



# ***Budget Responsibility and National Audit Bill [HL]***

**[Bill No 143 of 2010-11]**

**RESEARCH PAPER 11/15** 8 February 2011

The Bill establishes the Office for Budget Responsibility (OBR) on a statutory basis, following its creation after the general election of 2010. It also requires the Treasury to publish a Charter for Budget Responsibility setting out its approach to fiscal policy. The Bill would also confirm a new corporate governance structure for the National Audit Office, under a new paid post of Chair, who would develop a joint strategy with the Comptroller and Auditor General.

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## Research Paper 11/15

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## Summary

This Bill was first introduced into the Lords and completed its Third Reading on 7 February 2011. It did not prove controversial, but the Government responded to some points made in the Grand Committee stage with a package of amendments on Report. The Bill extends to the UK and will be brought into force by commencement orders.

Part 1 of the Bill sets out the Government's new fiscal framework and provides for the establishment of the Office for Budget Responsibility (OBR) on a statutory basis. The [Treasury Select Committee](#) published a series of reports on the OBR and appointments to the body during 2010 and has proved influential in shaping its structure.

The Bill requires the Treasury to publish a Charter for Budget Responsibility which is to include the Government's fiscal policy objectives and its "fiscal mandate". The fiscal mandate was published in the June 2010 Budget. The new mandate sets the Government's target for reducing the budget deficit. It is supplemented by a target for public sector debt. This is essentially a replacement for the previous Government's fiscal rules. The new fiscal rules aim to improve on their predecessors by being forward-looking and being assessed on the basis of independent forecasts produced by the OBR.

The OBR was established on a non-statutory basis in May 2010. The Bill will put it on a statutory basis. The OBR will produce forecasts for the economy and public finances, replacing those previously published by the Treasury in the Budget and Pre-Budget Report. The forecasts will be produced independently of government with the aim of removing any perception that the forecasts are motivated by political considerations. The OBR will also examine the likelihood of the fiscal mandate being met and will report on the longer-term sustainability of the public finances. The non-statutory OBR has already published three sets of forecasts: two under the interim chairman, Sir Alan Budd and one under Robert Chote, who became chairman in October.

The creation of the OBR has generally been welcomed, especially for bringing greater transparency to forecasting. Concerns have been expressed, however, about how independent the OBR will be in practice. The OBR will need to have contact with the government and access to its information in order to produce the forecast. This might be perceived as reducing its independence. Much of the consideration of the Bill in the House of Lords was about ways to bolster the OBR's independence. A number of amendments were made by the House of Lords. These included a requirement for an external review of the OBR's work and clarification of the role of the OBR's non-executive members. A clause which had been criticised for limiting the OBR's independence was removed.

One aspect of the debate has been the question of accountability and independence for bodies which are constitutionally separate from the executive. The National Audit Office has been in existence since 1866, but gained statutory independence in the *National Audit Act 1983*. The Office for Budget Responsibility was established immediately after the 2010 general election.

Part 2 of the Bill would also create a new corporate governance structure for the National Audit Office, under a new paid post of Chair, which would develop a joint strategy with the Comptroller and Auditor General. The Chair, Amyas Morse, has already been appointed and taken up office. The clauses in this Bill were originally contained in the *Constitutional Reform and Governance Bill 2009-10*, but were dropped at wash-up just before the general election of May 2010.

## 1 Introduction

### 1.1 The Bill and its passage through Parliament.

This Bill has two main parts – one dealing with the statutory framework for the Office for Budget Responsibility (OBR) and the second introducing a new form of corporate governance for the National Audit Office (NAO). Both the changes authorised by this Bill have already been made. The Bill extends to England and Wales, Scotland and Northern Ireland. The OBR has a role in fiscal policy which is a reserved matter; the powers of the Comptroller and Auditor General extend to UK departments. There are separate Auditor Generals for Scotland, Wales and Northern Ireland, who deal with devolved matters.

The Bill had its second reading in the Lords on 8 November 2010 as [Bill 23 of 2010-11](#), together with [Explanatory Notes](#). It was subsequently dealt with in Grand Committee on [29 November 2010](#), [1 December](#), [6 December](#) and [9 December 2010](#) and had its report stage on [31 January 2011](#), where a number of Government amendments were made, detailed below. The Bill was reprinted as [Bill 42](#) and received a third reading on 7 February 2011. It is due for second reading in the Commons on 14 February 2011 as Bill 143 of 2010-11.

## 2 Part 1: Budget Responsibility

### 2.1 Summary

Part 1 of the Bill has two functions:

- it sets out the Government's new fiscal framework, replacing the previous Government's arrangements. There will be a *Charter for Budget Responsibility*, replacing the previous Government's *Code for Fiscal Stability*.
- it establishes the Office for Budget Responsibility on a statutory basis.

The establishment of the OBR has generally been welcomed. For example, the Institute for Fiscal Studies (IFS) described it as a “welcome innovation” and praised the greater transparency it has brought to economic and fiscal forecasts.<sup>1</sup> The IMF has also commended the OBR's establishment.<sup>2</sup> The issues raised during the Bill's passage through the House of Lords were mainly about drafting and detail rather than political differences. For example, Lord Eatwell, the Opposition spokesman, said “All sides want, I think, to make the Bill a success. That is not really a matter of political dispute”.<sup>3</sup>

### 2.2 The fiscal framework

In recent years, governments in a number of countries have sought to improve their fiscal policies by the introduction of fiscal rules or by strengthening fiscal institutions. These measures can improve the credibility of fiscal policy. Governments may be tempted to adopt short-term policies, such as cutting taxes or increasing public spending in an unsustainable way, which may be harmful to the economy in the long-term. By adopting fiscal rules or frameworks, which constrain their behaviour, governments can signal that they will not adopt these short-term policies and can thereby give their fiscal policy increased credibility.

A number of attempts have been made in the UK to gain credibility in this way. These include the fiscal rules adopted by the last Government and the [Fiscal Responsibility Act 2010](#) which placed a legal obligation on the Treasury to reduce borrowing and debt by specified amounts. The fiscal frameworks must find a balance between placing constraints

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<sup>1</sup> IFS, “The new fiscal framework: an assessment”, p59 in [The IFS Green Budget](#), February 2011

<sup>2</sup> IMF, [IMF Executive Board Concludes 2010 Article IV Consultation with the United Kingdom](#), 9 November 2010

<sup>3</sup> HL Deb 6 December 2010 c1GC

on policy with the need for flexibility in response to unanticipated economic events. This point was made by Lord Burns when the Bill received its second reading in the Lords:

The challenge is to have a framework that both constrains fiscal behaviour in a responsible way and is capable of dealing with the range of surprises and unexpected events that inevitably occur. All attempts to frame budget responsibility in this way have at some stage met that particular problem - some have dealt with it better than others.<sup>4</sup>

In its 2011 *Green Budget*, the IFS explained how the establishment of the OBR would contribute to this objective:

Essentially, there is a concern that politicians are prone, or are perceived to be prone, to undervalue the longer-term costs of borrowing – perhaps because of pressure from special interest groups or political short-termism – which causes them to allow excessive debt accumulation. Even if politicians sign up to fiscal rules which theoretically constrain the amount of borrowing they are allowed to do (such as Mr Osborne’s fiscal mandate and supplementary target discussed above), the complex nature of economic and fiscal forecasting is such that the electorate finds it hard to hold governments to account. If the electorate prefers less borrowing than politicians do, politicians have an incentive to produce optimistic fiscal forecasts to hide their intention to borrow excessively. (It is also possible that, immediately after a change of government, politicians might have an incentive to produce deliberately pessimistic forecasts in order to increase the chance that the new government will be able to announce better-than expected performance in subsequent budgets.)<sup>5</sup>

In the past, attempts were made to add caution to the Treasury’s fiscal forecasts. For example, the NAO examined the assumptions used in the projections of the public finances to ensure that they were reasonable and cautious. The NAO will no longer audit the assumptions used in the Budget forecast under the Government’s proposed framework. In addition, the Budget and Pre-Budget Reports used a cautious assumption for trend GDP growth in making projections for the public finances. For example, the March 2010 Budget assumed that trend GDP growth was ¼% lower than the Treasury’s main economic forecast. The OBR does not use “cautious” assumptions in this way. It presents a central case and seeks to emphasise the inevitable uncertainties involved in economic forecasting.

### ***Fiscal objectives and mandate***

The draft *Charter for Budget Responsibility* sets out the Treasury’s objectives for fiscal policy.<sup>6</sup> These are to:

- ensure sustainable public finances that support confidence in the economy, promote intergenerational fairness, and ensure the effectiveness of wider Government policy; and,
- support and improve the effectiveness of monetary policy in stabilising economic fluctuations.<sup>7</sup>

The Chancellor announced the fiscal mandate in the June 2010 Budget:

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<sup>4</sup> HL Deb 8 November 2010 c34

<sup>5</sup> IFS, “The new fiscal framework: an assessment”, p52 in *The IFS Green Budget*, February 2011

<sup>6</sup> The Treasury has published a [draft version of the Charter](#). A revised draft will be published after Royal Assent. The Government set out areas where changes to the draft are being considered in its Bill [Factsheet 7](#), Government amendments at Lords Report.

<sup>7</sup> HM Treasury, *Draft Charter for Budget Responsibility*, November 2010, para 3.1

1.15 The Budget announces the Government's forward-looking fiscal mandate to achieve cyclically-adjusted current balance by the end of the rolling, five-year forecast period. At this Budget, the end of the forecast period is 2015-16.

1.16 At this time of rapidly rising debt, the fiscal mandate will be supplemented by a target for public sector net debt as a percentage of GDP to be falling at a fixed date of 2015-16, ensuring that the public finances are restored to a sustainable path. The Government has asked the OBR to assess whether policy is consistent with a greater than 50 per cent chance of meeting the target for debt.

1.17 This fiscal mandate, supplemented by the target for debt, will guide fiscal policy decisions over the medium term, ensuring that the Government sets plans consistent with accelerating the reduction in the structural deficit so that debt as a percentage of GDP is restored to a sustainable, downward path. This will help reduce the risk of pushing up long-term interest rates and provide scope to absorb the impact of future economic shocks.<sup>8</sup>

This framework replaces the fiscal rules adopted by the previous Government and the targets imposed by the *Fiscal Responsibility Act 2010*. The previous Government's two fiscal rules were:

The golden rule: over the economic cycle, the current budget will balance, ie the government will borrow only to fund investment, not current spending.

The sustainable investment rule: public sector debt will be kept below 40% of GDP.

There are some similarities between these rules and the new fiscal mandate. For example, both look at the current balance and both allow for borrowing to fluctuate with the economic cycle. The new framework aims to avoid some of the criticisms of the previous arrangements. The previous Government was accused of "moving the goalposts" to make it easier to meet the rules. The IFS commented:

As Mr Brown's hopes of continued surpluses were dashed and deficits began to mount up, the exact method of calculating the cumulative budget balance and the precise dating of the cycle became increasingly important in determining whether or not the golden rule was on course to be met – and, if so, with what degree of comfort. Changes were made that increased the extent to which the public finances could be claimed to be on course to meet the golden rule:

- First, the methodology employed to calculate cumulative current budget surpluses that Mr Brown reported in his Budget Speeches was modified.
- Second, the estimated start date for the economic cycle was moved by two years at precisely the point at which, without this change, the government looked on course to break rather than meet the golden rule.
- Third, in evidence to the Treasury Select Committee, Treasury officials left open the option of dropping the approach of counting the last year of one economic cycle as the first year of the next economic cycle.

All of these changes could be justified in their own right. But the fact that they all made it easier to meet the golden rule at convenient times undermined the credibility of the

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<sup>8</sup> HM Treasury, Budget 2010, June 2010, paras 1.15 – 1.17

policy framework and created suspicion that Mr Brown would ‘move the goalposts’ rather than face the embarrassment of missing this target.<sup>9</sup>

Under the new framework, the OBR will assess the economy’s position in the economic cycle.

In addition, the previous Government’s rules were backward looking, especially at the end of the cycle. In its January 2009 *Green Budget*, the IFS commented:

picking any fixed period over which to judge the rule means that the amount the government can borrow towards the end of the period is determined by what it has borrowed earlier on. Policy becomes backward-looking as the Chancellor is potentially constrained to compensate for the policy and forecasting errors of the past rather than setting what is necessarily the most sensible policy looking forward.<sup>10</sup>

The new mandate is more forward-looking requiring cyclically-adjusted balance by the end of a five year rolling period. The IFS has described the forward-looking nature of the new mandate as a “welcome improvement”. It has, however, noted that a problem with this formulation of the rule is that, strictly speaking, it relates only to forecasts rather than outturns. As the IFS observes:

Under the current formulation of the new borrowing rule, a government that continually promised to tighten in future, but never delivered on those promises, would not technically be judged to be breaking the rule. The government has indicated that, once the public finances are closer to balance – presumably towards the end of the current forecasting horizon – the period over which the rule is judged could be shortened. This would reduce the scope for this problem to materialise, but it would not eliminate it. Furthermore, government plans may quickly lose credibility if they were seen continually to promise but never deliver future pain. Careful independent scrutiny of the government’s management of the public finances – aided by the increase in transparency and credibility of the official forecasts associated with the introduction of the OBR ... – will help police a forward-looking rule (with all its attendant benefits) so that any government did not inappropriately manipulate such a target.<sup>11</sup>

The previous Government’s fiscal rules were suspended following the financial crisis and replaced first with a “Temporary Operating Rule” and secondly with the *Fiscal Responsibility Act*.<sup>12</sup> This required:

- borrowing to be more than halved to 5.5 per cent of GDP or less in 2013-14;
- borrowing to be reduced as a share of GDP in each and every year from 2009-10 to 2015-16; and
- public sector net debt to be falling as a share of GDP in 2015-16.<sup>13</sup>

The Government has criticised this for being “insufficiently rigorous” as borrowing was only required to be 5½% of GDP by 2013/14.<sup>14</sup>

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<sup>9</sup> IFS, “[The fiscal rules and policy framework](#)” p86, in *The IFS Green Budget*, January 2009

<sup>10</sup> IFS, “[The fiscal rules and policy framework](#)” p85, in *The IFS Green Budget*, January 2009

<sup>11</sup> IFS, “The new fiscal framework: an assessment”, pp39-40 in *The IFS Green Budget*, February 2011. There is a more detailed discussion of the Government’s new fiscal rules on pp38-51.

<sup>12</sup> This Act is repealed by Clause 10 of the Bill.

<sup>13</sup> HM Treasury, Budget 2010, March 2010, para 2.61

<sup>14</sup> HM Treasury, Budget 2010, June 2010, paras 1.22

The Government has said that the design of the current fiscal mandate reflects the current fiscal environment. The fiscal mandate may change once the levels of borrowing and debt have been reduced:

The choices of a five-year rolling forecast period for the fiscal mandate, supplemented by the fixed date for the debt target, reflect the exceptional environment in which the Government must address the fiscal challenge. They are designed to ensure that fiscal consolidation is delivered over a realistic and credible timescale. Once the public finances are closer to balance the period over which cyclically-adjusted current balance must be achieved could safely be shortened in order to create a tighter constraint. In addition, once the exceptional rise in debt has been addressed, a new target for debt as a percentage of GDP will be set, taking account of the OBR's assessment of the long-term sustainability of the public finances.<sup>15</sup>

### 2.3 The Office for Budget Responsibility

The aim of the OBR is to make the Government's forecasts for the economy and public finances independent. The Treasury's forecasts were previously based on the Chancellor's judgements. This could lead to the suspicion that the forecasts were over-optimistic, and potentially to a loss of credibility in fiscal plans. By giving the forecasting role to the OBR, the aim is to remove the danger that the forecasts could be politically motivated and thereby enhance the credibility of the fiscal framework.

In the Second Reading debate in the Lords, Lord Sassoon, Commercial Secretary to the Treasury, said:

Now, through the Bill, the Government are strengthening the framework of the UK's fiscal institutions.

The greatest single step forward is the establishment of the independent Office for Budget Responsibility, which will make independent assessments of the public finances and the economy. Up until the new Government's first Budget, the responsibility for producing the official forecasts had rested with the Chancellor. The key judgments were made by Ministers, but the possible incentive to forecast optimistically, whether on lower borrowing or higher growth, led to scepticism over the credibility of the forecasts. Budget forecasts over the past decade consistently underestimated borrowing, compared to both its actual level and to what other independent forecasters expected at the time. The coalition Government intend to take a different approach.<sup>16</sup>

The OBR was initially established on an interim basis on 17 May 2010.<sup>17</sup> Sir Alan Budd was appointed as chair. Two other members were appointed to the Budget Responsibility Committee (BRC): Graham Parker and Geoffrey Dicks. The interim body also included a secretariat of eight Treasury employees on secondment. It had, therefore, to rely on the Treasury's expertise.<sup>18</sup>

The interim OBR published two sets of economic forecasts. The first was published before the June 2010 Budget and was based on the previous Government's economic policies.<sup>19</sup> The second forecast was published alongside the June 2010 Budget.<sup>20</sup>

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<sup>15</sup> HM Treasury, Budget 2010, June 2010, paras 1.24

<sup>16</sup> HL Deb 8 November 2010 c12

<sup>17</sup> HM Treasury Press Notice, *Chancellor announces policies to enhance fiscal credibility*, 17 May 2010

<sup>18</sup> *Establishing the Office for Budget Responsibility*, Letter from the OBR to the Chancellor, 12 July 2010, para 47

<sup>19</sup> OBR, *Pre-Budget forecast*, June 2010

The interim OBR did, however, become involved in political controversy. It brought forward publication of employment forecasts, releasing them shortly before Prime Minister's Questions on 30 June 2010. The Prime Minister was able to use this information to rebut questions from the Opposition. Sir Alan Budd denied that he had been placed under political pressure to bring forward the forecast saying that the figures were released to correct a leak of misleading data. Nevertheless, the episode was viewed as damaging the OBR's independence and, shortly afterwards, Sir Alan announced his intention to stand down. He expressed regret about the damage this controversy had done to the OBR in evidence to the Treasury Committee:

Chair: You do understand, though, Sir Alan, do you not, that this has done quite a bit of damage to the early reputation of the OBR?

Sir Alan Budd: And, as I have said, I regret that enormously, Chairman.<sup>21</sup>

In October, Robert Chote became chair of the OBR. This appointment was made by the Chancellor, subject to a veto by the Treasury Committee. Mr Chote was formerly director of the IFS. The Chancellor also announced that Stephen Nickell and Graham Parker were his preferred candidates as members of the Budget Responsibility Committee.<sup>22</sup> These appointments were also confirmed by the Treasury Committee. Mr Nickell is a former member of the Bank of England Monetary Policy Committee and was previously a professor of economics at both the London School of Economics and Oxford University. Mr Parker was formerly head of the public sector finances team in the Treasury. The permanent OBR published a forecast for the economy and public finances in November 2010.<sup>23</sup>

The Chancellor has published terms of reference for the OBR which will apply until the legislation comes into force.<sup>24</sup> While the Chancellor has said that he intends to use the OBR's forecasts, the legislation does not require him to do so.

It is worth noting that similar institutions in other countries have, in some cases, been given a quite different role. The Treasury Committee noted that "most fiscal councils do not themselves produce the forecast which the government uses in making its fiscal judgements". Often the role of the council is to assess the official forecast, or provide an alternative, after it has been published.<sup>25</sup> Lars Calmfors, Chair of Sweden's Fiscal Policy Council, contrasted the OBR's arrangements with those in Sweden where there is less on-going contact between the fiscal council and the finance ministry. He argued that requiring the OBR to publish a forecast with the Budget makes it very difficult to "avoid behind the scenes 'negotiations' ... with the Treasury". He concluded:

And the most important lesson is this: one cannot have it both ways – the OBR cannot be both an independent watchdog and an in-house provider of input into the Treasury's work.<sup>26</sup>

The Treasury Committee published a report on the OBR in September 2010. It recommended that the legislation establishing the OBR should contain the following:

- a) establishment of the OBR as an institution with its own legal personality, responsible for appointing its own staff;

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<sup>20</sup> OBR, *Budget forecast*, June 2010

<sup>21</sup> Treasury Committee, *June 2010 Budget*, HC 350, 20 July 2010, Q14

<sup>22</sup> HM Treasury Press Release, *Chancellor announces Professor Stephen Nickell and Graham Parker as his preferred candidates for members of the Budget Responsibility Committee*, 12 October 2010

<sup>23</sup> OBR, *Economic and fiscal outlook*, November 2010

<sup>24</sup> Letter from the Chancellor to Robert Chote 12 October 2010

<sup>25</sup> Treasury Committee, *Office for Budget Responsibility*, HC 385, 21 September 2010 para 20

<sup>26</sup> "How it's done in Sweden", *Guardian*, 29 July 2010

- b) a requirement on the OBR to act transparently, objectively, and independently;
- c) a clear remit and set of core tasks;
- d) a requirement that the responsible select committee should have a veto over appointment or dismissal of the Chair of the permanent body and the members of the Budget Responsibility Committee;
- e) provision for a small group of non-executive directors to support the Budget Responsibility Committee;
- f) a requirement that government officials support the OBR when it is preparing forecasts;
- g) a requirement that the OBR has a right of access to the information it needs.<sup>27</sup>

The Committee's report noted that the OBR's success would also depend on matters which could not be directly provided for in the Bill, such as the calibre of those appointed to the BRC and that of the Non-executive members.<sup>28</sup>

Further background on the OBR is in a Library note,<sup>29</sup> the Treasury Committee's report,<sup>30</sup> the IFS 2011 *Green Budget*<sup>31</sup> and the OBR website.<sup>32</sup>

## 2.4 The Bill

This section describes the clauses and schedule in the Bill which relate to budget responsibility. A number of amendments were made to the Bill during its passage through the House of Lords. Significant amendments are noted in the discussion of each clause.

### **Charter for Budget Responsibility**

**Clause 1** relates to the Treasury's operation of fiscal policy. It requires the Treasury to set out a range of matters in relation to fiscal policy in a document, *The Charter for Budget Responsibility*. This clause effectively replaces section 155 of the *Finance Act 1998* which established the *Code for Fiscal Stability*.

The Charter must include:

- The Treasury's fiscal policy objectives and policy for management of the National Debt
- The "fiscal mandate": the means by which these objectives will be achieved
- The minimum content of the annual Budget document.

The Charter may also contain other material considered appropriate by the Treasury.

The Charter must be laid before Parliament and requires approval by an affirmative resolution of the House of Commons. The Treasury may modify the Charter. The modified Charter must be laid before Parliament and be approved by affirmative resolution. The

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<sup>27</sup> House of Commons Treasury Committee, *Office for Budget Responsibility*, 4<sup>th</sup> report of 2010-11, HC 385, 21 September 2010, p3

<sup>28</sup> *Ibid*

<sup>29</sup> Library Standard Note, *The Office for Budget Responsibility* SN/EP/5657, 15 November 2010

<sup>30</sup> House of Commons Treasury Committee, *Office for Budget Responsibility*, 4<sup>th</sup> report of 2010-11, HC 385, 21 September 2010

<sup>31</sup> *The IFS Green Budget*, February 2011

<sup>32</sup> <http://budgetresponsibility.independent.gov.uk/>

Charter and any modified Charter must be published once approved by the House of Commons. A [draft Charter](#) was published by the Treasury in advance of the Committee Stage of the Bill in the House of Lords.

The draft *Charter* lays down the following as a minimum requirement for the contents of the Budget:

- an explanation and costing of the impact of all significant fiscal policy measures introduced by the Government since the last Budget and an explanation of the methodology used to cost the fiscal impact of each of those measures;
- an explanation, where necessary, of how these policy measures maintain the path of the public finances in a position consistent with:
  - the objectives for fiscal policy;
  - the mandate for fiscal policy, where consistency will be assessed by the OBR; and,
  - the Government’s European commitments, in particular the terms of the Stability & Growth Pact.
- the Debt Management Report, as specified in paragraph 3.15, below.<sup>33</sup>

### ***The Budget and Pre-Budget Report***

**Clause 2** relates to the Budget. It requires the Treasury to produce a Financial Statement and Budget Report (“the Budget”) each year. This must include any items required by the Charter. The Treasury must lay the Budget before Parliament and publish it.

This clause replaces section 156 of the *Finance Act 1998*. It therefore removes the obligation placed on the Treasury by this section to have a Pre-Budget Report (PBR). These were published by the previous Government, in November or December of each year. The Chancellor has said that the requirement for a PBR will be removed “in line with the Government’s objectives for more certainty and stability in the fiscal cycle”.<sup>34</sup>

### ***The OBR***

**Clause 3** establishes the OBR as a “body corporate”. According to the *Explanatory Notes* to the Bill:

This is in common with similar independent bodies that form part of the Crown but are not government departments. For administrative purposes the Office will be categorised as an executive non-departmental public body (NDPB).<sup>35</sup>

### ***Duties***

**Clause 4** imposes duties on the OBR. Its main duty is “to examine and report on the sustainability of the public finances”. In particular, the OBR must prepare fiscal and economic forecasts at least twice a year. This is the same frequency as the previous arrangements under which the Treasury published forecasts in the Budget and Pre-Budget Report.

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<sup>33</sup> HM Treasury, *Draft Charter for Budget Responsibility*, November 2010, para 3.9

<sup>34</sup> [Letter](#) from the Chancellor to Andrew Tyrie MP, Chairman of the Treasury Committee, 12 October 2010

<sup>35</sup> Budget Responsibility and National Audit Bill [HL], [Explanatory Notes](#), para 34

The Government has said that it intends to use the OBR's forecasts as its official forecasts, although the Bill does not require it to do so. The Government has reserved the right to disagree with the OBR's forecasts but where it does so, it must explain why to Parliament. The Treasury will maintain macroeconomic expertise to provide advice to the Government.<sup>36</sup>

The OBR must also assess, at least twice a year, the extent to which the fiscal mandate (see above) has been, or is likely to be, achieved.

Once a year, the OBR must prepare an assessment of the accuracy of its fiscal forecasts. The Treasury has previously published this type of analysis in its *End of Year Fiscal Report*. The OBR must also prepare an analysis of the sustainability of the public finances. An analysis of this kind was previously published by the Treasury in its *Long-term public finance report*. The OBR's website says that it will assess the public sector balance sheet, including analysing the costs associated with an ageing population, public service pensions and Private Finance Initiative contracts.

The duties specified in this clause must be carried out by the BRC.<sup>37</sup> The *Explanatory Notes* make it clear that the OBR will not be limited to making these reports and "can also report on other matters relating to the sustainability of the public finances in pursuance of its main duty".<sup>38</sup>

This clause was amended at Lords Report stage to require the OBR to include in its reports an explanation of its assumptions and relevant risks. Following concerns that this clause allowed the OBR to report on the accuracy of its own forecasts, a new external review provision was also added at Lords Report stage (see paragraph 16 of the Schedule below).

### ***Performance of main duty***

**Clauses 5 and 6** set out how the OBR is to perform the duty set out in Clause 4. Clause 5 says that the OBR "has complete discretion in the performance of its duty" subject to certain qualifications:

- The duty must be performed objectively, transparently and impartially
- The OBR's duties must be carried out efficiently and cost-effectively (**Clause 7**)
- Where Government policy is relevant, the OBR must have regard to those policies and may not consider the effect of any alternatives. This part of the clause was amended at Lords Report stage.

In the Lords Grand Committee stage, there was a debate about the restriction that the OBR may only consider Government policies and not any alternatives, such as those of opposition parties. For the Government, Lord Sassoon sought to explain the purpose of this clause:

With regard to the core forecasting remit, the intention is that the OBR should consider government policies and not other policies. To take the point made the other day by the noble Lord, Lord Eatwell, we want to ensure that the OBR can take account of external shocks, for example, so in technical drafting terms his amendment would not quite work as it focuses narrowly on policy. We agree, anyway, that it is the Government's policies and not other policies that need to be considered. We must not

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<sup>36</sup> HM Treasury, *Draft Charter for Budget Responsibility*, November 2010, para 3.7

<sup>37</sup> Schedule 1, para 12 (3)

<sup>38</sup> Budget Responsibility and National Audit Bill [HL], *Explanatory Notes*, para 36

leave out the fact that, in doing the forecasts, the OBR can look at scenarios and at other issues.<sup>39</sup>

This clause was amended at Lords Report stage. Lord Sassoon explained the amendment as follows:

Amendment 11 will clarify the drafting of Clause 5(3) to make explicit that the OBR must have regard to government policies relevant to its analysis, including the Government's economic policies. The amendment preserves the original effect of Clause 5(3), which is to prevent the OBR from examining non-government policies. Otherwise, the OBR could be drawn into political commentary, which might undermine its perceived impartiality and independence. The OBR will continue to be able to analyse non-policy scenarios such as economic or demographic scenarios.<sup>40</sup>

**Clause 6** provides for the Charter to give guidance to the OBR about how it should perform its duty. The draft Charter says:

4.5 The OBR will perform this duty independently, subject to its statutory duties and the guidance this Charter provides to the OBR in fulfilling its responsibilities. This independence provides complete discretion to independently determine:

- the methodology by which the OBR produces its forecasts, assessments and analyses;
- the judgments made in developing these forecasts;
- the content of OBR publications, which are completely at the discretion of the OBR subject to fulfilling the minimum requirements contained within the Bill and this Charter; and
- the work programme by which the OBR may initiate research and produce additional analysis.

4.6 In order to protect the independence necessary for the effective delivery of its responsibilities within the fiscal framework, the OBR must perform its duty objectively, transparently and impartially.<sup>41</sup>

When the Bill was originally introduced, it also contained a provision allowing the Charter to provide guidance on subsections 5(2) and 5(3). Subsection 5(2) requires the OBR to be objective, transparent and impartial. In debates in the House of Lords, concerns were raised that allowing the Charter to give guidance on these terms might be used to reduce the OBR's independence. For example, in the Lords Second Reading debate, the Labour peer, Lord Eatwell, said:

It [the OBR] does not even have the freedom apparently suggested by Clause 5(2), which was quoted by the Minister and states:

"The Office must perform that duty objectively, transparently and impartially".

You would think that that was clear. However, that clause is qualified by Clause 6(1)(b), which mandates the provision of guidance as to what subsections (2) and (3) of Clause 5 entail. So the Treasury has to provide guidance on what transparency

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<sup>39</sup> HL Deb 6 December 2010 c29GC

<sup>40</sup> HL Deb 31 January 2010 c1188

<sup>41</sup> HM Treasury, *Draft Charter for Budget Responsibility*, November 2010, para 4.5-4.9

entails, and even what impartiality means. That does not sound very independent to me.<sup>42</sup>

He went on to say:

The conclusion must be that this Bill neither establishes the independence of the OBR nor embodies procedures to protect the independence, save in one respect - the forecasting methods used by the committee.<sup>43</sup>

The original clause 6 (1) (b) which allowed the Charter to give guidance on the meaning of clause 5 (2) and 5 (3) was removed by an amendment at the Lords Report stage. Lord Sassoon said:

Amendment 12 will remove the provision that states that the charter may include guidance on Clauses 5(2) and 5(3). That will address the particular concern raised in Grand Committee that the charter could be used to redefine the commonly used terms "objectively, transparently and impartially". It is not the Government's intention to subvert what these terms mean through the charter. The amendment will therefore remove the marker that strongly indicates that the charter will define what these terms mean.<sup>44</sup>

This clause was also amended at Lords Report stage to include a requirement that any revisions to the guidance in the Charter must be published at least 28 days before the modified charter is placed before the House of Commons for approval. Lord Sassoon said:

Amendment 13 will change the process for amending the guidance in the charter. Concerns were raised in Committee that such modifications could be done too easily, which would again undermine the independence of the OBR. Amendment 13 requires the Treasury to publish any revisions to the guidance at least 28 days before the modified charter is laid before Parliament for approval in another place. This period of 28 days, which is consistent with the period used in other secondary legislation, will provide further opportunity for scrutiny of and comment on the guidance before it is voted on. If appropriate, the Government could respond to, or make changes in the light of, this scrutiny before the formal version is laid for approval.<sup>45</sup>

## **Reports**

**Clause 8** requires the OBR to publish its reports, lay them before Parliament and send them to the Treasury.

## **Right to information**

**Clause 9** governs the OBR's right to information held by the Government. This clause gives the OBR a right of access to all Government information which it requires to perform the duties set out in clause 4. It also has the right to assistance and explanation of this information. According to the *Explanatory Notes*, the OBR will be entitled to receive all the information that the Treasury previously received.

## **Superseded statutory provisions**

**Clause 10** relates to superseded statutory provisions:

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<sup>42</sup> HL Deb 8 November 2010 c16

<sup>43</sup> HL Deb 8 November 2010 c17

<sup>44</sup> HL Deb 31 January 2011 c1188

<sup>45</sup> HL Deb 31 January 2011 c1188

- Section 27 and Schedule 5 of the *Industry Act 1975*. This required the Treasury to produce economic forecasts. This responsibility is transferred to the OBR by Clause 4 of the Bill.
- Sections 155 to 157 of the *Finance Act 1998*. Sections 155 and 156 related to the *Code for Fiscal Stability* and the Treasury's duty to publish annual Budget documents. These are superseded by Clauses 1 and 2 of the Bill. Sections 156 and 157 related to the National Audit Office's examination of the Budget assumptions. The NAO will no longer perform this role following the creation of the independent OBR.
- The *Fiscal Responsibility Act 2010* which set out the previous Government's fiscal consolidation plan. This is replaced by the fiscal mandate set out in the *Charter*.

### **Schedule 1 Appointments to OBR and Non executive committee**

Schedule 1 sets out down rules for the appointment of members of the OBR and other matters.

### **Membership, appointment, remuneration & termination of appointment (Paragraphs 1-6)**

The OBR will consist of one member to chair the office and two other expert members. These three members will make up the Budget Responsibility Committee.<sup>46</sup> These three members will be appointed by the Chancellor with the consent of the House of Commons Treasury Select Committee. See below for a discussion on this unusual arrangement. The Committee has already held [pre-appointment hearings](#) with those appointed so far. The members of the BRC are required to have knowledge or experience likely to be relevant to the Office's functions. The members of the BRC are appointed for a period of five years, renewable once.

In addition, there will be at least two non-executive members. These will be nominated by the OBR and appointed by the Chancellor. These members will be appointed for a period of up to five years, renewable once. Following an amendment at the Lords Report Stage, these members will be known as the Non-executive Committee.<sup>47</sup> Their role is discussed in the following section.

Paragraph 3 deals with the appointment of the initial members to the non-statutory OBR. It means that the Treasury Committee will not need approve the current members of the non-statutory BRC a second time. This paragraph also says that time spent on the non-statutory body will count towards the five year period of office. It also provides for the term of appointment of the two members of the BRC, other than the chair, to expire at different times to allow continuity.

Paragraph 4 allows OBR members to be paid an amount set by the Treasury. This paragraph also covers pensions and allowances, and compensation arrangements where a member of the OBR leaves before the end of their appointment. Under paragraph 5, the Chancellor may determine the terms and conditions of the OBR's members.

The arrangements for terminating appointments are set out in paragraph 6. Members of the OBR may resign by giving written notice to the Chancellor. The Chancellor may terminate an appointment under a number of circumstances specified in this paragraph, including missing meetings, bankruptcy and misconduct. The appointments of the expert members may not be terminated without the agreement of the Treasury Committee.

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<sup>46</sup> See Schedule 1, para 9

<sup>47</sup> See Schedule 1, para 9 (2)

***Other matters, including Non Executive Committee (paragraphs 7-29)***

**Paragraph 7** has the effect of making the OBR a crown body.

**Paragraph 8** allows the OBR to appoint staff. These will be civil servants and their terms and conditions, including remuneration, will be set by the OBR with the approval of the Minister for the Civil Service. The OBR is expected to have around 20 staff.<sup>48</sup>

**Paragraphs 9 and 10** relate to the formation of Committees and allows these to include experts from outside the OBR and its staff. Paragraph 2 was amended at the Lords Report stage to make it clear that those appointed under paragraph 1(1)(c) would be known as the Non-executive Committee.

**Paragraph 12** requires the core functions of the OBR to be carried out by the BRC and prevents delegation of this function.

**Paragraph 13** was added add Lords Report stage. It requires the Non-executive Committee to keep the OBR's work under review. Lord Sassoon explained the purpose of this amendment:

Amendment 3 gives the non-executives a duty to keep under review the processes that the OBR uses to assure that it is producing the best possible work. These are likely to be management processes that the non-executives will be well placed to consider. Examples might include: whether the OBR is consulting with a wide and appropriate range of experts, including academics and internationally; whether it is working effectively with the rest of government to produce analysis; and, to make sure that it follows up lessons from internal reviews.<sup>49</sup>

**Paragraph 15** requires the OBR to prepare an annual report on the performance of its functions in each financial year (to 31 March). Following an amendment at the Lords Report stage, the report must contain an assessment by the Non-executive Committee on the extent to which the OBR has carried out its functions in accordance with Section 5(1) (which says it has discretion in the performance of its duties) and section 5(2) (which requires objectivity, transparency and impartiality). The annual report must be sent to the Treasury, laid before Parliament and published.

**Paragraph 16** relates to external review of the OBR's work and was included following an amendment at the Lords Report stage. It requires the Non-executive Committee to appoint a person or body to review the OBR's reports. The Committee is to decide which of the reports should be reviewed. These reviews must be published and laid before Parliament and must be carried out at least once in every five year period. There was a debate at Lords Report stage about whether this should be shortened to three years to avoid association with the political cycle.

**Paragraph 17** relates to the funding of the OBR. The Treasury will fund the OBR from money provided by Parliament through a grant in aid. This funding may be subject to such conditions as the Treasury considers appropriate. The OBR's budget will be £1.75 million a year from 2011/12 to 2014/15. The OBR's annual budget expenditure will be separately identified in the Treasury's Estimate.<sup>50</sup>

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<sup>48</sup> HM Treasury, *Government response to the House of Commons Treasury Committee 4<sup>th</sup> Report of Session 2010-11: Office for Budget Responsibility*, Cm 7962, November 2010, para 3.6

<sup>49</sup> HL Deb 31 January 2011 c1193

<sup>50</sup> [Letter](#) from Nicholas Macpherson, Permanent Secretary to the Treasury to Robert Chote, 25 October 2010

**Paragraphs 18 and 19** require the OBR to prepare accounts for each financial year. **Paragraphs 21 to 29** deal with powers and make amendments to statutes, including bringing the OBR within the scope of the *Freedom of Information Act 2000*.

## 2.5 Debate on the form and function of the OBR

The establishment of the OBR has raised a number of issues, many of which were discussed during consideration of the Bill in the House of Lords. These include:

- the independence of the OBR;
- the role of the OBR's non-executive members;
- interaction of the OBR's forecast with those of the Bank of England;
- whether the OBR should be allowed to consider other policies, besides those of the government.

The Treasury Committee has also been closely involved with the formation of the OBR. It published a report in September 2010 making various recommendations about the legislation governing the OBR.<sup>51</sup> Many of these have been incorporated into the Bill. The Treasury Committee has also been given an unprecedented role in the appointment of the chairman of the OBR and the other members of the BRC and has published reports on these appointments.

### *Independence*

One of the key issues has been the extent to which the OBR can be truly independent of the Government, given that it will produce the Government's economic forecast and therefore have close contact with government departments. As Lord Eatwell pointed out, unlike the US Congressional Budget Office (which answers to Congress), the OBR "is a creature of the Executive". He regarded this as "the source of many of our difficulties in constructing a framework of independence."<sup>52</sup> The former Cabinet Secretary, Lord Turnbull, set out some of the arguments in the Lords Second Reading debate:

Some have argued that the OBR should be entirely independent of the Treasury, with its own staff, its own models and its own premises - this is what one might call the self-sufficiency model. The problem with that is what Sir Alan Budd has called "harvest time": in certain months of the year around PBR and the Budget, it is all hands to the pump. Maybe 200 people are involved in preparing Budget forecasts, including experts on the North Sea, social security benefits or EU finances. At other times, they go back to their other duties. If these resources were transferred, the Treasury would need to recreate them for its own policy development work.

At the other end of the spectrum was what may be called the validation model - all staff stay in the Treasury but none of their work can be published unless it has been validated by the OBR. I was initially attracted to this but I believe that the Treasury Select Committee and the Government have correctly concluded that it would not carry conviction. What is proposed is a pragmatic and, in my view, well judged hybrid, with a core of around 20 staff being transferred but the work of all people involved in the Budget being validated.

[...]

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<sup>51</sup> Treasury Committee, *Office for Budget Responsibility*, 4<sup>th</sup> Report of Session 2010-11, HC 385, 21 September 2010

<sup>52</sup> HL Deb 9 December 2010 c71GC

The real choice is between an OBR that is on the executive side of the fence and one that is an emanation of Parliament, like the NAO. Both the Treasury Select Committee and the Government have opted for the former, which I believe is right. The OBR is not just a commentator or expert auditor. It has an executive function: it supplies the Treasury with the basis for its projections.<sup>53</sup>

The IFS also discussed this question in its 2011 *Green Budget*. It said:

[...] the risks of losing the perception of independence are probably outweighed by the potential gains in the quality of policymaking to be derived from the OBR holding meetings with ministers during the forecasting process. Therefore a continuation of the model that has been adopted so far, whereby members of the BRC have held a limited number of meetings with ministers prior to the publication of forecasts, seems appropriate. However, to reduce any suspicions that these meetings might cause the OBR to be coerced into changing its judgements, the OBR should be as transparent as possible about what meetings have been held, and when and how all key assumptions made in its forecasts were decided upon.<sup>54</sup>

In relation to the last point made by the IFS, the OBR has published a [log](#) of its contact with the Chancellor and Treasury officials between 4 October and 29 November 2010. The OBR and the Treasury were in contact on seven occasions over this period. The log contains the date of the contact, who the contact was with (such as the Chancellor, special advisers, Treasury officials), the type of contact (email, meeting) and a brief summary of the purpose of the meeting.

The Treasury believes the independence of the OBR is protected by the following features:

- Remit – the OBR has a broad remit and, subject to its other statutory duties and the guidance in the Charter for Budget Responsibility, has complete discretion over how it is fulfilled. This extends to determining its judgements, selecting its methods and deciding its publication content and programme. These will all be determined independently and free from ministerial inference;
- Direction – a Budget Responsibility Committee of independent appointees will run the OBR, not ministers. Appointment and dismissal is subject to agreement of the Treasury Select Committee, an unprecedented measure to assure the BRC's personal independence and professional competence.
- Expertise – OBR staff will be civil servants in order to ensure that the OBR has full access to expertise in fiscal forecasting and policy costings. All OBR staff will report to the Chair, the OBR controls the hiring of its staff and it will manage their performance. The OBR may also convene advisory committees of technical experts to provide advice or peer review;
- Access to information and resources – the OBR has a statutory right of access to information it reasonably requires from the rest of Government. This right will be supported by detailed Memoranda of Understanding with departments;
- Funding – The OBR will have discretion to manage its resources within a transparent, multi-year budget settlement. Resources provided will be set out separately in the Treasury's Estimate and the OBR may submit its own Memorandum;

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<sup>53</sup> HL Deb 8 November 2010 c22

<sup>54</sup> IFS, "The new fiscal framework: an assessment", p56 in *The IFS Green Budget*, February 2011. The IFS discusses this issue in more depth on pages 54-56 of the *Green Budget*.

- Governance – The BRC will be supported by non-executive members who will safeguard the independence of the OBR through their capacity to advise and report from an external perspective;
- Direct accountability to Parliament – forecasts and analysis will be laid directly before the House and all OBR members will be available for select committee scrutiny. Parliament has a role in holding the OBR to account for its independence.<sup>55</sup>

### ***The non-executive members***

The inclusion of non-executives had been recommended by the Treasury Committee in its report on the OBR. The report said:

The permanent OBR should also have a small group of non-executive directors, containing two or three people working on a pro bono basis, with a senior non-executive director, drawn from those with considerable experience in relevant fields, such as the Treasury forecasting, the Bank of England or the private sector, and at least one should have had some forecasting experience. Previous political experience should not necessarily be a bar to appointment.

The non-executives should not be involved in the forecasting process. Their primary role should be to safeguard the independence of the OBR and they should have a duty to warn this Committee of anything which appears to threaten that independence, including any questions about resources. They should be available to advise to the Chair and members of the BRC, and, if necessary, the Treasury Committee.<sup>56</sup>

This was another area which was discussed extensively by the House of Lords and where amendments were made. Their role will be to “provide support and constructive challenge” and safeguard the OBR’s independence. In the Lords second reading debate, Lord Newby said:

I find the context of the other non-executive directors strange in relation to this body and I am not sure what their role will be. I was slightly surprised by the use of the phrase "at least two". If the chair decided that he would like half a dozen, would that be acceptable? More important, what role will they play? They will not be technical people, but much of the work of the office will be intensely technical. Will their role be to protect the independence of the office in some way and to proselytise about the role of the office? It would be helpful to have further clarification from the Minister on that.<sup>57</sup>

This issue was also raised by Lord Burns, a former Permanent Secretary to the Treasury:

However, in my view the Bill should be much more specific about the role of the non-executive members. I suggest that they should not be involved with the published content but should be consulted if any issue of process emerges during the forecasting rounds. Similarly, they should be involved in post-mortems of how the process worked in relation to content and relationships with the Treasury and other relevant bodies. They can give guidance and support the independence of the OBR, if this question ever becomes an issue, and help the executive members to navigate their way through the inevitable issues that will arise from month to month in determining how the remit should work and how they should respond to pressures from the Treasury and to the whole variety of issues that people who have been non-executive directors know come

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<sup>55</sup> HM Treasury, BRNA Bill Factsheet 4: [OBR Independence](#)

<sup>56</sup> Treasury Committee, [Office for Budget Responsibility](#), 4<sup>th</sup> Report of Session 2010-11, HC 385, 21 September 2010, paras 96-97

<sup>57</sup> HL Deb 8 November 2010 c20

before boards on a regular basis. They should also be involved in setting the OBR's own budget and adding weight to any issues over resources that the OBR has. Along with a number of noble Lords, I would be grateful to hear from the Minister whether this type of interpretation accords with his view of the role of the non-expert members of the OBR. I agree with others that it would be helpful for the Bill to be much more specific about the role of the non-executive members.<sup>58</sup>

The issue of the non-executive members was also discussed at the Committee stage. Lord Eatwell argued that their role should be more clearly defined:

What is striking at the moment is that the non-executives have no role whatever except that of being involved in audit activity and the production of the annual report; otherwise, they simply make the tea for the experts. We want to give the non-executives a particular role, that of bolstering and supporting the independence side, let us call it, of the OBR.<sup>59</sup>

In response, Lord Sassoon said:

The so-called non-experts are non-executives, but are full members of the OBR, which means that they can help to carry out any of the OBR's functions beyond those reserved for the BRC. As I see it, their role will be principally one of support and constructive challenge to the executive members, just in the way that non-exec directors would normally exercise those functions. They may form part of some committee structure, if the OBR so decides - audit is a particular role often assigned to independent non-executives - and they will carry out an important role in safeguarding the independence of the OBR.<sup>60</sup>

On the question of the number of non-executives, Lord Peston questioned why the Bill provided for at least two. He argued that two seemed a lot and asked why the Bill did not specify a precise figure. In response, Lord Sassoon said:

We have put in "two or more" because at the moment we think that the remit of the OBR and the construct should be perfectly sufficient and workable for robust government arrangements. That is the minimum number. To have one non-exec would put that individual in an impossible position; two gets you to the minimum. If the OBR's remit were somehow to develop in an unanticipated way, it might be appropriate to modestly expand the number of non-exec non-experts, but that is not the intention at the moment.<sup>61</sup>

The Bill was amended at Lords Report stage to spell out the non-executives' role in more detail. In particular, the following responsibilities for the non-executives were inserted:

- A duty to keep under review the way in which the OBR carries out its functions (new paragraph 13 in schedule 1);
- A requirement for the annual report to include an assessment by the non-executive Committee on the extent to which the OBR has carried out its functions in accordance with Section 5(1) (which says it has discretion in the performance of its duties) and section 5(2) (which requires objectivity, transparency and impartiality). This requirement is in paragraph 15(2) of the Schedule;

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<sup>58</sup> HL Deb 8 November 2010 c36-7

<sup>59</sup> HL Deb 1 December 2010 c181GC

<sup>60</sup> HL Deb 1 December 2010 c181GC

<sup>61</sup> HL Deb 1 December 2010 c183GC

- A duty to appoint the external reviewer of the OBR's work (Paragraph 16 of the Schedule).

The Treasury has said that the responsibilities of the non-executives will be set out in a framework document to be agreed with the OBR and published after Royal Assent. According to the Treasury, this is standard practice for Executive Non Departmental Public Bodies.<sup>62</sup> The role of the non-executive members will include:

- forming part of a board to provide strategic oversight of the OBR's work and agree the deployment of resources in the OBR's annual work programme and medium term corporate plans;
- responsibilities given to them by the board that best practice in corporate governance suggests should be performed by independent non-executives. For example, they may be asked to review the OBR's performance, processes and progress;
- providing a sounding board for the Chair on issues such as how to respond to competing pressures, or how to manage relationships in Whitehall; and
- being accountable for the independent operation of the OBR. As full members of the OBR with oversight of its resource requirement and relationship with Government, their view will be credible and powerful.<sup>63</sup>

The House of Lords also considered the process for appointing the non-executive members in Grand Committee on 1 December. Unlike the executive members (i.e. the Chair and the other members of the BRC), the Treasury Committee is not required to give its approval to these appointments. They are nominated by the OBR and appointed by the Chancellor of the Exchequer. At the Committee stage there was a discussion about whether the Treasury Committee should also give its consent to the appointment of the non-executives. The Government opposed this on the grounds that other public bodies did not have their non-executives appointed in this way. It also pointed out that the Treasury Committee had not asked for this power in its report on the OBR.

### ***The Treasury's forecasting capacity and duplication of forecasts***

One issue raised by the creation of the OBR is the extent to which the Treasury will continue to maintain its own, separate, economic forecasting capacity and the circumstances under which the government might choose not to use the OBR's forecasts. A related issue is how the OBR's forecasts will relate to those made by the Bank of England.

The Chancellor has said that he intends to use the OBR's forecasts but is not required by the Bill to do so. The Government will have the right to disagree with the OBR's forecasts, but must explain the reasons if it does so.<sup>64</sup> In the Lords Grand Committee debate, Lord Eatwell questioned how the OBR could produce the official forecast while at the same time the Government reserved the right to disagree with it. He said:

I can see that the Government can maintain the right to disagree with anybody, especially with an independent body - which the OBR is supposed to be - but I do not then see how they can adopt the OBR's fiscal and economic forecasts as the official forecast for the Budget report. They cannot adopt something with which they disagree

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<sup>62</sup> HM Treasury, BRNA Bill Factsheet 3: [OBR Governance](#)

<sup>63</sup> HM Treasury, BRNA Bill Factsheet 3: [OBR Governance](#)

<sup>64</sup> HM Treasury, [Government response to the House of Commons Treasury Committee 4<sup>th</sup> Report of Session 2010-11: Office for Budget Responsibility](#), Cm 7962, November 2010, para 2.6

as the official forecast; it just does not work. They cannot have it both ways; it is nonsensical.<sup>65</sup>

In response, Lord Sassoon said:

It is absolutely the intention and the expectation that the Government will adopt the forecast in all but the most extreme circumstances. In answer to the challenge of my noble friend Lord Newby, it would be wrong to start thinking about hypothetical contexts. It is right, and it is the intention of the construct of the Bill and the charter, as the noble Lord, Lord Turnbull, explained it - and I agree with him that this is the appropriate construct-that ultimately the Minister directly accountable to the electorate and Parliament should retain the discretion not to use the OBR's forecasts. That should be only a fall-back situation that needs to be legislated for. It is ultimately a decision that must be made by a Minister who is directly democratically accountable as part of the Government, as I hope we would agree, because it is so critical to underpinning economic policy. That does not change the fact that the OBR will be responsible for producing the official forecast or that the Government expect that there will be circumstances in which the Government disagree with the forecast. Nevertheless, it is entirely appropriate that that failsafe is allowed for and, in those circumstances, the Chancellor of the Exchequer will have to make the nature of the disagreement absolutely clear to Parliament. It will be completely transparent and the Chancellor should answer that question. That is exactly what we intend to have, but that does not mean that we are taking the OBR's forecasts in any way lightly; it is a failsafe mechanism ensuring appropriate parliamentary and ministerial accountability.<sup>66</sup>

The Government has made clear that the Treasury will continue to maintain its own economic forecasting capacity. This issue was considered at the Lords Committee stage:

Lord Higgins: My Lords, we are grateful to the Minister, who has clarified a number of points. I will come back to an obvious and fundamental one. I am still not in the least clear why we will have both an OBR forecast and an official one from the Treasury that will be useful for Ministers. I simply do not understand this.

Lord Sassoon: Perhaps I may clarify that. There will be one official forecast, which the OBR will produce. The Treasury will retain a modelling and forecasting capability, but it is absolutely not the intention, and will not be the case, that there will be another official forecast from the Treasury. Ministers simply require the Treasury to retain that capability, so that if, in circumstances that we do not at all anticipate, the Chancellor or the Treasury want to take a different view from that of the OBR, they will retain the capability of doing so. There is absolutely no intention that there should be anything other than one published forecast, which will be put out by the OBR.

[...]

Lord Sassoon: My Lords, there will not be another official internal forecast. There will be the forecast of the OBR, but that does not mean that the Treasury should not have the capability to - and it will - look at underlying assumptions on which the forecast is based, to make sure that it understands where the OBR is coming from and feels comfortable with it. There will not be some other internal official forecast; there will merely be a capability within the Treasury - and it is important that there should be such a capability - whereby Treasury officials can look at and understand the

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<sup>65</sup> HL Deb 29 November 2010 c112GC

<sup>66</sup> HL Deb 29 November 2010 c114GC

assumptions on which the OBR's forecast is made. That will not require, and there is no intention for, the Treasury to produce any separate forecast of its own.<sup>67</sup>

Baroness Noakes commented that given that so much effort had been spent ensuring that the OBR was truly independent of the Treasury, it would be “ludicrous” if the Treasury were left with no internal capacity to judge the OBR's forecasts.<sup>68</sup> Lord Burns commented that the Treasury would need to take a view on economic developments between the two economic forecasts produced by the OBR each year. He said: “the idea that there should be no capacity left in the Treasury to make this kind of analysis is frankly unrealistic.”<sup>69</sup>

The creation of the OBR means that there are two organisations, each independent of government, producing economic forecasts. The OBR's will be used for fiscal policy purposes while the Bank of England's will be used for monetary policy. In one sense, this is no different from the arrangements which have been in place since the Bank of England was made independent, when separate forecasts were made by the Bank and the Treasury. It has, however, received some comment. For example, the IFS has said:

Instead of tasking the OBR with producing macroeconomic forecasts, the government could instead have made use of the macroeconomic forecasts already being produced by the Bank of England – the existing, official body that is responsible for setting monetary policy but is independent of government. Some of the attractions and drawbacks of such an arrangement were discussed in the 2010 IFS Green Budget.

As this option has not been chosen, there are now two sets of forecasts for the UK economy being produced by bodies that are official but independent of government. Those produced by the OBR will be used when deciding fiscal policy, while those produced by the Bank of England will be used by the Monetary Policy Committee when deciding on monetary policy. Understanding how and why these forecasts are different – or similar – may well be important for assessing how well coordinated are fiscal and monetary policy. Analysis of these similarities and differences by experts both inside and outside these bodies has the potential to increase debate and understanding of which assumptions underlying the forecasts are most important or controversial, and thus could improve the quality of the macroeconomic forecasts produced.<sup>70</sup>

At Lords Report stage, Lord Higgins said:

I am concerned that there is an increasing schizophrenia – almost - between, on the one hand, the monetary policy side of things that is managed by the Bank of England's Monetary Policy Committee and, on the other, the fiscal side. It seems that the Bank of England will operate on one set of forecasts, while the Treasury will operate on the basis of the OBR's forecasts, supplemented by the forecasts to which the noble Lord, Lord Burns, has referred. It is not helpful to have two separate forecasts being made when we are concerned with the overall position of the management of the economy. Therefore, I hope that my noble friend is able to accept my amendment.<sup>71</sup>

In response, Lord Eatwell said that “the possibility of inconsistent forecasts ... is, in a way, embodied in the independence and separation of the Bank of England.”<sup>72</sup>

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<sup>67</sup> HL Deb 6 December 2010 cc9-10GC

<sup>68</sup> HL Deb 6 December 2010 c10GC

<sup>69</sup> HL Deb 6 December 2010 c11GC

<sup>70</sup> IFS, “The new fiscal framework: an assessment”, p56 in *The IFS Green Budget*, February 2011.

<sup>71</sup> HL Deb 31 January 2011 c1206

<sup>72</sup> HL Deb 31 January 2011 c1208

### ***Should the OBR be allowed to consider alternatives to Government policy?***

The Bill prevents the OBR from considering alternatives to government policy. One argument for this restriction is that it will help prevent the OBR from becoming involved in political controversies. Others, have taken a different view. Professor Simon Wren-Lewis of Oxford University was in favour of the OBR being able to examine opposition parties' policies. The issue was discussed in evidence given the Treasury Committee's inquiry:

David Rutley: There seems to me some consensus amongst you that there needs to be a wider commentary function for the OBR going forward. Just to test the outer limits though, you have mentioned the fiscal council in the Netherlands, which has gained a reputation for costing government policies and also opposition policies. Would the OBR or should the OBR go that far, just, again, trying to test what the outer limit should be, in the commentary function?

Professor Wren-Lewis: Can I start by a simple answer, and that is "yes". I think that is a good thing to do anyway because I think it will raise the level of public debate around elections, it would stop opposition parties promising to do everything without costing it properly. I also think it would foster independence, the notion of independence, because you would start a dialogue not just between the OBR and the Government, which is a necessary dialogue and is always going to be there, but you also start a dialogue with the Opposition. I think that would be useful for independence as well.<sup>73</sup>

The IFS has argued that the OBR should publish forecasts based on the assumption of no policy changes. This would clarify the effect of policy changes on the economy and public finances. The IFS has also argued that the proposed arrangements give incumbent governments an advantage as only they will have access to OBR approved policy costings and that immediately before an election, the opposition's policies may be of more interest if they are expected to win.<sup>74</sup>

In October 2010, the Chancellor appeared open to the idea that the OBR could cost Opposition parties plans:

this is genuinely a matter that should be debated in the House in a non-partisan way, because it does not affect just this Parliament. There is a question of whether we want the OBR to be able to cost Opposition policies at the time of a general election. I propose to have discussions with Opposition party leaders about whether that is the appropriate thing to do, and it would be a legitimate matter for the House to debate and decide.<sup>75</sup>

In its response to the Treasury Committee report, however, the Government rejected this idea, saying that the OBR "should not examine alternative fiscal or other policy scenarios, including those proposed by political parties."<sup>76</sup> This was because the Civil Service Code tightly controls the degree to which civil servants may examine Opposition parties' policies and that the principle of political impartiality should also apply to the OBR.

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<sup>73</sup> Treasury Committee, *Office for Budget Responsibility*, 4<sup>th</sup> Report of Session 2010-11, HC 385, 21 September 2010, Q86

<sup>74</sup> IFS, "The new fiscal framework: an assessment", p58 in *The IFS Green Budget*, February 2011

<sup>75</sup> HC Deb 12 October 2010 c142

<sup>76</sup> *Government response to the House of Commons Treasury Committee 4<sup>th</sup> Report of Session 2010-11*, *Office for Budget Responsibility*, Cm 7962, November 2010, para 2.23

## 2.6 The OBR model- a comparison with the National Audit provisions

A major area of debate on this Bill so far is the extent to which the OBR will be independent from HM Treasury. The [Treasury Select Committee](#) indicated in its report on the office that it saw its role as both upholding the independence of the OBR and holding it to account:

31. This Committee will have a key role both in holding the OBR to account and in upholding its independence. The NAO audited OBR independence at the time of the Budget and identified the following criteria by which the independence of the judgement underlying the forecasts could be judged:

- The Budget Responsibility Committee had full discretion over the scope and nature of its judgments on the forecasts.
- The interim Office for Budget Responsibility had unrestricted access to the necessary data and analysis.
- The interim Office for Budget Responsibility had control over sufficient resources to consider the evidence and form a robust judgment.
- The interim Office for Budget Responsibility effectively scrutinised, questioned and challenged the information and advice it received.
- The Budget Responsibility Committee formed its judgments independently of any views of officials or Ministers.
- The Budget Responsibility Committee had autonomy over the content of its published reports and the means of dissemination.

We consider that these criteria provide an excellent foundation by which to judge the future OBR, and will bear them in mind in our future work.

Witnesses to the committee differed on the appropriate status for a permanent OBR. Broadly their suggestions fell under three headings: a non-ministerial department, an independent public interest body, and a Parliamentary body:

After reviewing the options for its structure and accountability, the [Treasury Select Committee](#) commented that the form of the OBR was linked to its functions:

91. As Professor Flinders observed, the appropriate status of the OBR is closely related to its remit. An independent parliamentary body would be well suited to an OBR whose role was that of an external fiscal watchdog.<sup>[87]</sup> However, it is difficult to reconcile this model with an OBR whose primary functions include developing forecasts *for* government in order to inform decisions taken *by* government. While we are drawn towards clarity of the model proposed by the Institute for Government, we accept that the model chosen for the OBR may well be a hybrid, designed to ensure the organisation's independence, while allowing it to work closely with the government on the forecast, and minimising duplication of functions. **The body should have the maximum independence possible. It should operate from offices outside the Treasury and have its funding secured by the measures set out in paragraph 112. We believe the best structure for this would be to have the OBR established as a Non Ministerial Department. The Statistics Authority offers a useful model of how such a department can function. It is roughly the size we envisage for the permanent OBR (or even smaller), with 27 staff—23.6 full time equivalents. While a Non Departmental Public Body could be established in ways which maximised its independence, it would appear to be linked to the Treasury because of the**

**Estimates process, and there would be inevitable doubts about its independence.<sup>77</sup>**

The Committee also expressed some concerns about the proposed funding arrangements:

112. If the OBR is not to be a fully Parliamentary body, it needs transparency in the resources it is given, and the House needs to know the Government's proposals in time for intervention to be effective. To that end we recommend:

- the OBR budget should be given its own line in the estimates;
- that budget, accompanied by an explanatory memorandum prepared by the OBR itself, should be sent to the Treasury Committee in confidence at least six weeks before the Estimate is laid.

These measures will allow us to ensure that the BRC and the non-executives are content with what is proposed. They should have a duty to raise any concerns they have with the Committee.

The Government argued for a Non Departmental Public Body model, but offered the OBR its own line in the estimates, and gave the Office the power to submit to the Treasury Select Committee its own additional estimates memorandum. This will enable the Committee to undertake scrutiny of funding for the OBR.<sup>78</sup> The provisions requiring the consent of the Treasury Committee to OBR appointments indicates an new departure in terms of formal parliamentary involvement set out in statute.<sup>79</sup> The Chair of the Statistics Board, Michael Scholar, was appointed following a confirmation hearing and formal vote in the House, as agreed during the passage of the *Statistics and Registration Services Act 2007* but not prescribed in the legislation.

It is unusual for a select committee to be named in a statute. The C&AG is appointed with the agreement of the Chair of the Public Accounts Committee under the *National Audit Act 1983*. In theory it would seem possible for the committee decision to be on the basis of majority vote. Aspects to consider are occasions when the Committee may not be in existence, for example at the beginning of the Parliament.

There has been a long running debate about the appropriate structure for independent watchdogs. Background is given in Library Standard Note 4720 [Officers of Parliament: recent developments](#). Within Parliament, there has been growing interest in more parliamentary involvement in new bodies with some kind of constitutional role, such as the Equality and Human Rights Commission, the Judicial Appointments Committee or the Civil Service Commissioners. The parliamentary body model is based on current arrangements for the National Audit Office and the Comptroller and Auditor General. The salient features are:

- parliamentary involvement in appointment and dismissal
- a statutory committee responsible for budget approval and oversight
- a specific select committee to which the body/officer is bound to report
- staffing independent of the civil service.

Part 2 of this Bill reforms the governance arrangements for the NAO, by creating a separate NAO Chair and Board. But it does not abolish the parliamentary Public Accounts Commission, or remove Officer of Parliament status from the Comptroller and Auditor General. It does introduce a new ten year fixed term for the Comptroller and Auditor General.

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<sup>77</sup> HC 385 2010-11

<sup>78</sup> HL Deb 31 January 2011 c1203-4GC [Lord Sassoon]

<sup>79</sup> See Treasury Select Committee [Fifth Report](#) *Appointments to the Budget Responsibility Office* for details

The following table compares the structure for the Comptroller and Auditor General with the Chairman of the Office for Budget Responsibility:

	<b>Chairman of OBR</b>	<b>Comptroller and Auditor General</b>
<b>Appointment</b>	Chancellor of Exchequer with "consent of Treasury Committee"  Five year term renewable once  Must have "knowledge and experience " relevant to OBR functions	Crown following address from the Commons, tabled by the Prime Minister with the agreement of the Chair of the Public Accounts Committee  10 year non-renewable term proposed in Bill
<b>Dismissal</b>	Chancellor of the Exchequer with "consent of Treasury Committee"	Crown on resolution of both Houses
<b>Staff</b>	Civil service	Public service
<b>Funding</b>	Treasury grant	Office and NAO funded from Consolidated Fund
<b>Powers to require information from Government</b>	Statutory	Statutory
<b>Government powers of direction</b>	Limited	None
<b>Non-executives</b>	At least two members appointed by Chancellor of Exchequer after nomination by OBR	Five members appointed by Public Accounts Commission for three year term renewable twice. One non-executive to chair board, appointable on address from Commons, tabled by Prime Minister with agreement of Chair of Public Accounts Committee

### 3 Part 2: National Audit

This part of the paper sets out the background to the changes in corporate governance for the National Audit Office (NAO) which followed the Tiner review. This led to the initial inclusion of clauses in the *Constitutional Reform and Governance Bill 2009-10* which were then dropped at wash-up before the May 2010 general election. This Bill replicates those provisions with drafting amendments only.

#### 3.1 Background

*The Exchequer and Audit Departments Act 1866* created the post of Comptroller and Auditor General (C&AG) in its modern form. Although the C&AG was described as an officer in nineteenth century texts, this was not officially recognised until the *National Audit Act 1983*, which established the office as an Officer of the House of Commons, to be appointed by the Crown, but in consultation with the Chairman of the Public Accounts Committee (PAC). Although the Public Accounts Committee (PAC) had been established in 1861, its relationship with the C&AG had been ambiguous. Pressure for reform mounted in the 1970s, and a private member's bill sponsored by Norman St John Stevas and based on a report from the PAC in 1980-81, was eventually enacted, following extensive redrafting by parliamentary counsel. This became the *National Audit Act 1983*.

The 1983 Act:

- created the office of C&AG as an Officer of the House of Commons, to be appointed by the Crown, but in consultation with the Chairman of the PAC The C&AG holds office during good behaviour and can only be dismissed following resolutions of both Houses.<sup>80</sup>
- created an independent National Audit Office, with staff employed directly by the C&AG;
- gave the C&AG complete discretion over discharge of functions, but in determining to carry out an audit examination, he must take into account any proposals made by the PAC; and
- created a statutory Public Accounts Commission to oversee the budget of the NAO and appoint its auditor. It consists of the Chairman of the PAC, the Leader of the House (a Cabinet Minister) and seven other MPs, none of whom can be ministers.

The separate existence of the Public Accounts Commission, distinct from the Public Accounts Committee (PAC) in governance arrangements. is unusual in Commonwealth Westminster style parliaments, but the model has been followed in Scotland and Wales.<sup>82</sup> The Commission prepares and lays the estimates for the NAO and has overlapping membership with the PAC. For further background see Library Standard Note 4595 *The Comptroller and Auditor General*.<sup>83</sup>

The C&AG is not currently appointed on a fixed term basis, but holds office until he indicates a preference for retirement. This provision was introduced in 1866 to protect the office-holder's independence, and therefore avoids the question of criteria for re-appointment after a fixed term expires. When the long standing C&AG, Sir John Bourn, was appointed in 1988 under the provisions of the Act, he was confirmed in Parliament after recommendation by the then Chairman of the Public Accounts Committee to the Prime Minister, with no formal recruitment procedure, no advertising, and no open competition. The appointment pre-dated the establishment of the Office of the Public Appointments Commissioner in 1995. Sir John continued in office for 20 years, a tenure not matched in modern times.<sup>84</sup>

In 2007 the National Audit Office released details of the expenses claimed by the C&AG following a Freedom of Information request by the magazine *Private Eye*. Press reports expressed concern that the C&AG's expenses amounted to £365,000 since April 2004 and that hospitality expenses were £27,000 over the same period.<sup>85</sup>

The procedure for accounting for Sir John's expenses was set out by the Public Accounts Commission in its 13<sup>th</sup> report, which introduced a new review process for expenses. Specific arrangements were made to deal with selecting accommodation, approving travel where the C&AG is accompanied by a spouse, and other expenses. The report went on to announce a review of corporate governance.<sup>86</sup>

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<sup>80</sup> HL Deb 9 December 2010 c80GC

<sup>81</sup> The term 'good behaviour' is used as a shorthand for undertaking the duties of the office. See the *Exchequer and Audits Department Act 1866*

<sup>82</sup> See Oonagh Gay and Barry Winetrobe *Parliamentary Audit: the Audit Committee in comparative context* Constitution Unit, UCL. [Report for Audit Committee of Scottish Parliament 2003](#), [on 1 October 2009]

<sup>83</sup> Library Standard Note SN/PC/4595, *The Comptroller and Auditor General*

<sup>84</sup> *Ibid*, See Appendix for office holders back to 1834

<sup>85</sup> "MPs order reviews into watchdog spending bills", *Telegraph*, 12 October 2007

<sup>86</sup> Public Accounts Commission 13<sup>th</sup> report, 11 July 2007, HC 915 of 2006-07 para 2

### 3.2 The Tiner review

This review was announced on 11 October 2007 by the Public Accounts Commission. Full details of the Tiner proposals and the response by the Public Accounts Commission is given in Library Standard Note 4595 [The Comptroller and Auditor General](#).

Sir John Bourn announced his retirement on 25 October 2007 and his term of office ended in January 2008.<sup>87</sup> His deputy, Tim Burr, was appointed as interim C&AG, on the understanding that he would step down once the corporate governance reforms had taken effect. The formal motion to present a humble address to the Crown on Mr Burr's appointment was moved on 23 January 2008 by the Prime Minister and seconded by the then chairman of the Public Accounts Committee, Edward Leigh.<sup>88</sup> During the debate, Mr Leigh supported the continuing involvement of the Prime Minister in the process of appointment.<sup>89</sup>

The review was published on 12 February 2008 as the [14<sup>th</sup> report](#) of the Public Accounts Commission.<sup>90</sup> It found existing corporate governance arrangements inadequate, since the Senior Management Board made only a limited contribution to oversight, and was appointed by the C&AG., with only one non-executive member. Appointments had been made without reference to the Office of the Public Commissioner for Appointments (OCPA) code of practice.

The review benchmarked the governance arrangements against a range of comparator organisations and concluded that there was an “overwhelming case for strengthening the governance of NAO”. It made a series of recommendations for change, summarised as follows:

The NAO should be formed as a body corporate with a governing board comprising a majority of independent non executive directors. Its main functions should be to set the strategy of the Office, support and oversee the work of the C&AG, ensure the Office (including the C&AG) conducts its business in an economic, efficient and effective way and satisfy itself that the systems of governance and internal controls operate effectively and to the highest standards. The Board should have a Remuneration Committee and an Audit Committee comprised entirely of non-executive directors.

The Chief Executive (who would be styled the C&AG) should have complete personal discretion as to the audit judgements he reaches and the presentation of those judgements to the Public Accounts Committee and other committees of Parliament as may be necessary.

Both the Chairman and Chief Executive of the NAO Board would be appointed by Her Majesty the Queen on a motion from the House of Commons. The Chairman and the other non-executives should be appointed for a term of 3 years renewable once. The Chief Executive should be appointed for a fixed term of 8 years which cannot be renewed.<sup>91</sup>

The corporate governance for Auditors General established in the three devolved institutions in Scotland, Wales and Northern Ireland is closely based on the Westminster model, but Mr Tiner was careful not to comment on possible application of his proposals on these devolved models, as this was beyond his terms of reference. Mr Tiner also made no comment as to the designation of the C&AG as an Officer of the House:

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<sup>87</sup> “Retirement of the C&AG” 25 October 2007 Public Accounts Commission Press Notice 25 October 2007

<sup>88</sup> HC Deb 23 January 2008 c1520

<sup>89</sup> *Ibid*, c1527

<sup>90</sup> HC 328 2007-8

<sup>91</sup> Public Accounts Commission 14<sup>th</sup> report HC 328 2007-8 Summary, para 3

61..I am not aware of the background to the C&AG being an Officer of the House of Commons and feel it is a matter for Members of Parliament to consider whether this should continue in the event that my proposals for changing the governance of the NAO are taken forward. It would be consistent with past practice and, in my view appropriate, for the Chief Executive to be appointed by the Public Accounts Commission as the Accounting Officer of the NAO.<sup>92</sup>

### *Length of term for C&AG*

The review argued that a single non-renewable eight year term was the appropriate length of time for appointment as C&AG and proposed the retention of the current arrangements for formal appointment. To make the appointment, Mr Tiner recommended that a new Nominations Committee be formed with a membership including the NAO Chairman and an Independent Assessor from the Public Appointments Commissioner list. He did not specify whether any MPs would also sit on the Committee.<sup>93</sup> In the Scottish Parliament the parliamentary procedure for nominating an Auditor General is by way of a specially constituted selection panel, which will include the Committee's convener, and perhaps other members of the Committee.<sup>94</sup>

### *Remuneration of C&AG*

Tiner recommended changes in remuneration, breaking the current arrangement where there is an automatic link with the salary of a High Court judge, as no longer sufficient to attract the appropriate candidate:

66. To reinforce the independence of the C&AG from Government, the current C&AG's level of remuneration follows that of a High Court judge and is paid out of the Consolidated Fund. While I can see that this achieves the objective of independence, I do not believe it benchmarks the position of Auditor General against the appropriate peer group in seeking to attract high quality candidates to the position. I would favour the Chief Executive's remuneration being set by the Public Accounts Commission based on advice by the non-executive members of the NAO Board, which itself would take advice from its Remuneration Committee. The Remuneration Committee would provide an evaluation of the performance of the Chief Executive in the management and leadership of the office and should seek expert external advice on relevant benchmarks in both the public and private sectors.<sup>95</sup>

This arrangement bears similarities to the performance review arrangements established in Scotland for its public officials of Parliament, such as the Scottish Information Commissioner and Scottish Standards Commissioner.<sup>96</sup> The C&AG would also be under an explicit restriction against holding other external paid positions without the agreement of the Public Accounts Commission.

### *Role of NAO chair*

The new NAO Board Chair would be responsible for leading the Board and for maintaining relations with stakeholders. The Chair would provide evidence to the Public Accounts Commission in respect of its oversight of the NAO. Clearly, the existence of a new body interposed between the Commission and the NAO will require some new working

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<sup>92</sup> *Ibid*, para 61

<sup>93</sup> *Ibid*, para 64 For background on the concept of Officer of Parliament, see Library Research Paper 03/77 [Officers of Parliament: A comparative perspective](#)

<sup>94</sup> *Parliamentary Audit: the Audit Committee in comparative context* Oonagh Gay and Barry Winetrobe Constitution Unit, UCL. [Report for Audit Committee of Scottish Parliament 2003](#), [on 1 October 2009]

<sup>95</sup> *Ibid*, para 66

<sup>96</sup> See for example Scottish Information Commissioner press release "[Commissioner re-appointed](#)", January 2008 [on 7 October 2009]

arrangements and channels of communication. The new Board should, according to Tiner, include the chair of the Audit Commission, in an attempt to provide 'closer and more formal contact, collaboration and cooperation between these two bodies' The Audit Commission audits and assesses local government and NHS bodies.<sup>97</sup> There has been a long running debate on the value or otherwise of merging the two principal audit bodies in the UK. The review summarises the arguments for and against, concluding that the question of a merger was beyond the terms of reference, but expressing a personal view that a merger at present would delay governance reforms necessary at the NAO.<sup>98</sup> In fact, the Audit Commission later declined to take up an observer place on the Board.<sup>99</sup>

Finally, the review suggested that the reforms would result in a slightly more onerous workload for the Public Accounts Commission which would require the Commission to have the necessary support.<sup>100</sup>

### 3.3 Response from the Public Accounts Commission

The Public Accounts Commission issued its response on 4 March 2008, which was broadly supportive of the Tiner proposals, but concerned to uphold the independence of the C&AG's work on statutory audit.<sup>101</sup>

The Commission recommended a slightly longer single term for the C&AG of 10 years. The Commission also preferred to link the salary to that of a Treasury Permanent Secretary, rather than any bonus system. The response also noted that the C&AG should be subject to the regulation of the Advisory Committee on Business Appointments when leaving the post, to avoid potential conflicts of interest.<sup>102</sup>

The Commission expressed some reservations about the Tiner model for the NAO board:

8. There is general agreement that it would be unacceptable if the Chairman were able to constrain the C&AG's audit decisions (including decisions on what audits to conduct) or to act as an alternative figurehead for the NAO, given that the Chairman would not be responsible for what the NAO actually produces, which is audit judgments. With this in mind, we agree to the proposal for a Chairman on the basis that he or she would have only an internal role, and would speak in public only about governance matters, and in particular would not comment on the audit reports or the audit programme of the C&AG. Given that the role would be largely internal, the Chairman's interventions in public would be rare. We would prefer the Chairman to be Chairman of the NAO Board rather than of the NAO, if legally possible. The C&AG would act as Chief Executive of the NAO, would lead the NAO executive, would manage the NAO's resources (as discussed below) and would be the public face of the NAO.<sup>103</sup>

The commentator David Walker argued that the creation of a strong board would diminish democratic accountability by reducing the direct input of the Public Accounts Commission.<sup>104</sup> *Private Eye* suggested in its review of the work of the NAO in September 2008 that the Public Accounts Commission could have exercised more detailed oversight over Sir John

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<sup>97</sup> *Ibid*, para 73

<sup>98</sup> *Ibid*, Chapter 7

<sup>99</sup> *Public Accounts Commission 16<sup>th</sup> report* HC 1027 2007-08, para 16

<sup>100</sup> *Ibid*, para 96

<sup>101</sup> The Public Accounts Commission, *Corporate Governance of the National Audit Office: Response to John Tiner's Review*, 4 March 2008, HC 402 2007-08

<sup>102</sup> For further details see Library Standard Note SN/PC/3745, *Business Appointment Rules*

<sup>103</sup> The Public Accounts Commission, *Corporate Governance of the National Audit Office: Response to John Tiner's Review*, 4 March 2008, HC 402 2007-08

<sup>104</sup> David Walker "Barking up the wrong tree" April 2008 *Public (Guardian)*

Bourn.<sup>105</sup> The Commission made some detailed recommendations on the composition of the Board, recommending a narrow majority of non-executive members.

### 3.4 Draft clauses for C&AG and NAO

The Public Accounts Commission's 16<sup>th</sup> report, published in August 2008 contained draft clauses drawn up by the National Audit Office, which had been endorsed by the Commission.<sup>106</sup> The main points of the draft clauses were as follows:

- C&AG to continue as Officer of the House, with existing appointments process confirmed, but strengthened by the use of the OCPA Code of Practice on Appointments. Maximum term of office to be 10 years;
- the C&AG's remuneration package to be linked to that of a permanent secretary, but with no performance-based element;
- statutory restriction on employment after leaving office, where a conflict of interest might arise;
- incorporation of the NAO as a statutory body with a non-executive majority and Chairman;
- Chairman of NAO to be Crown appointment for three years, potentially renewable for a further term, and subject to parliamentary approval in same way as the C&AG;
- establishment of non-executive Audit Committee and Remuneration Committee;
- statutory code to specify respective roles of C&AG and NAO Board;
- executive members of NAO Board to be appointed by non-executive members;
- joint presentation of NAO corporate plan by Chairman and C&AG to Board and Commission.

As recommended in the Commission report, the draft clauses were developed by parliamentary counsel. At a meeting on 16 December 2008, the Commission approved the resultant draft, with the only points of disagreement remaining the preference of the Commission to link the pay of the C&AG with the Lord Chief Justice and for a five year employment restriction on former C&AGs.<sup>107</sup>

Sir Andrew Likierman, the former head of the Government Accountancy Service, was appointed Chair of NAO as announced in December 2008.<sup>108</sup> On 16 January 2009 the Prime Minister announced that Amyas Morse had been approved as the next C&AG. The press notice from No 10 Downing St noted:

Mr Leigh chaired the selection panel, with Sir Nicholas Macpherson (HMT Permanent Secretary) representing the Prime Minister and Sir Andrew Likierman. Tim Burr, the current Comptroller & Auditor General sat as an independent observer.<sup>109</sup>

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<sup>105</sup> "The Bourn complicity" 4 September 2008 *Private Eye*

<sup>106</sup> [HC 1027 2007-08](#)

<sup>107</sup> <http://www.parliament.uk/business/committees/committees-archive/public-accounts-commission/tpacmeeting161208/>

<sup>108</sup> "Andrew Likierman to chair National Audit Office" 15 December 2008 *Accountancy Age*

<sup>109</sup> [Appointment of the Comptroller and Auditor General](#) 16 January 2009 *No 10 gov.uk* [on 1 October 2009]

In February 2009 the PAC issued a report which gave details of the selection process and pre-appointment hearing for Mr Amyas which the Committee held on 11 February 2009.<sup>110</sup> Mr Amyas is the first C&AG to come from a chartered accountancy background. During his pre-appointment hearing, Mr Amyas was questioned about the potential for conflict with the new Chair:

**Q15 Mr Mitchell:** David Heald, who used to be adviser on the Accounts Commission, objected to the appointment of a Chairman which he indicated would diffuse that relationship which is central between the Comptroller and Auditor General and Parliament by bringing an element of executive power. What is your view on the appointment of a Chairman?

**Mr Morse:** I actually think that it is going to be extremely positive and I am very comforted that there is a Chairman role. I think it is a very good thing. I am not saying that to be polite, I really believe it, first, in the person of the Chairman, who I have already met and talked to and I am satisfied I am going to get a lot of positive advice. It is asking a lot of someone to be in a sole role.<sup>111</sup>

On 17 March 2009 the Commission took evidence from Sir Andrew Likierman and Mr Burr on the NAO supply estimate.<sup>112</sup> On 20 May the Commission approved the appointment of four non-executive members of the NAO Board, Ruth Evans, Richard Fleck, Dame Mary Keegan and Sir Joseph Pilling, on the recommendation of Sir Andrew, following an open recruitment process. The salary was set at £20,000 per annum for two days a month.<sup>113</sup>

The address to appoint Mr Morse was debated on 20 May 2009.<sup>114</sup> There was no dissension from the decision to appoint him to the post. The Prime Minister said that Mr Morse had agreed to a 10 year non renewable appointment, pending the corporate governance reforms for the NAO. Mr Morse took up his appointment on 1 June 2009.<sup>115</sup>

### 3.5 The Constitutional Reform and Governance Bill 2009-10.

The clauses relating to the NAO governance attracted relatively little attention during the passage of the Bill in the Commons; in the Lords debate was truncated by the announcement of the general election.

- The Commons Committee stage was taken on the floor of the House. Kelvin Hopkins introduced amendments to set out the functions of the C&AG and to extend his remit to private sector companies supplying Government. This gave way to a more general debate about the proposed changes in the governance of the National Audit Office. David Gauke, for the Conservatives, raised concerns from Professor David Heald that the role of the Commission (and Parliament) would be diminished by the new NAO Board. Edward Leigh, chairman of the Public Accounts Committee, said that the independence of the C&AG was protected by statute. Finally, Mr Gauke spoke to an amendment to put the remuneration package of the C&AG online on a monthly basis. In response Mr Leigh pointed out that the C&AG published details already of all his expenses and allowances on a six monthly basis. Mr Gauke pushed the amendment to a division which was lost by 274 votes to 201.<sup>116</sup>

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<sup>110</sup> [Twelfth report from Public Accounts Committee](#), HC 256 2008-09

<sup>111</sup> *Ibid.*

<sup>112</sup> [Documents relating to meeting of Public Accounts Commission](#) on 17 March 2009

<sup>113</sup> [Documents relating to meeting of Public Accounts Commission](#) on 20 May 2009

<sup>114</sup> HC Deb 20 May 2009 c1521-1532

<sup>115</sup> [NAO Board and Leadership Team- the C&AG](#)

<sup>116</sup> HC Deb 4 November 2009 c944-949

- The post-employment restrictions on a former C&AG were discussed in a debate; the junior minister Sarah McCarthy-Fry said that the Government considered a two year ban achieved an appropriate balance between the independence of the C&AG and the ability of a former office holder to seek appropriate work. Ms Mc-Carthy-Fry moved some minor amendments which were unopposed.<sup>117</sup>
- At Commons report stage on 2 March 2010 there was no debate on the NAO clauses due to the operation of the programme motion.
- At Lords second reading on 24 March the debate was dominated by concerns that the Bill would not receive full scrutiny in the Lords, due to the imminence of dissolution of Parliament. On 7 April there were rapid negotiations about which elements of the Bill should be dropped, and these included Part 10 on the NAO.

### 3.6 The Budget Responsibility and National Audit Bill 2010-11

The clauses in Part 2 of the Bill are almost unchanged from those in of the *Constitutional Reform and Governance Bill 2009-10* (CRAG) and where there are changes these are minor drafting ones. A [HM Treasury guide](#) shows changes to the order and drafting of the national audit provisions in the current Bill compared with CRAG.<sup>118</sup>

The new corporate governance arrangements for the NAO took shape in July 2009, pending legislation which was expected to complete its passage in early 2010. The National Audit Office published its [strategy](#) for 2010/11 to 2012/13 which noted the innovations in the Introduction:

On 1 July 2009, the new National Audit Office (NAO) board structure took effect. For the first time in the history of the NAO, we have a Board with a non-executive Chairman and a majority of non-executive members, a Chartered Accountant as Comptroller and Auditor General (C&AG), and a genuine Leadership Team. This strategy is our first joint submission, with the support of the Board, under the new governance arrangements.

Also in July 2009 a [Code of Practice](#) was issued which set out the proposed governance relationships as follows:

1. This Code of Practice deals with the relationship between the National Audit Office (NAO) and the Comptroller and Auditor General (C&AG). The NAO Board and the C&AG will comply with the Code of Practice. Details of the role of the Public Accounts Commission, the NAO and the C&AG are set out in Annex 1 to the Code of Practice.

### 3.7 Initial reaction to the Bill

A minority of speakers at [second reading](#) on 8 November 2010 dwelt on the National Audit provisions. Lord Eatwell, for the Opposition, reminded the House that identical clauses had been brought forward by the Labour Government in early 2010. The Conservative peer Baroness Noakes said that she understood that the changes provided for in the bill had already occurred on a non-statutory basis, but queried whether the changes were necessary:

Before the National Audit Act 1983, there was a suspicion about the role of the Treasury in relation to the C&AG. The 1983 Act took the Treasury out of the picture, made the C&AG an officer of the House of Commons and created the Public Accounts

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<sup>117</sup> HC Deb 4 November 2009 c954

<sup>118</sup> [Budget Responsibility Bill Factsheet 6 National Audit Comparison](#) undated

Commission to oversee the NAO's budget. When there was a fuss about the expenses of the C&AG more than 20 years later, the Public Accounts Commission commissioned a report from Mr John Tiner, who was then on gardening leave at the end of his service with the Financial Services Authority. Mr Tiner said that he was,

"not aware of the background to the C&AG being an officer of the House of Commons"-

that is, he did not know what he was talking about. As the Constitution Unit of University College London has pointed out, he made absolutely no assessment of the effectiveness of the Public Accounts Commission in carrying out its statutory role. Nevertheless, he concluded that the answer lay in the governance of the NAO and prescribed the usual formula of a board with a chairman and non-executive directors, which we have before us today. This was, of course, a convenient solution for those in another place to sign up to because it avoided any issues about the responsibility of the other place.

I recount that story to show how policy can be made at the highest level with relatively little real foundation. The failures of oversight of a component of the expenditure of the C&AG could have been dealt with relatively easily. Instead, the Bill will impose a costly and cumbersome superstructure of a board and non-executives. I have no criticism of the people who are undertaking those roles-they are excellent people-but do they add any real value to the process of public audit, about which there were absolutely no concerns? I doubt it. I hope that, before the Minister and his colleagues in the coalition Government pick up any more left-overs from the previous regime, they will in future examine critically whether changes are indeed necessary.<sup>119</sup>

Baroness Browning, a former member of the PAC, asked whether the Bill had been benchmarked against the Public Accounts Commission response to Tiner, emphasising that it was important that the C&AG retained discretion over the ability to initiate an audit against possible opposition from the Board.<sup>120</sup>

In subsequent stages there have been some detailed points on the Bill, but no further opposition to the principle of the corporate governance changes emerged.

There has been some continued criticism from Professor David Heald of Aberdeen University, a former advisor to the Public Accounts Commission, to the effect that parliamentary oversight of the NAO would be diminished by the changes:

Fourth, the effect of the proposed structure for the NAO will be to weaken the Public Accounts Commission when the Parliamentary accountability and legitimacy of the NAO require it to be strengthened. The Commission is a statutory body which consists entirely of MPs.

Since 2002 it has held, in public, meetings with the C&AG to approve the NAO's annually revised corporate plan (July) and the NAO Estimate (February), which is then presented to the House of Commons by the Chairman. The Public Accounts Commission has acted as a valuable protective buffer for the NAO against the Executive. When NAO strategy is internally negotiated between the NAO Board and the C&AG, there will be less opportunity for the Commission to have an effective input...

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<sup>119</sup> HL Deb 8 November 2010 c26

<sup>120</sup> HL Deb 8 November 2010 c31

As a voice independent of the Executive, and a resource for Parliament to access, the role of the NAO will become even more important during a period of macroeconomic difficulties and of public expenditure restrictions. NAO judgements, whether these concern accounting treatments or value-for-money studies, will from time to time create serious tensions with government. Notwithstanding the protection provided to the C&AG by the requirement of resolutions of both Houses of Parliament for removal from office, the manner of Sir John Bourn's exit has probably made future C&AGs less secure. This is not the time to over-complicate NAO governance.<sup>121</sup>

The Public Accounts Commission took evidence from Amyas Morse and Andrew Likierman (C&AG and NAO Board Chair respectively) on 9 November 2010 and a [transcript](#) is available. Mr Morse drew attention to new methods of undertaking NAO investigations and the recruitment of new senior staff. He also said how he valued the role of Mr Likierman as a sounding board.

### 3.8 The detailed provisions of the Bill

#### *The Comptroller and Auditor General*

**Clause 11** allows for the continuance of the office of C&AG, by appointment by Her Majesty on an address from the House of Commons, moved by the Prime Minister. This replicates existing procedure. The clause allows for a ten year non-renewable term. This length of term has not attracted much parliamentary debate so far.

**Clause 12** deals with the status of the office of C&AG, which continues as a corporation sole and officer of the House of Commons. It prohibits the office holder from being a peer (the position is already a disqualifying one for the House of Commons) and from taking any other position under the Crown. Clause 17(1) upholds the 'complete discretion' of the C&AG in carrying out the functions of the office, including the right to initiate audits. **Clause 39** allows the C&AG to provide services in the UK and elsewhere.

**Clause 14** allows for the resignation of the C&AG, and retains the current terms of dismissal by addresses to the Crown from both Houses of Parliament.

#### *Pay and employment after leaving office*

**Clause 13** governs the remuneration arrangements for the post, to be determined jointly by the Prime Minister and the chair of the Public Accounts Committee before the start of the employment term. Any performance related aspect to the remuneration is specifically prohibited.

This is the area of the bill where there has been most debate, both in terms of remuneration and post-employment conditions. There are some differences in this area with the draft clauses initially proposed by the Public Accounts Commission in its [16<sup>th</sup> report](#) in July 2008. The Commission had proposed that the amount be determined by the Commission and that the level of remuneration be set at that for a Permanent Secretary. The *Explanatory Notes* to the Bill explain the policy change as follows:

244. Together the powers in this clause allow some flexibility over the terms and conditions which may be offered to the C&AG, to suit the requirements of different possible appointees. As happens for the Directors of Public Prosecutions and of the Serious Fraud Office, the Bill does not specify the level of remuneration itself. The remuneration package may include arrangements for automatic uprating during the term of the C&AG's appointment, for example through a formula or a link to an

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<sup>121</sup> "Reforming the Governance of the NAO" *Public Money and Management* Vol 29(2) 2009 pp83-85 and "A reform too far" *Public Finance* 21-28 November 2008 pp22-23

established uprating mechanism. However, by *subsection (4)*, performance-based incentives are not permitted since they could constrain the operational independence of the C&AG.<sup>122</sup>

This does not address the change in responsibility for setting the package from the PAC to the Prime Minister and Chair of the Public Accounts Committee. However a policy paper from the NAO to the Commission in December 2008 argued that it was reasonable to link responsibility for making the appointment to responsibility for setting the remuneration package.<sup>123</sup>

**Clause 15** prohibits former C&AGs appointed under the Bill from taking up other public sector employment or consultancy without consulting a specified person. The draft clauses had simply prohibited any employment for an unspecified number of years, and the 16<sup>th</sup> Commission report in July 2008 had noted the Commission's preference for a lifetime ban.<sup>124</sup> The current clause provides for a prohibition in the first two years after resignation and then for consultation, probably with the Advisory Committee on Business Appointments. Advice from HM Treasury had been that a lifetime ban would be potentially discriminatory on grounds of age, and might deter younger candidates.<sup>125</sup> The clause specifically allows a former C&AG to take up the post of Auditor General for Wales, or Scotland or Comptroller and Auditor General for Northern Ireland.

This was the only aspect of the audit clauses to come up at [Grand Committee](#) stage in the Lords. Lord Touhig proposed that the provisions of the Bill be strengthened by specifying that permission should be sought from the Advisory Committee on Business Appointments. Lord Eatwell pointed out that the drafting was too general. In response, Lord Sassoon said that the Government would consider the point, but argued that two years was the most appropriate length of time for any restriction.<sup>126</sup> On [Report](#), Lord Sassoon introduced an amendment to ensure that the specification would be undertaken by the Public Accounts Commission, explaining that in the future there might be a successor body to the Advisory Committee on Business Appointments, so it would be unwise to specify this in the Bill.<sup>127</sup>

### ***The National Audit Office***

**Clause 20** establishes the NAO as a new corporate body and separate legal entity, compared with the current position, where it is composed of the C&AG and staff appointed by the C&AG. **Schedule 2** provides that the C&AG is the chief executive, but not employee of the NAO. It also provides for the NAO to have nine members- five non executives, the C&AG and three employee members, chaired by a non-executive. The chair is to be appointed by the Crown following an address from the House of Commons moved by the Prime Minister with the agreement of the Chair of the Public Accounts Committee (PAC). Similarly, the appointment may only be terminated by an address of both Houses.

The Chair is initially appointed for three years, in common with non-executive members, but this may be extended for a second term without a formal address. The remuneration package is jointly determined by the Prime Minister and chair of the PAC and is to be paid from the consolidated fund. The remuneration for other non executives is to be set by the Commission, after taking advice from an appropriate person. The Commission is given power to restrict other employment by non-executives, whether during or after membership of the

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<sup>122</sup> [Explanatory Notes](#)

<sup>123</sup> [The Corporate Governance of the National Audit Office: Setting and Uprating the Remuneration of the C&AG](#) National Audit Office December 2008

<sup>124</sup> [Public Accounts Commission Sixteenth Report](#) HC 1028 2007-08 Para 8

<sup>125</sup> Public Accounts Commission [NAO Governance Legislation: paper by the Treasury](#) December 2008

<sup>126</sup> HL Deb 9 December 2010 c75-80GC

<sup>127</sup> HL Deb 31 January 2011 c1214

NAO. Provisions on employee members include terms of appointment, remuneration and termination of appointment. Part 6 of Schedule 2 deals with procedural rules, such as quorums for NAO meetings. The draft clauses contained more detail on NAO meetings where votes were required. This has been replaced by a requirement that a quorum cannot be met unless a majority of members present are non executives. Finally, there is a requirement for an external auditor for the NAO.

### ***Relationship between C&AG and the National Audit Office (NAO)***

The new statutory relationship between the C&AG and the NAO is set out in detail in **Clause 22** and **Schedule 3**. The *Explanatory Notes* summarise the main points:

302. Schedule 3 contains provisions that govern the relationship between the NAO and the C&AG. These include:

- the preparation by the NAO and the C&AG of a national audit strategy;
- the obligation of the NAO to provide resources for the carrying out of the C&AG's functions;
- the need for the C&AG to obtain the approval of the NAO to perform certain services;
- the NAO's duty to monitor and provide advice to the C&AG;
- the ability of the C&AG to delegate functions;
- the arrangements for dealing with vacancy in office or the incapacity of the C&AG;
- powers to charge fees;
- the obligation to prepare an annual report; and
- the preparation and contents of a code of practice to deal with the relationship between the CA&G and the NAO.<sup>128</sup>

**Schedule 3** considerably expands the draft clauses, and specifies the statutory relationship more closely. The joint strategy would in effect act as the business plan for the NAO and C&AG as stated by the *Explanatory Notes*.<sup>129</sup> The strategy must specify the amount of the resources provided by the NAO to the C&AG. The strategy is to be approved by the Public Accounts Commission, which must have regard to advice from the Treasury.

The resources provided to the C&AG fall into two categories: firstly those whose allocation is at the discretion of the C&AG, where the NAO is simply required to provide the resources asked for. This category includes the statutory functions, such as comptroller and auditor functions and value for money examinations. Secondly, the NAO would give approval for funding for other activities such as audit and consultancy services to international bodies.

In paragraph 2, it is the NAO which is responsible for employing staff, holding information and procuring services on behalf of the C&AG. The NAO is also given a duty to monitor and provide advice to the C&AG in paragraph 5. Finally, there are provisions to cover the position where there is a vacancy or incapacity in the office of C&AG, to provide for joint reports to the Commission and for a code of practice on the relationship between the NAO and C&AG.

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<sup>128</sup> *Explanatory Notes*

<sup>129</sup> *Ibid*, para 303

It is perhaps noteworthy that the role of the Public Accounts Commission is not specifically considered in the code of practice and this may be interpreted as indicating that its role in monitoring the C&AG is passing to the NAO as a separate corporate body. Instead, the PAC approves the code.

**Schedules 4 and 5** make transitional provisions to preserve continuity between the current NAO and the new one, and set out a series of consequential amendments to legislation.

**Schedule 6** amends Schedules 5 and 7 to the *Government of Wales Act 2006* to confer legislative competence on the National Assembly for Wales in relation to the Auditor General for Wales. This will allow, but not require the National Assembly to make similar governance changes. The Schedule was added to the *Constitutional Reform and Governance Bill* at Commons committee stage. The then minister, Wayne David, said that this would enable the Assembly to put into place arrangements for the more effective oversight, supervision and accountability of the Auditor General for Wales. However, the Assembly would not be able to modify provisions in the *Government of Wales Act 2006* which set out the operational independence of the Auditor General.<sup>130</sup> An [Explanatory Memorandum](#) from the Wales Office gave further details.<sup>131</sup> The new clause was passed without further comment.

There are a couple of other clauses related to NAO functions.

**Clause 18** ensures that the C&AG has to have regard to Public Accounts Commission proposals on investigations undertaken with respect to economy, efficiency and effectiveness examinations under Part 2 of the *National Audit Act 1983*.

**Clause 19** amends section 25 of the *Government Resources and Accounts Act 2000*. According to the Bill's Explanatory Notes, it provides "a simpler procedure for enabling the C&AG to audit those companies which exercise functions of a public nature or receive substantial public funding.

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<sup>130</sup> HC Deb 4 November 2009 c957

<sup>131</sup> Wales Office *Constitutional Reform and Governance Bill Welsh Assembly Government Memorandum on Framework Powers conferring Legislative Competence on the National Assembly for Wales* October 2009