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Department of Finance
An Roinn Airgeadais
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DAO (DoF) 01/22

02 February 2022

Dear Accounting Officer

GUIDANCE ON MINISTERIAL DIRECTIONS

Purpose

1. This DAO letter provides more detailed guidance to NI departments on the process for Ministerial Directions. It also incorporates the guidance published last year on publication of Ministerial Directions issued under cover of DAO (DoF) 02/21. DAO (DoF) 02/21 has therefore been withdrawn.

Background

2. Ministerial Directions are an important vehicle for Accounting Officers in demonstrating proper accountability for public money. Section 3.4 of Managing Public Money Northern Ireland (MPMNI) sets out that Accounting Officers should routinely scrutinise significant policy proposals or plans to start or vary major projects and then assess whether they measure up to the standards set out in MPMNI. The Accounting Officer should draw any issues to the attention of the responsible Minister to see whether they can be resolved. If the Minister decides it is nevertheless appropriate to continue with a course that does not meet MPMNI standards, the Accounting Officer should ask for a formal written direction to proceed.

3. While there is high level guidance on Ministerial Directions contained within MPMNI, it was recognised that there would be merit in producing more detailed guidance to bring clarity and more consistency to the process across departments.

Guidance

4. The guidance reflects that contained in MPMNI but has been enhanced with some further detail on aspects of the process. It includes information on DoF's requirements, details on what documentation is required by the Northern Ireland Audit Office and appropriate timeframes, and contains a flow chart to assist departments. It also includes guidance on the publication of Ministerial Directions as above.

Action

5. This DAO should be brought to the attention of all relevant staff within your department.

Queries

6. Any queries regarding the process for a Ministerial Direction should be addressed to the relevant DoF Supply Officer. Any queries regarding the publication of Ministerial Directions should be addressed to Julie Sewell at Julie.sewell@finance-ni.gov.uk.

Yours sincerely

STUART STEVENSON

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GUIDANCE ON MINISTERIAL DIRECTIONS

As reflected in Managing Public Money Northern Ireland (MPMNI), each departmental Accounting Officer should take care to bring to the attention of the Minister to whom he or she is responsible, any conflict between the Minister's instructions and his or her duties as set out in MPMNI. Examples of concerns where this procedure is appropriate are as below:

- **Regularity**: if a proposal is outside the legal powers, Assembly authority, or DoF delegations; or incompatible with the agreed spending budgets.
- **Propriety**: if a proposal would breach Assembly control procedures or expectations.
- **Value for money**: if an alternative proposal, or doing nothing, would deliver better value, e.g. a cheaper, higher quality or more effective outcome for the public sector as a whole.
- **Feasibility**: where there is a significant doubt about whether the proposal can be implemented accurately, sustainably and to the intended timetable (applicable as soon as the new version of MPMNI is published).

The ultimate judgement however must lie with personally with the relevant Accounting Officer.

There is no set form for doing this, though the Accounting Officer should be specific about the nature of his or her objections and where possible set these out in writing. Before doing so it is good practice for an Accounting Officer to discuss the matter with the Department of Finance (DoF) if time permits. There should also be engagement between departmental officials and the relevant DoF Supply Officer. It may also be necessary to discuss the issue with officials from The Executive Office (TEO) to determine if the matter needs to be brought to the Executive under the terms of the Ministerial Code.

If, despite the Accounting Officer's advice, the Minister decides to continue with a course of action which the Accounting Officer has advised against, the Accounting

Officer should ask for a formal Ministerial Direction to proceed. This can be oral but, if so, should be confirmed in writing as soon as possible. While Directions of this kind are generally rare, this is nonetheless a legitimate process and the acid test is whether the Accounting Officer could justify the proposed activity if asked to defend it.

Such a Direction is likely to mean that the associated expenditure is novel or contentious and therefore outside of the departmental delegated authority. Having received a direction from the departmental Minister, in these circumstances, the Accounting Officer should seek DoF approval.

In circumstances where the departmental Accounting Officer is unable to confirm that he or she is content with the regularity, propriety, value for money or feasibility of the project concerned, it will not normally be possible for officials in DoF to provide approval, and in such circumstances it is likely that the decision to approve the departmental Minister's Direction will be sought from the Finance Minister.

Alternatively a departmental Minister may decide, in certain circumstances, that the issue should be discussed by the Executive. If this happens and a decision reached at the Executive is to agree to the course of action proposed by the departmental Minister it will be recorded in the minutes which can be treated as formal approval. The DoF Minister, as part of the Executive, is bound by this decision and in these circumstances it is not envisaged that it will be necessary for the Accounting Officer to seek a formal written approval from DoF. If the Executive decides that the proposal should not proceed then the Accounting Officer should abide by the Executive's decision and not undertake any course of action which could be seen as contrary to the decision.

The flow chart below at Annex A outlines the step by step approval process to be followed which will be relevant for the majority of Ministerial Directions being sought.

Urgent decisions

There may be an occasional circumstance however, as reflected in para 2.14 of the Ministerial Code, where a decision is required to be taken so urgently as not to be able to await consideration at the next Executive Committee meeting. The responsible Minister must set out in writing to the First Minister, the deputy First Minister and the Secretary to the Executive the decision to be taken and, so far as is practicable, the background to the issue, the views of any other Ministers with a relevant interest, the position of any other interested administrations and the consequences of deferring the decision in question pending the next Executive Committee meeting and of not taking it at all. The First Minister and deputy First Minister, acting jointly, will consider the decision in consultation with the responsible Minister, and notify him/her of the outcome of their consideration of the matter. A matter dealt with in this way will be deemed to have been dealt with in accordance with paragraph 2.4 of the Code. Where the urgent decision is the responsibility of the First Minister and deputy First Minister and, acting jointly, they agree that decision, the decision will be deemed to have been dealt with in accordance with paragraph 2.4 of the Code.

Once a Ministerial Direction has been approved

When a Ministerial Direction is confirmed by the DoF Minister or Executive as appropriate, the Accounting Officer should:

- write to the Comptroller and Auditor General (C&AG) with the relevant details of the issue within the next four weeks following the Direction. This correspondence should be copied to the Treasury Officer of Accounts in DoF and the relevant DoF Supply Officer. Documentation required by the Northern Ireland Audit Office (NIAO) for scrutiny includes:
    - ➢ The submission from the Accounting Officer to the Minister setting out the background to the spending proposal, together with the reason(s) for requesting a Ministerial Direction;
    - ➢ Written correspondence from the Minister, granting approval for the Accounting Officer to seek authorisation from DoF/Executive/TEO for the Ministerial Direction;
    - ➢ Approval for the Ministerial Direction granted by DoF/Executive/TEO;
    - ➢ The Ministerial Direction issued by Minister; and

- The C&AG will normally draw the matter to the attention of the Public Accounts Committee (PAC), who will attach no blame to the Accounting Officer.

- follow the Direction without further ado;
- if asked, explain the Minister's/Executive's course of action. This respects Ministers' rights to frank advice, while protecting the quality of internal debate;
- engage with DoF to arrange for the existence of the Direction to be published as soon as possible. Further detail on the publication of Ministerial Directions is laid out below; and
- arrange for the existence of the Direction to also be published in the next Annual Report and Accounts, unless the matter must be kept confidential.

Publication of Ministerial Directions

In HMT, since 2011 there has been a presumption that such directions are published with both the letter from the Accounting Officer to the Minister seeking a direction and the Minister's response confirming the direction being published on the GOV.UK website, unless the matter must be kept confidential. Example of these are available on the Gov.uk website at Ministerial Directions - GOV.UK (www.gov.uk) .

Until recently, information on Ministerial Directions made in NI was only available in the public domain through being reported on within individual departmental Annual Reports and Accounts and within PAC end of session reports. A consolidated record of all Ministerial Directions was not contained in one place and it was not easily accessible and transparent to the public.

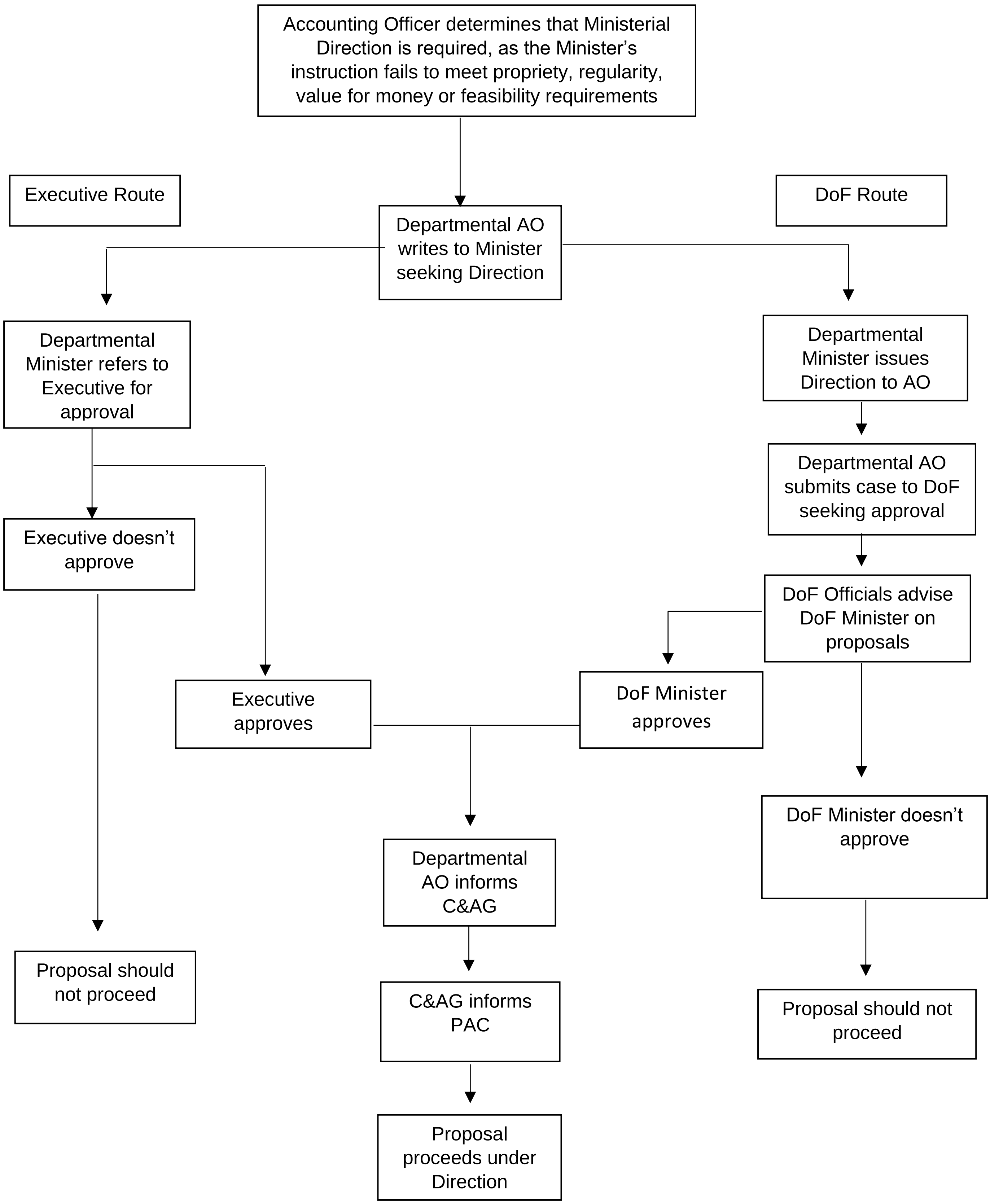
For transparency purposes therefore, a historical list of all Ministerial Directions made since the restoration of devolution in 2007 was published on the DoF website. This list included those Directions which had been made, notified to the C&AG and discussed at PAC. The list will be updated on a regular basis moving forward by DoF (Treasury Officer of Accounts team) in liaison with NIAO and departments.

Further, as reflected in previous guidance, all Ministerial Directions made in Northern Ireland from 1 April 2021 will also be published on the Department of Finance website together with a note setting out the background and rationale for the Direction. It is recognised there may be a chain of correspondence and detailed advice between an Accounting Officer and their Minister relating to the issue including other options, legal advice etc. but for the purposes of publication, departments should draw up a summary note outlining the above. To ensure consistency across departments, a template is attached below for this purpose at Annex B.

In future therefore, once departments have received a Ministerial Direction, when sending notification and the necessary documentation regarding the Direction to the C&AG etc. as above, they should also send a copy of the completed template and actual Direction separately to Julie Sewell at Julie.sewell@finance-ni.gov.uk who will arrange for publication on the DoF website. This will normally be within one week of it being discussed at PAC. If however there are any sensitivities regarding this timing such as the public interest test or commercial confidentiality etc. departments should discuss this with the Treasury Officer of Accounts to agree alternative suitable timing for publication.

There may also be the rare occasion whereby sensitive information within a Ministerial Direction should be withheld, or indeed that even any details of a Ministerial Direction should be kept confidential and not published. In any such cases, advice should be sought from the Treasury Officer of Accounts who will engage wider within DoF as necessary to consider on a case by case basis.

ANNEX A - MINISTERIAL DIRECTIONS FLOWCHART



Notes: 1. Separate DoF approval is not necessary if the Executive approves the Direction as the DoF Minister is part of the Executive.

ANNEX B - TEMPLATE - MINISTERIAL DIRECTION NOTE FOR PUBLICATION

Department:

Title:

Description:

Background:

Rationale: