CONTINGENCIES FUND (NO.2) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Contingencies Fund (No. 2) Bill as introduced in the House of Commons on 9 March 2021 (Bill 267).

- These Explanatory Notes have been produced by HM Treasury in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

Contents

Overview of the Bill

1 The purpose of the Contingencies Fund (No. 2) Bill is to increase, only until the end of the financial year ending on 31st March 2022 (“2021-22”), the limit set on the capital of the Contingencies Fund by section 1(1) of the Contingencies Fund Act 1974 (“the 1974 Act”).

2 As originally enacted, the capital limit set by the 1974 Act is 2% of the total authorised Supply expenditure (i.e. the total of all authorised departmental net cash requirements) in the preceding financial year. Unadjusted, this would amount to approximately £17.5bn for 2021-22.

3 The Contingencies Fund Act 2020 increased the percentage to 50% until the end of 2020-21. This had the effect that the capital limit was increased to approximately £266bn in 2020-21.

4 It is necessary to increase that percentage to 12% until the end of 2021-22 to ensure the government has the resources available to continue to respond in a timely manner to the covid-19 pandemic. This would have the effect that the capital limit would be increased to approximately £105bn for 2021-22.

Policy background

5 The Main Supply Estimates are normally published and presented to Parliament in April of the financial year to which they relate. The sums set out in the Estimates are approved by resolution of the House of Commons. Following this approval, a Supply and Appropriation (Main Estimates) Bill (“the Main Estimates Bill”) is introduced into the House of Commons and it is normally enacted before Parliament rises for the summer recess in July. Once enacted the Main Estimates Act authorises departments to use net resources and net capital and to spend cash up to the amounts requested in the Main Supply Estimates. This is the main means by which specific Parliamentary authority is granted to enable departments to incur expenditure during a financial year.

6 Since the Main Estimates Act for a financial year is not passed until several months into that financial year, the Supply and Appropriation (Anticipation and Adjustments) Act for the preceding financial year ensures that each department has Parliamentary authority to spend money from the beginning of a financial year. This takes place in February/March of the preceding financial year by means of a Vote on Account. The Vote on Account is then followed by a Supply and Appropriation (Anticipation and Adjustments) Act.

7 These Supply processes continue to be used in the usual way. Expenditure and cash are still subject to parliamentary scrutiny and vote. However, it is important that the government can continue to react swiftly during the covid-19 pandemic and it is therefore necessary that the maximum capital of the Contingencies Fund is again increased. This increase until the end of 2021-22 will ensure any urgent and unforeseen priorities can be met ahead of the next formal vote on Supply Estimates, at which point Contingencies Fund advances can be repaid.

8 The maximum capital sought in this Bill is significantly less than the amount sought in 2020-21: 12% (c£105bn) in 2021-22, compared to 50% (c£266bn) in 2020-21. Whilst it is vital the Contingencies Fund is increased to enable the government to react in a timely manner if required, it is hoped that the fund can be used considerably less in 2021-22.

9 Full guidance about the workings of the Contingencies Fund can be found in the ‘Estimates Manual’ on page 69:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/220744/estimates_manual_july2011.pdf

Legal background

10 The Contingencies Fund was established in 1862 by Treasury minute. It originally consisted of a fixed amount of capital which was increased over time and by 1945 had reached £1.5 million.

11 As originally enacted, under section 1(1) of the 1974 Act the capital of the Contingencies Fund, including the permanent capital of £1.5 million, cannot exceed 2% of the authorised Supply expenditure for the previous financial year ("the relevant percentage"). The Contingencies Fund Act 2020 increased the relevant percentage to 50% until the end of 2020-21.

12 The Contingencies Fund's capital is provided by a standing service from the Consolidated Fund (see section 3(1) of the Miscellaneous Financial Provisions Act 1946 ("the 1946 Act")). That standing service is limited to the relevant percentage under section 1(1) of the 1974 Act.

13 The purpose of the Contingencies Fund is to make "advances in respect of urgent services in anticipation of the provision made or to be made by Parliament for those services becoming available, or for making advances in anticipation of the realisation of receipts in connection with any services for which provision is so made or to be made, or for making temporary advances to any government department for the provision of any necessary working cash balances in connection with any such services" (see section 3(1) of the 1946 Act).

14 Sums paid out of the Contingencies Fund are, in effect, cash loans made to departments in anticipation of provision being made by Parliament. In practice advances from the Contingencies Fund must be repaid via provision made in later Estimates authorised by Parliament.

15 Access to the Contingencies Fund is managed by the Treasury. Applications for advances from that Fund are scrutinised carefully by the Treasury, and neither political imperative nor Ministerial preference are relevant to the Treasury's decision whether to allow access to the Fund. Further detail on the process can be found in the Estimates Manual, page 69: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/220744/estimates_manual_july2011.pdf

Territorial extent and application

16 The extent of a Bill can be different from its application. Extent is about the jurisdictions in which the Bill forms part of the law. Application is about where a Bill produces a practical effect. The Bill will extend and apply to the whole of the United Kingdom.

17 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the Senedd or the Northern Ireland Assembly without the consent of the legislature concerned. The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the Senedd or the Northern Ireland Assembly, and no legislative consent motion is being sought in relation to any provision of the Bill. If there are amendments relating to matters within the legislative competence of the Scottish Parliament, the Senedd or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments.

18 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business (although those Standing Orders are not expected to apply to the bill).

Fast-Track Legislation

19 The government intends to ask Parliament to expedite the parliamentary progress of this Bill. In its report, Fast-track legislation: Constitutional Implications and Safeguards[1], the House of Lords Select Committee on the Constitution recommended that the government should provide more information as to why a piece of legislation should be fast-tracked.

Why is fast-tracking necessary?

20 There continues to be a need for timely government expenditure in relation to the covid-19 pandemic and a need for the government to access the resources necessary to incur that expenditure. The increase in the relevant percentage made by the Contingencies Fund Act 2020 will cease at the end of 2020-21. It is, therefore, necessary to amend the relevant percentage for 2021-22 before 31st March 2021. It was not possible to prepare the Contingencies Fund (No. 2) Bill until now, because in order to determine an appropriate relevant percentage for 2021-22 the Treasury needed to consider the position in relation to the Vote on Account for 2021-22, consider the final net cash position for 2020-21 in order to calculate the fund limit for 2021-22 and, so far as possible, the position regarding likely government expenditure on the covid-19 pandemic during that financial year.

What is the justification for fast-tracking each element of the bill?

21 All of the provisions in the Bill are aimed at ensuring the government can access the funding necessary to respond to an emergency situation and to manage the effects of the covid-19 pandemic. It is therefore important that the entire Bill be fast-tracked.

What efforts have been made to ensure the amount of time made available for parliamentary scrutiny has been maximised?

22 In order for the Bill to be effective in managing the effects of a covid-19 pandemic, Royal Assent needs to be secured before the end of financial year 2020-21. Given the pressing need for legislation to be enacted, it has not been possible to give Parliament more time to scrutinise the Bill.

To what extent have interested parties and outside groups been given an opportunity to influence the policy proposal?

23 With the need to pass the legislation before the end of 2020-21 to manage the covid-19 pandemic, it has not been possible to give interested parties and outside groups an opportunity to influence this Bill.

[1] House of Lords' Constitution Committee, 15th report of session 2008/09, HL paper 116-I.

Does the Bill include a sunset clause (as well as any appropriate renewal procedure)? If not, why does the government judge that their inclusion is not appropriate?

24 The Bill is designed to respond to the covid-19 pandemic. The modifications which it makes to the 1974 Act have effect until the end of 2021-22. This is to ensure that the modifications are only in place no longer than is necessary.

Are mechanisms for effective post-legislative scrutiny and review in place? If not, why does the government judge that their inclusion is not appropriate?

25 The Supply Estimates process during 2021-22 will provide an opportunity for scrutiny and review of departmental expenditure. During 2020-21 the use of the Contingencies Fund was regular and as of early March 2021 over £210bn has already been advanced. Written ministerial statements were made throughout the year in line with guidance agreed between HM Treasury, the NAO and Parliament. All advances were included in either Main Estimates or Supplementary Estimates for Parliamentary scrutiny and voting.

Has an assessment been made as to whether existing legislation is sufficient to deal with any or all of the issues in question?

26 Yes. The Bill consists of a single measure aimed at ensuring the government has access to the funding necessary to respond to an emergency situation and to manage the effects of the covid-19 pandemic. The use of the Contingencies Fund in 2020-21 was an essential part of the response to the pandemic in terms of ensuring that departments had the necessary cashflow to meet the numerous challenges.

Has the relevant parliamentary committee been given the opportunity to scrutinise the legislation?

27 It has not been possible to engage with the Treasury Select Committee or the Committee of Public Accounts in the time available. The Chief Secretary has written to both Chairs highlighting the importance of the Bill.

Commentary on provisions of Bill

Clause 1: Temporary increase of capital limit of Contingencies Fund

28 Clause 1 of the Bill modifies section 1(1) of the Contingencies Act 1974. That clause provides that section 1(1) of the Contingencies Fund Act 1974 is to have effect in relation to times after 31st March 2021 but before 1st April 2022 as if the reference to 2 per cent were a reference to 12 per cent.

29 Because the modification only has effect until the end of 2021-22, in practice all sums issued from the Contingencies Fund during 2021-22 will require authorisation via the Supply and Appropriation process during that year in order that those sums can be repaid by departments before the end of 2021-22.

Clause 2: Short title

30 This provision is self-explanatory.

Commencement

31 The provisions of the Bill will commence on Royal Assent.

Financial implications of the Bill

32 Costs of services or of government departments (whether arising under other legislation or otherwise) may fall to be met from the Contingencies Fund. In order to meet those costs, the capital of the Contingencies Fund may need to be increased by issues from the Consolidated Fund, up to the level which the Bill authorises (approximately £105bn).

Parliamentary approval for financial costs or for charges imposed

33 The Bill will require a money resolution to cover the increase of the maximum capital of the Contingencies Fund, as this will allow an increase in payments to that fund from the Consolidated Fund under the 1946 Act.

Compatibility with the European Convention on Human Rights

34 The Chancellor of the Exchequer has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Contingencies Fund Bill are compatible with the Convention rights.

Annex A - Territorial extent and application in the United Kingdom

35 The Bill will extend and apply to the whole of the United Kingdom:

Provision	**Extends to E & W and applies to England?**	**Extends to E & W and applies to Wales?**	**Extends and applies to Scotland?**	**Extends and applies to Northern Ireland?**
Clauses 1 and 2	Yes	Yes	Yes	Yes

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