and reporting to Treasury

24. Where (the potential for) unappropriated expenditure is identified *and* it meets the criteria for a section 26B approval, the Minister responsible for the appropriation should write to the Minister of Finance:

- outlining the reason for the (proposed) additional spend, including why it was not in the Supplementary Estimates
- including any Treasury comment (please discuss with your Vote Team)
- including the following recommendations:

note [details of additional spend], and

approve the additional expenditure above under section 26B of the Public Finance Act 1989

Where Treasury does not support the section 26B approval, include the following alternative recommendation:

or [Treasury preferred option]

agree that the additional expenses *and/or* capital expenditure above be included in the Appropriation (2017/18 Confirmation and Validation) Bill for validation by Parliament.

25. Departments should follow the following process:

- complete the section 26B return (see attachment for template)
- attach signed copies of approvals, and
- submit to Treasury prior to **21 September 1pm**.

26. Changes cannot be made after 28 September

27. Reporting requirements for unappropriated expenditure are set out in section 26D of the PFA. That is, a statement relating to the unappropriated expenditure must be included in both the department's and the Government's annual financial statements.

Section 26C and 26CA– Parliamentary validation of expenses or capital expenditure without appropriation or other authority and capital injections

28. Section 26C of the Public Finance Act covers all expenditure incurred without appropriation or other authority where:

- authority for additional expenditure has not been obtained in advance, or
- the additional expenditure has not been approved under section 26B, either because it is too large, or the Minister of Finance has deemed it more appropriate for the expenditure to be validated.

29. Such unappropriated expenditure requires validation in the Appropriation (Confirmation and Validation) Act. Where possible departments should, in the first instance, seek to use one of the approval options described previously.

30. Validation is a *retrospective* approval for:

- expenses or capital expenditure outside the scope of an appropriation
- expenses or capital expenditure in excess of the amount of an appropriation, not already, or able to be, remedied via the tools above, and
- unapproved or unauthorised capital injections (please contact your vote analyst early if this is relevant to you).

31. Reporting requirements for unappropriated expenditure are set out in sections 26C(2) and 26D of the PFA. A statement relating to the unappropriated expenditure must be included in the department's and the Government's annual financial statements and in the report that the Minister of Finance is required to present to the House on the introduction of the Appropriation (Confirmation and Validation) Bill.

32. Note that if an appropriation has been exceeded during the year (in respect of amount or scope), and the department has *subsequently* sought a change in the amount or scope of the appropriation, this subsequent approval authorises expenditure only from the date of Cabinet approval. Unless the expenditure incurred between the initial breach and the Cabinet approval has been approved under section 26B, such an expenditure breach must be validated under section 26C of the PFA. Validation will generally be considered more suitable. Please include all such "in-year" breaches within the section 26C template and Ministerial certification.

Process for section 26C and 26CA when seeking Cabinet approval prior to 30 June

33. Except where Joint Ministers have a delegation from Cabinet, the Minister responsible for the appropriation should submit a Cabinet paper:

- outlining the reason for the unappropriated expenditure or unauthorised capital injection, including an explanation of why it was not in the Supplementary Estimates
- including any Treasury comment (please discuss with your Vote Team), and
- including the following recommendations:

note [details of additional spend, including type and value], and

agree that the [additional expenses *and/or* capital expenditure *and/or* the capital injection above be included in the Appropriation (2017/18 Confirmation and Validation) Bill for validation by Parliament and that, in the interim, the expenses *and/or* capital expenditure *and/or* capital injection be met from Imprest Supply.

34. Note that the statement above regarding Imprest Supply is sufficient to meet the criteria for interim authority under Imprest Supply - Imprest Supply is required because the section 26C or 26CA approval is not validated until the next financial year when the Appropriation (2017/18 Confirmation and Validation) Bill is passed.

35. In addition, departments must:

- complete the section 26C return (attached to this circular)
- attach the required Ministerial certification
- for each item of unappropriated expenditure and unauthorised capital injection include the explanation of the Minister responsible for the appropriation for tabling in the House of Representatives (see the 'Guidance for explanations' section below for more information about what the explanation should include)
- **submit to Treasury prior to 21 September 1pm 2018, and**
- **All agencies are required to submit to CFISnet. Where no section 26C validations are sought a nil return is required.**

Guidance for the explanations of Minister responsible for the appropriation

Each instance of unappropriated expenditure requiring validation by Parliament under section 26C or 26CA must include an explanation from the Minister responsible for the appropriation for tabling in Parliament in the Report on Unappropriated Expenses and Capital Expenditure.

The explanation should:

- be written in the Minister's voice and of a standard suitable for tabling in Parliament
- provide a clear and concise explanation of the unappropriated expenditure, and the nature of the breach (eg whether in excess of appropriation, outside of scope or without an appropriation), and
- enable a reader with no background knowledge of the area to understand how and why the unappropriated expenditure has occurred – accordingly, it should be written in plain English, be free of jargon and “insider” language, and not contain references to Cabinet minutes.

For expenditure approved under Imprest Supply, but where this was done too late to be included in the 2017/18 Supplementary Estimates (generally this will be decisions made after Budget Day) you should use the following text:

“The incurring of this expenditure under Imprest Supply was approved by Cabinet/Joint Ministers [omit whichever does not apply] before the expenditure was incurred, but it was identified too late for inclusion in the Appropriation (2017/18 Supplementary Estimates) Bill and is thus unappropriated expenditure requiring validation.”

Process for section 26C when seeking Cabinet approval after 30 June

36. When approval is being sought after 30 June, all of the above process should be followed, with the exception of submitting a Cabinet paper. Instead, the information should be submitted to Treasury. The Treasury will then include this information in an Omnibus Cabinet paper that incorporates all such unappropriated expenditure.

37. All of the information that would be provided to Cabinet when seeking approval prior to 30 June is still required to be submitted to Treasury for the omnibus paper. This process is designed to provide a more streamlined reporting process for Cabinet.

38. For all approvals given after 30 June, the recommendations should not include any reference to Imprest Supply.

TEMPLATE FOR SECTION 26A TRANSFERS

- (1) Fill this table out if Joint Ministers have approved a section 26A transfer for a vote administered by your department.
- (2) Please submit the completed details and associated documentation to Treasury as outlined in the circular – *the template itself does not need to be signed off by Cabinet or Joint Ministers.*

Please use one template per set of transfers

Have the Minister responsible for the appropriation <u>and</u> the Minister of Finance approved the transfer?	Yes/No
Has the use of Imprest been approved by Cabinet (or Joint Ministers, if a delegation is in place)?	Yes/No if yes, please enter the Cabinet Minute or reference to Joint Minister approval below:
Are the titles of the output expense appropriations consistent with the 2017/18 Supplementary Estimates?	Yes/No (if no, please ensure this is corrected)

Vote XXXX Briefly describe the reason for the transfer including why it was not included in the 2017/18 Supplementary Estimates	(\$million)
Baseline Reductions Departmental Output Expense/Non-Departmental Output Expense(s): <i>(please insert Name of Output Expense Appropriation(s))</i>	(x.xxx)
Total	(x.xxx)
Baseline Increases Departmental Output Expenses/Non Departmental Output Expense(s): <i>(please insert Name of Output Expense Appropriation(s))</i>	y.yyy
Total	y.yyy

Reconciliation: A section 26A transfer must not increase the appropriation for an output expense by more than 5%. The 5% threshold relates to the Appropriation Act in force at the time of the approval. As both the Appropriation (2017/18 Supplementary Estimates) Act and the Order in Council (that gives effect to the section 26A transfers come into force in late June, it is not clear whether the Appropriation (2017/18 Estimates) Act or the Appropriation (2017/18 Supplementary Estimates) Act will be in force when the section 26A transfer takes place.

For this reason, a conservative approach should be taken in calculating the 5% threshold:

- If the appropriation is either **unchanged** or **increased** in the Supplementary Estimates, the **Main Estimates** figure should be used as the base for calculation;
- If the appropriation is **reduced** in the Supplementary Estimates, the **Supplementary Estimates** figure should be used as the base for calculation.

Please fill out the table below:

Appropriation Name	Relevant Appropriation Act	Main Estimates Output Expense (2017/18) amount (\$ million)	Supplementary Estimates Output Expense (2017/18) Appropriation (\$ million)	Percentage increase (to 3 decimal places) compared to relevant appropriation Act.
	Main Estimates / Supplementary Estimates <i>[Choose one]</i>	xx.xxx	xx.xxx	x.xxx%

Template for Section 26B approvals

- (1) Fill this table out if an approval under section 26B has been approved for a vote administered by your department.
- (2) Please submit the completed details and associated documentation to Treasury as outlined in the circular – the template itself does not need to be signed off by Cabinet or Joint Ministers.

Does the case of unappropriated expenses meet the conditions for section 26B approvals (less than 2% or \$10,000)?	Yes/No
Have the Minister responsible for the appropriation <u>and</u> Minister of Finance approved it?	Yes/No
Was the approval in advance of the expenditure being incurred?	Yes/No
Are the titles of the appropriations consistent with the Estimates?	Yes/No (if no, ensure this is corrected)

Vote	Description	Amount (\$ million)
(XXXX)	Provide details of the appropriation name and type	xx.xxx

Reconciliation: A section 26B approval must not increase the appropriation by more than 2% or \$10,000, whichever is greater. In different circumstances it will be appropriate to use different bases for calculating the \$10,000/2% thresholds:

- For section 26B requests to be approved **before** the Appropriation (2017/18 Supplementary Estimates) Act has been passed in late June:
 - if the net effect of the Supplementary Estimates and/or any section 26A transfer is to either **increase** the appropriation or **leave it unchanged**, the **Main Estimates** figure should be used as the base for calculation, or
 - if the net effect of the Supplementary Estimates and/or any section 26A transfer is to **reduce** the appropriation, the **Supplementary Estimates** figure as amended by any section 26A transfers should be used as the base for calculation.
- For section 26B requests to be approved **after** the Appropriation (2017/18 Supplementary Estimates) Act and the Order in Council giving effect to the section 26A transfers have come into force in late June, the **Supplementary Estimates** figure as amended by any section 26A transfers should be used as the base for calculation.

Please fill out the table below:

Appropriation Name	Date Approval Given	Relevant Appropriation Act	Main Estimates (2017/18) Output Expense amount (\$ million)	Supplementary Estimates (2017/18) Output Expense Appropriation amount (\$ million)	Percentage increase (to 3 decimal places) compared to relevant Appropriation Act.
		Main Estimates / Supplementary Estimates [<i>Choose one</i>]	xx.xxx	xx.xxx	x.xxx%

Template for Section 26C Validation

- (1) Fill this table out if your Minister is seeking validation of unappropriated expenditure or capital injections.
- (2) Please submit the completed details and associated documentation to Treasury as outlined in the circular – the template itself does not need to be signed off by Cabinet or Joint Ministers.

Has the Minister responsible for the appropriation been informed and certified the reason for the expenditure?	Yes/No (if not, do so)
Has the use of Imprest been approved by Cabinet (or Joint Ministers, if a delegation is in place)?	Yes/No if yes, please enter the Cabinet Minute or reference to Joint Minister Approval:
Does this return include any expenditure outside the scope of an existing appropriation?	Yes/No
Are the titles of the appropriations consistent with the Estimates?	Yes/No (if no, please ensure this is corrected)

Vote	Description	Amount (\$ million)
(XXXX)	<p>Provide details of the appropriation name and type</p> <p><i>Provide a brief reason (in the Minister's voice) for the unappropriated expenditure, including why it was not in the Supplementary Estimates. This will be tabled in the House of Representatives and should be written in a clear and concise manner.</i></p> <p><i>Clearly identify if the unappropriated expenditure is outside the scope of an appropriation. This type of breach should be quantified.</i></p> <p>if the spending was approved under Imprest Supply but requires validation, please use the following text:</p> <p>“The incurring of this expenditure/ the making of a capital injection under Imprest Supply was approved by Cabinet/Joint Ministers [omit whichever is inappropriate] before the expenditure/ capital injection was incurred/made, but it was identified too late for inclusion in the Appropriation (2017/18 Supplementary Estimates) Bill and is thus unappropriated (expenditure) [omit word</p>	xx.xxx

	<i>expenditure if capital injection]</i> requiring validation.”	
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Certification of Unappropriated Expenses and Capital Expenses and Capital Expenditure, and/ or Capital Injections

- (1) All departments and Offices of Parliament **must** submit this form.
- (2) Please submit the completed details, and any associated documentation, **by 1pm 21 September 2018**

Either:

- **part I**, where there are instances of unappropriated expenses or capital expenditure, or capital injections, or
- **part II**, where the department has no instances of unappropriated expenses or capital expenditure, or unauthorised capital injections.

Part I

PROFORMA CERTIFICATION OF SCHEDULE OF UNAPPROPRIATED EXPENSES AND CAPITAL EXPENDITURE AND CAPITAL INJECTIONS

I hereby certify that the explanations provided for the unappropriated expenses, capital expenditure and capital injections in Vote X for which I am responsible, are correct, and agree that these explanations are suitable for inclusion in the *Report on Unappropriated Expenses and Capital Expenditure* for tabling in the House of Representatives.

Minister of/for [insert Portfolio name]

Date:

Part II

CERTIFICATION THAT THERE ARE NO INSTANCES OF UNAPPROPRIATED EXPENSES AND CAPITAL EXPENDITURE AND CAPITAL INJECTIONS

I hereby certify that there are no instances of unappropriated expenses or capital expenditure or capital injections in Vote(s) [insert Vote name(s)].

Chief Financial Officer/Director of Finance

Date: