



House of Commons  
The Public Accounts  
Commission

---

# Draft clauses on the corporate governance of the National Audit Office

---

## Sixteenth Report

*Presented to the House of Commons in  
pursuance of section 2(3) of the National Audit  
Act*

*Ordered by The House of Commons  
to be printed 21 July 2008*

## The Public Accounts Commission

The Public Accounts Commission is defined by the National Audit Act 1983. The Commission's principal duties under the Act are to examine the National Audit Office Estimate, to consider reports from the appointed auditor of the National Audit Office, and to report from time to time.

### Membership

Rt Hon Alan Williams MP (*Labour, Swansea West*) (Chairman)  
Mr Richard Bacon MP (*Conservative, South Norfolk*)  
Rt Hon Harriet Harman QC MP (*Labour, Camberwell and Peckham*) (*ex-officio* as Leader of the House of Commons)  
Mr Edward Leigh MP (*Conservative, Gainsborough*) (*ex-officio* as Chairman of the Committee of Public Accounts)  
Dr William McCrea MP (*Democratic Unionist, South Antrim*)  
Mr John McFall MP (*Labour, West Dunbartonshire*)  
Mr Austin Mitchell MP (*Labour, Great Grimsby*)  
Dr Nick Palmer MP (*Labour, Broxtowe*)  
Mr Andrew Tyrie MP (*Conservative, Chichester*)

### Publications

The Reports and evidence of the Commission are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [www.parliament.uk/parliamentary\\_committees/public\\_accounts\\_commission.cfm](http://www.parliament.uk/parliamentary_committees/public_accounts_commission.cfm)

### Committee staff

The current staff of the Commission are Dorian Gerhold (Secretary of the Commission) and Ann Williams/Jill Herring (Secretaries).

### Contacts

All correspondence should be addressed to Mr Dorian Gerhold, Secretary of the Commission, House of Commons, 7 Millbank, London SW1P 3JA; [gerholddj@parliament.uk](mailto:gerholddj@parliament.uk). The telephone number for general enquiries is 020 7219 6257/1366.

# Contents



---

## Report

*Page*

<b>DRAFT CLAUSES ON THE CORPORATE GOVERNANCE OF THE NATIONAL AUDIT OFFICE</b>	<b>3</b>
<b>Appendix 1: Memorandum from the National Audit Office</b>	<b>4</b>
<b>Appendix 2: Draft clauses prepared by the National Audit Office</b>	<b>13</b>
<b>Appendix 3: Draft Explanatory Notes prepared by the National Audit Office</b>	<b>32</b>



# DRAFT CLAUSES ON THE CORPORATE GOVERNANCE OF THE NATIONAL AUDIT OFFICE

---

1. In March 2008 we published our response to John Tiner's review of the corporate governance of the National Audit Office (NAO).<sup>1</sup> At the same time, the Government agreed to make provision in the Constitutional Renewal Bill for those parts of our proposals which required legislation. We are now publishing as Appendix 1 to this report a paper by the NAO setting out how our proposals might be taken forward. We endorse the NAO's paper. The draft clauses and explanatory notes (Appendices 2 and 3) embody these proposals, and also reflect our decision that the NAO Board should have nine members with a non-executive majority of one<sup>2</sup> and our proposal for a prohibition on a former Comptroller and Auditor General (C&AG) accepting any post in any body which the C&AG has audited or which is in the gift of the Government. Our view is that this should be a lifetime prohibition. We will also be considering further with the NAO and the Treasury how we would set and uprate the C&AG's remuneration under the proposals set out in the draft clauses.

2. The draft clauses (presented here as a free-standing Bill) will need to be reviewed by Parliamentary Counsel prior to inclusion in the Constitutional Renewal Bill. Although technical refinements may be required, we consider that the draft clauses offer a pragmatic, workable way of implementing our proposals. They recognise the unique position of the C&AG and meet our twin objectives of preserving the independence of the C&AG and at the same time strengthening the corporate governance of the NAO. We commend the draft clauses published here as the basis for the clauses that the Government has agreed to incorporate in the Constitutional Renewal Bill.

---

<sup>1</sup> Fifteenth Report, *Corporate Governance of the National Audit Office: Response to John Tiner's Review, 2007-08*, HC 402.

<sup>2</sup> Instead of the proposal in HC 402, para 11, for a Board of seven members.

# Appendix 1: Memorandum from the National Audit Office

---

## **THE CORPORATE GOVERNANCE OF THE NATIONAL AUDIT OFFICE TAKING FORWARD THE PUBLIC ACCOUNTS COMMISSION'S RESPONSE TO JOHN TINER'S REVIEW**

1. This paper sets out how it is proposed that the changes arising from the response<sup>3</sup> of the Public Accounts Commission to John Tiner's Review of the Corporate Governance of the National Audit Office<sup>4</sup> should be implemented. The annex to the paper<sup>5</sup> presents an initial draft of clauses and supporting schedules (together with explanatory notes) which would give effect to those parts of the Commission's recommendations which require legislation.
2. The draft clauses have been prepared by the National Audit Office's legal advisers, taking account of the work already completed by Parliamentary Counsel. The clauses have been drafted as a free-standing Bill, though the Government has agreed that equivalent provisions will be included in the Constitutional Renewal Bill. The draft clauses will need to be considered by Parliamentary Counsel before incorporation into the Bill. Both the paper and the draft clauses reflect the discussions that have been taking place between the Treasury and the National Audit Office since the Commission's response was published in March 2008.
3. The objectives of the Commission in making recommendations for change were (i) to preserve the independence of the C&AG in forming audit judgements, while at the same time (ii) to strengthen the corporate governance of the National Audit Office by bringing it more into line with best practice. Reconciling these two objectives is not straightforward and requires governance arrangements tailored for the particular circumstances of the C&AG and the National Audit Office.

---

<sup>3</sup> Fifteenth Report, *Corporate Governance of the National Audit Office: Response to John Tiner's Review*, HC 402, Session 2007-08.

<sup>4</sup> Fourteenth Report, *Review of the National Audit Office's Corporate Governance*, HC 328, Session 2007-08.

<sup>5</sup> [Appendices 2 and 3 of the report.]

## **The role of the C&AG**

### The C&AG's role and status

4. No changes are proposed to the legislative provision either for the C&AG's statutory financial audits, set out in the Government Resources and Accounts Act 2000 and elsewhere, or for the C&AG's value for money work, set out in the National Audit Act 1983. The C&AG will continue therefore to be responsible for making audit judgements, for deciding a programme of value for money examinations, and for reporting the results of his or her work to Parliament.
5. As well as providing for the C&AG's value for money work, the National Audit Act 1983 set the legal framework for the C&AG's independence from the Executive. There will be no changes to the C&AG's status as an Officer of the House of Commons, and he or she will continue to be appointed by The Queen on a motion of the House of Commons moved by the Prime Minister with the agreement of the Chairman of the Committee of Public Accounts. The appointment process is to be strengthened by the application of best practice on public appointments, as set out in the Code of Practice published by the Office of the Commissioner for Public Appointments.
6. The draft clauses in the annex provide for the C&AG to be appointed for a single, non-renewable term of ten years. This change is in line with the Commission's recommendation, which was made in the light of John Tiner's observation that a fixed term of eight years, as he proposed, should give the incumbent time to become established and gain experience, while mitigating the risk of the National Audit Office becoming too closely associated with one individual over the longer term.
7. In view of the desire of the Chairman of the Committee of Public Accounts to start the appointment process for the next C&AG in advance of the legislation being passed, the draft clauses provide for transitional arrangements. Should a new C&AG be appointed prior to the commencement date of the legislation, the Treasury will determine by order made by statutory instrument how the maximum ten year term provided for in the legislation should be applied but the existing C&AG will serve a term of not less than ten years in total.

8. The introduction of a single, non-renewable term in place of the current unlimited tenure makes it more likely, however, that a future C&AG might seek other employment after his or her term. Mindful of conflicts of interest, perceived or otherwise, the Commission favoured a lifetime prohibition on former C&AGs accepting any post in any body audited by the National Audit Office or which is in the gift of the Government. On this basis, a former C&AG would be unable to hold positions for which individuals are appointed or recommended by or on behalf of the Crown, or in any body whose accounts are audited by the National Audit Office; or to provide consultancy services to the Crown or any body acting on behalf of the Crown, or to any body whose accounts are audited by the National Audit Office.
9. In addition, given the Commission's concerns about apparent conflicts of interest in relation to posts with suppliers to the public sector or other positions in the private sector, former C&AGs may be required to consult before taking up certain types of position or entering certain types of contract. The proposal is that the Code (see paragraph 26 below) will specify who the C&AG should consult and, as current structures stand, it is likely to be the Advisory Committee on Business Appointments, as the Commission suggested.
10. On the C&AG's salary, the draft clauses provide that the value of the C&AG's remuneration package on appointment should not exceed the maximum value of a Permanent Secretary's package for the same period. The Commission had suggested that the C&AG's salary might be linked to that of the Treasury's Permanent Secretary but, as Permanent Secretaries are on personal rates of pay, this approach could have resulted in the C&AG's salary fluctuating inappropriately, for example with a change in Treasury Permanent Secretary.
11. A more general provision is therefore proposed, which in practice would prevent the C&AG's remuneration exceeding that of the Cabinet Secretary. This formulation should not be affected by future machinery of government changes. The remuneration package might be determined by the Commission at the start of each C&AG's term and updated thereafter on an index-linked basis.

### The C&AG's ability to delegate

12. As John Tiner noted in his Review, it is a long established practice that audit opinions are best formed by individuals using their professional experience and judgement. The CA&G will accordingly continue to be responsible for forming audit judgements and communicating these to Parliament. The C&AG will remain a legal entity in his own right as a corporation sole, a status which provides for a continuing legal personality and thereby ensures continuity in the event of a change in C&AG.
13. In its response, the Commission noted, however, that the C&AG's overall responsibility for audit judgements does not imply that all such judgements must be made by the C&AG, and it is therefore possible for the C&AG to delegate the making of individual audit judgements to subordinates. Delegating the signing of the audit opinion on some accounts would allow the C&AG to select those accounts to which he or she wished to give personal attention, while making appropriate arrangements in other cases for duly qualified and senior National Audit Office staff to sign opinions on his or her behalf.
14. Over time the number of accounts audited by the C&AG has grown to over 500, and more recently the deadline for most audited accounts to be laid by the Parliamentary summer recess has resulted in the C&AG having to sign the majority of accounts within the space of a few weeks in June and July. For example, in 2006-07 the National Audit Office delivered 346 opinions on financial statements prior to the summer recess. Against this background, a system of delegation would give more substance to the exercise of the C&AG's independent judgement.
15. In fact, the C&AG already delegates the signing of opinions on some accounts which he or she audits by agreement. But extending the C&AG's ability to delegate to cover statutory audits requires legislative change and the draft clauses in the annex include the necessary provision. At a more detailed level, the proposal is that the Code (see paragraph 26 below), approved by the Commission, will give authority to the scheme of delegation by specifying the types of account that the C&AG will be able to delegate. The intention is that the C&AG will not delegate but will continue to sign personally accounts relating to the Parliamentary

system of supply, including the departmental resource accounts, through which Parliament exerts control over the Executive. Delegation will not apply to value for money reports or any other report prepared by the C&AG.

### **Strengthening the National Audit Office's corporate governance**

16. Accepting the recommendations of John Tiner, the Commission proposed a number of changes aimed at bringing the National Audit Office's corporate governance more into line with best practice in the public and private sectors, including that set out for government departments in the Treasury's Code of Practice and for listed companies in the Combined Code on Corporate Governance. The Commission's intention in making its recommendations was to introduce greater checks and balances over what had previously been the largely unchecked power of the C&AG.

### The National Audit Office Board

17. Drawing on the Commission's report, the draft clauses in the annex provide for formalising the governance and management of the National Audit Office. The National Audit Office will be incorporated as a statutory Board, with a non-executive majority and Chairman. The Board will employ the staff of the National Audit Office, and contract for the provision of such other resources as are needed to deliver the Office's programme of work.
18. The Board's functions will include:
- agreeing the strategy of the National Audit Office;
  - agreeing the National Audit Office's annual estimate and corporate plan for presentation to the Commission;
  - approving the National Audit Office's programme of 'non-statutory' work and the associated budgets (see paragraphs 31 and 33 below);
  - preparing a Code, for approval by the Commission, which will govern the relationship between the Board and the C&AG (see paragraph 26 below).
19. The Commission suggested that the Board should have seven members and the draft clauses so provide, but also offer an alternative of nine members. A Board of nine would remain manageable, but would make it easier to achieve a quorum and should provide sufficient members for Board Committees, including Audit and

Remuneration Committees which would need to be composed entirely of non-executives.

20. Regardless of size, the Board will have a non-executive majority of one. There will be four [or five] non-executive members – the Chairman, plus three [or four] others appointed by the Commission on a recommendation from the Chairman; and three [or four] executive (employee) members – the C&AG, plus two [or three] others appointed by the non-executive members on a recommendation from the C&AG.
21. John Tiner also suggested that the Chairman of the Audit Commission should be a member of the Board, with a view to facilitating closer co-operation between the National Audit Office and the Audit Commission. The Public Accounts Commission did not wish to go that far, but agreed that the Audit Commission Chairman should attend the Board as an observer. This arrangement would not require legislative provision and could be taken forward on an administrative basis. The Audit Commission have, however, indicated that they would not wish to take up this facility.

#### The Chairman

22. To achieve balance in the appointment process, the Chairman of the National Audit Office is to be appointed in the same way as the C&AG, by agreement between the Prime Minister and the Chairman of the Committee of Public Accounts. The National Audit Office Chairman will be a Crown appointment for a three-year term, renewable for one further three-year term. The Chairman's remuneration package will be determined by the Commission. He or she will not be able to hold any other positions for which individuals are appointed or recommended by or on behalf of the Crown.

#### Committees

23. The draft clauses provide a general power for the National Audit Office to set up committees. In line with best practice, the Commission referred in its report to there being an Audit Committee and a Remuneration Committee.
24. The intention is that the Audit Committee would comprise only non-executive members, which would strengthen the Committee's independence and effectiveness in scrutinising the National Audit Office's executive management.

The Chairman of the National Audit Office would appoint the Chairman of the Audit Committee, who would be a member of the Board, although some of the other members might be appointed from outside the Board. On the advice of the Audit Committee, the Board would recommend external auditors for appointment by the Commission.

25. The Remuneration Committee would also comprise only non-executive members. As with the Audit Committee, the Chairman of the National Audit Office would appoint the Chairman of the Remuneration Committee, who would be a member of the Board, although some of the other members might be appointed from outside the Board. The role of the Remuneration Committee would be to set the remuneration of the two [or three] executive members of the Board, other than the C&AG, and to advise on the remuneration of any other National Audit Office staff referred to the Committee by the Board.

### **Reconciling the C&AG's independence and stronger corporate governance**

26. The key challenge in developing proposals to enhance the National Audit Office's corporate governance is to ensure that the establishment of a statutory Board, and in particular the appointment of a Chairman, does not cut across the CA&G's independence in an inappropriate or unintended way. Following discussions between the National Audit Office and the Treasury, the intention is that this risk should be managed through a Code, prepared under the relevant section of the legislation and approved by the Commission.
27. The Code will set out how the Board of the National Audit Office, its Chairman, and the C&AG will perform their roles, and how the relationships between them will work. Any amendment of the Code will also require the approval of the Commission. The internal procedures and management of the National Audit Office will be governed by standing orders provided for in the legislation.
28. Key to the Code will be a distinction between the National Audit Office's 'statutory' and 'non-statutory' work. Statutory work is carried out under specific legislative provision, and covers the accounts which the C&AG is required to audit, the value for money examinations which the C&AG has a right to undertake, and the C&AG's Comptroller function. Non-statutory work covers the remainder of the National Audit Office's activities and may include support to

Parliament, audits and examinations carried out by agreement (including the audit of certain companies), technical co-operation projects and other international work, responding to correspondence from MPs and the public, and the development of good practice guidance.

#### Allocating resources

29. For the C&AG's responsibility for forming audit judgements to be meaningful, he or she needs to control the use of resources for statutory audit purposes. While resources will always be limited in a general sense, artificial constraints on the use of resources for statutory audits could influence the scope of the work and thus indirectly the judgements reached. Such constraints might also be hard to reconcile with the audit standards and regulations under which the work is done.
30. So that the C&AG has sufficient control over resourcing decisions, the Code will specify the respective roles of the C&AG and the National Audit Office Board. Each year, the C&AG will prepare a draft corporate plan, setting out a multi-year envelope for the resourcing of the National Audit Office, for discussion and agreement by the Board. The Chairman and the C&AG will jointly present the corporate plan to the Commission for their approval. The C&AG will then determine an annual budget required for his or her statutory work, as a prior claim on the overall resource envelope in the corporate plan, as approved by the Commission. The C&AG will also determine the budgets for individual statutory audits and value for money examinations.
31. In the case of non-statutory work, however, the C&AG will seek the approval of the National Audit Office Board for the resourcing of such work within the remaining resource provision not required for statutory work. The Board will have the discretion to amend both the overall budget for this work and the budgets for specific projects.

#### Deciding the work programme

32. The Code will provide for a similar dual-track arrangement for the development of the National Audit Office's work programme. Audits which the C&AG is statutorily obliged to perform will necessarily be included in the programme, and the C&AG will decide on a programme of value for money examinations. The intention is that the Board may discuss the C&AG's proposed programme of value

for money work, and may challenge particular proposals or the balance of the programme, but decisions about its content will be taken by the C&AG. The C&AG will continue to be required to take into account any proposals made by the Committee of Public Accounts in determining what value for money examinations to carry out.

33. In contrast to the position on statutory audits and examinations, the Board will have a decision-making role in relation to non-statutory work. It will discuss the C&AG's proposals for a programme of such work, and may add, remove or amend them prior to approving the programme. Once the C&AG has obtained approval for non-statutory work and the associated budget (see paragraph 31 above), he or she then has complete discretion in carrying out the work and responsibility for the audit judgements reached.

#### Commenting publicly on audit judgements

34. As noted in paragraph 12 above, the C&AG will retain complete discretion in his or her audit opinions and judgements, which will apply to both statutory and non-statutory assignments. The Chairman of the National Audit Office Board will have no locus to speak publicly on matters of audit judgement, or otherwise to act as an alternative head of the National Audit Office. Similarly, the Code will require other non-executive members of the Board to refrain from public comment on audit opinions and judgements.

# Appendix 2: Draft clauses prepared by the National Audit Office

---

## National Audit Bill

### CONTENTS

#### *The Comptroller and Auditor General*

- 1 Office of Comptroller and Auditor General
- 2 Status of Comptroller and Auditor General

#### *The National Audit Office*

- 3 Incorporation of the National Audit Office
- 4 Expenditure of the National Audit Office

#### *General*

- 5 Code of practice
- 6 Liabilities of Comptroller and Auditor General and NAO
- 7 Transfers of property, contracts of employment, etc
- 8 Consequential amendments
- 9 Interpretation
- 10 Repeals
- 11 Short title, commencement and transitional provision

---

Schedule 1 – The Comptroller and Auditor General

Schedule 2 – The National Audit Office

Part 1 – Membership and status

Part 2 – Non-executive members

Part 3 – Employee members

Part 4 – Chief executive and employees

Part 5 – NAO's strategy

Part 6 – Standing orders

Part 7 – Other matters

Schedule 3 – Code of practice

Schedule 4 – Consequential amendments

Schedule 5 – Repeals

A  
**BILL**  
TO

Make provision about the functions and status of the Comptroller and Auditor General, and for the incorporation of the National Audit Office and about its governance and functions; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and the Commons, in this present Parliament assembled, and by the authority of the same, as follows: –

*The Comptroller and Auditor General*

**1 Office of Comptroller and Auditor General**

- (1) The office of the Comptroller and Auditor General is to continue.
- (2) In Welsh the office is to be called Y Rheolwr ac Archwilydd Cyffredinol.
- (3) It is for Her Majesty by Letters Patent to appoint a person to the office.
- (4) Her Majesty's power is exercisable on an address presented by the House of Commons.
- (5) It is for the Prime Minister to move the motion for the address, and to do so the Prime Minister must have the agreement of the chair of the Committee of Public Accounts.
- (6) The person appointed holds the office for ten years.
- (7) The person may not be appointed again.
- (8) Subject to subsection (9), the person who immediately before the coming into force of this section holds the office of the Comptroller and Auditor General shall continue to hold that office (but see section 11(4) and (5) in relation to transitional provision).
- (9) Subsection (8) does not apply if that person had resigned the office by written notice to the Prime Minister to have effect at the end of the day before this section comes into force.

**2 Status of Comptroller and Auditor General**

- (1) The Comptroller and Auditor General is by that name a corporation sole.
- (2) The Comptroller and Auditor General is an officer of the House of Commons (but section 4(4) of the House of Commons (Administration) Act 1978 (c. 36) does not apply in relation to the office of the Comptroller and Auditor General).

- (3) The person who is the Comptroller and Auditor General must not hold any other office or position for which the person is appointed or recommended by or on behalf of the Crown, and must not be a member of the House of Lords.
- (4) The Comptroller and Auditor General is not to be regarded –
  - (a) as the servant or agent of the Crown, or
  - (b) as enjoying any status, immunity or privilege of the Crown.
- (5) Subject to any duty imposed by statute and to subsection (6), the Comptroller and Auditor General shall have complete discretion in the discharge of the functions of the office, including in determining whether to carry out any examination under Part 2 of the National Audit Act 1983 (c.44) and as to the manner in which any such examination is carried out.
- (6) In carrying out any of the functions of the office, the Comptroller and Auditor General must take into account the strategy prepared by the NAO under paragraph 17 of Schedule 1 and any advice of the NAO, and in determining whether to carry out an examination under Part 2 of the National Audit Act 1983 the Comptroller and Auditor General must also take into account any proposals of the Committee of Public Accounts.
- (7) Schedule 1 (which makes further provision about the office of the Comptroller and Auditor General) has effect

*The National Audit Office*

### **3 Incorporation of the National Audit Office**

- (1) There shall be a body corporate called the National Audit Office.
- (2) In Wales it is called Y Swyddfa Archwilio Genedlaethol.
- (3) Schedule 2 (which is about the National Audit Office) has effect.

### **4 Expenditure of the National Audit Office**

- (1) The NAO's expenditure is to be paid out of moneys provided by Parliament.
- (2) This is subject to section 6 and paragraph 1(9) of Schedule 1 (which provide for certain amounts to be charged on and paid out of the Consolidated Fund).
- (3) For each financial year (see subsection (8)), the NAO must prepare an estimate of the NAO's use of resources (see section 27 of the Government Resources and Accounts Act 2000 (c. 20)).
- (4) The estimate must make provision for (amongst other matters) such resources as are in the opinion of the NAO required to enable the Comptroller and Auditor General's functions and the NAO's functions to be carried out.
- (5) The chair of the NAO and the Comptroller and Auditor General must together present to the Commission the estimate prepared by the NAO under subsection (3).

- (6) The Commission must –
  - (a) examine the estimate, and
  - (b) lay it before the House of Commons with the modifications (if any) the Commission think appropriate.
- (7) In doing this the Commission must have regard to any advice given by the Committee of Public Accounts or the Treasury.
- (8) Each of the following is a financial year –
  - (a) the period which begins when section 3 comes into force and ends with the following 31 March;
  - (b) each successive period of 12 months.

*General*

**5 Code of practice**

Schedule 3 (which contains provisions for a code of practice dealing with amongst other matters governance of the NAO) has effect.

**6 Liabilities of Comptroller and Auditor General and NAO**

There shall be charged on and issued out of the Consolidated Fund any amount payable by the Comptroller and Auditor General or the NAO in consequence of any liability for breach of duty (whether under a contract or otherwise) incurred by the Comptroller and Auditor General or a member of the staff of the NAO in performing the functions of the Comptroller and Auditor General or the member of staff in respect of any audit or examination.

**7 Transfers of property, contracts of employment, etc**

- (1) In this section, “the old NAO” means the National Audit Office that was established by section 3 of the National Audit Act 1983.
- (2) Subject to subsection (7), all property, rights and liabilities held by the Comptroller and Auditor General and the old NAO at the time this section comes into force vest in the NAO.
- (3) Subsection (2) operates in relation to property, rights and liabilities –
  - (a) whether or not they would otherwise be capable of being transferred;
  - (b) without any instrument or other formality being required; and
  - (c) irrespective of any kind of requirement for consent that would otherwise apply.
- (3) The rights and liabilities transferred under subsection (2) include rights and liabilities under contracts of employment with staff appointed under section 3(2) of the National Audit Act 1983.
- (4) The transfer of rights and liabilities under such a contract does not break the continuity of the employee’s employment, and accordingly –

- (a) the employee is not to be regarded for the purposes of Part 11 of the Employment Rights Act 1996 (c.18) (redundancy) as having been dismissed by virtue of the transfer; and
  - (b) the employee's period of employment under section 3(2) of the National Audit Act 1983 counts as a period of employment with the NAO for the purposes of the Employment Rights Act 1996.
- (5) Anything done by, on behalf of or in relation to the Comptroller and Auditor General or the old NAO with respect to a matter transferred under subsection (2) has effect as if done by, on behalf of or in relation to the NAO, so far as necessary or appropriate for continuing its effect after that subsection comes into force.
- (6) Anything (including legal proceedings) which, immediately before the coming into force of subsection (2), is in the process of being done by, on behalf of or in relation to the Comptroller and Auditor General or the old NAO with respect to a matter transferred under that subsection may be continued by, on behalf of or in relation to the NAO.
- (7) Rights and liabilities under any agreements, made before subsection (2) comes into force, for the Comptroller and Auditor General or staff of the old NAO to carry out an audit or examination shall not transfer under that subsection, but shall be and remain rights and liabilities of the Comptroller and Auditor General.

## **8 Consequential amendments**

- (1) Reference in any other Act, or in any subordinate legislation, to the National Audit Office that was established by section 3 of the National Audit Act 1983 is to be read as a reference to, or as including a reference to, the NAO.
- (2) Schedule 4 (which contains amendments consequential on this Act) has effect.

## **9 Interpretation**

In this Act –

- “the code of practice” means the code made and approved from time to time under Schedule 3;
- “the Commission” means the Public Accounts Commission; and
- “the NAO” means the body established by section 3.

## **10 Repeals**

The repeals set out in Schedule 5 (which include repeals of spent provisions) have effect.

## **11 Short title, commencement and transitional provision**

- (1) This Act may be cited as the National Audit Act 2008.
- (2) The provisions of this Act come into force on such day as the Treasury may by order made by statutory instrument appoint.

- (3) An order under subsection (2) may appoint different days for different purposes.
- (4) An order under subsection (2) bringing section 1 or paragraph 1 of Schedule 1 into force may make transitional provision about how section 1(6) and that paragraph are to have effect in relation to the person to whom section 1(8) applies.
- (5) Transitional provision under subsection (4) about how section 1(6) is to have effect may not provide that, leaving paragraph 4 of Schedule 1 out of account, the aggregate of the period of office of that person before the day on which section 1 comes into force and the period of office of that person on and after that day is to be less than ten years.
- (6) An order under subsection (2) which makes transitional provision under subsection (4) is subject to annulment pursuant to a resolution of either House of Parliament.

## SCHEDULES

### SCHEDULE 1

Section 2

#### THE COMPTROLLER AND AUDITOR GENERAL

##### *Remuneration package of Comptroller and Auditor General*

- 1 (1) The Comptroller and Auditor General is to receive a remuneration package.
  - (2) The package may include an annual salary, allowances, provision for a pension and other benefits.
  - (3) The package is to be determined by the Commission at the time of the appointment of the person to whom it relates to the office of the Comptroller and Auditor General.
  - (4) The package determined must cover the period of ten years referred to in section 1(6).
  - (5) No element of the package is to be performance based.
  - (6) The value of the Comptroller and Auditor General's package (as estimated by the Commission at the time of the determination) for the first year of appointment must not exceed the maximum value (as so estimated) that a permanent secretary's package could have for that year.
  - (7) The package may provide that for the remainder of the period of appointment any element of the package is to be increased from time to time by reference to an index.
  - (8) In sub-paragraph (6), "permanent secretary's package" means a remuneration package for a permanent secretary in the civil service of the State (taking into account annual salary, allowances, provision for a pension and other benefits).
  - (9) Amounts required for providing the Comptroller and Auditor General's package are to be charged on and paid out of the Consolidated Fund.

##### *Delegation of Comptroller and Auditor General's functions*

- 2 (1) The Comptroller and Auditor General may delegate any of the functions of the office to employees of the NAO in accordance with a scheme made by the Comptroller and Auditor General and approved by the Commission.
  - (2) A delegation does not prevent the Comptroller and Auditor General from doing anything personally.

*The Comptroller and Auditor General: vacancies in the office and incapacity*

- 3 (1) This paragraph applies while the office of Comptroller and Auditor General is vacant.
- (2) This paragraph also applies if the Speaker of the House of Commons has certified to that House that, in the view of the Speaker taken on medical advice, the ability of the Comptroller and Auditor General to exercise the functions of the office has become seriously impaired through ill health (whether physical or mental), and the House of Commons has resolved that this paragraph should apply with respect to the period of ill health.
- (3) The NAO may with the approval of the Commission authorise a member of the staff of the NAO to carry out the functions of the Comptroller and Auditor General while the office is vacant or during the period of ill health (as the case may be).
- (4) The functions referred to in sub-paragraph (3) include the function of delegating under paragraph 2.
- (5) In relation to a vacancy or period of ill health that exists for more than six months, functions may not be carried out by virtue of provision within sub-paragraph (3) after the end of the first six months; and sub-paragraph (2) may not apply to any one person holding the office of the Comptroller and Auditor General more than once.

*Resignation or removal of Comptroller and Auditor General*

- 4 (1) The person who is the Comptroller and Auditor General may resign from office by giving written notice to the Prime Minister.
- (2) Her Majesty may remove from office the person who is the Comptroller and Auditor General on an address from both Houses of Parliament.

*Restriction on employment etc of a former Comptroller and Auditor General*

- 5 (1) This paragraph applies to a person (“P”) who once held the office of the Comptroller and Auditor General, for the period of [*n* years] starting with the day after the day on which P left office.
- (2) P must not –
- (a) hold an office or position for which the person is appointed or recommended by or on behalf of the Crown;
  - (b) be a member, director, officer or employee of a body or other person whose accounts are required by an Act or subordinate legislation to be examined and certified by, or to be open to the inspection of, the Comptroller and Auditor General.

- (3) P must not, in any capacity, provide consultancy services to—
- (a) the Crown or any body or other person acting on behalf of the Crown;
  - (b) a body or other person whose accounts are required by an Act or subordinate legislation to be examined and certified by, or to be open to the inspection of, the Comptroller and Auditor General.
- (4) This paragraph does not apply to a person who ceased to hold the office of the Comptroller and Auditor General before the day on which section 1 comes into force.

*Expenditure relating to Comptroller and Auditor General*

- 6 Subject to paragraph 1(9), expenditure relating to the office of the Comptroller and Auditor General is expenditure of the NAO and is to be dealt with (with other expenditure of the NAO) in accordance with section 4.

SCHEDULE 2

Section 3

THE NATIONAL AUDIT OFFICE  
PART 1

MEMBERSHIP AND STATUS

*Membership*

- 1 (1) The NAO is to have nine members.
- (2) They are to be –
- (a) five persons who are not employees of the NAO (“non-executive members”) (see Part 2 below);
  - (b) the Comptroller and Auditor General;
  - (c) three employees of the NAO (“employee members”) (see Parts 3 and 4 below).

*Status*

- 2 (1) The NAO (including its members and employees) is not to be regarded –
- (a) as the servant or agent of the Crown, or
  - (b) as enjoying any status, immunity or privilege of the Crown.
- (2) The NAO’s property is not to be regarded as property of, or held on behalf of, the Crown.

## PART 2

### NON-EXECUTIVE MEMBERS

#### *Chair of NAO*

- 3 (1) One of the non-executive members is to be the chair of the NAO.
- (2) It is for Her Majesty by Letters Patent to appoint the chair of the NAO.
- (3) Her Majesty's power is exercisable on an address presented by the House of Commons.
- (4) It is for the Prime Minister to move the motion for the address, and to do so the Prime Minister must have the agreement of the chair of the Committee of Public Accounts.
- (5) The person who is the chair of the NAO must not hold any other office or position for which the person is appointed or recommended by or on behalf of the Crown.

#### *Appointment of other non-executive members*

- 4 (1) The other non-executive members are to be appointed by the Commission as follows.
- (2) If there is a vacancy, the chair of the NAO must recommend a person to the Commission for appointment.
- (3) The Commission may –
  - (a) appoint that person, or
  - (b) require the chair to recommend another person (in which event this sub-paragraph applies again and so on until someone is appointed).

#### *Period of appointment and re-appointment*

- 5 (1) An appointment under this Part of this Schedule is to be for a period of no more than three years.
- (2) A person may not be appointed under this Part of this Schedule more than twice.

#### *Other terms of appointment*

- 6 (1) The other terms of an appointment under this Part of this Schedule are to be determined by the Commission (which may include restrictions on other appointments or employments that the member may accept while, or after ceasing to be, a member).

- (2) Before making a determination the Commission must consult any person with oversight of public appointments who the Commission thinks it is appropriate to consult.
- (3) Terms may provide for the appointee to receive a remuneration package, which may include an annual salary, allowances, provision for a pension and other benefits.
- (4) The remuneration packages of the non-executive members are to be paid for by the NAO.

*Resignation and termination of appointments*

- 7 A person appointed under this Part of this Schedule may resign by giving written notice to the Commission.
- 8 Her Majesty may terminate the appointment of the chair of the NAO on an address from both Houses of Parliament.
- 9 The Commission may terminate the appointment of any other non-executive member by giving the member written notice if –
  - (a) the member has been absent from meetings of the NAO without the NAO’s permission for a period of more than three months,
  - (b) the member is the subject of a bankruptcy restrictions order (or interim order),
  - (c) the member’s estate has been sequestrated in Scotland or, under Scots law, the member has made a composition or arrangement with, or granted a trust deed for, the member’s creditors,
  - (d) the member is unfit to continue the appointment because of misconduct,
  - (e) the member has failed to comply with the terms of the appointment, or
  - (f) the member is otherwise unable, unfit or unwilling to carry out the member’s functions.

PART 3

EMPLOYEE MEMBERS

*Appointment*

- 10 (1) The employee members are to be appointed by the non-executive members as follows.
- (2) If there is a vacancy, the Comptroller and Auditor General must recommend a person to the non-executive members for appointment.
- (3) The non-executive members may –

- (a) appoint that person, or
- (b) require the Comptroller and Auditor General to recommend another person (in which event this sub-paragraph applies again and so on until someone is appointed).

*Terms of appointment*

- 11 (1) The terms of an employee member's appointment are to be determined by the non-executive members.
- (2) The terms may provide for the employee member to receive a remuneration package which may include an annual salary, allowances, provision for a pension and other benefits.
- (3) The package is to be paid for by the NAO.

*Resignation and termination of appointments*

- 12 An employee member shall cease to be a member upon ceasing to be an employee of the NAO.
- 13 An employee member may resign before then by giving written notice to the NAO.
- 14 The NAO may terminate the appointment of an employee member by giving the member written notice if –
  - (a) the member has been absent from meetings of the NAO without the NAO's permission for a period of more than three months,
  - (b) the member is the subject of a bankruptcy restrictions order (or interim order),
  - (c) the member's estate has been sequestrated in Scotland or, under Scots law, the member has made a composition or arrangement with, or granted a trust deed for, the member's creditors,
  - (d) the member is unfit to continue the appointment because of misconduct,
  - (e) the member has failed to comply with the terms of the appointment, or
  - (f) the member is otherwise unable, unfit or unwilling to carry out the member's functions.

## PART 4

## CHIEF EXECUTIVE AND EMPLOYEES

*Chief executive*

- 15 The Comptroller and Auditor General is to be the chief executive (but not an employee) of the NAO.

*Employment of staff*

- 16 (1) The NAO may employ staff.
- (2) In exercise of its powers under sub-paragraph (1), the NAO shall employ such staff as are in its opinion required to enable the Comptroller and Auditor General's functions and the NAO's functions to be carried out.
- (3) In determining the terms of employment of any staff, the NAO must have regard to the desirability of keeping the terms broadly in line with those applying to civil servants.
- (4) A person who is an employee of the NAO must not hold any office or position for which the person is appointed or recommended by or on behalf of the Crown.

## PART 5

## NAO'S STRATEGY

- 17 (1) The NAO must –
- (a) prepare a strategy for the NAO, and
  - (b) review the strategy (and revise it as appropriate) at least once every 12 months.
- (2) In preparing, reviewing and revising the strategy the NAO must consult the Commission, and have regard to the code of practice and any advice given by the Treasury.
- (3) In carrying out its functions, the NAO must have regard to its strategy.

## PART 6

## STANDING ORDERS

*General*

- 18 The NAO must make rules ("the standing orders") for the purpose of regulating the NAO's procedures and management.

- 19 (1) This paragraph applies in relation to any matter to be decided by the NAO for the purposes of paragraph 18 before the standing orders are made.
- (2) A matter is to be decided –
- (a) at a meeting of the NAO at which the chair of the NAO and at least six other members are present, and
  - (b) by the majority of votes of the members present and voting on the matter.
- (3) But the matter may not be decided unless a majority of the members voting on the matter are non-executive members.
- (4) If the votes are tied, the chair of the NAO is to have the casting vote, whether or not the chair has already voted on the matter.
- (5) It is for the chair of the NAO to call a meeting of the NAO by giving written notice to the other members of the date, time and venue of the meeting.
- 20 The following provisions of this Part of this Schedule are not exhaustive as to the provision that may be included in the standing orders, but the NAO must not make any provision in the standing orders which contravenes the principle in section 2(5) or which is required to form part of the code of practice.

#### *Quorum for NAO meetings and voting*

- 21 If the standing orders provide for a quorum for meetings of the NAO, the quorum cannot be met unless a majority of the members present are non-executive members.

#### *Committees*

- 22 (1) The standing orders may include provision –
- (a) for the setting up of committees of the NAO and for those committees to set up sub-committees;
  - (b) regulating the procedures of those committees and sub-committees.
- (2) An employee of the NAO who is not an employee member may be a member of a committee or sub-committee.
- (3) A person who is neither a member of the NAO nor an employee of the NAO may be a member of a committee or sub-committee so long as no functions of the NAO are delegated to the committee or subcommittee (see paragraph 25).

#### *Delegation*

- 23 (1) The standing orders may provide for –

- (a) the NAO to delegate any of its functions to any of its members, employees or committees;
  - (b) a committee to delegate any of its functions (including functions delegated to it) to a sub-committee.
- (2) The delegation of a function does not prevent the NAO or the committee (as the case may be) from carrying out the function itself.
- (3) The following functions may not be delegated under this paragraph –
- (a) the functions given by paragraph 17(1) and (2) (the NAO’s strategy);
  - (b) the functions given by paragraph 18 (making and revising the standing orders);
  - (c) the duty to appoint an auditor under paragraph 27(1);
  - (d) the decision referred to in paragraph 3 of Schedule 3 (concerning the code of practice to be presented to the Commission).

## PART 7

### OTHER MATTERS

#### *Powers*

- 24 The NAO may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions.

#### *Validity of proceedings*

- 25 The validity of any proceedings of the NAO or any committee or sub-committee established under the standing orders is not affected by a vacancy or a defective appointment.

#### *NAO to prepare resource accounts*

- 26 (1) Resource accounts of the kind mentioned in section 5 of the Government Resources and Accounts Act 2000 must be prepared for the NAO for each financial year (see section 4(8)).
- (2) The Commission must appoint a person as accounting officer to be responsible for that.
- (3) That person must carry out any other functions determined by the Commission.

#### *Audit of NAO*

- 27 (1) The NAO must appoint an auditor for the NAO for each financial year (see section 4(8)).

- (2) The Commission's approval is required for the appointment (including its terms).
- (3) The auditor must be eligible for appointment as a statutory auditor (see section 1212 of the Companies Act 2006).
- (4) The auditor must examine the NAO's resource accounts for the financial year.
- (5) Sections 6(1) and 25(2) of the Government Resources and Accounts Act 2000 apply in relation to the examination as they apply in relation to an examination by the NAO of the resource accounts of a department.
- (6) On completion of the examination the auditor must –
  - (a) certify the accounts, and
  - (b) send them, together with the auditor's report on them, to the Commission.
- (7) The Commission must lay the accounts and report before the House of Commons.
- (8) The terms of the auditor's appointment may require the auditor to carry out economy, efficiency and effectiveness examinations of the NAO's use of resources.
- (9) On completion of the examinations, the auditor must send its report to the Commission.
- (10) The Commission must lay the report before the House of Commons.
- (11) The auditor may require access at any reasonable time to any document, as the auditor thinks necessary for the purposes of the auditor's functions under this paragraph.
- (12) The auditor may also require any person holding or accountable for any document to provide any information or explanation that the auditor thinks necessary for those purposes.

### *Reports*

- 28 (1) The NAO must, as soon as practicable after the end of each financial year (see section 4(8)), prepare a report on the carrying out of its functions during the year.
- (2) The chair of the NAO and the Comptroller and Auditor General must together provide the report to the Commission.
- (3) The Commission must lay the report before Parliament.

*Documentary evidence*

- 29 The application of the NAO's seal is to be authenticated by the signature of any of the following –
- (a) a member of the NAO;
  - (b) any person authorised (whether generally or specifically) for the purpose by a member of the NAO.
- 30 A document purporting to be duly executed under the NAO's seal or signed on its behalf –
- (a) is to be received in evidence, and
  - (b) is to be taken to be executed or signed in that way, unless the contrary is proved.

## SCHEDULE 3

Section 5

## CODE OF PRACTICE

*Preparation and review of code of practice*

- 1 (1) The NAO must prepare a code of practice dealing with the matters set out in paragraph 4.
- (2) The code of practice may also deal with matters relating to the governance of the NAO not mentioned in that paragraph, including standards for corporate governance which the members of the NAO must comply with or otherwise have regard to, but must not contravene the principle in section 2(5).
- (3) The NAO must from time to time review the code, and must also consider any proposals for revising the code made by the Commission.
- (4) In preparing the code (including any revision of it), the NAO must consult the Treasury.
- 2 (1) The Commission's approval is required for the code of practice (including any revision of it).
- (2) For that purpose, the chair of the NAO and the Comptroller and Auditor General must together present to the Commission the code of practice prepared or revised from time to time by the NAO under paragraph 1.
- 3 (1) With respect to any proceedings of the NAO in deciding that a code of practice (including any revision of it) is in terms that should be presented to the Commission under paragraph 2 which take place before the standing orders under Part 6 of Schedule 2 are made, paragraph 19 of that Schedule applies as it applies to the making of the standing orders.
- (2) Notwithstanding anything in sub-paragraph (1) or in the standing orders of the NAO, no code may be presented to the Commission under paragraph 2

unless (in addition to the requirements in sub-paragraph (1) or in the standing orders) not less than one half of the non-executive members present and voting have voted in favour of the terms of the code to be presented.

### *Contents of code*

- 4 The code of practice must deal with the following –
  - (a) the matters (if any) about which the NAO thinks the NAO should be consulting the Commission from time to time;
  - (b) the manner in which resources are to be allocated for the purpose of enabling the Comptroller and Auditor General to carry out audits and examinations under an enactment;
  - (c) the manner in which the Comptroller and Auditor General is to obtain approval of the NAO before entering into agreements or arrangements for the carrying out of audits or examinations, or the giving of advice, under the natural powers of the office (rather than under an enactment);
  - (d) the nature of the advice by the NAO referred to in section 2(6) which it may properly tender to the Comptroller and Auditor General;
  - (e) the matters with which the strategy referred to in paragraph 17 of Schedule 2 is to be concerned;
  - (f) any restrictions to be placed on non-executive members of the NAO about the public comments they may make in relation to the carrying on of any of the functions of the Comptroller and Auditor General;
  - (g) the requirements (if any) for a person who once held the office of the Comptroller and Auditor General to consult a specified person before taking up an employment or a consultancy which is not precluded by paragraph 5 of Schedule 1.
  
- 5 The objective which is to apply to the formulation of the matter mentioned in paragraph 4(c) is that –
  - (a) the Comptroller and Auditor General is to obtain approval to the expenditure which would be incurred in carrying out an audit or examination, or giving advice, under the natural powers of the office (rather than under an enactment) and to the principle of carrying out the audit or examination, or giving the advice, before entering into the agreement or arrangement in question, but
  - (b) if the NAO approves the expenditure and the principle then the complete discretion referred to in section 2(5) is to apply.
  
- 6 (1) The consultation requirements included in the code pursuant to paragraph 4(g) do not apply to a person who ceased to hold the office of the Comptroller and Auditor General before the day on which section 1 comes into force.
  - (2) Subject to sub-paragraph (1), the code of practice is to be complied with.

## SCHEDULE 4

Section 8

## CONSEQUENTIAL AMENDMENTS

*Superannuation Act 1972 (c. 11)*

- 1 In Schedule 1 (employment and offices to which a scheme under section 1 of the Act may apply), in the list of “Offices” insert “Employee member of the National Audit Office”.

*House of Commons Disqualification Act 1975 (c. 24)*

- 2 In Part 2 of Schedule 1, at the appropriate place insert “The National Audit Office”.

*Northern Ireland Assembly Disqualification Act 1975 (c. 25)*

- 3 In Part 2 of Schedule 1, at the appropriate place insert “The National Audit Office”.

*Interpretation Act 1978 (c. 30)*

- 4 In the definition of “the Comptroller and Auditor General” in Schedule 1, for “appointed in pursuance of the Exchequer and Audit Departments Act 1866” substitute “in office pursuant to section 1 of the National Audit Act 2008”.

## SCHEDULE 5

Section 10

## REPEALS

<i>Reference</i>	<i>Extent of repeal</i>
Exchequer and Audit Departments Act 1866 (c. 39)	Sections 3 and 6.
Exchequer and Audit Departments Act 1957 (c. 45)	The whole Act.
Parliamentary and other Pensions and Salaries Act 1976 (c. 48)	Section 6(3).
National Audit Act 1983 (c. 44)	Sections 1, 3 and 4. In Schedule 2, paragraphs 1 and 2. Schedule 3.
Government of Wales Act 1998 (c. 38)	In Schedule 12, paragraph 1.
Constitutional Reform Act 2005 (c. 4)	In Schedule 6, paragraph 7.

## Appendix 3: Draft Explanatory Notes prepared by the National Audit Office

---

### INTRODUCTION

1. These draft explanatory notes relate to the draft National Audit Bill, prepared by the National Audit Office's legal advisers[Appendix 2]. The draft Bill is designed to give effect to changes arising from the report of the Public Accounts Commission on the Corporate Governance of the National Audit Office (Fifteenth report, Session 2007-08). The draft notes have been prepared by the National Audit Office in order to assist the reader of the draft Bill, and do not form part of the draft Bill.

### OVERVIEW OF THE BILL

2. The draft National Audit Bill has 11 clauses and 5 schedules. Commentary on the clauses and schedules is set out below.

### COMMENTARY ON CLAUSES

#### **Clause 1: Office of Comptroller and Auditor General**

3. *Clause 1, subsection (1)* provides for the continuation of the office of C&AG.
4. *Subsections (3) to (5)* provide that the C&AG will continue to be appointed by The Queen on an address from the House of Commons. The Prime Minister will move the motion for the address, with the agreement of the Chairman of the Committee of Public Accounts.
5. *Subsections (6) and (7)* provide for the person appointed as C&AG to serve for a single term of ten years.
6. *Subsection (8)* provides that if a C&AG is in post on the day that the Act comes into force, he or she will continue in post. He or she will serve a term of not less than ten years in total (see clause 11(5)).

## **Clause 2: Status of Comptroller and Auditor General**

7. *Clause 2* provides for the C&AG to continue to be a corporation sole (*subsection (1)*) and an officer of the House of Commons (*subsection (2)*), as at present.
8. *Subsection (3)* provides that the Comptroller and Auditor General is not to hold another position where the appointment is made or recommended by or on behalf of the Crown, nor be a member of the House of Lords.
9. *Subsection (4)* provides that the Comptroller and Auditor General does not act as a servant or agent of the Crown or enjoy any status or privilege of the Crown.
10. *Subsections (5) and (6)* provide for the C&AG to have complete discretion in carrying out his or her functions, subject to taking into account the strategy and any advice of the NAO, and, in relation to deciding a programme of value for money examinations, any proposals of the Committee of Public Accounts.
11. *Subsection (7)* introduces Schedule 1 which makes further provision about the office of C&AG.

## ***Schedule 1: The Comptroller and Auditor General***

12. *Paragraph 1* provides for the C&AG's remuneration package to be determined by the Public Accounts Commission. No element of the C&AG's remuneration is to be performance related. For his or her first year in office, the C&AG's remuneration must not exceed the maximum remuneration received by a Civil Service Permanent Secretary for the same period, and thereafter the C&AG's remuneration may be increased with reference to an index.
13. *Paragraph 2* provides that the C&AG may delegate any of his or her functions in accordance with a scheme of delegation approved by the Public Accounts Commission.
14. *Paragraph 3* provides for arrangements in the event that the office of C&AG is vacant or the Speaker of the House of Commons has certified that the C&AG is unable to carry out his or her functions due to ill health. In either circumstance the NAO, with the approval of the Public Accounts Commission, may authorise a

member of its staff to carry out the C&AG's functions for a period of no more than six months.

15. Under *paragraph 4*, the C&AG may resign by giving written notice to the Prime Minister and may be removed from office on an address to The Queen agreed by both Houses of Parliament. This follows current arrangements.
16. *Paragraph 5* provides for restrictions on the employment of a former C&AG. For [*n* years] after leaving office, a former C&AG may not work for, or provide consultancy services to, the Crown nor any body audited or inspected by the C&AG.
17. Under *paragraph 6*, expenditure relating to the C&AG, other than his or her remuneration package, is treated as expenditure of the NAO.

### **Clause 3: Incorporation of the National Audit Office**

18. Clause 3 provides for the NAO to be a body corporate and introduces Schedule 2 which makes provision about the NAO.

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

19. In *Part 1, paragraphs 1 and 2* provide for the NAO to have nine members, with a non-executive majority of one, and for their status. The C&AG is a member, with three employee members.
20. *Part 2* is concerned with the non-executive members. *Paragraph 3* provides for one of the non-executive members to be the chair of the NAO. The chair will be appointed by The Queen on an address from the House of Commons. The Prime Minister will move the motion for the address, with the agreement of the Chairman of the Committee of Public Accounts. Under *paragraph 4*, the other non-executive members are appointed by the Public Accounts Commission on the recommendation of the chair.
21. *Paragraph 5* provides that the non-executive members are appointed for a term of no more than three years, and may serve one further term.

22. *Paragraphs 6 to 9* make provision for other terms of appointment of non-executive members and provide that the chair may be removed on an address to The Queen agreed by both Houses of Parliament, and other non-executive members may be removed by the Commission on certain grounds.
23. *Part 3, paragraphs 10 to 14* deal with the employee members. These are appointed by the NAO on the recommendation of the C&AG. They cease to be members if they cease to be employees of the NAO, and they may be removed by the NAO on certain grounds.
24. In *Part 4, paragraph 15* provides that the C&AG is to be the chief executive of the NAO but not an employee. Under *paragraph 16* the NAO may appoint staff.
25. Under *Part 5, paragraph 17*, the NAO must prepare a strategy for the NAO, review the strategy (and revise as appropriate) every year, and have regard to the strategy in carrying out its functions. In preparing, reviewing and revising the strategy, the NAO must consult the Public Accounts Commission and have regard to the code of practice and any advice given by the Treasury.
26. Under *Part 6, paragraphs 18 to 23*, the NAO must make standing orders governing its internal procedures, which may provide for committees, a quorum and delegation of its functions.
27. *Part 7, paragraphs 24 to 30* deal with ancillary matters, including the preparation of resource accounts by the NAO and their audit, and the making of an annual report on the NAO's functions.

#### **Clause 4: Expenditure of the National Audit Office**

28. *Subsections (1) and (2)* provide for the NAO's expenditure to be met by funds provided by Parliament, except for the remuneration of the C&AG and certain liabilities of the C&AG and the NAO (see Clause 6).

29. *Subsections (3) to (8)* specify the arrangements for preparing and considering an annual estimate of the NAO's use of resources. The chair of the NAO and the C&AG are required jointly to present the estimate to the Public Accounts Commission, and the Commission will then lay the estimate before the House of Commons subject to any amendments they think appropriate.

**Clause 5: Code of practice**

30. *Clause 5* introduces Schedule 3 to provide for there to be a code of practice which will make provision concerning the governance of the NAO.

***Schedule 3: Code of practice***

31. *Paragraphs 1 to 3* require the NAO to prepare the code of practice for approval by the Public Accounts Commission, dealing with the governance of the NAO, the relationship between the C&AG and the NAO and other matters. The NAO is required to consult the Treasury in preparing the code of practice.
32. *Paragraphs 4 and 5* specify the matters that the code of practice must deal with, which include the way in which resources are to be allocated for the C&AG's 'statutory' audits and examinations, the way in which the C&AG obtains the approval of the NAO to carry out 'non-statutory' work, and any requirements for a former C&AG to consult a specified person before taking up positions which he or she is not prevented from taking up by paragraph 5 of Schedule 1.

**Clause 6: Liabilities of Comptroller and Auditor General and National Audit Office**

33. *Clause 6* provides for any liabilities incurred by the C&AG or the NAO in the carrying out of an audit or examination to be met from the Consolidated Fund. This reflects similar provision at present in section 4(6) of the National Audit Act 1983.

**Clause 7: Transfers of property, contracts of employment etc**

34. *Subsections (1) to (6)* provides for the property, rights and liabilities of the C&AG and the 'old' NAO (established under the National Audit Act 1983) to transfer to the 'new' NAO being established under this Bill, including contracts of employment of existing staff of the 'old' NAO. The transfer of contracts of employment does not break the continuity of employment of the staff.
35. *Subsection (7)* provides an exception to this transfer, so that rights and liabilities under agreements for 'non-statutory' audits and examinations will continue to be held by the C&AG.

**Clause 8 and Schedule 4: Consequential amendments**

36. *Clause 8* introduces Schedule 4 which makes amendments to other legislation which are consequential on the Bill.

**Clauses 9 to 11 and Schedule 5**

37. *Clauses 9 to 11* make supplementary provision about interpretation and introduce the repeals in Schedule 5, and provide for commencement and the short title.