

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

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## **EXPLANATORY NOTES**

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

#### ***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*;

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- 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

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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.