

Reference: 20190604

26 September 2019



s9(2)(a)

Dear s9(2)(a)

Thank you for your Official Information Act request, received on 1 September 2019. You requested the document *Treasury Report T2019/1701: Avoiding Unappropriated Expenditure dated June 12 2019*.

Information being released

Please find enclosed the following documents:

Item	Date	Document Description	Decision
1.	11 June 2019	Treasury Report: Avoiding Unappropriated Expenditure: Transfers by Order in Council for 2018/19	Released in full
2.	11 June 2019	LEG Memorandum: Transfers between Outputs 2018/19	Released in full
3.	11 June 2019	Transfers Between Outputs Order 2019: Letter to Governor-General	Released in full

I have decided to release documents listed above, subject to information being withheld under one or more of the following sections of the Official Information Act, as applicable:

- section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage.
- Direct dial phone numbers of officials have been redacted under section 9(2)(k) in order to reduce the possibility of staff being exposed to phishing and other scams. This is because information released under the OIA may end up in the public domain, for example, on websites including Treasury's website.

In making my decision, I have considered the public interest considerations in section 9(1) of the Official Information Act.

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Treasury website.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

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<https://treasury.govt.nz>

Alex Harrington
Manager, Budget Management

20190604

Table Of Contents

1.	<u>Treasury Report: Avoiding Unappropriated Expenditure</u>	1
2.	<u>Transfers Between Outputs Order 2019: Letter to Governor-General</u>	5
3.	<u>LEG Memorandum: Transfers Between Outputs 2018 19</u>	7

IN-CONFIDENCE

TE TAI ŌHANGA
THE TREASURY
Treasury Report: Avoiding Unappropriated Expenditure: Transfers by Order in Council for 2018/19

Date:	11 June 2019	Report No:	T2019/1701
		File Number:	BM-2-11-2019

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Grant Robertson)	<p>Agree the proposal for fiscally neutral transfers under section 26A of the Public Finance Act be included in an Order in Council</p> <p>Sign and forward to the Cabinet Office the attached:</p> <ul style="list-style-type: none"> - LEG memorandum - Letter to the Governor General, and - Advice Sheet 	10am, Thursday 13 June 2019

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
s9(2)(g)(i)		s9(2)(k)	N/A (mob)
Alex Harrington	Manager, Budget Management		s9(2)(a)
			✓

Actions for the Minister's Office Staff (if required)

Once signed, **forward** to the Cabinet Office the attached LEG memorandum, Cabinet Submission Form, Advice Sheet and Letter to the Governor General.

Return the copies of the signed report and attachments to Treasury.

Note any feedback on the quality of the report

Enclosure: Yes (attached)

IN-CONFIDENCE**Treasury Report: Avoiding Unappropriated Expenditure: Transfers by Order in Council for 2018/19****Purpose of Report**

1. This report seeks your agreement to the inclusion of fiscally neutral transfers requested by Hon Stuart Nash to avoid unappropriated expenditure in Vote Police in an Order in Council under section 26A of the Public Finance Act 1989 (PFA) (detailed in Annex One).
2. It is sometimes necessary for changes to be made to appropriations after the Supplementary Estimates have been finalised. Departments may realise they have already incurred, or are likely to incur, expenditure in excess of or outside the scope of existing appropriations. Provisions for dealing with potential or actual unappropriated expenditure are as follows:

Type of approval	
Section 26A: Order in Council	Section 26A of the 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.
Section 26B: 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.
Section 26C: 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 (Confirmation and Validation) Act. Ministers should seek interim authority under Imprest Supply from Cabinet prior to incurring the expenditure. Unauthorised capital injections can also be validated in such legislation.

3. This report only deals with approvals under section 26A. Approvals under sections 26B and 26C will be separately dealt with later in the year.

Transfers between Output Expenses under Section 26A

4. You received and have signed a request for s 26A transfers for Vote Police. The attached annex outlines the fiscally neutral transfers to be included in the Order in Council relating to s 26A of the PFA.
5. The Treasury is satisfied that the transfers do not exceed the 5% limit specified under s 26A.
6. Draft copies of an Order in Council giving effect to these transfers and a memorandum to the LEG seeking agreement to this Order being made are attached for your consideration.
7. Subject to your agreement, the Parliamentary Counsel Office will provide the final Order in Council to the Cabinet Office prior to LEG on 18 June. The Order in Council will be considered by the Executive Council on Monday 24 June.

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8. Ordinarily, the '28-day rule' requires that an Order in Council shall not come into force until at least 28 days after it has been notified in the Gazette. The LEG memorandum recommends that the 28-day rule be waived so that the Order in Council can come into force before the end of the 2018/19 financial year.

Recommended Action

We recommend that you:

- a **agree** that the fiscally neutral transfers between output expenses set out in Annex One be included in an Order in Council under section 26A of the PFA

Agree/disagree.

- b **sign and forward** the attached Cabinet Legislation Committee memorandum, letter to the Governor General, and advice sheet relating to the Public Finance (Transfers Between Outputs) Order 2019 to the Cabinet Office
- c **note** that because the Order in Council is to come into force on 30 June 2019, a waiver of the 28 day rule is sought
- d **note** that further cases for approval under sections 26B and 26C of the PFA will likely be submitted to you by Ministers as details and amounts become known, and
- e **note** that the Treasury will report to you on the final position of unappropriated expenditure in December.

Alex Harrington
Manager, Budget Management

Hon Grant Robertson
Minister of Finance

IN-CONFIDENCE**Annex One: 26A Transfers to Avoid 2018/19 Unappropriated Expenditure**

Vote Police	
These transfers are principally required to align the output class expenditure to expected activities, including those that arose due to reallocation of resources following the terrorist attack in Christchurch on 15th March 2019 with resources being deployed to demand.	(\$million)
Baseline Reductions	
Departmental Output Expense: Police Primary Response Management	(5.500)
Departmental Output Expense: Specific Crime Prevention Services and Maintenance of Public Order	(1.500)
Departmental Output Expense: Case Resolution and Support to Judicial Process	(1.500)
Departmental Output Expense: Investigations	(1.000)
Total	(9.500)
Baseline Increases	
Departmental Output Expense: General Crime Prevention Services	9.500
Total	9.500

Her Excellency the Governor-General
Government House
WELLINGTON

Your Excellency

PUBLIC FINANCE (TRANSFERS BETWEEN OUTPUTS) ORDER 2019

This Order is being made pursuant to section 26A of the Public Finance Act 1989. The Order transfers amounts appropriated for output expense appropriations in one Vote to other output expense appropriations within the same Vote.

Section 26A of the Public Finance Act 1989 allows for such transfers without further appropriation than that section where:

- the amount transferred does not increase that appropriation for a financial year by more than 5 percent
- no other transfer under section 26A to that appropriation has occurred during that financial year, and
- the total amount appropriated for that financial year for all output expense appropriations in that Vote is unaltered.

All of the transfers in the Order meet the requirements set out above.

Section 26A(2) of the Public Finance Act 1989 requires that a clause confirming the making of the order must be included in an Appropriation Bill that applies to that financial year. This clause will be included in the Appropriation (2018/19 Confirmation and Validation) Bill.

Yours sincerely

Hon Grant Robertson
Minister of Finance



In Executive Council

Her Excellency the Governor-General is recommended to sign the attached Order in Council making the Public Finance (Transfers Between Outputs) Order 2019

**Hon Grant Robertson
Minister of Finance**

Approved in Council

Clerk of the Executive Council

RELEASED UNDER THE OFFICIAL INFORMATION ACT

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Office of the Minister of Finance

Chair
Cabinet Legislation Committee

Public Finance (Transfers Between Outputs) Order 2019

Proposal

1. This paper seeks authorisation for submission to the Executive Council of the Public Finance (Transfers Between Outputs) Order 2019, made under section 26A of the Public Finance Act 1989, directing limited transfers between output expense appropriations. It also seeks a waiver of the 28-day rule so that the Order can come into force before the end of the financial year (by 30 June 2019).

Policy

2. It is often necessary for minor changes to be made to the amounts of appropriations after the Supplementary Estimates have been approved by Cabinet. These changes are necessary to avoid incurring unappropriated expenditure. Section 26A of the Public Finance Act 1989 authorises the Governor-General, by Order in Council, to direct a transfer of resources between output expense appropriations within a Vote to avoid unappropriated expenses.
3. This paper details the section 26A criteria and cases of fiscally neutral transfers to be made by the Public Finance (Transfers Between Outputs) Order 2019 to avoid unappropriated expenditure in 2018/19.

Section 26A Criteria

4. The Public Finance (Transfers Between Outputs) Order 2019 is made under section 26A of the Public Finance Act 1989 and allows for the transfer between output expenses within a Vote if:
 - a. The amount transferred does not increase that appropriation for a financial year by more than 5 percent
 - b. No other transfer under section 26A to that appropriation has occurred during that financial year; and
 - c. The total amount appropriated for that financial year for all output expense appropriations in that vote is unaltered.

Fiscally Neutral Transfers to Be Made by the Public Finance (Transfers Between Outputs) Order 2019

5. A list of fiscally neutral transfers under section 26A of the Public Finance Act 1989 required to avoid unappropriated expenditure in 2018/19 is provided in Annex One to this paper. These transfers are included in the proposed Order in Council, and meet the criteria for section 26A transfers set out above.

Timing and 28 Day Rule

6. The 28-day rule requires that an Order in Council shall not come into force until at least 28 days after it has been notified in the Gazette. The proposed Order in Council is to come into force on 30 June 2019, therefore a waiver of the 28-day rule is being sought on the following basis:
 - a. the making of fiscally neutral transfers under section 26A of the Public Finance Act 1989 by Order in Council, to avoid unappropriated expenditure in 2018/19, must come into force by the end of the financial year to which the expenditure relates (i.e. by 30 June 2019),
 - b. the Order needs to be made as close to the end of the financial year as possible, so as to take into account the latest possible information on expenditure, and
 - c. the Order imposes no obligation on anyone other than the Ministers and departments responsible for the Votes in which transfers are being made.

Compliance

7. The proposed Order in Council complies with:
 - a. the principles of the Treaty of Waitangi
 - b. the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - c. the principles and guidelines set out in the Privacy Act 1993
 - d. relevant international standards and obligations, and
 - e. LAC Guidelines: Guidelines on Process and Content of Legislation, a publication by the Legislation Advisory Committee.

Regulations Review Committee

8. There are no grounds for the Regulations Review Committee to draw the proposed Order in Council to the attention of the House under Standing Order 319.

Certification by Parliamentary Counsel

9. The proposed Order in Council has been certified by Parliamentary Counsel as being in order for submission to Cabinet subject to the waiver of the 28-day rule.

Regulatory Impact Statement

10. A regulatory impact statement is not required as the proposed Order in Council is mechanical in nature and has no impact on businesses, individuals or not-for-profit entities.

Publicity

11. Apart from notification in the Gazette, no other publicity of the proposed Order in Council is required.

Consultation

12. Departments that administer Votes where fiscally neutral transfers are being sought under section 26A of the Public Finance Act 1989 have been consulted on the amounts and output expense appropriations included in the proposed Order in Council.

Proactive Release

13. This paper may be proactively released, with any appropriate redactions.

Recommendations

14. I recommend that the Cabinet Legislation Committee:
 - 1 **note** that the Public Finance (Transfers Between Outputs) Order 2019, made under section 26A of the Public Finance Act 1989, will direct a transfer of resources between output expense appropriations within a Vote to avoid unappropriated expense
 - 2 **authorise** the submission to the Executive Council of the Public Finance (Transfers Between Outputs) Order 2019
 - 3 **note** that the Public Finance (Transfers Between Outputs) Order 2019 requires the 28-day rule to be waived as the Order must come into force by the end of the financial year to which the expenditure relates (30 June 2019) to avoid unappropriated expenditure in 2018/19, and the Order imposes no obligation on anyone other than the Ministers and departments for the Votes in which transfers are being made, and
 - 4 **agree** to waive the 28-day rule so that the Public Finance (Transfers Between Outputs) Order 2019 comes into force on 30 June 2019.

Hon Grant Robertson
Minister of Finance

Date:

Annex One: Transfers Between Output Expense Appropriations

Fiscally Neutral Transfers Under Section 26A of the Public Finance Act	
Vote	\$ million
Police	9.500
Total	9.500

Vote Police	(\$ million)
These transfers are principally required to align the output class expenditure to expected activities, including those that arose due to reallocation of resources following the terrorist attack in Christchurch on 15th March 2019 with resources being deployed to demand.	
Baseline Reductions	
Departmental Output Expense: Police Primary Response Management	(5.500)
Departmental Output Expense: Specific Crime Prevention Services and Maintenance of Public Order	(1.500)
Departmental Output Expense: Case Resolution and Support to Judicial Process	(1.500)
Departmental Output Expense: Investigations	(1.000)
Total	(9.500)
Baseline Increases	
Departmental Output Expense: General Crime Prevention Services	9.500
Total	9.500