**Contracts and Grants: A Comparative Table**

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| **Issue** | **Contracts:** [**www.gov.uk/government/collections/the-public-sector-contract**](http://www.gov.uk/government/collections/the-public-sector-contract) | **Government Grants:** [**https://grantshub.civilservice.gov.uk**](https://grantshub.civilservice.gov.uk) |
| Description | The agreement for money to be paid to an external source / party for the purchase of products (assets or goods) or activities (services or works). Usually focussed on specific output. Mostly for commercial opportunities, and the provision of goods and services or access to experts. | The agreement for money to be paid to an individual or entity to fund activities that align with departmental policy and / or for the public good. Usually focussed on more general outcomes. In reflecting department priorities these can cover areas of disadvantage, social improvement, research and innovation etc. |
| Benefit to Government | Departments can benefit directly, by taking ownership of goods purchased, or receiving services provided. | Departments have activities carried out that align with their policies, they do not gain a direct economic benefit (except if replacing a spending commitment). |
| Incentives | Most contracts have a profit element to the payment and consideration. Contracted parties can make a reasonable return / profit margin in return for the risk they are accepting and the goods or services being delivered.  | Grants do not generally have a profit element, they are usually for reimbursement of costs incurred. The recipient is usually barred from making a profit from delivery. Grants incentivise delivery through funding. |
| Ownership and Liability | Departments can take ownership of (and may be beneficiary to) the products or activities. Liability / risk lies predominantly with the contractor. | The funding department does not take ownership of (nor will it be beneficiary to) the activities. Liability / risk lies predominantly with the funder. |
| Control | Departments have greater / direct control over the funds spent. | Gives Department limited control over the funds spent, allowing Departments to remain at arm’s length to recipients and outputs. |
| Elements | A legally enforceable agreement, between two or more competent parties that intend to be legally bound, where an offer is made and accepted, and funds / resources are provided for goods or services (consideration). | A legal agreement, between two or more parties, where on evidence of the entity’s need or qualification, money is paid in order to fund (or reimburse expenditure on) specific recipient activities or services. |
| Establishment  | Usually developed via commission for a specific service / goods, detailed specification of goods or services to be provided. With defined outputs and a delivery profile or agreed activity. | Usually developed in conjunction with existing activities that align with Department policy, indication of likely areas to benefit, of desired outcomes and longer term impacts. Less well defined, particularly for innovation / research. |
| Terms & Conditions | Terms are any provisions that form part of the contract, they create legal obligations. Terms can be conditions or warranties. They regulate the exchange of products / activities (quality, quantity, etc.) for payment. | A grant is provided on conditions aimed at ensuring the proper application of the grant funds, but not in return for anything. Terms and Conditions focus on broader aims / milestones and categories of expenditure. |
| Payment | Can pay by results, transferring risk and limiting financial exposure – uses targets to incentivise performance. Funding is payable as deposits or on completion of contract stages. | Can be paid in advance of the activities being carried out (if need is evidenced) or provided on submission of periodic claims. |
| Delivery | Usually driven by the Department, based on its needs, and specified within the contract. Usually outputs focussed. | The recipient is usually able to exercise freedom to take their own decisions on how to achieve the outcomes. |
| [Value Added Tax](https://s3-eu-west-2.amazonaws.com/taxcofe-prod-storage-e5g3yxxi33zt/uploads/2018/02/TCoE-Website-VAT_Grants.pdf) | Due to consideration VAT will apply (unless for certain exempt goods / services, or with HMRC waiver). [More information can be found here](https://www.gov.uk/vat-businesses). | As [consideration is not usually evident VAT will not apply](https://www.gov.uk/hmrc-internal-manuals/vat-supply-and-consideration/vatsc51600). If there is consideration, it is unlikely to be a grant. [More information can be found here](https://s3-eu-west-2.amazonaws.com/taxcofe-prod-storage-e5g3yxxi33zt/uploads/2018/08/20180810-policy-approved-Grants-and-VAT-002.pdf). |
| Authority & Regulatory Issues | Authority to enter into contracts is given by Parliament via vote on estimate, though specific legislation may also be required for certain large contracts. [EU Public Sector Procurement law applies](https://www.gov.uk/guidance/transposing-eu-procurement-directives). Contract procurement rules must be applied. Civil law standards and contract law applies. | Specific legislation is usually required to allow a Secretary of State to make grants (in some instances grants can be financed via the Appropriations Act). [The Grants Standards](https://www.gov.uk/government/publications/grants-standards/grant-standards) must be complied with. Public law standards, public and administrative law and tort law applies. |
| Remedies for breach | Suspension, clawback of unused or misused funds, liquidated damages allow compensation, recovery of funds due to losses incurred, termination for breach, may be able to obtain a court order for specific performance. | Can suspend, claw back unused or misused funds, termination for breach. |

**Official Sensitive** – Please note this is a policy guidance note and should not be treated as constituting legal advice

**Questions to Consider when deciding on the appropriate mechanism:**

**Grants versus contracts**

**Instructions**: work through the questions in turn, highlighting the appropriate answer to each in the context of the scheme/ policy under development. The totalled result should provide an indication as to which mechanism may be most appropriate, providing a baseline for further investigations.

**Important note**: the table below is to be used as a guide, to provide a broad indication of which funding mechanism may be the most appropriate; there are exceptions to the answers in most cases and so the table should be used in conjunction with detailed guidance and considered in the light of legal advice on particular schemes.

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| # | Question | Grant | Contract |
| 1 | Do you wish the participating organisations to make a profit or retain a surplus? | No | Yes |
| 2 | Do you have clear volumes for outputs that can be profiled? | No | Yes |
| 3 | Do you want the agreement to be legally enforceable (beyond just clawback)? | No | Yes |
| 4 | Is the output likely to be defined during delivery? | Yes | No |
| 5 | Do you wish to pay by results as opposed to just payment in arrears? | No | Yes |
| 6 | Do you wish to only cover costs? | Yes | No |
| 7 | Will the scheme provide a direct economic benefit to the department? | No | Yes |
| 8 | Is the scheme aimed towards non-profit making activities rather than more obviously commercialised for-profit activities? | Yes | No |
| 9 | Will the scheme be delivered primarily by commercial entities? | No | Yes |
| 10 | Will delivery be via small organisations in the civil society sector? | Yes | No |
| 11 | Do you consider VAT is applicable - are goods/services being bought? | No | Yes |
| 12 | Is the scheme an extension of departmental policy delivered externally due to internal capability and/ or capacity limits? | Yes | No |
| 13 | Do you wish the department to retain the funding/ delivery risk? | Yes | No |
| 14 | Will the scheme deliver tangible/ measurable outputs? | No | Yes |
| 15 | Will the scheme provide the department with direct access to specialists available via a market, such as management consultants? | No | Yes |
| 16 | Does the applicable legislation specify grant powers? | Yes | No |
| 17 | Do you expect to claw-back surplus funding? | Yes | No |