

BUDGET RESPONSIBILITY AND NATIONAL AUDIT ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS AND SCHEDULES

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*.