

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

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## **EXPLANATORY NOTES**

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

#### **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.