

**FRAMEWORK DOCUMENT FOR
THE INFORMATION COMMISSIONER**

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INTRODUCTION

This Framework Document, comprising a Management Statement and Financial Memorandum, has been drawn up by the Secretary of State's Department (the Department) in consultation with the Information Commissioner (the Commissioner), Wycliffe House, Water Lane Wilmslow. It has been agreed with Cabinet Office and HM Treasury, and takes effect from June 2003.

Taken together, and subject to all relevant legislation, the Management Statement and Financial Memorandum set out the broad framework within which the Commissioner will operate, in particular:

- a) the rules and guidelines relevant to the exercise of the Commissioner's functions, duties and powers;
- b) the conditions under which any public funds are paid to the Commissioner;
- c) the arrangements for the Commissioner reporting to Parliament; and
- d) the relationship between the Secretary of State and his Department, and the Commissioner.

However, the Management Statement and the Financial Memorandum do not convey any legal powers or responsibilities.

The Financial Memorandum sets out in greater detail certain aspects of the financial provisions, which the Commissioner is required to observe.

The arrangements set out in this Framework Document are to be reviewed at least every fifth year. (see paragraph 9 below).

The Commissioner or the Department may propose amendments to the Framework Document at any time. Revisions may be made by agreement between the Department and the Commissioner. Legislative changes will take precedence over any part of the Framework Document. Significant variations to either the Management Statement or the Financial Memorandum will be cleared with Cabinet Office and HM Treasury.

The Department will arrange for copies of the Framework Document and any subsequent substantive amendments to be placed in the Libraries of both Houses of Parliament. The Framework Document will be made available to members of the public through each parties respective publication schemes.

Glossary of Terms

Secretary of State	-	The Secretary of State for Constitutional Affairs.
Department	-	The Department for Constitutional Affairs.
Financial year	-	A period beginning on 1 April and ending on the next 31 March.
Phasing	-	Expected rate of spend by period to the end of the financial year.
Outturn	-	Actual expenditure during the period specified.
Forecast outturn	-	Expected total expenditure to the end of the financial year.

PART I: MANAGEMENT STATEMENT

1. THE INFORMATION COMMISSIONER

Founding legislation and status

- 1.1 The Information Commissioner is an independent body created by statute who reports directly to Parliament

The Information Commissioner is, a corporation sole set up initially by the Data Protection Act 1984 under the name of Data Protection Registrar. Following implementation of the Data Protection Act 1998 on 1st March 2000 it continued in existence under the name of Data Protection Commissioner. The Freedom of Information Act 2000 received Royal Assent on 30th November 2000 and the title of the Data Protection Commissioner changed to the Information Commissioner with effect from 30th January 2001.

1.2 The duties and powers of the Information Commissioner

- 1.2.1 The Commissioner's duties and powers are set out in Annex A.

1.3 Classification

- 1.3.1 For Government's administrative purposes the Commissioner is classified by the Machinery of Government and Standards Group, Cabinet Office as an executive non-departmental public body (NDPB).
- 1.3.2 For national accounts purposes the Commissioner is classed to the central government sector.

2. RESPONSIBILITIES AND ACCOUNTABILITY

2.1 Parliamentary accountability

- 2.1.1 The Commissioner is accountable to Parliament for the exercise of his statutory functions.
- 2.1.2 The Department's Principal Accounting Officer is answerable to Parliament, through the Committee of Public Accounts, for the monies voted to the Department, in particular:
- a) the payment of the grant-in-aid to the Commissioner;
 - b) the conditions attached to the grant-in-aid;
 - c) monitoring the Commissioner's compliance with those conditions;
 - d) the steps taken to ensure that the financial and other management controls applied by the Department and the Commissioner conform to the requirements of good financial management and are appropriate and sufficient to safeguard public funds and
 - e) the Department reserves the right to arrange for independent reviews of internal audit arrangements of the Commissioner.

2.1.3 the Commissioner by virtue of his duty of signing the Accounts as Accounting Officer is answerable to Parliament, through the Committee of Public Accounts, for the management of all monies allocated to him.

2.1.4 The Commissioner and his staff may be called to give evidence before the relevant Select Committee of Parliament.

2.2 Parliamentary Questions and Ministerial Correspondence

2.2.1 The Department and the Commissioner will act co-operatively to provide timely and accurate replies to Parliamentary Questions and Ministerial Correspondence relating to the Commissioner's activities.

2.2.2 Ministers of the Department will be responsible for answering Parliamentary Questions. The Department will, where appropriate, seek advice from the Commissioner on his administration or activities in order to answer Parliamentary Questions.

2.2.3 Members of Parliament will be encouraged to write directly to the Commissioner about the administration or the day to day operations of the Commissioner, or about individual cases concerning their constituents.

If Ministers receive correspondence from Members of Parliament on these matters, a Member of Parliament will be advised to write directly to the Commissioner.

2.2.4 Where a Minister decides to reply personally, for example where the correspondence involves wider policy considerations, the Department will, where appropriate, seek advice from the Commissioner on any aspect relating to his administration or activities. A copy of the reply will be sent to the Commissioner.

2.3 The duties and powers of the Department for Constitutional Affairs

2.3.1 The Department's duties and powers in respect of the Commissioner are set out in Annex B.

2.4 The Permanent Secretary of the Department

2.4.1 The Permanent Secretary is the Department's Principal Accounting Officer whose responsibilities are covered in paragraph 2.1.2.

2.4.2 The responsibilities of a Departmental Accounting Officer are set out in more detail in Chapter 4 of *Government Accounting*.

2.5 The Information Commissioner's Accounting Officer responsibilities

2.5.1 The Commissioner is designated by the Department's principal Accounting Officer as an Accounting Officer. The text of the letter of appointment of the Information Commissioner as Accounting Officer and the Treasury's *NDPB Accounting Officer Memorandum* are at Annexes C and D.

2.5.2 As an Accounting Officer, the Commissioner is personally responsible for safeguarding the public funds for which he has charge, for propriety and regularity in the handling of those public funds and for the day-to-day operations and management of his office. He should act in accordance with the terms of this document, the instructions and guidance in *Government*

Accounting and other relevant instructions and guidance issued from time to time by the Department, the Treasury and the Cabinet Office, in particular, the Treasury's *NDPB Accounting Officer Memorandum* and the Treasury document *Regularity and Propriety*.

2.5.3 As an Accounting Officer, the Commissioner shall advise the Department on the discharge of his responsibilities as set out in this Framework Document.

2.5.4 The Commissioner may delegate the day-to-day administration of these Accounting Officer responsibilities to other members of his staff. However, he shall not assign absolutely to any other person any of the responsibilities set out in this document.

2.6 The Sponsoring Branch in the Department for Constitutional Affairs

2.6.1 Within the Department the Freedom of Information and Data Protection Division of the Constitution Directorate is responsible for sponsoring the Information Commissioner, acting as a point of contact between the Department and the Commissioner in support of the arrangements set out in this Framework Document and as necessary on day to day issues arising.

3. COMMUNICATION

3.1 Communication between the Department and the Commissioner

3.1.1 The Department will meet the Commissioner formally four times a year to:

- a) discuss the Corporate and Business Plans (see section 5 below);
- b) discuss the Commissioner's performance, its current and future activities and any policy developments relevant to those activities.

3.1.2 It would be neither possible nor desirable to prescribe the pattern of communications between the two bodies, but the following communications will be fixed points:

- a) The formal channel of communication between the Department and the Commissioner is between the Head of the Freedom of Information and Data Protection Division and the Commissioner;
- b) Quarterly meetings will be held between the Commissioner, senior members of his staff and the Sponsoring Branch in the Department. These meetings will be chaired by the Constitution Director of the Department and the Commissioner. The purpose of these meetings is to review operation of the arrangements set out in this Management Statement and Financial Memorandum, to discuss the Commissioner's progress against his output and performance objectives and targets and discuss his expenditure against plans (as reported to the Department under paragraph 7.2 below), to discuss objectives and operational issues.
- d) The Sponsoring Branch will act as a central point for all communications between the Department and Information Commissioner.

3.2 Requests for information

3.2.1 The Department and the Commissioner will be open in their dealings with each other.

3.2.2 Requests for information in addition to that provided for in this Framework Document will be made only where necessary. The body requesting the information will, where possible, allow a period of four weeks for the information to be provided. The body providing the information will aim to meet the target for response.

3.3 Requests for approval

3.3.1 Where prior Departmental approval is required, the Department will approve requests from the Commissioner, where possible, four weeks before approval is needed. The Department will aim to deal with such requests within four weeks.

3.3.2 The Department will endeavour to deal with matters requiring Parliamentary approval as quickly as the Parliamentary timetable will allow.

4 **STRATEGIC PLANNING, OBJECTIVES AND TARGETS**

4.1 The statutory duties and powers of the Commissioner (“statutory responsibilities”) are set out in Annex A. The Commissioner will seek to contribute to the achievement of the Department’s Strategic Objectives and PSA targets.

4.2 The strategic planning system

4.2.1 The Commissioner will have a strategic planning system which:

- a) identifies those features in the environment which the Commissioner needs to take into account when deciding how he can best determine and achieve his key aims and objectives, including the needs and interests of stakeholders;
- b) provides a clear view on the long-term direction of his office;
- c) provides the basis for determining the financial resources that will be made available to the Commissioner and any charging policy;
- d) provides a clear understanding of the corporate strategy which the Commissioner and key members of his staff will follow to enable his aims and objectives to be achieved within an agreed resources framework; and
- e) ensures challenging, but realistic, performance targets are set.

4.3 The Corporate Plan

4.3.1 The Commissioner will discuss with the Department his strategic aims and objectives and the issues to be addressed in the Corporate Plan. By the end of December each year, the Commissioner will provide the Department with a copy of his draft Corporate Plan covering the three years ahead commencing the following April. The Department will provide the Commissioner with any comments on the draft Corporate Plan within two months of receipt.

4.3.2 The Corporate Plan will reflect the Commissioner’s statutory responsibilities and, subject to those responsibilities, the issues discussed with the Department. In particular, the Corporate Plan will seek to ensure that the Commissioner contributes to the achievement of the Department’s Strategic Objectives and PSA targets. (see paragraph 4.1 above).

4.3.3 The Corporate Plan will include:

- a) a strategic analysis of the environment in which the Commissioner operates, including the resources likely to be available to him;
- b) the Commissioner's aims and objectives and key priorities;
- c) the Commissioner's high level performance targets and indicators over the three forward years, and his strategy for achieving the aims and objectives;
- d) forecasts of expenditure and income, including a summary of budget and staffing plans, taking account of guidance on resource assumptions and policies provided by the Department at the beginning of the planning round. These forecasts should represent the Commissioner's best estimate of available income, including any grant or grant-in-aid and other expenditure within the Commissioner's provision;
- e) any other matters reasonably specified by the Department, which do not threaten or undermine the Commissioner's independent status.

4.4 The Business Plan

4.4.1 By the end of December each year, the Commissioner will provide the Department with a copy of his draft Business Plan covering the year ahead commencing the following April. The Department will provide the Commissioner with any comments on the draft Business Plan within two months of receipt.

4.4.2 The Business Plan will set out a detailed statement of how the Commissioner and his staff will implement his Corporate Plan during the year ahead, including:

- a) key objectives, targets and performance indicators;
- b) a clear indication of priorities for the year ahead, highlighting in particular proposed changes of priority where these are significant;
- c) management plans and staffing arrangements, including a clear indication of organisational responsibilities;
- d) analysis of total administration costs and overall staffing requirements for the year ahead;
- e) allocations of budget (including staffing and other resources), with meaningful indications of the costs and staffing implications for each objective;
- f) details of expenditure proposed on projects and items of a novel, politically sensitive or potentially contentious nature;
- g) any proposed initiatives or developments which require departmental or Ministerial approval;
- h) particular measures (including specific targets) to demonstrate how the Commissioner will improve year-on-year efficiency and achieve greater value for money within the resource limits notified by the Department;

- i) any significant deviations from, or revisions to, the previous year's Corporate Plan;
- j) arrangements for monitoring output and performance objectives and targets, including milestones for assessing progress against targets;
- k) any proposed changes in organisation or working practices which might affect expenditure commitments in future years; and
- l) any other matters reasonably specified by the Department which do not threaten or undermine the Commissioner's independent status.

4.5 Adoption and Publication of Plans and Results

- 4.5.1 The Commissioner will consider modification to his draft Corporate Plan and Business Plan in the light of any comments from the Department.
- 4.5.2 The Commissioner will then adopt and publish his Corporate Plan and Business Plan.
- 4.5.3 Aims, objectives and key performance indicators for the year under review, will be included in each annual report, together with an account of results actually achieved.

5. BUDGETING AND REPORTING

5.1 Budgeting procedures

- 5.1.1 The amounts of the grant-in-aid to be paid to the Commissioner will be determined by the sponsorship branch and approved by the Constitution Director. The payment of the grant-in-aid will be subject to conditions imposed by the sponsorship branch. These conditions are set out in this Management Statement and the Financial Memorandum.
- 5.1.2 In advance of each financial year (usually in January or February) the Department will send to the Commissioner a formal statement of its financial provision as approved by the Director General Policy, together with a statement of the Department's Public Service Agreement (PSA) targets relating to the Commissioner's activities and any change in policies affecting the Commissioner in the coming financial year. The notified provision will be subject to Parliamentary approval and will form part of the Department's overall Departmental Expenditure Limit (DEL).
- 5.1.4 Once the Department has sent to the Commissioner a formal statement of its financial provision, and subject to any restrictions imposed by statute, the Director General Policy, this Management Statement and the Financial Memorandum, the Commissioner will have authority to incur expenditure approved in the budget without further reference to the Department, on the following conditions:
 - a) the Commissioner complies with the delegations set out in the Financial Memorandum
 - b) the Commissioner complies with the conditions set out in section 3.3 of the Financial Memorandum regarding novel, contentious or repercussive proposals;
 - c) inclusion of any planned and approved expenditure in the Commissioner's budget will not remove the need to seek formal Departmental approval where any proposed expenditure is outside the delegated limits;

- d) the Commissioner will provide the Department with such information about his operations, performance, individual projects or other expenditure as the Department may reasonably require;
- e) the Commissioner will formally notify the Department as soon as possible if at any time and for any reason it becomes apparent that an overspend may occur or that an underspend of 5% or more may be developing in the grant-in-aid.

5.2 Reporting procedures

- 5.2.1 To enable the Department to meet its responsibilities in relation to the Strategic Objectives and PSA targets and to monitor the Commissioner's financial and operational performance the Commissioner will provide the Department with financial, statistical and management information as agreed by the Department and the Commissioner. Full details will be set out in writing in the Financial Memorandum or otherwise.

6. **INTERNAL CONTROL**

6.1 General

- 6.1.1 The Commissioner as an Accounting Officer should ensure that effective management systems appropriate for the achievement of his objectives, including financial monitoring and control systems, have been put in place.

6.2 Internal audit

- 6.2.1 The Commissioner will establish and maintain arrangements for internal audit in accordance with the objectives, standards, scope and practices set out in the Treasury's *Government Internal Audit Standards* and with the guidance provided in the *Government Information Systems Audit Manual*.
- 6.2.2 The Department will assess the effectiveness of the Commissioner's internal audit arrangements by periodic scrutiny of the plans and reports prepared by the Commissioner's internal auditor on future and past activity respectively. Once these plans and reports have been approved by the Commissioner they will be forwarded as soon as possible in each financial year to the Head of the Sponsor Division and copied to the Head of Internal Audit at the Department.

6.3 Department

- 6.3.1 The Commissioner agrees to make available to the Department's Internal Assurance Division (IAD) all material reasonably required by them to carry out any reviews relating to financial management and value for money. Any such review will not look at matters relating to the Commissioner's statutory duties and powers.

6.4 Audit Committee

- 6.4.1 The Commissioner will set up an Audit Committee in accordance with the Cabinet Office's *Guidance on Codes of Practice for Public Bodies* and Dear Accounting Officer letter (GEN) 13/00. Copies of audit committee meeting minutes will be sent to the sponsorship branch as soon as possible after they have been approved

6.5 Annual Corporate Governance Statement

6.5.1 The Commissioner will make an annual statement regarding the system of internal control in accordance with the current requirement in the government sector. This statement will be included in the Commissioner's Accounts.

7 EXTERNAL ACCOUNTABILITY

7.1 The Commissioner's Accounts

7.1.2 The Commissioner will keep accounts and at the end of each financial year will prepare a Statement of Accounts. The accounts will be kept and the Statement of Accounts will be prepared in accordance with the Data Protection Act 1998 and the Accounts Direction issued by the Department with the approval of the Treasury.

7.1.3 The Accounts Direction will specify the form and content of the Accounts, the information to be contained in the Statement of Accounts, the manner in which the information is to be presented, and the principles according to which the Statement of Accounts is to be prepared. The Department will consult the Commissioner's external auditor on the content of the Accounts Direction.

7.1.4 The Commissioner will send the signed Statement of Accounts to the Comptroller and Auditor General on or before 31 August following the end of the financial year, and by the same date will send a copy to the sponsoring branch.

7.2 External audit

7.2.1 The National Audit Office (NAO) will audit the Commissioner's expenditures and incomes; examine their regularity and propriety; and certify and report on the Commissioner's Statement of Accounts. The Commissioner and the NAO will lay before Parliament the Statement of Accounts and the NAO's Report on it, usually with the Commissioner's Annual Report (see section 7.3 below).

7.2.2 The Commissioner will send copies of all NAO management letters and correspondence relating to those letters, and of the Commissioner's replies, to the sponsoring branch. For the avoidance of doubt, this requirement does not apply to drafts of management letters.

7.2.3 In addition, NAO will have access to the Commissioner's books and records by virtue of the National Audit Act 1983 for the purpose of carrying out examinations into the economy, efficiency and effectiveness with which the Commissioner has used his resources in discharging his functions.

7.3 The Annual Report

7.3.1 After the end of each financial year the Commissioner will prepare an Annual Report of his activities, to be laid before Parliament.

7.3.2 The Commissioner will aim to publish his Annual Report and Accounts before the summer recess.

7.3.3 The content of the Annual Report and Accounts will comply with the Treasury's guidance *Executive NDPBs' Annual Reports and Accounts*.

8. STAFF MANAGEMENT

8.1 Terms and conditions of staff

8.1.2 The terms and conditions of the Commissioner's staff will be determined by the Commissioner with the approval of the Department.

8.1.3 The Commissioner will be responsible for its own pay bargaining, and the Commissioner will have responsibility for authorisation of the Commissioner's pays system for his staff. The Commission must prepare annual pay bargaining remit proposals, which must be agreed by the Department and Treasury before annual pay negotiations begin.

8.2 Personnel management policy

8.2.1 The Commissioner is responsible for the recruitment, retention and motivation of his staff. The Commissioner will issue personnel management policy statement, which ensures that:

- a) the rules for the recruitment and management of staff provide for appointment and advance on merit on the basis of equal opportunities for all applicants and staff;
- b) the level and structure of its staffing, including gradings and numbers of staff, is appropriate to its functions and the requirements of efficiency, effectiveness and economy;
- c) the performance of staff at all levels is satisfactorily appraised;
- d) staff are encouraged to acquire appropriate professional management and other expertise necessary to achieve the Commissioner's objectives;
- e) proper consultation with staff takes place on key issues affecting them;
- f) adequate grievance and disciplinary procedures are in place;
- f) a code of conduct for staff is in place based on the Cabinet Office document *Model Code for Staff of Executive Non-Departmental Public Bodies*.

8.3 Pensions

8.3.1 The Commissioner will consult the Department about any proposed alterations to pension arrangements or to pay arrangements, which have implications for its pension schemes.

9. REVIEWING THE ROLE OF THE INFORMATION COMMISSIONER

9.1 Review

9.1.1 The Department will conduct a Financial Management and Policy Review of the Commissioner, in accordance with the Cabinet Office guidance.

DUTIES OF THE COMMISSIONER

1. To promote the following of good practice by data controllers and public authorities, and to promote their respective observance with, the requirements of the Data Protection Act 1998 (the “Data Protection Act”) and, in the case of public authorities, the Freedom of Information Act 2000 (the “Freedom of Information Act”) and the provisions of the statutory codes of practice issued by the Secretary of State under that Act¹.
2. To provide information to the public about both pieces of legislation and how they work, about good practice and about other matters relevant to his work².
3. To issue codes of practice for guidance as to good practice about data protection where either the Commissioner considers it appropriate or the Secretary of State directs him to do so, subject to appropriate consultation³. The Commissioner is also required, in appropriate cases, to encourage the preparation and dissemination of data protection codes of practice by trade associations, consider those codes submitted to him, ensure appropriate consultation and then provide an opinion on the code as to good practice⁴.
4. To consult with the Keeper of Public Records (and Deputy Keeper of Public Records of Northern Ireland) about promoting the observance by public authorities of the statutory “records management” code of practice⁵. Such consultation must also be undertaken before issuing a practice recommendation to a public authority relating to such code⁶.
5. Annually, to lay before each House of Parliament a general report on the exercise of his functions under both the Data Protection and Freedom of Information Acts⁷. Where not included in any such report the Commissioner must also lay before each House of Parliament any data protection code of practice produced by him further to the direction of the Secretary of State⁸.
6. To maintain a register of data controllers who have given notification under the Data Protection Act and to add new entries, or amend existing entries, on the register⁹. The Commissioner is required to make the information contained in the register available to the public for inspection free of charge¹⁰. The Commissioner must also supply any member of the public with a certified copy of any register entry upon payment of the prescribed fee¹¹.
7. To deal with requests for assessment made under the Data Protection Act¹². The Commissioner is required to make assessments as to whether it is likely or unlikely that processing of personal data that directly affects the individual making the request has been, or is being, carried out in compliance with the Act¹³.
8. To deal with applications for decisions made under the Freedom of Information Act¹⁴. The Commissioner is required to decide whether a request for information made by a complainant to a public authority has been dealt with in accordance with the relevant requirements of the Act¹⁵.

¹ Section 51(1) Data Protection Act (“DPA”) and section 47(1) Freedom of Information Act (“FOIA”)

² Section 51(2) and (6) DPA and section 47(2) FOIA

³ Section 51(3) DPA

⁴ Section 51(4) DPA

⁵ Section 47(5) FOIA

⁶ Section 48(3) and (4) FOIA and see Powers of the Commissioner (“Powers”), paragraph 5 below

⁷ Section 52(1) DPA and section 49(1) FOIA

⁸ Section 52(3) DPA

⁹ Sections 19(1) and 20(4) DPA

¹⁰ Section 19(6) DPA

¹¹ Section 19(7) DPA

¹² Section 42(2) DPA

¹³ Section 42(1) DPA

¹⁴ Section 50(2) FOIA

¹⁵ Section 50(1) FOIA

9. To consider publication schemes submitted to him by public authorities and decide whether or not to approve each scheme¹⁶.
10. To consider, and decide upon, any application made to him for assistance in relation to court proceedings involving processing for the special purposes and to inform the applicant of his decision¹⁷.
11. To discharge various functions relating to, or arising from, the Commissioner's international role in connection with data protection as the national supervisory authority for the UK further to European legislation and other international arrangements¹⁸. In particular, the Commissioner must inform the European Commission and the supervisory authorities in other EEA states of any approvals or authorisations granted by him in relation to international transfers of data¹⁹.
12. Where the Commissioner has conducted a good practice assessment²⁰ (or 'audit') of a data controller's processing, to inform the data controller of the results of that assessment.
13. To pay to the Secretary of State all fees and other sums received by him in the exercise of his functions under either Act or under section 159 Consumer Credit Act 1974²¹.
14. To keep proper accounts and other records in relation to the accounts, to prepare an annual Statement of Account in the form required by the Secretary of State and to send copies of that Statement of Account to the Comptroller and Auditor General²².
15. To appoint at least one and up to two deputy commissioners who shall perform the Commissioner's statutory functions, as specified by the Commissioner upon the appointment of the second deputy commissioner, during any vacancy in that office or at any time when the Commissioner is for any reason unable to act²³.
16. To decide on the remuneration and other conditions of service of the deputy commissioners and his other officers and staff, subject to the approval of the Secretary of State²⁴.
17. To keep under review the working of the notification regulations²⁵. If required to do so by the Secretary of State the Commissioner must consider any matter relating to notification regulations and submit proposals for amendments to those regulations in connection with that matter²⁶.
18. Duties in relation to "assessable processing", subject to implementation of the relevant provisions of the Data Protection Act²⁷. Such provisions have not been implemented to date.

POWERS OF THE COMMISSIONER

1. To give advice to any person about how both Acts work, about good practice and about other matters relevant to the Commissioner's work²⁸.

¹⁶ Section 19(1) FOIA

¹⁷ Section 53 and Schedule 10 DPA. The 'special purposes' means the purposes of journalism, and artistic and literary purposes (section 3 DPA)

¹⁸ Section 54 DPA

¹⁹ Section 54(7) and Schedule 4, paragraphs 8 and 9 DPA

²⁰ under section 51(7) of the DPA the Commissioner has the power to assess any processing of personal data for the following of good practice, with the consent of the data controller (see Powers, paragraph 2 below)

²¹ Schedule 5, paragraph 9(1) DPA as amended by Schedule 2 paragraph 22 FOIA (see also Powers, paragraph 8 and footnote 34 below)

²² Schedule 5, paragraph 10(1) DPA

²³ Schedule 5, paragraph 4(1)(a) DPA as amended by Schedule 2, paragraph 20 FOIA and Schedule 5, paragraph 5 DPA as amended by Schedule 2, paragraph 21 FOIA

²⁴ Schedule 5, paragraph 4(2) and (5) DPA

²⁵ Section 25(2) DPA

²⁶ Section 25(3) DPA

²⁷ Section 22 DPA

²⁸ Section 51(2) DPA and section 47(2) FOIA

2. With the consent of the data controller, the Commissioner may assess any processing of personal data for the following of good practice under the Data Protection Act²⁹. With the consent of the public authority the Commissioner may assess whether a public authority is following good practice under the Freedom of Information Act³⁰. This is sometimes referred to as the ‘audit’ power.
3. To lay before each House of Parliament such other reports about the exercise of his functions as he thinks fit³¹.
4. Enforcement powers under both pieces of legislation, as well as under the Telecommunications (Data Protection & Privacy) Regulations 1999 (the “Regulations”)³². These entail service of decision notices³³, information notices³⁴ and enforcement notices³⁵ (as well as variations and/or restrictions of these in particular circumstances³⁶) to enable the Commissioner to investigate and rectify instances of non-compliance with:
 - any of the data protection principles,
 - any of the requirements concerning access to information held by public authorities in Part 1 of the Freedom of Information Act, or
 - any of the requirements of the Regulations.

All such notices are subject to appeal to the Information Tribunal³⁷. The Commissioner also has power to cancel or vary an enforcement notice served under the Data Protection Act or the Regulations³⁸, and to cancel an information notice (or special information notice) served under the Data Protection Act³⁹, or an information or enforcement notice served under the Freedom of Information Act⁴⁰. If a public authority fails to comply with a notice served under the Freedom of Information Act the Commissioner may certify that fact in writing to the court⁴¹.

5. To issue practice recommendations to public authorities under the Freedom of Information Act to require conformity with either of the statutory codes of practice under that Act⁴².
6. To set an expiry date for his approval of any publication scheme⁴³, and to revoke his approval of any publication scheme⁴⁴.
7. The Commissioner may approve model publication schemes prepared by him or other persons in relation to particular classes of public authorities as well as modifications to any approved model scheme proposed to be adopted. He may refuse to approve a proposed model publication scheme (or modifications to an approved scheme) submitted to him by any person. He may set an expiry date for any approval of a model scheme and may revoke any approval given by notice⁴⁵.

²⁹ Section 51(7) DPA

³⁰ Section 47(3) FOIA

³¹ Section 52(2) DPA and section 49(2) FOIA

³² Regulation 36 and Schedule 4

³³ Section 50(3)-(6) FOIA

³⁴ Section 43 DPA and section 51 FOIA

³⁵ Section 40 DPA and section 52 FOIA

³⁶ Sections 44 to 46 DPA, involving the exercise of enforcement powers in the context of processing for the special purposes

³⁷ Section 48 DPA and section 57 FOIA

³⁸ Section 41(1) DPA and Regulation 36 and Schedule 4, paragraph 2 of the Regulations

³⁹ Respectively, sections 43(9) and 44(10) DPA

⁴⁰ Respectively, sections 51(7) and 52(4) FOIA

⁴¹ Section 54(1) FOIA

⁴² Section 48 FOIA

⁴³ Section 19(5) FOIA

⁴⁴ Section 19(6) FOIA

⁴⁵ Section 20 FOIA

MANAGEMENT STATEMENT – APRIL 2005

8. To prosecute any person for any offence contained in either the Data Protection or Freedom of Information Acts⁴⁶ together with associated powers of entry and inspection in connection with the investigation of any such offence (or contravention of any of the data protection principles)⁴⁷.
9. To make orders (and vary or revoke such orders) under section 159 of the Consumer Credit Act 1974⁴⁸ further to receiving applications from individual consumers or credit reference agencies relating to complaints of incorrect entries on credit reference files.
10. With the consent of the Secretary of State (none given to date), the Commissioner may charge such sums as he decides for any services provided by him in exercising certain functions under either Act⁴⁹.
11. To appoint such number of officers and staff (other than deputy commissioners) as he decides and to pay such pensions, allowances or gratuities (or make payments towards their provision) as he decides, subject to the approval of the Secretary of State⁵⁰.
12. To submit to the Secretary of State proposals as to amendments to be made to the notification regulations⁵¹.

⁴⁶ Section 60(1) DPA and section 77(4) FOIA

⁴⁷ Section 50 and Schedule 9 DPA, and section 55 and Schedule 3 FOIA

⁴⁸ as amended by section 62 DPA

⁴⁹ Section 51(8) DPA and section 47(4) FOIA

⁵⁰ Schedule 5, paragraph 4(1)(b), (3)-(5) DPA

⁵¹ Section 25(2) DPA

The Duties and Powers of the Secretary of State in relation to the Information Commissioner under the Data Protection Act 1998 (“the DPA”) and Freedom of Information Act 2000 (“the FOIA”)

1. Financing the Commissioner and the services undertaken by the Commissioner

- 1.1 To make payments to the Commissioner out of the money provided by Parliament (Schedule 5 paragraph 8 DPA 1998)
- 1.2 To be paid all fees and other sums received by the Commissioner in the exercise of his functions under the Data Protection Act 1998, section 159 of the Consumer Credit Act 1974 and the Freedom of Information Act 2000 unless the Secretary of State otherwise directs with the consent of Treasury. To pay all such sums into the Consolidated Fund. (Schedule 5 paragraphs 8 and 9 DPA 1998 as amended by schedule 2 part II paragraph 22 of FOIA 2000)
- 1.3 To direct the form in which the Commissioner should prepare a statement of account in respect of each financial year (Schedule 5 paragraph 10 (1) (b) of DPA 1998)

2. Commissioner’s staff

To approve the number of officers and staff whom the Commissioner appoints, their remuneration and other conditions of service, and the payment of pensions, allowances or gratuities to the deputy commissioners, other officers and staff.
(Schedule 5 paragraph 4 (5) DPA 1998, as amended by schedule 2 part II paragraph 20 of FOIA 2000)

3. Guidance

- 3.1 May direct by order the Commissioner to produce codes of practice for guidance as to good practice. (Section 51 (3) (a) of DPA 1998)
- 3.2 To give consent to the sums the Commissioner may charge for any services he provides under Part VI of the DPA (section 51 (8) of DPA 1998) or under section 47 of the FOIA (Section 47(4) FOIA)
- 3.3 Must consult the Commissioner before issuing or revising any code of practice under section 45 FOIA (providing guidance to public authorities as to desirable practice in discharging their functions under Part I of FOIA 2000) (Section 45(4) of FOIA 2000)
- 3.4 Must consult the Commissioner before issuing or revising any code of practice under section 46 FOIA (providing guidance to public authorities as to desirable practice in keeping, management and destruction of their records) (Section 46(5)(b) of FOIA 2000)

4. Notification and fees regulations

- 4.1 To receive from the Commissioner proposals to amend the notification regulations, may require the Commissioner to consider any matter relating to notification regulations and to submit proposed amendments to him in connection with that matter. The Secretary of State must consider any proposals made to him by the Commissioner and consult with the Commissioner before making any notification regulations. (Section 25 (2) (3) and (4) of DPA 1998)
- 4.2 When making fee regulations, must have regard to the desirability of securing that the fees paid to the Commissioner are sufficient to offset the expenses incurred by or in respect of the Commissioner, any deficit previously incurred in respect of such expenses, and any expenses incurred in respect of the inclusion of any officers or staff of the Commissioner in any scheme under section 1 of the Superannuation Act 1972. (Section 26(2) of DPA 1998)

5. Miscellaneous Order Making Powers

- 5.1 Must consult the Commissioner before making certain orders or regulations under the DPA (section 67(3) DPA)

- 5.2 May by order make provision for the appointment of data protection supervisors ,n impose duties on data protection supervisors in relation to the Commissioner and confer functions on the Commissioner in relation to data protection supervisors (section 23 DPA).
- 5.3 May by order make provision in relation to the Commissioner’s international role, in particular as to:
- ❑ the functions to be discharged by the Commissioner as the designated authority in the United Kingdom for the purposes of Article 13 of the Convention;
 - ❑ co-operation by the Commissioner with the European Commission and with supervisory authorities in other EEA states in connection with the performance of their respective duties; and
 - ❑ the functions to be discharged by the Commissioner to enable the Government to give effect to any international obligations of the United Kingdom.
(DPA section 54(2), (3) and (4))
- 5.4 May direct the Commissioner to provide any authority exercising data protection functions under the law of a colony specified in the direction with assistance in connection with the discharge of those functions
(DPA section 54(5))

Copy of Letter issued to AO

Annex C

February 2003

Dear Richard

This letter appoints you, as the Information Commissioner, as an Accounting Officer.

The purpose of this letter is to set out formally my responsibilities as Accounting Officer for the Department for Constitutional Affairs, how this relates to the Department's role as sponsor for the Information Commissioner and your responsibilities so far as the delegation of these duties is concerned. As you know, I am the Accounting Officer for the Vote to which your office's grant-in-aid is charged. It is not my intention that the discharge of my responsibilities should involve detailed, continuous scrutiny of the Information Commissioner's financial administration. That would obscure the purposes of delegation and blur lines of responsibilities. My intention is to make it clear that the prime responsibility for the discharge of financial responsibilities rests with you.

With these allocations, I delegate authority to you as the Commissioner to spend the amounts involved, within the prescribed limits, on the services for which you are responsible. However, I may not delegate my accountability to Parliament and I remain fully answerable through the Committee for Public Accounts for the expenditure for the Department for Constitutional Affairs Estimates. It is for this reason that it is necessary to set out the terms and conditions under which you exercise your delegated authority in a Memorandum of this kind.

In carrying out your duties, you will need to take account of the conditions attached to the payment of grant-in-aid to you. I understand that you are currently being consulted on a revised Financial Memorandum intended to come into effect at the start of the next financial year in April 2003, which sets out the arrangements and conditions for the allocation of public money to you for discharge of your duties, and which deals generally with relations between the Department and yourself on matters of financial provision and management. For the moment, the existing Financial Memorandum (as amended at the liaison meeting in March 2002) remains operational.

During the period of your appointment, I shall expect you to answer for the management of your resources. This places on you responsibility for the propriety of your expenditure: that it gives the best possible value for the money spent on administration; for good management of public money; for the regularity of management and financial accounts information; and ensuring that your staff fully understand the principles which should be applied to expenditure by them.

You should regard the designation as making you answerable in Parliament for your expenditure as Information Commissioner. As you know, the Committee of Public Accounts, which oversees public expenditure has wide powers to examine the use and management of public money, to call witnesses and to seek evidence in its investigations. Should the need arise, I shall expect you to accompany me before the Committee to provide evidence or explanation on matters relating to the management of all moneys allocated to you. I have attached a copy of the Treasury Memorandum, which sets out the responsibility of an NDPB Accounting Officer, which should give a clear picture of what is expected of you in this role.

I am sending a copy of this letter to the Treasury Officer of Accounts, the Comptroller and Auditor General and the Clerk to the Committee of Public Accounts.

Yours sincerely
Sir Hayden Phillips

THE RESPONSIBILITIES OF A NDPB ACCOUNTING OFFICER

1. The senior official (usually the full time Chief Executive or equivalent) of a Non Departmental Public Body (NDPB) is normally designated as accounting officer by the departmental Accounting Officer of the sponsor department. An accounting officer has the personal duty of signing the body's accounts, unless the body is a Companies Act company, in which case the accounts should be signed both by a Director and the accounting officer. By virtue of this duty, the accounting officer has the further duty of being a witness before the Committee of Public Accounts (PAC) to deal with questions arising from those accounts or, more commonly, from reports made to Parliament by the Comptroller and Auditor General (C&AG) under the National Audit Act 1983.

2. Associated with these duties are the further responsibilities, which are the subject of this Memorandum. It is incumbent on the officials who serve as accounting officer to combine these duties with their duties to the Board of the NDPB (or where there is no Board, to the senior appointee to the body), which they should inform of their designation. More detailed guidance for the accounting officer and the staff of the NDPB is contained in the Treasury Manual 'Government Accounting' (copies of which are available from The Stationery Office).

3. NDPBs are financed in a variety of ways, for example by grant-in-aid, grant, income from fees and charges or private sector funds. An accounting officer is designated in the case of NDPBs, which are financed by a large grant or grant in aid or where the accounts of the body are to be laid before Parliament. Where it is in the interests of public accountability, a department will also designate an accounting officer for a NDPB, which receives its primary funding from other sources. It is an important principle that, regardless of the source of the funding, accounting officers are responsible to Parliament for the resources under their control.

4. This memorandum is directed at those who are formally designated as accounting officer. Its contents, however, are applicable to the senior full-time official of a NDPB for which there is no designated accounting officer. This memorandum does not apply to those NDPBs (such as Tribunals and Advisory Committees) which are funded directly by a department through a Vote (as opposed to via grant or grant in aid) and for which the departmental Accounting Officer is therefore accountable.

5. Paragraph 6 below describes the responsibilities of the departmental Accounting Officer's relation to NDPBs. Paragraph 7 describes the general responsibilities of the Chief Executive of an NDPB. Paragraphs 8-18 set out the responsibilities of accounting officers in respect of the funds for which they are responsible. Paragraphs 19-24 deal with the accounting officer's duties and responsibilities in respect of the National Audit Office and Public Accounts Committee. Paragraphs 25-27 describe the arrangements for covering the absence of an accounting officer.

Responsibilities of the departmental Accounting Officer

6. In relation to NDPB's, it is the responsibility of a departmental Accounting Officer to be satisfied that:

- a. the financial and other management controls applied by the department are appropriate and sufficient to safeguard public funds and, more generally, that those being applied by the NDPB conform with the requirements both of propriety and of good financial management;

- b. there is an adequate statement of the financial relationship between the department and the NDPB (in a financial memorandum or similar document) and that this statement is regularly reviewed;
- c. the conditions attached to grants conform with the terms of the Vote and that the sponsor department monitors compliance with those conditions.

The general responsibilities of the NDPB accounting officer

7. The designation as accounting officer reflects the fact that under the Board (whether or not he or she is a member of the Board) the accounting officer has responsibility, which only he or she is in a position to discharge, for the overall organisation, management and staffing of the NDPB and for its procedures in financial and other matters. The accounting officer must ensure that there is a high standard of financial management in the NDPB as a whole; that financial systems and procedures promote the efficient and economical conduct of business and safeguard financial propriety and regularity throughout the NDPB; and that financial considerations are fully taken into account in decisions on NDPB policy proposals.

The specific responsibilities of the NDPB accounting officer

8. The essence of the accounting officer's role is a personal responsibility for the propriety and regularity of the public finances for which he or she is answerable; for the keeping of proper accounts; for prudent and economical administration; for the avoidance of waste and extravagance; and for the efficient and effective use of all the resources in their charge.

9. As accounting officer you must:

- a. personally sign the accounts, (subject to the point in paragraph 1 about Companies Act companies), and in doing so accept personal responsibility for their proper presentation as prescribed in legislation or by Ministers;
- b. conform with the requirements of any financial memoranda and ensure that accounts are drawn up in accordance with any conditions set out in legislation, the accounts direction and relevant Treasury guidance;
- c. ensure that proper financial procedures are followed and that accounting records are maintained in a form suited to the requirements of management as well as in the form prescribed for published accounts;
- d. ensure that the resources for which you are responsible as accounting officer are properly and well managed (see paragraph 10 below) and safeguarded, with independent and effective checks of cash balances in the hands of any official;
- e. ensure that assets for which you are responsible such as land, buildings or other property, including stores and equipment are controlled and safeguarded with similar care, and with checks as appropriate;
- f. ensure that conflicts of interest are avoided, whether in the proceedings of the Board or in the actions or advice of its staff, including yourself,
- g. ensure that, in the consideration of policy proposals relating to the expenditure, for which you are responsible as accounting officer, all relevant financial considerations, including

any issues of propriety, regularity or value for money, are taken into account, and brought to the attention of the Board.

10. An accounting officer should ensure that effective management systems appropriate for the achievement of the NDPB's objectives, including financial monitoring and control systems, have been put in place. An accounting officer should also ensure that managers at all levels:

- a. have a clear view of their objectives, and the means to assess and, wherever possible, measure outputs or performance in relation to those objectives;
- b. are assigned well defined responsibilities for making the best use of resources (both those consumed by their own commands and any made available to organisations or individuals outside the NDPB) including a critical scrutiny of output and value for money;
- c. have the information (particularly about costs), training and access to the expert advice which they need to exercise their responsibilities effectively.

11. Accounting officers must make sure that their arrangements for delegation promote good management and that they are supported by the necessary staff with an appropriate balance of skills. Arrangements for internal audit should accord with the objectives, standards and practices set out in the Treasury "Government Internal Audit Manual".

Regularity and propriety of expenditure

12. In respect of funds voted by Parliament accounting officers have a particular responsibility for ensuring compliance with Parliamentary requirements in the control of expenditure and any requirements imposed by the sponsor department. A fundamental requirement is that the funds for which they are responsible should be applied only to the extent and for the purposes authorised by Parliament. You must also comply with any conditions, which Ministers may attach to the grant or grant-in-aid. You must ensure that Parliament's attention is drawn to losses or special payments, by appropriate notation of the relevant account.

13. An accounting officer is responsible for ensuring that specific approval for expenditure has been obtained from the sponsor department in all cases where it is required, including cases involving pay, pensions and conditions of service. This will include any expenditure not covered by any authorities delegated by the department to the NDPB. As in the case of delegations from the Treasury to departments, delegated authority does not remove the obligation to submit to its sponsor department proposals, which are novel or contentious. The accounting officer is also responsible for ensuring that adequate machinery exists for the collection and bringing to account in due form of all receipts of any kind connected with the accounts of the NDPB.

Advice to the Board

14. An accounting officer has particular responsibility to see that appropriate advice is tendered to the Board on all matters of financial propriety and regularity and more broadly as to all considerations of prudent and economical administration, efficiency and effectiveness. Accounting officers will need to determine how and in what terms such advice should be tendered, and whether in a particular case to make specific reference to their own duty as accounting officer to justify to the Public Accounts Committee transactions for which they are accountable.

15. The Board of a NDPB should act in accordance with the requirements of propriety or regularity (including the provisions of the NDPB's financial memorandum, or other documents setting out the

financial duties of the NDPB, or any of "Government Accounting" or other rules governing the conduct of the NDPB). However, if the Board or the Chairman is contemplating a course of action involving a transaction which you as accounting officer consider would infringe these requirements, you should set out in writing your objection to the proposal, the reasons for this objection, and your duty to notify the Comptroller and Auditor General (C&AG) should your advice be overruled. If the Board decides nonetheless to proceed, you should seek a written instruction to take the action in question. You should also inform your sponsoring department's Accounting Officer of the position, if possible before the Board takes its decision or in any event before the decision is implemented, so that the department, if it considers it appropriate, can intervene with the Board and inform the Treasury. If the outcome is that you are overruled the Board's instruction must be complied with, but your request for the instruction and the instruction itself should be communicated without undue delay to the NDPB's external auditors, and to the C&-AG. Provided that this procedure has been followed, the PAC can be expected to recognise that the accounting officer bears no personal responsibility for the transaction.

16. If a course of action is contemplated which raises an issue not of formal propriety or regularity but relating to your wider responsibilities for economy, efficiency and effectiveness, it is your duty to draw the relevant factors to the attention of the Board and to advise them in whatever way you deem appropriate. If your advice is overruled, and the proposal is one, which as accounting officer you would not feel able to defend to the Public Accounts Committee as representing value for money, you should seek a written instruction before proceeding. The departmental Accounting Officer should be informed of such an instruction, if possible before the decision is implemented. It will then be for the departmental Accounting Officer to consider the matter, and whether or not to intervene. If the outcome is that the difference between yourself and the Board nevertheless remains unresolved, the Treasury should be informed and your request for the instruction and the instruction itself should be communicated to the C&AG without undue delay, as in cases of propriety or regularity (paragraph 15 above).

17. If because of the extreme urgency of the situation there is no time to submit advice in writing to the Board in either of the eventualities referred to in paragraphs 15 and 16 before the Board takes a decision, you must ensure that, if the Board overrules the advice, both the advice and the Board's instructions are recorded in writing immediately afterwards.

18. If an accounting officer is also the Chairman or a member of the Board, he or she should ensure that the responsibilities as accounting officer do not conflict with those as Board member. For example, if the Board proposes action which as accounting officer you could not endorse, and would therefore advise against, you should, as a Board member, vote against such action, or ensure that your opposition as Board member as well as accounting officer is clearly recorded if no formal vote is taken. In serious cases it will not be sufficient to protect your position as Board member merely by abstaining from a decision which cannot be supported.

Appearance before the Public Accounts Committee

19. Where the C&AG is the auditor of the NDPB or has rights of inspection (either by statute or by agreement) then the C&AG may also, under the National Audit Act 1983, carry out examinations into the economy, efficiency and effectiveness with which the NDPB has used its resources in discharging its functions. An accounting officer may expect to be called upon to appear before the Committee from time to time, normally with the Accounting Officer from the sponsor department, to give evidence on the reports arising from these examinations or reports following the annual certification audit, and to answer the Committee's questions concerning expenditure and receipts for which he or she is accounting officer. An accounting officer may be supported by one or two other senior officials, who may, if necessary, assist in giving evidence.

20. Treasury officials attend Committee hearings, and may be asked to comment on the evidence. The Treasury has the formal responsibility for presenting Estimates to Parliament, for prescribing the form of accounts and the rules of Government Accounting and for promoting good financial management in departments. This goes with the Treasury's central responsibility for the operation of public expenditure control. Parliament has traditionally regarded the Treasury as an ally in controlling expenditure.

21. An accounting officer will be expected to furnish the Committee with explanations of any indications of weakness in the matters covered by paragraphs 8-13 above, to which their attention has been drawn by the C&AG or about which they may wish to question the accounting officer.

22. In practice, an accounting officer will normally have delegated authority to others, but cannot on that account disclaim responsibility or dilute his or her accountability. Nor, by convention, does the incumbent accounting officer decline to answer questions where the events took place before taking up appointment: the Committee may be expected not to press the incumbent's personal responsibility in such circumstances.

23. The Committee has emphasised the importance it attaches to accuracy of evidence, and the ability of witnesses to ensure this, in order to ensure that relevant lines of enquiry may be pursued at its hearings. The accounting officer should ensure that he or she is adequately and accurately briefed on matters, which are likely to arise at the hearing. The accounting officer may however ask the Committee for leave to supply information not within his or her immediate knowledge by means of a later note. Should it be discovered subsequently that the evidence provided to the Committee has contained errors, these should be made known to the Committee at the earliest possible moment.

24. In general, the rules and conventions governing appearances of officials before Parliamentary Committees apply to the Public Accounts Committee, including the general convention that officials do not disclose the advice given to the Board. Nevertheless, in a case where the procedure described in paragraph 15 was used concerning a matter of propriety or regularity, the accounting officer's advice, and its overruling by the Board, would be disclosed to the Committee. In a case covered by paragraph 16, where the advice of an accounting officer has been overruled in a matter not of propriety or regularity but of prudent and economical administration, efficiency or effectiveness, the C&AG will have made clear in the report to the Committee that the accounting officer was overruled. The accounting officer should seek to avoid disclosing the advice given to the Board, though subject to their agreement the accounting officer should be ready to explain the reasons for their decision.

Absence of an accounting officer

25. An accounting officer should ensure that he or she is generally available for consultation, and that in any temporary period of unavailability due to illness or other cause, or during the normal period of annual leave, there will be a senior officer in the NDPB who can act on his or her behalf if required.

26. If it becomes clear to the Board that an accounting officer is so incapacitated that he or she will be unable to discharge these responsibilities over a period of four weeks or more, the sponsor department should be notified so that an acting accounting officer can be formally designated, pending the accounting officer's return. The same applies if exceptionally the accounting officer plans an absence of more than four weeks during which he or she cannot be contacted.

27. The Public Accounts Committee may be expected to postpone a hearing if the relevant accounting officer is temporarily indisposed. Where the accounting officer is unable by reason of incapacity or absence to sign the accounts in time to submit them to the Minister, the NDPB may submit unsigned copies pending the accounting officer's return. If the accounting officer is unable to sign the accounts in time for printing, the acting accounting officer should sign instead.

HM TREASURY
DECEMBER 1994