



**national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

# **GUIDELINE ON UNAUTHORISED EXPENDITURE**

**OFFICE OF THE ACCOUNTANT-GENERAL**

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# GUIDELINE ON UNAUTHORISED EXPENDITURE

## PURPOSE

1. The purpose of this *Guideline* is to provide clarity on the interpretation of matters related to unauthorised expenditure, as defined in section 1 of the Public Finance Management Act (PFMA), 1999 (Act No. 1 of 1999) and the application of procedures related thereto.

## DEFINITIONS

2. The following definitions are relevant in relation to unauthorised expenditure:

Definitions in terms of section 1 of the PFMA	Description
<b>Irregular expenditure</b>	Irregular expenditure means expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any applicable legislation, including:  (a) the PFMA; (b) the State Tender Board Act, 1968 (Act No. 86 of 1968), or any regulations made in terms of that Act; or (c) any provincial legislation providing for procurement procedures in that provincial government.
<b>Main Division within a vote (often referred to as a Programme)</b>	One of the segments into which the vote is divided and which specifies the total amount which is appropriated for the item under that segment and is approved by Parliament or a provincial legislature, as may be appropriate, as part of the vote.
<b>Overspending</b>	When expenditure under the vote exceeds the amount appropriated for that vote or in relation to a main division when expenditure under the main division exceeds the amount appropriated for that main division, subject to the virement rules contained in section 43 of the PFMA.
<b>Unauthorised expenditure</b>	(a) overspending of a vote or a main division within a vote; or (b) expenditure that is made not in accordance with the purpose of a vote or, in the case of a main division, not in accordance with the purpose of the main division.

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Definitions in terms of section 1 of the PFMA	Description
Vote	One of the main segments into which an Appropriation Act is divided and which specifies the total amount which is usually appropriated per department in an Appropriation Act and is separately approved by Parliament or the provincial legislature, as may be appropriate, before it approves the relevant draft Appropriation Act as such.

### APPLICABILITY

3. Taking cognizance of the definitions contained in paragraph 2 above, the concept of unauthorised expenditure is only applicable to departments.

### LEVEL AT WHICH PARLIAMENT AND THE RELEVANT PROVINCIAL LEGISLATURES APPROPRIATE MONEY FOR DEPARTMENTS TO CARRY OUT THEIR MANDATES

4. Given the definition, unauthorised expenditure is only calculated at the level of a vote or main division within a vote since it is at these levels that Parliament and the relevant provincial legislature appropriate money.
5. Whilst some Appropriation Acts provide budgetary information at economic classification level, such is only provided as a breakdown of the appropriation. An example of such is contained in extracts of an Appropriation Bill for national departments and the Appropriation Act, 2013 of a province, which are enclosed as **Annexures A and B** respectively.

### DISTINCTION BETWEEN UNAUTHORISED EXPENDITURE AND IRREGULAR EXPENDITURE

6. If a department incurs expenditure that contravenes any applicable legislation, such expenditure meets with the definition of irregular expenditure and must be classified as such.
7. Should the same expenditure in paragraph 6 above relate to the procurement of goods or services that is not in accordance with the purpose of the vote or main division within a vote or which results in the overspending of the main vote or main division within a vote, such expenditure also meets with the definition of unauthorised expenditure.

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8. Transactions such as those in paragraphs 6 and 7 above may not be accounted for as both irregular and unauthorised expenditure. Considering that irregular expenditure is defined as expenditure other than unauthorised expenditure, this means that unauthorised expenditure shall take precedence over irregular expenditure.

### PFMA PROVISIONS RELATED TO UNAUTHORISED EXPENDITURE

9. Section 38 of the PFMA spells out the following general responsibilities of accounting officers related to unauthorised expenditure:
  - (i) **Section 38(1)(c)(ii) and section 39(1)(b):** The accounting officer must take effective and appropriate steps to prevent unauthorised expenditure;
  - (ii) **Section 38(1)(g):** The accounting officer must on discovery of unauthorised expenditure, immediately report, in writing, report particulars of the expenditure to the relevant treasury;
  - (iii) **Section 38(1)(h)(iii):** The accounting officer must take effective and appropriate disciplinary steps against any official in the service of the department who makes or permits unauthorised expenditure; and
  - (iv) **Section 40(3)(b):** The annual report and audited financial statements must include particulars of any unauthorised expenditure that occurred during the financial year and any criminal or disciplinary steps taken as a result of such unauthorised expenditure.
10. Section 45(c) of the PFMA requires an official of a department to take effective and appropriate steps to prevent unauthorised expenditure within that official's area of responsibility.

### TREASURY REGULATION PROVISIONS RELATED TO UNAUTHORISED EXPENDITURE

11. In terms of section 76(2)(e) of the PFMA, the National Treasury may make regulations or issue instructions applicable to departments on, amongst others, unauthorised expenditure.
12. In line with section 76(2)(e) above, the National Treasury issued the following regulations:

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Treasury Regulations	Description
<b>Treasury Regulation 9.1.1</b>	The accounting officer of a department must exercise all reasonable care to prevent and detect unauthorised expenditure and must, for this purpose, implement effective, efficient and transparent processes of financial and risk management.
<b>Treasury Regulation 9.1.2</b>	When an official of a department discovers unauthorised expenditure, that official must immediately report such expenditure to the accounting officer. The unauthorised expenditure must also be reported in the department's monthly report to the relevant treasury, as required in terms of section 40(4)(b) of the PFMA.
<b>Treasury Regulation 9.1.3</b>	When an accounting officer determines the appropriateness of disciplinary steps to be taken against an official in terms of section 38(1)(g) of the PFMA, the accounting officer must take into account— <ul style="list-style-type: none"> <li>(a) the circumstances of the transgression;</li> <li>(b) the extent of the expenditure involved; and</li> <li>(c) the nature and seriousness of the transgression.</li> </ul>
<b>Treasury Regulation 9.1.4</b>	The recovery of losses or damages resulting from unauthorised expenditure must be dealt with in accordance with Treasury Regulation 12 related to the Management of Losses.
<b>Treasury Regulation 9.1.5</b>	The amount of the unauthorised expenditure must be disclosed as a note to the department's annual financial statements.

### VIREMENT BETWEEN MAIN DIVISIONS WITHIN A VOTE

13. Section 43(1) of the PFMA allows an accounting officer of a department to utilize a saving in the amount appropriated under a main division within a vote towards the defrayment of excess expenditure under another main division within the same vote, unless the relevant treasury directs otherwise.
14. Section 43(2) of the PFMA provides that the amount of the saving referred to in section 43(1), may not exceed 8% of the amount appropriated under that main division. The 8% limitation is

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restricted to the main division from which the saving is to be transferred from whilst no limitation exists for the main division that receives the saving.

15. Section 43(4) of the PFMA, does not authorize the utilization of a saving in:
  - (a) an amount specifically and exclusively appropriated for a purpose mentioned under a main division within a vote;
  - (b) an amount appropriated for transfer to another institution; and
  - (c) an amount appropriated for capital expenditure in order to defray current expenditure.
  
16. In addition to section 43(4) of the PFMA, Treasury Regulation 6.3.1 states that for purposes of section 43(1):
  - (a) compensation of employees and transfers and subsidies to other institutions, excluding transfers and subsidies to other levels of government for purposes of paying levies and taxes imposed by legislation, may not be increased without approval of the relevant treasury;
  - (b) new transfers and subsidies to other institutions may not be introduced without the approval of the relevant treasury;
  - (c) allocations earmarked by the relevant treasury for a specific purpose (excluding compensation of employees) may not be used for other purposes, except with its approval, and
  - (d) virement of funds from compensation of employees to transfers and subsidies for the payment of severance/exit packages are excluded from the provisions of (a) and (b).

### **DISTINCTION BETWEEN VIREMENT AND SHIFTING OF FUNDS**

17. Virement is the movement of funds **from** one main division within a vote **to** another main division with the same vote. Shifting of funds takes place between economic classifications **within** a main division of a vote.

### **AMENDMENTS TO SECTION 43(4)(b) and 43(4)(c) OF THE PFMA IN SECTION 5 OF THE NATIONAL ANNUAL APPROPRIATION ACT (AS IT RELATES TO VIREMENT)**

18. Section 43(4) of the PFMA, does not authorize the utilization of a saving in:

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- (a) an amount specifically and exclusively appropriated for a purpose mentioned under a main division within a vote;
  - (b) an amount appropriated for transfer to another institution; and
  - (c) an amount appropriated for capital expenditure in order to defray current expenditure.
19. Section 5(1) of the Appropriation Act, 2013 indicates that despite section 43(4)(b) and (c) of the PFMA, and in order to expedite service delivery, the Minister may approve the utilization of a saving in an amount appropriated for:
- (a) transfer to another organ of state or to an organization or body outside of government, provided that the expenditure is to be utilized for the same purpose as that of the main division within the vote in which it was originally appropriated; or
  - (b) payments for capital assets, in the same vote for other categories of expenditure, other than for the compensation of employees.
20. The provisions in paragraph 19 above are only applicable to national departments. Provincial departments must be guided by their respective provincial Appropriation Acts.

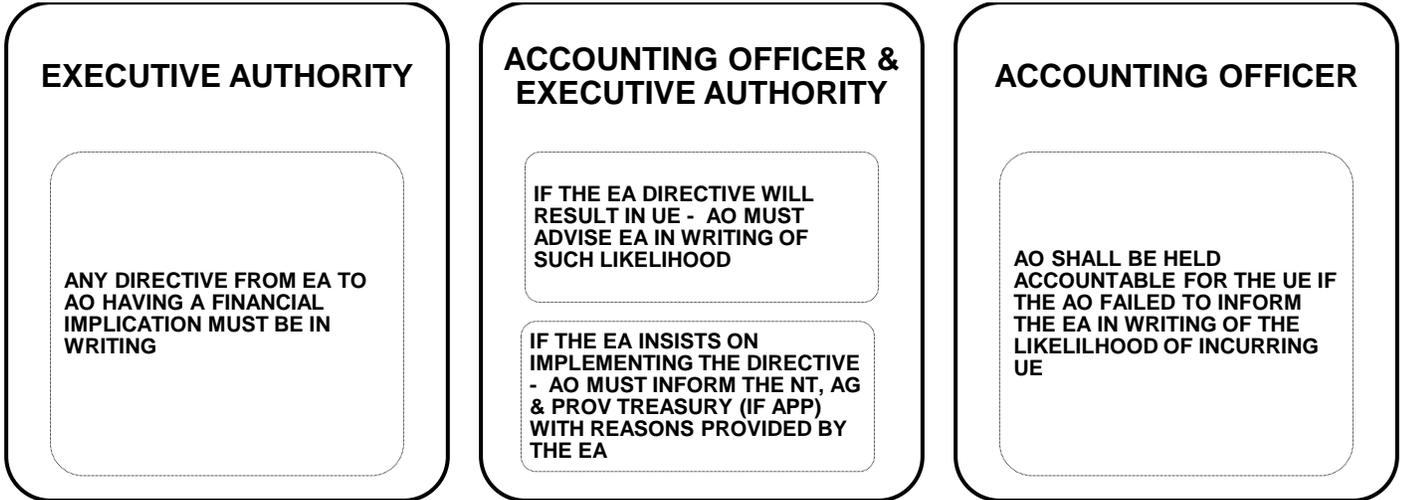
### EXECUTIVE DIRECTIVES HAVING FINANCIAL IMPLICATIONS

21. Section 64(1) of the PFMA states that any directive having financial implications by the executive authority to the accounting officer of the department must be in writing. Section 64(2) of the PFMA indicates that if implementation of the directive is likely to result in unauthorised expenditure, then the accounting officer shall be responsible for such expenditure unless he or she has informed the executive authority in writing of the likelihood of that unauthorised expenditure.
22. Notwithstanding sections 64(1) and 64(2) of the PFMA, if the executive authority decides to proceed with implementation of the directive referred to in paragraph 21 above, such a decision and the reasons therefore must be in writing to the accounting officer who must promptly file a copy of that directive with (a) the National Treasury; (b) the Auditor-General and; (c) the relevant provincial treasury, in the case of a provincial department. The aforementioned is required in terms of section 64(3) of the PFMA.

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## ACCOUNTABILITY FOR UNAUTHORISED EXPENDITURE

### ACCOUNTABILITY ARRANGEMENTS BETWEEN ACCOUNTING OFFICER (AO) AND THE EXECUTIVE AUTHORITY (EA)



## DEALING WITH UNAUTHORISED EXPENDITURE

23. An official who discovers alleged unauthorised expenditure in a department must, in writing, report such immediately to the accounting officer who must ensure that such is recorded in an unauthorised expenditure register.
24. The accounting officer must investigate the alleged unauthorised expenditure to determine whether such meets with the definition of unauthorised expenditure. During the period of investigation, the expenditure must remain in the department's expenditure account since the outcome of the investigation will determine the appropriate action that must be taken by the accounting officer.
25. Should the investigation reveal that the expenditure does not constitute unauthorised expenditure; the details of the expenditure must be retained in the register for purposes of completeness and to provide an appropriate audit trail. The unauthorised expenditure register must be updated to reflect the outcome of the investigation.

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26. After conclusion of the investigation and if the result confirms that the expenditure constitutes unauthorised expenditure, the accounting officer must, in writing, report such immediately to the relevant treasury, as required in terms of section 38(1)(g) of the PFMA.
27. Treasury Regulation 9.1.2 also requires that the accounting officer report the abovementioned unauthorised expenditure in the department's monthly report, as required in terms of section 40(4)(b) of the PFMA.
28. The accounting officer must take appropriate disciplinary steps against any official who is responsible for incurring unauthorised expenditure. When taking such disciplinary steps, the accounting officer must take into consideration the circumstances of the transgression, the extent of the expenditure involved and the nature/seriousness of the transgression. Details regarding the nature of the transgression and the amount involved must also be recorded in the register.
29. Unauthorised expenditure is no longer disallowed by reducing the total expenditure in the Statement of Financial Performance. The unauthorised expenditure "receivable" is, however, created by crediting the Exchequer Grant Account of the department (i.e. reducing the amount available in the vote) and debiting a corresponding receivable/debt account in the Statement of Financial Position.
30. The investigation of alleged unauthorised expenditure must be concluded by the end of the financial year or prior to finalisation of the external audit, if such expenditure is only discovered after the financial year-end. This will ensure that the necessary steps have been taken and that appropriate disclosures are made in the annual financial statements.
31. Receivables comprise amounts due to the state as a result of the sales of goods, the provision of services or the recovery of expenditure incurred by the state. If an investigation into alleged unauthorised expenditure confirms that such expenditure has in fact been incurred and there is an official liable in law, a receivable for the recovery of the relevant amount must be raised.
32. The accounting officer must determine the official liable in law from whom the amount must be recovered. Such information will suffice during the investigation.

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33. The accounting officer must in writing request that the official liable in law pay the amount within 30 days or in reasonable instalments. If the official fails to comply with the request, the matter may be handed to the State Attorney for the recovery of the debt.
34. Treasury Regulation 9.1.4 provides that the recovery of losses or damages resulting from unauthorised expenditure must be dealt with in accordance with Treasury Regulations 12 related to the Management of Losses.
35. Unauthorised expenditure incurred during the year must be disclosed in the relevant notes to the department's Interim Financial Statements and in its Annual Financial Statements.
36. In the accounting officer's report to the annual financial statements and as part of the general review of the state of financial affairs, the accounting officer must include a description of the reasons for unauthorised expenditure and the amounts involved as well as steps taken to address and prevent a recurrence.

### APPROVAL OF UNAUTHORISED EXPENDITURE: SECTION 34 OF THE PFMA

37. Section 34(1) of the PFMA indicates that unauthorised expenditure does not become a charge against a Revenue Fund except when:
  - (a) the expenditure is an overspending of a vote and Parliament or a provincial legislature, as may be appropriate, approves, as a direct charge against the relevant Revenue Fund, an additional amount for that vote which covers the overspending; **OR**
  - (b) the expenditure is unauthorised for another reason and Parliament or a provincial legislature, as may be appropriate, authorizes the expenditure as a direct charge against the relevant Revenue Fund.
38. Section 34(2) of the PFMA indicates that if Parliament or a provincial legislature does not approve an additional amount for any overspending, that additional amount becomes a charge against the funds allocated for the next or future financial years under the relevant vote. This means that the overspending will be funded by a department's future savings achieved against its vote or funds available due to reprioritization of expenditure.
39. After learning of the unauthorised expenditure from the accounting officer's report [in terms of section 38(1) (g) of the PFMA], the Auditor-General's audit report and other sources of

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information, the relevant treasury prepares a report detailing the various instances of unauthorised expenditure. Such a report is submitted to the relevant Public Accounts Committee for advice on the following:

- (a) Approval or non-approval of the unauthorised expenditure; and
- (b) Funding of the unauthorised expenditure.

- 40. The relevant Public Accounts Committee will make recommendations to Parliament or the relevant provincial legislature whether or not to approve the unauthorised expenditure. Such a recommendation will also include advice on whether the unauthorised expenditure should be treated as a direct charge against the relevant revenue fund or a charge against the funds allocated for the following year or future years, as indicated in paragraphs 37 and 38 above.
- 41. The recommendations referred to in paragraph 40 will be presented to Parliament or the relevant provincial legislature for consideration. If Parliament or the relevant provincial legislature approves the unauthorised expenditure, then such an approval is submitted to the Minister of Finance or the relevant provincial MEC that is responsible for finance in that province. The Minister of Finance or the relevant provincial MEC responsible for finance will then table a Finance Bill in Parliament or the relevant provincial legislature.
- 42. Unauthorised expenditure will only be approved with additional funding after the passing of the Finance Bill by Parliament or the relevant provincial legislature.

### **FINANCIAL MISCONDUCT**

- 43. Section 81(1) (b) of the PFMA provides that an accounting officer of a department commits an act of financial misconduct if that accounting officer willfully or negligently makes or permits an unauthorised expenditure.
- 44. Treasury Regulation 4.1.3 indicates that if an accounting officer is alleged to have committed financial misconduct, the relevant treasury, as soon as it becomes aware of the alleged misconduct, must ensure that the relevant executive authority initiates an investigation into the matter and if the allegations are confirmed, holds a disciplinary hearing in accordance with the prescripts applicable and agreements applicable in the public service.

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### ACCOUNTING FOR UNAUTHORISED EXPENDITURE

45. The Modified Cash Standard provides for the annual financial statements disclosure requirements for departments. The annual financial statements template must be used to complement the Modified Cash Standard and to provide for a format in which the unauthorised expenditure disclosure requirements will be presented in the annual financial statements and related notes.

### ACCOUNTING POLICY FOR UNAUTHORISED EXPENDITURE

46. Unauthorised expenditure, when confirmed, must be recorded in the Statement of Financial Position. The amount recorded must be equal to the overspending within the vote or main division within the vote **OR** the expenditure incurred that was not in accordance with the purpose of the vote or main division of the vote.

### DERECOGNITION OF UNAUTHORISED EXPENDITURE FROM THE STATEMENT OF FINANCIAL POSITION

47. Unauthorised expenditure must be recognised in the Statement of Financial Position if it is:
- (a) approved by Parliament or the provincial legislature with funding and the related funds are received;
  - (b) approved by Parliament or the provincial legislature without funding and it becomes a charge against the current or future year's appropriation in the Statement of Financial Performance; or
  - (c) transferred to receivables for recovery.

### TREATMENT OF UNAUTHORISED EXPENDITURE

48. The enclosed **Annexure C** contains a diagrammatic presentation of how unauthorised expenditure is treated.

### EXAMPLES OF UNAUTHORISED EXPENDITURE

49. The enclosed **Annexure D** contains examples of scenarios where unauthorised expenditure has been incurred.

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## ANNEXURE A

### EXAMPLE OF NATIONAL APPROPRIATION BILL AND SCHEDULES

#### SCHEDULE

	R'000	Current Payments			Transfers and Subsidies R'000	Payments for Capital Assets R'000	Payments for Financial Assets R'000
		Compensation of Employees R'000	Goods and Services R'000	Other R'000			
<b>2 Policy, Research and Knowledge Management</b> <i>Provide specialised support services to the department in the areas of research and knowledge management, policy formulation, monitoring and evaluation, and information, communication and business technologies.</i>	49 492	18 919	24 323			6 250	
<b>3 Governance and Intergovernmental Relations</b> <i>Improve vertical and horizontal coordination and alignment between the three spheres of government. Promote public participation in governance through regulatory mechanisms. Provide oversight, intervention and support programmes to provinces, municipalities and associated institutions.</i> <i>Of which</i> <i>Departmental agencies and accounts</i> * – South African Local Government Association: Operations * – Municipal Demarcation Board: Operations <i>Municipal bank accounts</i> * – Local Government Equitable Share <i>Non-profit institutions</i> * – South African Cities Network: Operations * – United Cities and Local Government of Africa: Operations	40 706 726	25 346	20 305		40 661 055	20	
<b>4 Disaster Response Management</b> <i>Promote an integrated and coordinated system of disaster risk management that places special emphasis on prevention, mitigation and preparedness on the part of national, provincial and municipal organs of state, statutory functionaries and other role players involved in disaster risk management, and communities.</i> <i>Of which</i> <i>Conditional grant to local government</i> * – Municipal Disaster Grant <i>Conditional grant to provinces</i> * – Provincial Disaster Grant	585 056	19 895	28 386		534 600	2 175	

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**ANNEXURE B**

**EXAMPLE OF FREE STATE APPROPRIATION ACT AND SCHEDULES**

<b>APPROPRIATION ACT, 2013</b>								
<b>SCHEDULE</b>								
<b>(As a charge to the Provincial Revenue Fund)</b>								
<b>Vote</b>	<b>Description</b>	<b>Total Vote</b>	<b>Current Payments</b>			<b>Transfers and Subsidies</b>	<b>Payments for Capital Assets</b>	<b>Payments for Financial Assets</b>
			<b>Compensation of Employees</b>	<b>Goods and Services</b>	<b>Others</b>			
		<b>R'000</b>	<b>R'000</b>	<b>R'000</b>	<b>R'000</b>	<b>R'000</b>	<b>R'000</b>	<b>R'000</b>
1	Premier	279 956	192 288	84 864		449	2 355	
2	Free State Legislature	173 898	82 307	57 641		31 869	1 881	
3	Economic Development, Tourism and Environmental Affairs	450 195	181 587	95 733		118 587	54 288	
4	Free State Provincial Treasury	216 355	159 537	54 167		336	2 295	
5	Health	7 894 778	5 197 263	1 944 472	712	112 329	640 002	
6	Education	10 456 217	7 971 147	812 481	966	1 197 852	473 791	
7	Social Development	951 229	445 862	88 097		381 627	35 643	
8	Co-operative Governance and Traditional Affairs	348 413	165 704	115 978		63 955	2 776	
9	Public Works	1 418 308	356 823	530 403		285 956	245 126	
10	Police, Roads and Transport	2 260 413	529 811	443 587		232 238	1 054 677	
11	Agriculture	628 627	281 501	108 544		174 192	65 380	
12	Sport, Arts, Culture and Recreation	515 137	199 919	110 777		25 111	179 330	
13	Human Settlements	1 233 625	81 903	27 491		1 122 191	2 040	
14	Rural Development	43 687	16 919	5 252		21 466	30	
<b>Total</b>		<b>26 871 618</b>	<b>15 862 671</b>	<b>4 479 487</b>	<b>1 878</b>	<b>3 788 158</b>	<b>2 759 624</b>	

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## ANNEXURE C

### TREATMENT FOR UNAUTHORISED EXPENDITURE

#### DEPARTMENTS

