

# **BUDGET RESPONSIBILITY AND NATIONAL AUDIT ACT 2011**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS AND SCHEDULES**

#### **Part 1: Budget Responsibility**

##### ***Section 1: Charter for Budget Responsibility***

25. *Section 1* imposes a range of duties on the Treasury with regard to the operation of fiscal policy. The section effectively replaces section 155 of the FA 1998, which established the statutory Code for Fiscal Stability in the previous Government's fiscal framework.
26. *Subsection (1)* requires the Treasury to prepare and lay before Parliament a document to be known as the Charter for Budget Responsibility (the "Charter"). The Charter will explain the Government's approach to fiscal and debt management policy in a single statutory document.
27. *Subsection (2)* imposes obligations on the Treasury with regard to the contents of the Charter. The Charter must set out: (a) the Treasury's fiscal and debt management objectives; and (b) the fiscal mandate. The fiscal mandate comprises the means by which the Treasury's objectives in relation to fiscal policy will be attained. It consists of a set of targets set by the Treasury for the fiscal position. These are to be consistent with the Government's fiscal policy objectives, as described in the Charter. The mandate for fiscal policy was set by the Chancellor of the Exchequer in the June 2010 Budget. The mandate requires that the Treasury balance the cyclically-adjusted current budget deficit by the end of the rolling, five-year forecast period, which is part of the Government's plan for consolidating the public finances. In addition, the Charter must specify the minimum contents of the annual Budget document.
28. *Subsection (4)* requires the Treasury to lay the Charter before Parliament upon its publication. *Subsection (7)* sets out that the Charter does not come into force until it has been approved by an affirmative resolution of the House of Commons.
29. *Subsections (5), (6), and (8)* make provision for amending and publishing the Charter. The mechanism for amending the Charter will require the Treasury to lay a revised Charter before Parliament and again secure an affirmative resolution of the House of Commons.

##### ***Section 2: Annual Budget documents***

30. *Section 2* sets requirements for the Treasury to produce annual budget documentation, specifically the Financial Statement and Budget Report (the "Budget"). The section replaces part of section 156 of the FA 1998 (repealed in [section 10](#)). The section removes the requirement on the Treasury (imposed by section 156) to prepare and publish a pre-Budget Report.

31. *Subsection (2)* requires the Budget to conform to the minimum requirements set out in the Charter as to what must be included in the Budget.
32. *Subsections (3) and (4)* place duties on the Treasury to lay each Budget before Parliament and publish each Budget.

### **Section 3: Office for Budget Responsibility**

33. This section establishes the Office as a body corporate. This is in common with similar independent bodies that form part of the Crown but are not government departments. For administrative purposes the Office will be categorised as an executive non-departmental public body (NDPB).

### **Section 4: Main duty of Office**

34. *Subsection (1)* establishes that the Office's main duty is to examine and report on the sustainability of the public finances.
35. *Subsection (2)* provides that the duty of the Office includes the matters set out in *subsections (3) and (4)*. The Office is not limited to these products and can also choose to report on other matters relating to the sustainability of the public finances in pursuance of its main duty.
36. *Subsections (3) and (4)* make provision for the Office's "core functions", which must be exercised by the Budget Responsibility Committee (see *paragraph 9* of *Schedule 1*).
37. *Subsection (3)* requires the Office to prepare fiscal and economic forecasts at least twice for every financial year. It is the Government's intention to adopt these forecasts as the "official" Government forecasts. Although the Chancellor does reserve the right to disagree with them, he has said that this will require an explanation to Parliament.<sup>1</sup> Alongside these forecasts, the Office is required to prepare an assessment of whether the fiscal mandate has been, or is likely to be, achieved (as specified in the Charter).
38. *Subsection (4)* requires the Office to prepare two further reports on an annual basis. The first is an assessment of the accuracy of the fiscal and economic forecasts previously prepared by it. This type of analysis was previously produced by the Treasury, in a document known as the *End of year fiscal report*. The duty to assess the accuracy of its own fiscal and economic forecasts does not preclude the Office from considering other forecasts, provided this analysis is consistent with its statutory duties. The second report is the analysis of the sustainability of the public finances (this will include long-term projections and an analysis of the public sector balance sheet). Again, this type of analysis was previously carried out by the Treasury in a document known as the *Long-term public finance report*.
39. *Subsection (5)* requires the Office to include any forecast, assessment or analysis produced under *subsection (3) or (4)* in some form of report.
40. *Subsection (6)* requires every report produced under section 4 to include an explanation of the factors which the Office took into account when preparing the report. In particular, each report must include an explanation of the main assumptions made by the Office and an explanation of the main risks which the Office considered to be relevant.

### **Section 5: How main duty is to be performed**

41. *Subsection (1)* provides that the Office has complete discretion in the performance of its main duty, subject to *subsections (2) and (3)*, and *sections 6 and 7*. The Office is

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<sup>1</sup> Letter from the Chancellor of the Exchequer to the Chair of the Treasury Select Committee. Published in House of Commons Treasury Committee fourth report of session 2010-11 'Office for Budget Responsibility', 16 September 2010. HC385. Page 86. Available at:

<http://www.publications.parliament.uk/pa/cm201011/cmselect/cmtreasy/385/385.pdf>

otherwise at liberty to prepare the forecasts, assessments or analysis set out in [section 4](#) using any methods considered appropriate.

42. *Subsection (2)* requires the Office to carry out its functions in a manner that is objective, transparent and impartial.
43. *Subsection (3)* provides that, where there are any Government policies that are relevant to the performance of the Office's duty, the Office must have regard to those policies. The Office may not consider what the effect of alternative policy scenarios would be. However, the Office is able to consider non-policy scenarios, such as considering the effect of demographic pressures.

### ***Section 6: Guidance as to how main duty is to be performed***

44. *Subsection (1)* provides that the Charter may include guidance for the Office. There will be guidance on when the forecasts, assessments and analysis will be produced. The Charter will be used to set such guidance, which is not appropriate for inclusion in the Act. The guidance cannot modify the substance of the duty or impose a different duty on the Office.
45. *Subsection (2)* provides that the guidance to the Office may not specify the methods to be used in preparing forecasts, analysis or assessments produced. This reinforces the discretion which the Office has in performing its main duty (see [section 5\(1\)](#)).
46. *Subsection (3)* provides that the Office must act consistently with any guidance included in the Charter when carrying out its functions. Should the Treasury wish to revise the guidance included in the Charter, then the Treasury will be required under *subsection (4)* to publish a draft at least 28 days before the revised Charter is laid before Parliament for Commons approval.

### ***Section 7: Efficiency etc***

47. This section provides that the Office has a duty to carry out its functions efficiently and cost-effectively. While the Office is expected to be a relatively small one, there remains an expectation that an Office primarily concerned with the sustainability of the public finances should clearly demonstrate these qualities.

### ***Section 8: Reports***

48. This section requires that every report the Office prepares must be published. This will include the reports mentioned in [section 4](#). The Office must lay a copy of each of these reports before Parliament and send a copy to the Treasury.

### ***Section 9: Right to information***

49. *Subsections (1)* and *(3)* provide the Office with a right of access to all information held by any Minister of the Crown or Government department. The Office also has a right to assistance and explanation in relation to this information, set out in *subsection (2)*. These rights apply only to information which the Office reasonably needs to perform its functions. This continues the current practice of using information held across Government to produce forecasts and analysis effectively (previously undertaken by the Treasury) and the Office will be entitled to receive all of the information that the Treasury has previously received.
50. *Subsection (4)* specifies that the Office will receive information in compliance with any statutory provision (such as the Data Protection Act 1998) or common law rules (such as duties of confidentiality). The Office will not have access to confidential information relating to taxpayers and any information that is received will comply with data protection principles. The Treasury has not required access to such information in exercising its current forecasting functions.

### **Section 10: Superseded statutory provisions**

51. *Paragraph (a)* repeals section 27 of, and Schedule 5 to, the Industry Act 1975, consequently removing duties on the Treasury to produce economic forecasts and to publish and provide access to information and analysis produced by a macro-economic model for the UK for economic forecasting purposes. These duties are superseded by [section 4](#), which provides that the Office must produce economic forecasts.
52. *Paragraph (b)* repeals sections 155 to 157 of the FA 1998. These sections relate to the previous Government's fiscal policy framework (as described in the background and summary section above).
53. Section 155 of the FA 1998 established a duty for the Treasury to prepare the Code for Fiscal Stability and specified the contents of the code and how it was to be approved by the House of Commons. Section 156 established duties for the Treasury to publish certain annual Budget documents, including the Budget. These sections are now superseded by [sections 1](#) and [2](#) of the Act.
54. Section 156 of the FA 1998 also established a duty for the Comptroller and Auditor General (C&AG) to examine and report on the conventions and assumptions underpinning the annual Budget documents. Section 157 conferred rights on the C&AG to access appropriate information to undertake examination of Budget documents and produce a report. These sections, and the role of the C&AG and the NAO, are now superseded by the creation of the Office as an independent forecasting institution.
55. *Paragraph (c)* repeals the FRA 2010 in its entirety. This removes the duties of the previous Government's fiscal consolidation plan. These duties were to: reduce public sector net borrowing (PSNB) as a share of gross domestic product (GDP) each year from 2010-11 to 2015-16; halve PSNB as a share of GDP by 2013-14; and set public sector net debt as a share of GDP on a downward path in 2015-16. The Government's fiscal mandate will now be set out in the Charter (see [section 1](#)).

## **Part 2: National Audit**

### **Comptroller and Auditor General**

#### **Section 11: Office of Comptroller and Auditor General**

56. This section provides for the office of Comptroller and Auditor General (C&AG) to continue. It reproduces the appointment process of section 1 of the National Audit Act 1983 (the "1983 Act") under which the C&AG is appointed by Her Majesty by Letters Patent following an address presented by the House of Commons. The Prime Minister moves the motion for that address with the agreement of the chair of the Committee of Public Accounts. Because by convention the chair of the Public Accounts Committee is from an opposition party, this requirement means that the choice of C&AG requires cross-party agreement. *Subsections (6)* and *(7)* limit the term of office to a single ten-year appointment instead of (as now) an unlimited term.

#### **Section 12: Status etc**

57. This section sets out the status of the C&AG as a corporation sole and officer of the House of Commons. The C&AG may not be a member of the House of Lords, is not to be regarded as a servant or agent of the Crown, and may not hold any other position to which a person may be appointed by or on the recommendation of the Crown.

#### **Section 13: Remuneration arrangements**

58. This section provides for the determination of the C&AG's remuneration arrangements.

59. *Subsection (1)* provides that the C&AG's remuneration arrangements are to be made in advance of appointment by the Prime Minister and the Public Accounts Committee chair.
60. *Subsections (2) and (3)* provide that the C&AG will have remuneration arrangements that may include an annual salary, allowances, provision for a pension and other benefits.
61. By virtue of *subsection (4)*, the C&AG will continue to be eligible for a pension under the Principal Civil Service Pension Scheme. Alternative pension agreements may also be agreed as part of the remuneration package. These provisions are simplified from the current arrangements under section 13 of the Superannuation Act 1972.
62. Together the powers in this section allow some flexibility over the terms and conditions which may be offered to the C&AG, to suit the requirements of different possible appointees. As happens for the Director of Public Prosecutions and the Director of the Serious Fraud Office, the Act does not specify the level of remuneration itself. The remuneration package may include arrangements for automatic uprating during the term of the C&AG's appointment, for example through a formula or a link to an established uprating mechanism. However, by *subsection (3)*, performance-based incentives are not permitted since they could constrain the operational independence of the C&AG.
63. *Subsection (5)* provides that the remuneration package will be charged on and paid out of the Consolidated Fund, as now, with no need for the resources to be voted annually by Parliament.
64. *Subsections (6) and (7)* allow the Treasury to make regulations to give supplementary effect to any agreed pension arrangements under this section by disapplying or modifying other statutory provisions. Such regulations are subject to annulment by the House of Commons (see *subsection (8)*). A similar power currently exists under section 13(10) of the Superannuation Act 1972.

#### ***Section 14: Resignation or removal***

65. This section sets out the procedure for the resignation or removal from office of the C&AG. *Subsection (1)* provides that the C&AG may resign from office by giving written notice to the Prime Minister. *Subsection (2)* reproduces the procedure in section 3 of the Exchequer and Audit Departments Act 1866 by which the C&AG can be removed from office following an address of both Houses of Parliament to the Queen.

#### ***Section 15: Employment etc of a former Comptroller and Auditor General***

66. This section creates restrictions on the public sector employment of former C&AGs. These restrictions apply to former C&AGs who have been appointed under the provisions of this Act.
67. Under *subsection (2)*, a former C&AG will have to consult a person specified for that purpose by the Public Accounts Commission before taking up any other office or position, or entering into an agreement or other arrangement, of a type specified by the Commission. This arrangement would allow the Commission an opportunity to make its views clear in public if a former C&AG should ever contemplate employment it considers inappropriate after leaving office.
68. *Subsections (3) to (5)* provide a stricter regime to prevent conflicts of interest during the two years immediately after a C&AG's term of office ends. A former C&AG must not within two years of leaving office hold any Crown office or position, or be a member, director, officer or employee of a person or body whose accounts are required to be audited by, or are open to examination and inspection by, the C&AG, or provide services to the Crown, any person or body acting on behalf of the Crown, or any person or body whose accounts are required to be audited by, or are open to examination and inspection by, the C&AG.

69. There is an exception in *subsection (6)* which allows former C&AGs to hold office as Auditor General for Wales, Auditor General for Scotland or Comptroller and Auditor General for Northern Ireland during the two years after they leave office.

#### ***Section 16: Provision of services***

70. This section gives the C&AG a general power to enter into agreements and arrangements to provide services in the United Kingdom and elsewhere. This power is additional to specific powers which the C&AG has under other legislation.

#### ***Section 17: How functions are to be exercised***

71. This section sets out the way in which the C&AG exercises his functions.
72. Subject to certain limitations, the C&AG has complete discretion in the carrying out of his functions, including in determining whether to carry out an examination under Part 2 of the 1983 Act and as to the manner in which any such examination is carried out.
73. *Subsections (3) and (4)* set out some specific limitations to the C&AG's powers. In particular he must aim to do things efficiently and cost-effectively. *Subsection (5)* signposts the provisions in the Act that affect how the C&AG carries out the functions of the office.

#### ***Section 18: Economy, efficiency and effectiveness examinations***

74. This section amends Part 2 of the 1983 Act by inserting a new section 7A to require that the C&AG must have regard to any proposals made by the Committee of Public Accounts in determining whether to carry out economy, efficiency and effectiveness examinations. This requirement currently exists as part of section 1(3) of the 1983 Act.

#### ***Section 19: Auditing of companies***

75. This section amends section 25 of the Government Resources and Accounts Act 2000 ("GRAA 2000"). The Treasury can, by an order under subsection (6) of that section, provide for bodies that exercise functions of a public nature or which are wholly or substantially funded from public money to be audited by the C&AG. New provisions in section 482 of the Companies Act 2006 allow companies that have been made subject to public audit under section 25 of the GRAA 2000 to be exempt from the statutory audit requirements that otherwise apply to companies under section 475 of the Companies Act 2006.
76. These amendments provide for orders under section 25 of the GRAA 2000 to be subject to annulment by a resolution of either House of Parliament provided such an order only covers companies. This would provide a simpler procedure for enabling the C&AG to audit those companies which exercise functions of a public nature or receive substantial public funding.

#### ***Section 20: Incorporation of NAO***

77. This section establishes a new corporate body, the National Audit Office (NAO). Further details of the new NAO's constitution and functions, including rules on membership and status and the appointment of members and staff, are set out in [Schedule 2](#).
78. The existing NAO is not a corporate body. Instead it is composed of the C&AG (who is a corporation sole) and the staff appointed by the C&AG. The new corporate NAO will be a separate legal entity with a newly-established governance structure and constitution, and functions which include providing resources for the C&AG. These structures are based on established good practice, adapted for the unique role of the C&AG.

***Section 21: Efficiency, etc***

79. This section provides that NAO must aim to carry out its functions efficiently and cost-effectively.

***Section 22: Relationship with Comptroller and Auditor General***

80. This section introduces *Schedule 3* which contains provision about the relationship between the NAO and the C&AG.

***Section 23: NAO's expenditure***

81. This section sets out the arrangements for the NAO's expenditure and approval of its estimates.
82. The new NAO will be funded from money voted annually by Parliament for that purpose. There are three exceptions to that. The remuneration packages of the C&AG and the chair of the NAO will both be paid directly from the Consolidated Fund (under *section 13(5)* and *paragraph 6(2)* of *Schedule 2* respectively) as will any sums necessary to pay for the indemnities given under *section 24(1)* in respect of liabilities for audits, examinations and inspections carried out as part of the C&AG's functions.
83. *Subsections (2)* and *(3)* provide that the NAO and the C&AG must jointly prepare an estimate of the resources which the NAO requires for each financial year. That estimate must in particular cover the resources that are required for functions of the C&AG, as set out in *paragraph 2(1)* of *Schedule 3*.
84. *Subsections (4)* to *(6)* provide that the chair of the NAO and the C&AG must jointly submit the estimate to the Public Accounts Commission. The Commission must review the estimate and lay it before the House of Commons with any modifications that it thinks appropriate. In doing this, the Commission must have regard to any advice given by the Public Accounts Committee or the Treasury.

**Miscellaneous and supplementary**

***Section 24: Indemnification***

85. This section provides for the liabilities of certain persons to be indemnified by the Consolidated Fund. Those persons are: the C&AG; the NAO; past and present members of the NAO; and past and present employees of the NAO. The indemnity covers liabilities which are incurred by those persons for a breach of duty which arises from an audit, examination or inspection which is carried out as part of the C&AG's functions (including NAO-approved services). This indemnity is based on one currently set out in *section 4(6)* of the 1983 Act.

***Section 25: Interpretation***

86. This section defines certain terms included in this Part of the Act.

***Section 26: Transitional provisions and consequential amendments***

87. This section introduces *Schedules 4* and *5* which respectively contain transitional provisions and consequential amendments.

**Auditor General for Wales**

***Section 27: Powers of National Assembly for Wales***

88. This section introduces *Schedule 6* which amends *Schedules 5* and *7* to the Government of Wales Act 2006 to confer legislative competence on the National Assembly for Wales in relation to the Auditor General for Wales.

### **Part 3: Final provisions**

#### ***Section 28: Power to make consequential provisions***

89. The section makes standard provision in relation to consequential provisions. Any order containing such provision is subject to the negative procedure.

#### ***Section 29: Commencement***

90. This section makes provision in relation to commencement. Parts 1 and 2 are to be commenced by an order made by the Treasury (except for [section 27](#) which comes into force two months after the date of Royal Assent). Part 3 comes into force on Royal Assent.

#### ***Section 31: Short title***

91. The short title of the Act is the Budget Responsibility and National Audit Act 2011.

#### ***Schedule 1: Office for Budget Responsibility***

##### ***Paragraph 1: Membership***

92. The members appointed under *sub-paragraph (1)* will together constitute the Office.
93. *Sub-paragraph (1)(a)* sets out that one member shall chair the Office. The Chair will be appointed by the Chancellor of the Exchequer and this appointment can only be made with the consent of the Treasury Select Committee of the House of Commons (the “TSC”).
94. *Sub-paragraph (1)(b)* sets out that there will be two other members of the Office who will be appointed by the Chancellor. These appointments can only be made with the consent of the TSC. These appointments will be made by the Chancellor after consultation with the Chair of the Office.
95. *Sub-paragraph (1)(c)* sets out that no fewer than two members should be appointed by the Chancellor from individuals nominated by the Office. These members will assume the role of non-executives in the Office’s governance (“non-executive members”).
96. *Sub-paragraph (2)* requires that the Chair of the Office and the two members appointed by the Chancellor under *sub-paragraph (1)(b)* (“expert members”) have knowledge or experience likely to be relevant to performance of the Office’s main duty under [section 4](#). Together, the three expert members will constitute the Budget Responsibility Committee (BRC) (see [paragraph 9](#)) and will have an executive responsibility for performing the Office’s main duty under [section 4](#). The knowledge or experience required for performing these duties may include, for example, experience in economics, fiscal forecasting or analysis. In practice, such requirements may be set out in the candidate criteria for appointment.

##### ***Paragraph 2: Period of appointment and re-appointment***

97. *Sub-paragraph (1)* sets out that the appointments of the expert members of the Office (who comprise the BRC) should be for a fixed period of five years. [Paragraph 3](#) sets out transitional arrangements for the first appointments to ensure that they may expire at different times so that subsequent appointments can be staggered.
98. *Sub-paragraph (2)* sets out that the appointments of the non-executive members appointed under *paragraph 1(1)(c)* may be for a period of up to five years.
99. *Sub-paragraph (3)* provides that no member of the Office may be appointed more than twice.

**Paragraph 3: Appointment of initial members**

100. This paragraph sets out transitional arrangements for the initial members of the Office who are appointed to the non-statutory body before *Schedule 1* comes into force. This paragraph provides for continuity in the transition from the non-statutory Office to the statutory Office.
101. *Sub-paragraph (1)* enables the person appointed as the Chair of the non-statutory Office with the consent of the TSC to be appointed to the statutory Office without the consent of the Committee being required again. *Sub-paragraph (3)* makes similar provision for the other two expert members of the Office.
102. *Sub-paragraph (2)* provides that the time the Chair is appointed to the non-statutory Office will count towards the period of appointment under *paragraph 1(1)(a)* to the statutory Office. *Sub-paragraph (4)* makes similar provision for the other two expert members of the Office.
103. *Sub-paragraph (5)* makes provision for the initial appointments of the two expert members other than the Chair to be for shorter and different periods. This allows for the appointments to expire at different times, so as to facilitate continuity of business at the Office.
104. *Sub-paragraph (6)* provides that the first two non-executive members of the Office should be appointed by the Chancellor, after consultation with the Chair.

**Paragraph 4: Remuneration**

105. *Sub-paragraph (1)* enables the Office to pay a member of the Office, or arrange for the member to be paid, remuneration. This must be approved by the Treasury and the amount of remuneration must be set by the Treasury. This also makes provision for the Office to pay members, or former members of the Office, a pension, allowances or gratuities that may also be set by the Treasury.
106. *Sub-paragraph (2)* makes provision for a person who ceases to be member of the Office before their appointment term has ended to be paid compensation if the Office and Treasury judge that the circumstances make it appropriate. It is for the Treasury to set the amount of payment to make under such circumstances.

**Paragraph 5: Other terms of appointment**

107. This paragraph makes provision for the Chancellor to determine the terms of appointment of the members of the Office.

**Paragraph 6: Termination of appointments**

108. *Sub-paragraph (1)* enables a member of the Office to resign by giving written notice to the Chancellor.
109. *Sub-paragraph (2)* makes provision for the Chancellor to terminate the appointment of a member of the Office by giving written notice under a range of circumstances. The circumstances covered by this provision are: if the member has been absent from meetings of the Office for more than three months without permission; if the member is made bankrupt, including under Scots law, or has made arrangements with creditors; if the member is unfit to continue the appointment due to misconduct; if the member has not complied with the terms of appointment; or if the member is otherwise unfit or unable to perform his functions.
110. *Sub-paragraph (3)* requires that the consent of the TSC must be given for any member of the Budget Responsibility Committee to be dismissed.

### **Paragraph 7: Status of Office**

111. *Sub-paragraph (1)* provides that the Office's functions shall be exercised on behalf of the Crown. This has the effect of making the Office a Crown body. For the purposes of any civil proceedings arising out of those functions, *sub-paragraph (2)* makes provision for the Crown Proceedings Act 1947 and the Crown Suits (Scotland) Act 1857 to apply to the Office. These Acts set out jurisdiction and procedure for legal proceedings involving the Crown, and the 1947 Act provides that the Crown may be liable in tort for the acts of its servants and agents. *Sub-paragraph (3)* provides that the Office's property is to be regarded as held on behalf of the Crown.

### **Paragraph 8: Employees**

112. *Sub-paragraphs (1) and (2)* enable the Office to appoint staff as it considers appropriate and determine their terms and conditions, including remuneration, with the approval of the Minister for the Civil Service.
113. *Sub-paragraphs (3) and (4)* provide for the employees of the Office to be civil servants and for payments to be made to the pension scheme for civil servants in respect of benefits payable to or in respect of its staff.

### **Paragraphs 9 and 10: Committees**

114. *Sub-paragraph (1) of paragraph 9* provides that the expert members of the Office shall constitute a committee to be known as the Budget Responsibility Committee.
115. *Sub-paragraph (2) of paragraph 9* provides that the non-executive members shall constitute a committee to be known as the Non-executive Committee.
116. *Sub-paragraphs (1) and (2) of paragraph 10* enable the Office to establish other committees and provides that those committees may establish sub-committees.
117. *Sub-paragraph (3)* allows those committees to include members who are neither members of the Office nor members of its staff. This allows the Office to establish committees and sub-committees consisting in part or whole of expert advisers from outside the Office, for example.
118. *Sub-paragraph (4)* enables the Office to determine terms for committee or sub-committee members who are not Office members or staff, with the approval of the Treasury.

### **Paragraph 11: Procedure**

119. *Sub-paragraph (1)* enables the Office to set its own procedure and procedure of its committees and sub-committees.
120. *Sub-paragraph (2)* enables both the Budget Responsibility Committee and the Non-executive Committee to determine their own procedure.

### **Paragraph 12: Delegation of functions**

121. *Sub-paragraph (1)* enables the Office to delegate functions to members, employees or committees. With the exception of the Budget Responsibility Committee, committees may delegate functions to sub-committees. *Sub-paragraph (5)* provides that a delegation does not prevent the Office or one of its committees from carrying out a delegated function itself.
122. *Sub-paragraphs (3) and (4)* provide that the functions at *section 4(3) and (4)* (the "core functions") must be exercised by the Budget Responsibility Committee and may not be delegated.

***Paragraph 13: Review by Non-executive Committee***

123. *Paragraph 13* requires the Non-executive Committee to keep under review the way the Office's duty under *section 4* is performed. The duty to review the Office's internal processes is intended to provide assurance of the quality of the Office's work. Examples of areas the Non-executive Committee may consider for review include whether the Office is working effectively with other parts of government and whether the Office is following up on lessons learned from internal reviews.

***Paragraph 14: Documentary Evidence***

124. *Paragraph 14* makes provision relating to how the Office's seal is authenticated and provides that any document which appears to be executed under the Office's seal or signed on its behalf is to be presumed to be sealed or signed for the Office unless it is proved otherwise. This provision does not apply in relation to Scotland.

***Paragraph 15: Annual report***

125. This paragraph requires the Office to produce a report for each financial year (to 31 March) and to send that report to the Treasury who will then lay it before Parliament.
126. *Sub-paragraph (2)* provides that the annual report must include an assessment by the Non-executive Committee of the extent to which the Office has been able to carry out its main duty with complete discretion, and the extent to which it has carried out that duty impartially, transparently and objectively. This provides legislative underpinning for the non-executives' role in safeguarding the Office's independence.

***Paragraph 16: External Review***

127. *Paragraph 16* requires the Non-executive Committee to commission from time to time independent reviews of the Office's work. These reviews will take place at least once every five year period, the first period beginning on 1 October 2010.
128. The Committee will determine the specific timing of a review within this period, and reviews may be undertaken sooner than five years if the non-executives consider this to be appropriate. The Committee will appoint a person or body to carry out these reviews. The person or body will only be appointed if they have the knowledge or experience likely to be relevant to the performance of the Office's duty under *section 4*. The Committee will determine which of the reports published by the Office should be reviewed under *section 4*. The first review will concern reports published since 1 October 2010; subsequent reviews will concern reports published since the date of the last review. The Office may, if appropriate, make payments to the person or body in respect of carrying out such an external review. The Office must publish each external review, lay a copy before Parliament and send a copy to the Treasury.

***Paragraph 17: Finance***

129. *Sub-paragraph (1)* makes provision for the Treasury to fund the Office out of money provided by Parliament through a grant in aid.
130. *Sub-paragraph (2)* allows the Treasury to make such funding subject to conditions.

***Paragraphs 18 and 19: Accounts and audit***

131. *Paragraph 18* requires the Office to keep proper accounts and produce an annual statement of accounts. A copy of each statement of accounts must be sent to the Treasury and the C&AG. The C&AG will report on, and certify, the statement which he will then return to the Treasury who will then lay the report and statement before Parliament.
132. *Paragraph 19* requires the Office to keep its internal financial controls under review.

### **Paragraph 20: Powers**

133. *Paragraph 20* allows the Office to do anything which is conducive or incidental to the carrying out of its functions. This would, for example, enable the Office to enter into contracts for the supply of goods and services.

### **Paragraph 21: Validity**

134. *Paragraph 21* allows the Office (or a committee or sub-committee) to carry out its functions even if there is a vacancy or there has been a defect in an appointment.

### **Paragraphs 22 to 28**

135. These paragraphs insert the “Office for Budget Responsibility” into lists of institutions in various Acts.

### **Public Records**

136. *Paragraph 22* amends Schedule 1 to the Public Records Act 1958 to include the Office.

### **Parliamentary Commissioner**

137. *Paragraph 23* amends Schedule 2 to the Parliamentary Commissioner Act 1967 to include the Office.

### **Disqualification**

138. *Paragraph 24* amends Schedule 1 to the House of Commons Disqualification Act 1975. Members of the Office are disqualified from becoming members of the House of Commons.
139. *Paragraph 25* amends Schedule 1 to the Northern Ireland Assembly Disqualification Act to disqualify members of the Office from becoming members of the Northern Ireland Assembly.

### **Race Relations**

140. *Paragraph 26* provides for the Office to be subject to the general statutory duty under section 71 of the Race Relations Act 1976. It also provides that the amendment made by *sub-paragraph (1)* ceases to have effect when the repeal of the Race Relations Act 1976 by Schedule 27 to the Equality Act 2010 has effect for all purposes.

### **Freedom of Information Act 2000**

141. *Paragraph 27* amends Part 6 of Schedule 1 to the Freedom of Information Act 2000 to make the Office responsible for dealing with requests under that Act.

### **Equality**

142. *Paragraph 28* provides for the inclusion of the Office in Part 1 of Schedule 19 to the Equality Act 2010. As a public authority specified in Schedule 19, the Office will be subject to the public sector equality duty.

### **Paragraph 29: References to Treasury Committee**

143. This provision will ensure that the provisions of *Schedule 1* that refer to the TSC continue to operate as intended if the name of the TSC changes or its functions are transferred to a different Committee. It will be for the Speaker of the House to determine any questions regarding this.

## **Schedule 2: National Audit Office**

144. This Schedule is in seven parts: Part 1 sets out the membership and status of the NAO; Part 2 provides for the appointment of non-executive members; Part 3 provides for a Chief Executive; Part 4 makes provision for the appointment and termination of NAO employee members; Part 5 deals with NAO employees; Part 6 deals with the regulation of NAO procedure; and Part 7 deals with some miscellaneous matters.

### **Part 1: Membership and status**

145. *Paragraph 1* provides for the NAO to have nine members consisting of five non-executives, the C&AG and three employee members.
146. *Paragraph 2* states that NAO, its members and its employees are not to be servants or agents of the Crown, nor to enjoy any status, immunity or privilege of the Crown. NAO property is not to be regarded as Crown property.

### **Part 2: Non-executive members**

147. *Paragraph 3* provides for the NAO to have a non-executive chair. The appointment process follows that for the C&AG in *section 11*. The chair is appointed by Her Majesty by Letters Patent following an address of the House of Commons. The motion for the address has to be moved by the Prime Minister with the agreement of the Chair of the Committee of Public Accounts. The Queen may extend the appointment on the recommendation of the Prime Minister with the agreement of the Chair of the Committee of Public Accounts. In the case of an extension, there is no requirement for a motion in the Commons or an address to the Queen but an extension counts towards the two-term limit (see *paragraph 5*) so the chair can serve a maximum of six years in total.
148. *Paragraph 4* provides that the other non-executive members of the NAO are to be appointed by the Public Accounts Commission, following a recommendation by the NAO chair. In the event that the Commission chooses not to appoint a recommended individual, the Public Accounts Commission may require the chair to recommend another person until an appointment is made.
149. *Paragraph 5* provides that NAO non-executive members are appointed for a period of up to three years. They may be appointed for a second term of up to three years.
150. *Paragraph 6* deals with the remuneration of non-executive members.
151. Under *sub-paragraph (1)* the chair's remuneration arrangements are to be jointly determined by the Prime Minister and the chair of the Committee of Public Accounts. *Sub-paragraph (2)* provides for the NAO chair's remuneration to be paid from the Consolidated Fund rather than annually voted resources. *Sub-paragraph (3)* provides for the Public Accounts Commission to determine the remuneration arrangements for the other non-executives. Under *sub-paragraph (4)* that remuneration is to be paid for by the NAO from voted resources. *Sub-paragraph (5)* provides that the remuneration payable to a non-executive member may include an annual salary, allowances and other benefits, but not a pension.
152. *Paragraph 7* states that the Commission may determine terms of appointment for non-executive members that are not specifically provided for in the Act. Those terms may include restrictions on the offices and other positions that non-executive members can hold during and after their terms of appointment. Restrictions can also be imposed in respect of other agreements and arrangements to which non-executives can be a party during and after their appointment. Those agreements might include, for example, arrangements which fall short of holding office or employment but which share similar characteristics, such as consultancy agreements.

153. *Paragraph 8* requires the Commission to consult an appropriate person who has oversight of public appointments before setting remuneration or other terms under *paragraphs 6 and 7*.
154. *Paragraph 9* deals with the resignation of non-executive members. Under *sub-paragraph (1)*, the chair may resign by giving written notice to the Prime Minister. The other non-executive members may resign by giving written notice to the Commission.
155. *Paragraph 10* provides for the termination of the appointments of non-executive members of the NAO. *Sub-paragraph (1)* provides that the NAO chair's appointment may be terminated following an address of each House of Parliament. This is the same process that applies to the C&AG.
156. *Sub-paragraph (2)* sets out the grounds on which the Commission may terminate the appointment of the other non-executive members of the NAO. In all cases, the Commission must give the member written notice.

### **Part 3: Chief Executive**

157. *Paragraph 11* provides for the C&AG to be the chief executive of the NAO. The C&AG cannot be an NAO employee.

### **Part 4: Employee members**

158. This Part of the Schedule provides for the appointment of the three employee members of the NAO and makes provision about terms of, and termination of, such appointments.
159. *Paragraph 12* provides that NAO employee members are to be appointed by NAO non-executive members, on a recommendation by the C&AG. When there is a vacancy for an employee member, the C&AG is to recommend a person for appointment to the non-executive members. The non-executive members may appoint that person or require the C&AG to recommend someone else. That process can be repeated until an appointment is made.
160. *Paragraph 13* provides that the terms of appointment for the employee members are set by the non-executive members. The terms may provide for an annual salary, allowances and other benefits, but not a new pension. Employee members will have the same pension entitlements as they had as NAO employees; so, for example, if they are members of the Principal Civil Service Pension Scheme they will remain eligible for a pension under that scheme.
161. *Paragraph 14* provides that an employee member's appointment shall terminate either at the end of any period set for the appointment, or in any case when the employee member ceases to be employed by the NAO.
162. *Paragraph 15* provides that an employee member may resign by giving written notice to the non-executive members.
163. *Paragraph 16* sets out the grounds on which the non-executive members may terminate the appointment of employee members of the NAO. They are the same as those on which the Commission can terminate the appointments of non-executive members under *paragraph 10(2)*.

### **Part 5: Employees**

164. *Paragraph 17* gives the NAO power to employ staff. The terms of employment for NAO staff are to be kept broadly in line with those of civil servants. NAO employees are barred from holding any office or position to which a person may be appointed, or recommended for appointment, by or on behalf of the Crown.

## **Part 6: Procedural rules**

165. *Paragraph 18* requires the NAO to make internal procedural rules.
166. *Paragraph 19* provides that, if the procedural rules set a quorum for any NAO meetings, the quorum cannot be met unless a majority of those present are non-executive members.
167. *Paragraph 20* allows the NAO to establish committees and sub-committees and to make rules for regulating those committees and sub-committees. NAO employees may serve as committee and sub-committee members. Provided no functions of the NAO are delegated to a committee or sub-committee, those committees and sub-committees may also include persons who are neither NAO employees nor members of the NAO.

## **Part 7: Other matters**

168. This Part deals with a number of miscellaneous provisions for the carrying out of NAO functions.
169. *Paragraph 21* is an incidental power which permits the NAO to do anything which is calculated to facilitate, or which is incidental or conducive to, the carrying out of its functions.
170. *Paragraph 22* provides that a vacancy or a defective appointment does not affect the validity of anything done by the NAO, its non-executive members, its committees or its sub-committees.
171. *Paragraph 23* deals with the powers of the NAO to delegate its functions. The NAO is permitted to delegate functions to members, employees or committees. Its committees may delegate functions to sub-committees. In either case, a delegation does not prevent the NAO or one of its committees from carrying out a delegated function itself.
172. Under *sub-paragraph (4)* the following exceptions to the general power of delegation apply:
  - the preparation of resource estimates under *section 23(2)*;
  - making rules for regulating NAO procedure under *paragraph 18* of *Schedule 2*;
  - the appointment of the NAO's auditor under *paragraph 25(1)* of *Schedule 2*;
  - the preparation and review of NAO strategy under *paragraph 1(1)* of *Schedule 3*;
  - approving the provision of services by the C&AG, and the determination of resources to be provided for those services, under *paragraph 3(1) or (3)* of *Schedule 3*;
  - authorising (with the Commission's agreement) an employee to carry out C&AG functions in the event of a vacancy or period of ill health under *paragraph 7(3)* of *Schedule 3*;
  - the preparation of an annual report under *paragraph 9(1)* of *Schedule 3*; and
  - with the C&AG, the responsibility under *paragraph 10(1) to (5)* of *Schedule 3* to prepare, review and revise the code of practice.
173. *Paragraph 24* requires resource to be prepared for NAO for each financial year. Those accounts must be of the type described in section 5 of the Government Resources and Accounts Act 2000. That is, they must be resource accounts which detail the resources acquired, held or disposed during that year by the NAO and the use by the NAO of those resources. By *sub-paragraph (2)*, the Public Accounts Commission must appoint the C&AG or another appropriate person to be the accounting officer who is to be responsible for preparing the NAO's resource accounts. *Sub-paragraph (3)* provides

that the accounting officer must also carry out any other functions determined by the Public Accounts Commission.

174. *Paragraph 25* sets out the arrangements for the audit of NAO's resource accounts. *Sub-paragraph (1)* requires the NAO to appoint an auditor for each financial year. *Sub-paragraph (2)* makes the appointment of the auditor and the terms of the auditor's appointment subject to the approval of the Commission. Under *sub-paragraph (3)*, the auditor must be eligible to audit companies under Chapter 2 of Part 42 of the Companies Act 2006. *Sub-paragraph (5)* requires the auditor to examine the NAO's resource accounts for each financial year.
175. *Sub-paragraph (6)* provides that the provisions of sections 6(1) and 25(2) of the Government Resources and Accounts Act 2000 apply to the NAO's auditors in their examination of the NAO accounts as if it was the C&AG carrying out the examination. This means that the auditor must operate to professional standards and that it must examine the accounts with a view to being satisfied that:
- the accounts present a true and fair view;
  - money provided by Parliament has been expended for the purposes approved by Parliament;
  - resources authorised by Parliament to be used have been used for the purposes for which the resources were authorised; and
  - the NAO's financial transactions are in accordance with any relevant authority.
176. *Sub-paragraphs (7) and (8)* require that, once the accounts have been examined, the auditor must certify them and send them, together with the auditor's report on the accounts, to the Commission. The Commission must then lay the accounts and the report before the House of Commons.
177. *Paragraph 26* provides that the NAO's auditor may be required to carry out value for money examinations on the use of NAO resources and send its report to the Commission. This power is a parallel one to the C&AG's own power to carry out value for money examinations on other bodies under Part 2 of the National Audit Act 1983. The Commission must lay any value for money reports prepared by the NAO's auditor before Parliament. This allows the Commission to satisfy itself that the NAO is operating professionally and acceptably.
178. *Paragraph 27* gives the auditor information and access powers to carry out its functions of audit under *paragraph 25* and value for money examinations under *paragraph 26*. The auditor may require access to any document which the auditor considers is necessary to carry out its functions. Any person holding or who is accountable for any document may be required to provide any information or explanation that the auditor thinks necessary.
179. *Paragraph 28* provides that the NAO seal may be authenticated by a member of the NAO or any person authorised for that purpose by a member of the NAO. *Sub-paragraph (2)* provides that a document executed under NAO seal or signed on its behalf is to be received in evidence and is taken to be executed or signed in that way, unless the contrary is proven.

### ***Schedule 3: Relationship between NAO and Comptroller and Auditor General***

180. *Schedule 3* contains provisions that govern the relationship between the NAO and the C&AG. These include:
- the preparation by the NAO and the C&AG of a national audit strategy;
  - the obligation of the NAO to provide resources for the carrying out of the C&AG's functions;

*These notes refer to the Budget Responsibility and National Audit Act 2011 (c.4) which received Royal Assent on 22 March 2011*

- the need for the C&AG to obtain the approval of the NAO to perform certain services;
- the NAO's duty to monitor (and power to provide advice to) the C&AG;
- the ability of the C&AG to delegate functions;
- the arrangements for dealing with vacancy in office or the incapacity of the C&AG;
- powers to charge fees;
- the obligation to prepare an annual report; and
- the preparation and contents of a code of practice to deal with the relationship between the C&AG and the NAO.

**Paragraph 1: Strategy**

181. *Paragraph 1* provides for the preparation and approval of a strategy for the exercise of the national audit functions. The strategy will serve as the business plan for the NAO and the C&AG. Under *sub-paragraph (1)*, the NAO and C&AG must jointly prepare a strategy for the national audit functions. Those functions consist of the NAO's functions and those of the C&AG. The strategy must be reviewed and (if appropriate) revised at least once every 12 months.
182. *Sub-paragraph (2)* provides that the strategy is to include a plan for the use of resources. In particular, for each financial year covered by the strategy, it must specify a maximum amount of resources which the NAO is to provide to the C&AG.
183. *Sub-paragraphs (3) to (6)* require the strategy to be approved by the Public Accounts Commission. The process for achieving that is for the NAO chair and the C&AG jointly to submit the strategy to the Commission. Before approving the strategy, the Commission must review it and may modify it. In doing so, the Public Accounts Commission must have regard to any advice given by the Treasury.
184. *Sub-paragraph (7)* requires the NAO and the C&AG each to carry out the strategy.

**Paragraph 2: NAO to provide resources for the Comptroller and Auditor General's functions**

185. *Paragraph 2* gives the NAO a duty to provide the resources to the C&AG that that C&AG requires to carry out the functions of the office. A maximum level of resources will be agreed by the NAO and the C&AG, and approved by the Public Accounts Commission, under *paragraph 1(2) of Schedule 3*. The resources that are thus available for the C&AG's functions fall into two categories:
- those whose allocation is at the discretion of the C&AG; and
  - those for services which require the NAO's approval.
186. For the activities that are set out in *paragraph 3(2) of Schedule 3*, the C&AG will determine the level of resources that are required without needing approval from NAO. In such cases, the NAO must provide the resources that the C&AG asks for. These functions are mainly those which the C&AG is given by statute, including services as Comptroller of the issue of public funds, as auditor of government departments and many other public bodies, and in the exercise of powers under Part 2 of the National Audit Act 1983 to carry out value for money examinations. The C&AG will be bound by the maximum resource provision set out in the strategy (under *paragraph 1(2) of Schedule 3*) and by the resources voted by Parliament to NAO for the year under *section 23*. Subject to that, the C&AG's independence will be guaranteed by giving the C&AG the final say in setting the resources required for these functions.

187. For other activities, including audit and consultancy services provided by agreement, for example to international bodies and other countries, the C&AG will require the NAO's approval before providing such services. For these "NAO-approved" services, the NAO (not the C&AG) will be responsible for setting the maximum resource provision, under *paragraph 3(3)* of *Schedule 3*. The NAO must work within the maximum limit set by the strategy and the annual provision voted by Parliament.
188. *Sub-paragraph (2)* gives the NAO responsibility in particular for:
- employing staff to assist in carrying out the C&AG's functions;
  - buying in services to support the functions;
  - holding information; and
  - keeping records.
189. *Sub-paragraph (3)* limits the maximum amount of resources that the C&AG may require under *sub-paragraph (1)* in any financial year to the maximum amount set out in the strategy for that year.

***Paragraph 3: Provision of certain services by Comptroller and Auditor General to require NAO's approval***

190. *Paragraph 3* provides for the C&AG to seek the approval of the NAO before providing certain services. These "NAO-approved services" are services other than those set out in *sub-paragraph (2)*.
191. *Sub-paragraph (3)* explains that the NAO is to set a maximum amount of resources for the "NAO-approved services". In respect of NAO-approved services, then, the C&AG's ability to provide and resource these services is subject to the need for prior approval by the NAO board, and to the level of resource agreed by NAO.

***Paragraphs 4 and 5: NAO to monitor and provide advice***

192. *Paragraph 4* imposes a duty on the NAO to monitor the carrying out of the C&AG's functions. The NAO's monitoring function can be expected to provide it with the information it needs as a precursor to discharging its duty under *paragraph 5* to provide advice to the C&AG.
193. Under *paragraph 5* the NAO may provide such advice as it considers appropriate to the C&AG about the exercise of the C&AG's functions. The C&AG must have regard to any advice given by the NAO.

***Paragraph 6: Delegation of Comptroller and Auditor General's functions***

194. *Paragraph 6* provides that the C&AG may prepare a scheme for the delegation of the functions of that office to NAO employees. The scheme and any revisions of it must be approved by the Commission. If the Commission approves the scheme, the C&AG may delegate functions in accordance with it. A delegation does not prevent the C&AG from doing anything personally.

***Paragraph 7: Comptroller and Auditor General: Vacancy or incapacity***

195. *Paragraph 7* makes provision for the C&AG's functions to be carried out by a duly authorised employee of NAO on a temporary basis if the office is vacant or the C&AG is incapable.
196. In the case of incapacity, before NAO can authorise an employee to carry out the C&AG's functions, a certificate from the Speaker of the House of Commons is required. Under *sub-paragraph (2)(a)*, the Speaker may certify that in the Speaker's view the current C&AG's ability to carry out that office's functions is seriously impaired because

of ill health. The period of ill health starts when the Speaker certifies to the House that the C&AG is impaired and ends when the Speaker certifies to the House that the C&AG is able to carry out the office's functions.

197. NAO must obtain the Commission's agreement before authorising an employee to carry out the C&AG's functions. The temporary arrangement may last no more than six months (see *sub-paragraph (6)*) and is available only once during a C&AG's term of appointment. For longer vacancies and periods of incapacities, or for repeated incapacity, therefore, the expectation is that the gap would be filled by a new appointment.

### ***Paragraph 8: Audit fees etc***

198. *Paragraph 8(1) to (4)* authorises the NAO to charge fees for audits carried out by the C&AG in accordance with a scheme prepared by the NAO and approved by the Commission. The agreement of a Minister of the Crown is required if the accounts to be audited are those of a body or other person who acts on behalf of the Crown. *Sub-paragraph (5)* provides that those arrangements do not apply to audits that are carried out as part of NAO-approved services. In such cases, the C&AG may charge fees and other amounts but only in accordance with the relevant agreement or arrangement. The fee powers in this paragraph may be used to recover the costs of providing the services in question but not to cross-subsidise other costs of the NAO or the C&AG.
199. *Sub-paragraphs (6) and (7)* require that fees and other amounts received by the C&AG must be paid to the NAO and that the NAO must pay them into the Consolidated Fund.

### ***Paragraph 9: Reports***

200. *Paragraph 9* provides that the NAO and the C&AG must, as soon as practicable after the end of each financial year, jointly prepare a report on the carrying out of the functions of the NAO and of the C&AG. This annual report must be submitted to the Commission jointly by the chair of the NAO and the C&AG. The Commission must lay the report before Parliament.

### ***Paragraphs 10 to 12: Code of practice***

201. *Paragraphs 10 to 12* provide for the preparation, approval and content of a code of practice which is to set out the relationship between the NAO and the C&AG. The code will allow detailed arrangements for the operation of the new NAO and its relationship with the C&AG to be set in a flexible and transparent manner. The code will not be a source of further powers for either; rather it will seek to give practical effect to the provisions of Part 2 of the Act. It is intended to be a practical way of setting out how the powers are to be used in practice, and may be adjusted from time to time to reflect the evolving requirements of NAO's business and the C&AG's priorities.
202. *Paragraph 10* provides that the NAO and C&AG must jointly prepare a code of practice dealing with the relationship between the NAO and the C&AG. The code is required to reflect the principle enunciated in *section 17(1) and (2)* of this Act that, subject to any other statutory provision, the C&AG has complete discretion in carrying out the C&AG's functions.
203. Once it has been prepared, the code must be reviewed regularly by the NAO and C&AG and revised as appropriate. In preparing and revising the code, they must consult the Treasury. They must also consider any proposals for revision made by the Commission.
204. The code requires the approval of the Commission. The chair of the NAO and C&AG are jointly to submit the code or any revision to the Commission. If the Commission approves the code, it must lay it before Parliament.
205. *Sub-paragraph (9)* requires the NAO and the C&AG to comply with the code.

206. *Paragraph 11* provides that the code must be approved by the NAO at a meeting of NAO. Approval can only be given if at least one-half of the non-executive members present and voting vote in favour.
207. *Paragraph 12* sets out a non-exhaustive list of what is to be covered by the code.
208. *Sub-paragraph (1)* provides that the code must include:
- provision as to how the strategy is to be prepared, reviewed and revised, and the matters and the periods it should cover;
  - provision as to how resources are to be provided for the C&AG's functions under *paragraph 2(1) of Schedule 3*;
  - provision about the preparation of estimates for NAO resources under *section 23*;
  - provision about the way in which the NAO makes decisions on approving and setting resources for NAO-approved services under *paragraph 3 of Schedule 3*;
  - provision as to how the NAO monitors the C&AG's functions under *paragraph 4 of Schedule 3*;
  - provision as to how advice is to be given by the NAO for the purposes of *paragraph 5 of Schedule 3*;
  - provision as to the way in which the C&AG's charges fees under *paragraph 8 of Schedule 3*; and
  - provision about the extent of the delegation of NAO's functions to the C&AG under *paragraph 23 of Schedule 2*.
209. The code must also place restrictions on the public comments that a NAO non-executive member may make in relation to the carrying out of the C&AG's functions.
210. *Sub-paragraph (2)* sets out some other matters that may be dealt with in the code. These are:
- the way in which the annual reports required by *paragraph 9* are to be prepared;
  - the matters about which the NAO and/or the C&AG are to consult the Commission from time to time; and
  - any standards of corporate governance.

### ***Paragraph 13: Documents and information***

211. *Paragraph 13* provides a general power for the NAO to receive information on behalf of, and from, the C&AG. By virtue of *sub-paragraph (2)*, information held by NAO on behalf of the C&AG will be treated as being held by NAO for the purposes of section 3(2) of the Freedom of Information Act 2000. This means NAO will be responsible for discharging obligations under that Act both for itself and for the C&AG.

### ***Schedule 4: Transitional provisions relating to Part 2***

212. This Schedule makes transitional provision to preserve the continuity of rights and obligations between the old NAO and the new. In particular, it provides for the transfer of property rights and employment obligations. While obligations under audit contracts are expected to remain with the C&AG, the intention is that all other property, rights and liabilities will transfer to the new NAO whose responsibility it will be to provide and manage the resources that the C&AG requires.

**Paragraph 1: Transfer of property etc**

213. *Paragraph 1* provides for the C&AG to determine which property, rights and liabilities of the C&AG are to be transferred to the NAO as a consequence of this Act and to prepare a scheme which describes that property and those rights and liabilities. The scheme has to be approved by the Public Accounts Commission. On the appointed day (which under *sub-paragraph (11)* is a date set for that purpose by the Treasury), the property, rights and liabilities described in the scheme are transferred to the new NAO.
214. *Sub-paragraphs (5) and (6)* provide for the continuity of employment of NAO staff. The rights and liabilities that may be transferred to the NAO include those under contracts of employment in relation to staff of old NAO (who were appointed under section 3(2) of the 1983 Act). Periods of employment with old NAO are to be treated as employment by new NAO, as are periods of employment in the former Exchequer and Audit Department (for those employees who transferred to old NAO as a result of section 3(2) of, and paragraph 2 of Schedule 2 to, the 1983 Act). A transfer to new NAO is not to be treated as a break in service.
215. *Sub-paragraphs (7) and (8)* provide for the continuing effect of things done by or for the C&AG in relation to anything that is transferred to NAO under *sub-paragraph (3)* so far as is appropriate. This means, for example, that actions taken or procedures performed by the C&AG will not need to be repeated by the NAO to remain effective. Things that were in the process of being done by the C&AG in relation to anything transferred (such as ongoing legal proceedings) may be continued after the appointed time by the new NAO. So far as is appropriate as a result of the transfer, *sub-paragraph (9)* provides that references in agreements to the C&AG are to be read as, or as including, a reference to new NAO. *Sub-paragraph (10)* allows a person's employment by old NAO to be treated as employment by new NAO before new NAO comes into existence for limited purposes in connection with the establishment of new NAO.

**Paragraphs 2 to 4: Tax consequences of transfers by virtue of paragraph 1(3)**

216. *Paragraphs 2 to 4* make provision for corporation tax consequences of the transfer. The effect is to remove tax consequences that would otherwise have arisen only because of the transfer and to provide continuity of tax treatment.

**Paragraph 5: Old Comptroller and Auditor General to continue to be Comptroller and Auditor General**

217. *Paragraph 5* provides that the person who is C&AG immediately before the appointed day will continue to hold the office of C&AG and be treated as if appointed under the provisions of this Act. Although that person will have been appointed under the old legislation for an unlimited term, *sub-paragraph (2)* provides for the ten-year period of office of *section 11(6)* to apply. The ten-year period begins from the day that person took office under the old legislation. The new remuneration arrangements under *section 13* will apply but will not cover any period before the appointed day, that is, a day appointed for the purposes of this paragraph by an order made by the Treasury. The appointment of a new C&AG designate was announced in January 2009. On 1 June 2009, Amyas Morse was appointed as the new C&AG under the current legislation.

**Paragraphs 6 and 7: Provision of services**

218. *Paragraph 6* provides for continuity of the powers under which the C&AG acts. Anything done under power which is no longer available is to be treated as having been done under the general power of *section 16*, so far as necessary or appropriate.
219. *Paragraph 7* provides that existing contracts for the C&AG to provide services will not become subject to the new approval regime of *paragraph 3* of *Schedule 3* when that regime first comes into effect. However, the charging provisions of *paragraph 8* of that

Schedule will apply as if they were NAO-approved services. When a current contract expires or is renewed, it would then become subject to the approval regime.

### **Paragraph 8: Indemnification**

220. *Paragraph 8* provides for the indemnities in *section 24* to extend to liabilities that arise before the coming into force of that section, and liabilities that arise in relation to acts or omissions that occur before then. They also cover persons who were formerly members of NAO staff. This provision is needed to ensure that there is no break in cover between the indemnity set out in section 4(6) of the National Audit Act 1983 and that in *section 24* of this Act.

### **Paragraph 9: NAO's procedural rules before rules made under paragraph 18 of Schedule 2**

221. *Paragraph 9* sets out the procedural rules that apply to meetings of NAO before it has drawn up internal rules under *paragraph 18* of *Schedule 2*. These provisions on the quorums, majorities and casting votes will apply to meetings at which the NAO prepares its internal rules and the draft code under *paragraph 10* of *Schedule 3*.

### **Schedule 5: Consequential Amendments relating to Part 2**

222. This Schedule contains amendments which are minor or consequential on the measures in the Act.

### **Paragraphs 2 to 34**

#### **Exchequer and Audit Departments Act 1866**

223. *Paragraph 2* repeals sections of the Exchequer and Audit Departments Act 1866 that relate to the appointment and tenure of the C&AG. New provision is made in this Act, in particular in *sections 8, 9* and *11*.

#### **Exchequer and Audit Departments Act 1957**

224. *Paragraph 3* repeals the Exchequer and Audit Departments Act 1957. New provision for the C&AG's salary and powers of delegation are made in *section 13* of, and *paragraph 6* of *Schedule 3* to, this Act.

#### **Public Records Act 1958**

225. *Paragraph 4* provides for the reference to the NAO in Schedule 1 to the Public Records Act 1958 to be read as a reference to new NAO.

#### **Superannuation Act 1972**

226. *Paragraph 6* amends section 13 of the Superannuation Act 1972, which deals with the pension arrangements of the C&AG, so that it will not apply to a C&AG who is appointed under this Act. New pension arrangements are provided for under *section 13*. *Paragraph 7* amends the entry for staff of the NAO in Schedule 1 to the Superannuation Act 1972. This allows NAO employees to continue to be eligible for membership of the Principal Civil Service Pension Scheme. Any entitlement of a member of staff of the NAO who leaves before the creation of new NAO is not affected.

#### **House of Commons Disqualification Act 1975**

227. *Paragraph 8* amends Schedule 1 to the House of Commons Disqualification Act 1975. Members of the NAO (including the C&AG) and NAO employees are disqualified from becoming members of the House of Commons.

### **Northern Ireland Assembly Disqualification Act 1975**

228. *Paragraph 9* amends Schedule 1 to the Northern Ireland Assembly Disqualification Act to disqualify NAO members (including the C&AG) and employees from becoming members of the Northern Ireland Assembly.

### **Parliamentary and other Pensions and Salaries Act 1976**

229. *Paragraph 10* omits section 6(3) of the Parliamentary and other Pensions and Salaries Act 1976. Its provisions on the C&AG's salary are superseded by those in *section 13*.

### **Race Relations Act 1976**

230. *Paragraph 11* provides for the C&AG and the new NAO to be subject to the general statutory duty under section 71 of the Race Relations Act 1976. It also provides for continuity between the old and the new structures for things done or in the process of being done. It also provides that the amendments made by *sub-paragraph (1)* cease to have effect when the repeal of the Race Relations Act 1976 by Schedule 27 to the Equality Act 2010 has effect for all purposes.

### **Interpretation Act 1978**

231. *Paragraph 12* amends the definition of Comptroller and Auditor General in Schedule 1 to the Interpretation Act 1978 to remove the reference to appointments made under the Exchequer and Audit Departments Act 1866.

### **National Audit Act 1983**

232. *Paragraph 13* omits a number of sections of the National Audit Act 1983 which are superseded by provisions in this Act. They include provisions on: the appointment process of the C&AG (see *section 11*); the status of the NAO (see *section 20* and *Schedule 2*); and NAO's expenditure and audit (see *section 23* and *paragraph 25 of Schedule 2*). The repeal of section 3(4) of the 1983 Act does not affect staff of old NAO who cease to be members of PCSPS before the transfer of property, rights and liabilities under *paragraph 1(3) of Schedule 4* comes into effect.

### **Finance Act 1989**

233. *Paragraph 14* amends section 182 of the Finance Act 1989 to ensure that an existing offence for disclosing certain types of information (including tax and social security information) held by the C&AG and members of staff of NAO will continue to cover NAO and its employees in relation to the new structure of the NAO. The offence will also continue to apply to the Comptroller and Auditor General for Northern Ireland, and the staff of the Northern Ireland Audit Office.

### **Social Security Administration Act 1992**

234. *Paragraph 15* amends section 123 of the Social Security Administration Act 1992 to ensure that a disclosure offence which protects social security information related to particular persons continues to apply in relation to the new structure of the NAO. The offence also continues to apply to the Comptroller and Auditor General for Northern Ireland and the staff of the Northern Ireland Audit Office.

### **Taxation of Chargeable Gains Act 1992**

235. *Paragraph 16* adds paragraph 4 of Schedule 4 (which provides no gain or loss treatment for a transfer from the C&AG to the new NAO) to a list of "no gain/ no loss provisions" in section 288(3A) of the Taxation of Chargeable Gains Act 1992.

### **National Lottery etc. Act 1993**

236. *Paragraph 17* amends the National Lottery etc. Act 1993 to provide that the National Lottery Commission will continue to be permitted to make disclosures to the C&AG in connection with value for money examinations under Part 2 of the National Audit Act 1983.

### **Employment Rights Act 1996**

237. *Paragraph 18* amends the Employment Rights Act 1996.

### **Government of Wales Act 1998**

238. *Paragraph 19* repeals paragraph 1 of Schedule 12 to the Government of Wales Act 1998. This paragraph amends section 3 of the Exchequer and Audit Departments Act 1866 which is itself being repealed.

### **Government Resources and Accounts Act 2000**

239. *Paragraph 20* amends paragraph 18 of Schedule 1 to the Government Resources and Accounts Act 2000 to omit provisions related to the preparation of the NAO's accounts which have been superseded by those in *paragraphs 24 and 25* of *Schedule 2* to this Act.

### **Freedom of Information Act 2000**

240. *Paragraphs 22 and 23* provide for the continuity of obligations under the Freedom of Information Act 2000 between the old NAO, the new NAO and the C&AG. The new NAO will take on the information obligations of old NAO. It will hold information on behalf of the C&AG under the new structure and be responsible for dealing with requests under that Act.

### **Public Finance and Accountability (Scotland) Act 2000**

241. *Paragraph 24* amends the reference to the NAO in section 26D of the Public Finance and Accountability (Scotland) Act 2000 to take account of the structural change to NAO and thereby ensure that information may continue to be released to the C&AG and the NAO under this section for data-matching purposes.

### **Constitutional Reform Act 2005**

242. *Paragraph 25* omits paragraph 7 of Schedule 6 to the Constitutional Reform Act 2005. This provision is superseded by the new arrangements for delegation of the C&AG's functions in *paragraph 6* of *Schedule 3* to this Act.

### **Government of Wales Act 2006**

243. *Paragraphs 26 to 28* insert references to the NAO into paragraphs 5 and 8 in Parts 2 and 3 of Schedule 5 to the Government of Wales Act 2006, and paragraphs 4 and 7 in Parts 2 and 3 of Schedule 7 to that Act, to reflect the fact that certain functions currently carried out by the C&AG will in future be carried out by the NAO. The National Assembly for Wales will not be able to modify functions of either the C&AG or the NAO without the consent of the Secretary of State.

### **Companies Act 2006**

244. *Paragraph 30* omits section 1230(3)(a) of the Companies Act 2006 which is superseded by the new duty for NAO to provide the C&AG with resources under *paragraph 2* of *Schedule 3* to the Act.

## **Corporate Manslaughter and Corporate Homicide Act 2007**

245. *Paragraph 32* omits the reference to old NAO from Schedule 1 to the Act, but enables proceedings to be taken against old NAO in the event that offences are alleged to have been committed by old NAO before this provision comes into force. The offence in section 1 of the 2007 Act automatically applies to new NAO because it is a body corporate.

## **Parliamentary Standards Act 2009**

246. *Paragraph 33* amends paragraph 1 of Schedule 1 to the Parliamentary Standards Act 2009, which deals with the membership of the Independent Parliamentary Standards Authority. It updates the qualification requirements for the auditor member of the Authority which are based on eligibility to audit the NAO.

## **Equality**

247. *Paragraph 34* amends Part 1 of Schedule 19 of the Equality Act 2010 to include the C&AG. As a public authority specified in Schedule 19, the C&AG will be subject to the public sector equality duty.

## ***Schedule 6: Powers of National Assembly for Wales: Auditor General for Wales***

248. This Schedule amends Schedules 5 and 7 to the Government of Wales Act 2006 (“the 2006 Act”) to confer legislative competence on the National Assembly for Wales (“the Assembly”) in relation to the Auditor General for Wales (“AGW”).

## ***Paragraphs 2 to 4: Assembly Measures***

249. *Paragraphs 2 to 4* amend Schedule 5 to the 2006 Act, which deals with the Assembly’s competence to pass legislation known as Assembly Measures under Part 3 of the 2006 Act.
250. *Paragraph 3* amends Part 1 of Schedule 5 to the 2006 Act, which sets out the matters to which provisions of Assembly Measures may relate, by inserting a new matter 14.1 in the field of public administration. The competence conferred by matter 14.1 would enable an Assembly Measure to make certain kinds of provision in relation to the AGW, for example to put in place new governance arrangements for the AGW. The provision made by the Assembly could be similar to that set out elsewhere in Part 2 in relation to the C&AG and NAO.
251. *Paragraph 4* amends Part 2 of Schedule 5 to the 2006 Act, which sets out restrictions on the Assembly’s competence to pass Assembly Measures. The amendments provide for exceptions to the prohibitions on Assembly Measures being able to modify certain provisions of the Government of Wales Act 1998 (“the 1998 Act”) and the 2006 Act, and will enable those Acts to be amended by Assembly Measure if the purpose of the amendment is about putting in place governance arrangements relating to the AGW. The amendments made by *paragraph 4(3)* also include provisions to protect the AGW’s independence from the Assembly and Welsh Assembly Government.

## ***Paragraphs 5 to 7: Acts of the Assembly***

252. *Paragraphs 5 to 7* amend Schedule 7 to the 2006 Act, which deals with the Assembly’s competence to pass legislation known as Assembly Acts under Part 4 of the 2006 Act. Under sections 103 and 105 of the 2006 Act, the “Assembly Act provisions” enabling the Assembly to pass Assembly Acts can only be brought into force if the majority of those voting in a referendum held throughout Wales vote in favour. The purpose of the amendments made to Schedule 7 to the 2006 Act by *paragraphs 5 to 7* is to ensure that, upon the coming into force of the Assembly Act provisions, the Assembly would not

*These notes refer to the Budget Responsibility and National Audit Act 2011 (c.4) which received Royal Assent on 22 March 2011*

lose any of the competence which it would have as a result of the amendments made to Schedule 5 by *paragraphs 2 to 4*.

253. *Paragraph 6* amends Part 1 of Schedule 7 to the 2006 Act, which sets out the subjects to which provisions of Assembly Acts may relate, by inserting in paragraph 14 a new subject “Auditor General for Wales”. Paragraph 14 already includes the subject “Audit, examination, regulation and inspection of auditable public authorities”. The new subject would enable an Assembly Act to make similar types of provision in relation to the AGW as matter 14.1 in Schedule 5 (but it is worded differently in view of the subjects already included in Schedule 7 and the more general drafting style of that Schedule).
254. *Paragraph 7* amends Part 2 of Schedule 7 to the 2006 Act, which sets out restrictions on the Assembly’s competence to pass Assembly Acts. The amendments provide for exceptions to the prohibitions on Assembly Acts being able to modify certain provisions of the 1998 and 2006 Acts. These exceptions will enable an Assembly Act to modify Schedule 8 to the 2006 Act, which deals with the office of AGW, and will enable an Assembly Act to modify other provisions of the 1998 and 2006 Acts if the purpose of the amendment relates to the oversight or supervision of the AGW. The amendments made by *paragraph 7(3)* also include provisions to protect the AGW’s independence from the Assembly and Welsh Assembly Government.