

BUDGET RESPONSIBILITY AND NATIONAL AUDIT ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

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.