



Comptroller and Auditor General

Standard Note: SN/PC/4595

Last updated: 12 May 2008

Author: Oonagh Gay

Section Parliament and Constitution Centre

The Comptroller and Auditor General's relationship with Parliament is often used as a benchmark of independence and accountability to be applied to the creation of new constitutional watchdogs. The key characteristics of this model can be summarised as:

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

This note traces a brief history of the office of Comptroller and Auditor General and examines current proposals to reform the corporate governance of the National Audit Office. Draft clauses have been developed by the NAO following the Tiner review which reported in February 2008. These clauses are due to be included in the *Constitutional Renewal Bill* expected in the current session. They would create a new board for the NAO and limit the tenure of the C&AG to a single fixed term of 10 years. The Commons is due to debate a motion on the appointment of the next C&AG on 20 May 2009.

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

1	Development of the office	3
2	Corporate Government Review 2007	5
3	The appointment of a new Comptroller and Auditor General	6
4	The Tiner review	10
1.1	Response from the Public Accounts Commission	12
	NAO Board	12
	Appointment of the C&AG	13
4.1	Next steps and draft clauses	14
	Appendix: Comptrollers and Auditors General since 1834	16

1 Development of the office

The Exchequer and Audit Departments Act 1866 was an attempt to bring order to the system of parliamentary control over public money, creating the post of Comptroller and Auditor General 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). The C&AG holds office during good behaviour and can only be dismissed following resolutions of both Houses.¹ The text of section 3 of the 1866 Act is as follows:

3 Power to Her Majesty to appoint “Comptroller and Auditor General” and “Assistant Comptroller and Auditor”, who shall not hold any other offices during pleasure, nor be members or peers of Parliament

The Comptroller and Auditor General shall hold their offices during good behaviour, subject, however, to their removal there from by Her Majesty, on an address from the two Houses of Parliament; and they shall not be capable of holding their offices together with any other office to be held during pleasure under the Crown, or under any officer appointed by the Crown;; nor shall any peer of Parliament be capable of holding either of the said offices.

[But a person may at the same time hold both the office of Comptroller and Auditor General and the office of Auditor General for Wales.]²

Although the Public Accounts Committee (PAC) had been established in 1861, its relationship with the C and 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 and AG as an Officer of the House of Commons, to be appointed by the Crown, but in consultation with the Chairman of the PAC Dismissal would occur only if a petition to the Crown was preceded by a resolution of both Houses
- Created an independent National Audit Office, with staff employed directly by the C and AG
- Gave the C and 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
- 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.

Section 1 of the Act provided for the formal appointment process:

¹ The term ‘good behaviour’ is used as a shorthand for undertaking the duties of the office. See the *Exchequer and Audits Department Act 1866*

² The text is available from http://www.legislation.gov.uk/RevisedStatutes/Acts/ukpga/1866/cukpga_18660039_en_1#1g3

1.—(l) The power of Her Majesty under section 6 of the Exchequer and Audit Departments Act 1866 (appointment of and status of Comptroller and Auditor General) shall be exercisable on an address presented by the House of Commons, and no motion or shall be made for such an address except by the Prime Minister acting with the agreement of the Chairman of the Committee of Public Accounts.³

In the opinion of the academic Professor Gavin Drewry, the 1983 legislation moved the C & AG's centre of gravity away from the Treasury and towards the Commons, leaving him in an independent position between the two.⁴ There were continued complaints from the Labour MP John Garrett about the role of the Treasury in appointing the C & AG. In response, there was a statement in 1987 by the Financial Secretary confirming his operational independence.⁵

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.⁶ The main impetus behind the separate Commission appear to have been concerns that the PAC, as the main customer for the C&AG might not offer the more strategic approach of a Commission when considering the budget of the NAO.⁷ The Commission has overlapping membership with the PAC.

The salary of the C & AG is met directly from the Consolidated Fund and the salary is treated as Consolidated Fund standing services, thus bypassing the annual supply procedure, whereby Parliament approves government estimates.⁸ This emphasises the constitutional separation from other government expenditure. The costs of the National Audit Office are met by funds voted by Parliament. The estimates for the NAO are prepared and laid before Parliament not by the Treasury, but by the Public Accounts Commission, a statutory parliamentary committee established by the 1983 Act.

The C&AG is not 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 previous incumbent, 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.⁹ Commonwealth and European equivalent posts are appointed for a fixed term.

The practice has been to have some weeks before announcement of the name and parliamentary confirmation, and the PAC chair is, by convention, an Opposition backbencher

³ <http://www.statutelaw.gov.uk/content.aspx?LegType=All+Primary&PageNumber=45&NavFrom=2&parentActiveTextDocId=1284352&activetextdocid=1284358>

⁴ Unpublished research by Professor Gavin Drewry for the National Audit Office 1983

⁵ HC Deb 16 Dec 1987 c1201-4

⁶ See *Parliamentary Audit: the Audit Committee in comparative context* Oonagh Gay and Barry Winetrobe Constitution Unit, UCL. Report for Audit Committee of Scottish Parliament 2003, available at <http://www.scottish.parliament.uk/business/committees/historic/audit/reports-03/aur03-legacy-02.htm>

⁷ Ibid, para 4.620, which discusses the similar arrangements in the Scottish Parliament

⁸ This position predates the 1983 Act and is set out in the *Exchequer and Audit Departments Act 1957* For a clear explanation, see *Stair Memorial Encyclopaedia*, Public Expenditure 2002, para 519

⁹ See Appendix for office holders back to 1834

indicating a bi-partisan nature to the process. It also gives backbenchers an important role in the actual appointment, if not the recruitment process.

2 Corporate Government Review 2007

The National Audit Office released details of the expenses claimed by the Comptroller & Auditor General, following an FoI 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.¹⁰

The procedure for accounting for his expenses was set out by the Public Accounts Commission as follows:

The C&AG's expenses are, however, funded from the resource budget, voted by Parliament on the recommendation of the Commission. The C&AG's decisions to incur expenditure from the resource budget are not subject to approval by staff of the National Audit Office, of which the C&AG is the head, nor by the Treasury. They do however come within the purview of this Commission...¹¹

In its 13th report, the Commission established a new review process for expenses, having taken written evidence from the C&AG:

The review process

3. The Director of Internal Assurance at the National Audit Office will obtain all material information on the planned expenses of the C&AG. The Chairman of the Office's Audit Committee, who is also a non-executive member of the Office's Senior Management Board (along with another member of the Audit Committee to be appointed shortly), will be briefed in advance by the Director of Internal Assurance on planned expenses of the C&AG chargeable to the resource budget, in the light of the framework set out below. The Chairman of the Audit Committee will be able to discuss such issues as he or she sees fit with his or her fellow non-executive board member, with the C&AG, and ultimately with the Public Accounts Commission.

4. The National Audit Office will provide the Commission with a six-monthly report of its actual expenditure on the relevant expenses, which will be open to audit by the Office's external auditors, who are appointed by the Commission. The Commission could then, if it so wished, ask the C&AG about the expenses at its public meetings.

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.

The Public Accounts Commission announced in October its terms of reference for the review of the NAO's corporate governance, as follows:

"To identify the extent to which the NAO's corporate governance arrangements are consistent with best practice elsewhere (including the arrangements set out in the Combined Code on Corporate Governance and the Treasury's Corporate Governance in Central Government Departments: Code of Practice) and to propose any necessary improvements, taking account of the need to protect the Comptroller & Auditor General's statutory discretion in carrying out his duties.

¹⁰ "MPs order reviews into watchdog spending bills" 12 October 2007 *Telegraph*

¹¹ Public Accounts Commission 13th report HC 915 of 2006-07 11 July 2007 para 2

"The review should focus on the role of the C & AG and his relationship with the NAO, and should cover the role of the NAO's Senior Management Board, whether a separate advisory board would be beneficial, the number of non-executives and the method of their appointment, the method of appointment and reporting arrangements of the Audit Committee, the method of appointment of senior NAO officials, arrangements for determining remuneration, and internal controls, together with any other matters the reviewer or the Commission consider appropriate.

"The review is to be completed by the end of 2007."

On 25 October 2007, the Lord Chancellor, Jack Straw, announced that legislative time would be made available to implement the results of the corporate review in course of a statement on the Government's programme of constitutional renewal:

The House will be pleased to know that following a joint request to my right hon. Friend the Prime Minister from my right hon. Friend the Member for Swansea, West (Mr. Williams), the Father of the House, and the Chairman of the Public Accounts Committee, the hon. Member for Gainsborough (Mr. Leigh), space will be made available in the forthcoming constitutional reform Bill for any agreed changes to the governance of the National Audit Office emerging from the review that they have announced.¹²

On 8 November the PAC announced that John Tiner would lead the review. Mr Tiner was Chief Executive of the Financial Services Authority from 2003 to 2007.¹³ The review was been completed in January 2008, as Alan Williams, the chairman of the Public Accounts Commission noted in the debate on the appointment of Tim Burr on 23 January 2008.¹⁴ See below for a summary of the Tiner proposals published in the 14th report from the Public Accounts Commission on 12 February 2008.¹⁵

3 The appointment of a new Comptroller and Auditor General

Sir John Bourn announced his retirement on 25 October 2007 and his term of office ended in January 2008. His age at retirement was 73. His statement noted:

Sir John Bourn announced today his intention to retire as Comptroller and Auditor General on 31 January 2008, having served 20 years in post. The Companies Act 2006 gives Auditors General in the UK the power from April 2008 to audit Public Limited Companies and thus they will come under the inspection regime of the Professional Oversight Board of the Financial Reporting Council of which he is currently the Chairman. Draft Orders effecting this change will need to be published in the near future.

Sir John Bourn said today:

"Under these new arrangements it would be incompatible for me to hold the positions of both C&AG and Chairman of the Board. I have therefore decided to relinquish the

¹² HC Deb 25 October 2007 c408

¹³ Public Accounts Commission Press Notice 13 8 November 2007

http://www.parliament.uk/parliamentary_committees/public_accounts_commission/tpac081107pn13.cfm

¹⁴ HC Deb 23 January 2008 c1522

¹⁵ HC 328 2007-8

position of C&AG at the end of January 2008, when I shall have completed 20 years in the post, and continue in my position as Chair of the Professional Oversight Board.¹⁶

The Prime Minister, Gordon Brown, and others praised Sir John for his work, although there was some media and political comment about errors of judgement in relation to hospitality accepted from EDS, a government contractor, and BAE Systems¹⁷. His deputy, Tim Burr, is currently acting as interim C&AG but is expected to step down once the corporate governance reforms have taken effect. The formal motion to present a humble address to the Crown to appoint Mr Burr was moved on 23 January 2008 by the Prime Minister, Gordon Brown, and seconded by the chairman of the Public Accounts Committee, Edward Leigh. Mr Brown said:

Mr. Burr has been deputy CAG for nearly eight years in addition to some seven years' previous service at the NAO managing the audit of Departments including the Home Office, Inland Revenue and Customs and Excise. That was preceded by distinguished career in the civil service. I believe that Mr. Burr is eminently qualified to become CAG. Mr. Burr has undertaken to serve the House as CAG until the commission's new governance arrangements can come into effect.¹⁸

The House of Commons previously debated the appointment of the Comptroller and Auditor General (C&AG) on 16 December 1987. On that occasion, the motion before the House was:

That an humble Address be presented to Her Majesty praying that Her Majesty will appoint John Bryan Bourn Esquire, CB., to the Office of Comptroller and Auditor General.¹⁹

The then Prime Minister, Margaret Thatcher, opened the debate. The Prime Minister observed that the procedure for the appointment of the C&AG as set out in the *National Audit Act 1983* had been followed "minutely" and the name of the approved candidate had the support of the Chairman of the Public Accounts Committee, Robert (now Lord) Sheldon. Mr Sheldon himself observed:

I wish to support the motion on the Order Paper. It is the first time that such a procedure has been used. It is without precedent. The Prime Minister and the Chairman of the Public Accounts Committee have acted together in bringing to the forefront a person who is to be Comptroller and Auditor General.²⁰

However, some Members did not support the appointment process. John Garrett regarded the appointment "with some disquiet". Moreover, he said, "the arrangements by which he (the C&AG) is nominated pay inadequate respect to Parliamentary democracy". Mr Garrett continued:

No other state auditor in the Western world is appointed with the veto of the Head of Government. The Comptroller General of the United States is appointed by Congress. In West Germany, the President of State Audit is statutorily independent of the Government. It is unacceptable that the Prime Minister should have a hand in the appointment of an Officer of the House whose job it is to inquire into the financial

¹⁶ "Retirement of the C&AG" 25 October 2007 *National Audit Office Press Notice* http://www.nao.org.uk/pn/06-07/retirement_sir_john_bourn.htm

¹⁷ "Big spending cost watchdog to retire: Massive travel and meals bills drew criticism: Decision 'not connected to expenses row'" 26 October 2007 *Guardian*

¹⁸ HC Deb 23 January 2008 c1520

¹⁹ House of Commons, *Votes and Proceedings*, 16 December 1987

²⁰ HC Deb 16 December 1987 c1185

management of the Government...The proposed appointee is a civil servant who has served in the Treasury and the defence procurement executive...It will be said that there was no other candidate in the whole public service and throughout the public sector. I find that difficult to believe.²¹

Graham Allen agreed:

For all its gloss and pomp, our Parliament, in relation to public expenditure scrutiny, is no better than a third-rate banana republic. Parliamentary democracy is but a veneer unless we regain control of Government expenditure...The Comptroller and Auditor General – the senior financial officer of the House – is subject to the veto of the Executive, and that cannot be healthy for our democracy.²²

The question was put and the House divided, Ayes 178, Noes 9.

However, the system of approval has also met with parliamentary support. For example, Lord (Robert) Maclennan noted during a debate on Cabinet Office sponsored bodies:

Having served for a very long time in another place as a member of the Public Accounts Committee, I tend to think of the role of the National Audit Office, which is perceived as being, and is in fact, completely independent of government and whose chairman, or effective chairman, the Comptroller and Auditor-General, is appointed as a result of a dialogue between the chairman of the Public Accounts Committee and the Treasury Minister responsible. That recognises that the legislature and the Executive have an interest which needs to be embodied in the structures that we create to ensure the true independence of the system.²³

During the debate on the appointment of Tim Burr on 23 January 2008, the Chairman of the Public Accounts Committee, Edward Leigh, supported the involvement of the Prime Minister:

This is only the second appointment under the current arrangements whereby the nomination is made by the Prime Minister with the support of the Chairman of the Public Accounts Committee. During the debate the last time this happened, there was considerable support for making the appointment entirely a matter for the House. That is not an unreasonable view, as the CAG is an Officer of the House and he must be independent of the Government. That point was not lost on the Labour party in opposition. Indeed, summing up in the debate on Sir John Bourn's appointment 20 years ago, the shadow Minister committed a future Labour Government to changing

“the method of appointment so that there is no ambiguity between the role of the Executive and that of the House.”—[*Official Report*, 16 December 1987; Vol. 124, c. 1201.]

My view, however, is that—I say this to the Prime Minister to whom I am grateful for his presence—there is a need for the Government to have confidence in the person appointed because that person has unlimited access to all private papers and persons of the Government. Therefore, my view is that the current situation—of course, the House can take a different view—in which both the Prime Minister and the Opposition Chairman of the PAC have to agree is not unreasonable. I say that as long as the Government appreciate the difference between selection and appointment. They need

²¹ *Ibid.*, c1182

²² *Ibid.*, cc1197-98

²³ HL Deb 29 March 2007 c1787

to be involved in the appointment, but not in the selection. That should be the job of the House.

In this sense, I want to proceed according to statute and to precedent, and I want to follow closely the precedent set by my predecessor Bob—now Lord—Sheldon. He selected the candidate after exhaustive interviews and that selection was then put to Mrs. Thatcher and she approved it. Clearly the process now needs to be modernised in accordance with good practice. There needs to be openness, open advertising, transparency and I would need to be advised by a senior board in accordance with modern practice. Although all that can be arranged in agreement with the Government, I hope that the board would consist of a recently retired very senior servant—perhaps a former permanent secretary—a senior accountant from private practice and perhaps a recently retired officer from the NAO. I would need to listen to and consider their advice, but the Government do not need to be involved in that part of the process; otherwise there is the danger that I could find myself steered in classic Whitehall fashion in the direction of a safe candidate. I am sure that that would not be good for the future independence of the position. The Government do not have a right to a final veto.²⁴

During the debate on 23 January 2008, Tony Wright, chairman of the Public Administration Select Committee called for the involvement of the Commissioner for Public Appointments:

After the review of the governance of the National Audit Office, and when we have taken a view on issues such as term limits, I hope that we will have a clear system, in which there are reasonable term limits—a subject that has already been mentioned. I hope that the appointment process will be controlled by the Commissioner for Public Appointments; that is the system that we have put in place over the past 10 or 15 years to ensure the integrity of the public appointments process. The system should be supervised by the Office of the Commissioner for Public Appointments, and should be linked to pre-appointment hearings in the House, which would, I presume, be held by the Public Accounts Committee. That would give Parliament a role in the process. A motion should also be brought before the House, as has happened today. I hope that that is the process at which we arrive. In a sense, we are discussing an interim point on the journey to that destination.²⁵

In response, Alan Williams expressed some nervousness that a vote of the whole House might affect the independence of the office, given the Government majority.²⁶ Mr Williams indicated that a term limit for the C&AG was in prospect:

Mr. Gordon Prentice (Pendle) (Lab): Has my right hon. Friend formed an early view on the suggestion made at the meeting in December by the outgoing CAG, Sir John Bourn, that his replacement should have a limited tenure?

Mr. Williams: That question was covered by the Tiner review. The Chair of the PAC and I believe that there should be a time limit. I have not read the Tiner review yet, but I suspect that the dispute will be more about the length of service than about whether there should be a limit.²⁷

²⁴ HC Deb 23 Jan 2008 : c1527

²⁵ HC Deb 23 January 2008 c1529

²⁶ Ibid c1529

²⁷ HC Deb 23 January 2008 c1523

4 The Tiner review

The review was published on 12 February 2008 as the 14th report of the Public Accounts Commission. 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.²⁸

Mr Tiner noted that the proposals would require primary legislation, and that an opportunity for that would exist in the planned *Constitutional Reform Bill*. [now *Constitutional Renewal Bill*] 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 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:

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.²⁹

The review argued that a single non-renewable 8 year term was the appropriate length of time for appointment as C& AG and proposed the retention of the current arrangements whereby the appointment is made by the Crown following approval by the Commons, with the Prime Minister moving the appropriate motion with the agreement of the Chairman of the

²⁸ Public Accounts Commission 14th report HC 328 2007-8 Summary, para 3

²⁹ HC 328 2007-08

Public Accounts Committee, by convention an Opposition Member. The Public Administration Select Committee has recommended a non-renewable 7 year term length for constitutional and ethical watchdogs in its recent report *Ethics and Standards: The Regulation of Conduct in Public Life*.³⁰

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.³¹ 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.³²

He recommended changes in remuneration, breaking the 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.³³

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.³⁴ The C&AG would also be under an explicit restriction against holding other external paid positions without the agreement of the Public Accounts Commission.

The new NAO Board Chairman would be responsible for leading the Board and for maintaining relations with stakeholders. The Chairman 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 arrangements and channels of communication. The new Board should, according to Tiner, include the chairman of the Audit Commission, in an attempt to provide 'closer and more formal contact, collaboration and cooperation between these two bodies'.³⁵ 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

³⁰ HC 121 2006-07 para 81

³¹ Ibid, para 64

³² *Parliamentary Audit: the Audit Committee in comparative context* Oonagh Gay and Barry Winetrobe Constitution Unit, UCL. Report for Audit Committee of Scottish Parliament 2003, available at <http://www.scottish.parliament.uk/business/committees/historic/audit/reports-03/aur03-legacy-02.htm>

³³ Ibid, para 66

³⁴ See for example press release "Commissioner re-appointed" Scottish information Commissioner office 28 January 2008 <http://www.itspublicknowledge.info/home/News/20080128.asp>

³⁵ Ibid para 73

present would delay governance reforms necessary at the NAO.³⁶ In fact, the Audit Commission later declined to take up an observer place on the Board.³⁷

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. Mr Tiner also raised the question of the need or otherwise for another appointment as C &AG before the legislative changes recommended:

Transitional issues

96. I have proposed a set of governance arrangements in steady state. There will be many issues to consider in the transition from the present position to the new arrangements, if they are approved by Parliament. A particular issue concerns the appointment of the first Chief Executive, since Parliament may wish to move to appoint a longer-term successor to the current C&AG before the legislative process is complete and the NAO Chairman has been appointed.³⁸

1.1 Response from the Public Accounts Commission

The Public Accounts Commission issued its response on 4 March 2008.³⁹ It was broadly supportive of the Tiner proposals, noting:

3. Our starting point is the fundamental importance of preserving the independence of the C&AG in deciding what audits to carry out and in making audit judgments, and above all in preserving his or her independence from the executive...

4. The C&AG's independence from the executive is symbolised by his or her status as an Officer of the House of Commons, which also makes clear that the C&AG is a servant of the House. We attach great importance to that status as an Officer of the House...

6. The central problem in strengthening the NAO's corporate governance is how to achieve the second objective [governance and internal controls] without compromising the first [independence]. Most of our response to the review focuses on this issue.

The response can be divided as follows.

NAO Board

The Commission expressed some reservations about the Tiner model:

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

³⁶ Ibid, Chapter 7

³⁷ *Public Accounts Commission 16th report* HC 1027 2007-08, para 16

³⁸ Ibid para 96

³⁹ The Public Accounts Commission, *Corporate Governance of the National Audit Office: Response to John Tiner's Review*, 4 March 2008, HC 402 2007-08
<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmpacomm/402/402.pdf>

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.

The commentator David Walker has argued that the creation of a strong board would diminish democratic accountability by reducing the direct input of the Public Accounts Commission.⁴⁰ *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 Bourn.⁴¹

The Commission made some detailed recommendations on the composition of the Board, recommending a narrow majority of non-executive members. The independence of the C&AG was so important a principle that the Board should not be able to prevent the C&AG conducting an audit which he or she considered necessary or oblige the C&AG to undertake an audit which he or she did not regard as of sufficient priority. However, the inclusion of *nonstatutory* work in the NAO strategy (for example international work) would require the agreement of the Board.

Appointment of the C&AG

The Commission agreed with the review that the appointment of the C&AG should continue to be by a process which involves agreement between the Prime Minister and the Chairman of the Committee of Public Accounts, and also the principles of the Commissioner for Public Appointments' Code of Practice.⁴² It recommended a slightly longer single term of 10 years. The Commission also preferred to link the salary to that of a Treasury Permanent Secretary, rather than any bonus system.

However, under separate proposals in the *Governance of Britain* green paper, a select committee would be expected to hold a pre-appointment hearing in respect of the C&AG. This has raised some interest, as this post is already subject to parliamentary approval, and the involvement of the chairman of the Public Accounts Committee (PAC). The Chairman of the PAC, Edward Leigh, has objected to making this post subject to a pre-appointment hearing. In his letter to the Liaison Committee in February 2008 he stated that:

...I feel strongly that this is not suitable for a pre-appointment hearing with the Committee. The reasons are that the statutory provisions for the appointment of the C&AG provide a balance between the executive and this House and between the Government and Opposition through the requirement for the consent of both the Prime Minister and the Chairman of the PAC. A pre-appointment hearing with the whole Committee, with its inevitable government majority, would clearly upset this balance and thus potentially compromise perceptions of the C&AG's independence from the Government, an essential element in the effective functioning of the National Audit Office as a whole.

However I would not object to the C&AG-designate appearing before the Committee, once the Prime Minister and the PAC Chairman had agreed his or her name, but in advance of the debate on the motion for his or her appointment.⁴³

The Liaison Committee stated that they shared Edward Leigh's concerns in their March 2008 report.⁴⁴

⁴⁰ David Walker "Barking up the wrong tree" April 2008 *Public (Guardian)*

⁴¹ "The Bourn complicity" 4 September 2008 *Private Eye*

⁴² *Ibid*, para 16

⁴³ Liaison Committee, *Pre-appointment hearings by select committees*, 5 March 2008, HC 384 2007-2008, p23

⁴⁴ *Ibid*, para 16

The Public Accounts Commission response also noted that the C&AG should be subject to the regulation of the Advisory Committee on Public Appointments when leaving the post, to avoid potential conflicts of interest.⁴⁵

The recruitment process for the next C&AG may involve the Commissioner for Public Appointments, although at present the Commissioner's formal remit does not extend this far. Further background on these hearings is given in Library Research Paper 08/39 *Parliamentary Involvement in Public Appointments*.

4.1 Next steps and draft clauses

The Government commitment to make the necessary legislative changes was reiterated in the white paper *The Governance of Britain- Constitutional Renewal* published on 25 March 2008. This stated:

248. On 6 March 2008, the Public Accounts Commission reported on the future governance of the National Audit Office (NAO). The Government accepts the Commission's recommendations and will legislate to implement them. Accordingly the Constitutional Renewal Bill as presented for introduction, will seek to restructure NAO.⁴⁶

It appears that the Government have therefore accepted the PAC refinements to Tiner. The draft Bill made available as part of the white paper did not contain any draft clauses on the NAO or C&AG. However, the Public Accounts Commission's 16th report, published in August 2008 contained draft clauses drawn up by the National Audit Office, which had been endorsed by the Commission.⁴⁷ 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

⁴⁵ For further details see Library Standard Note 3745 *Business Appointment Rules*
<http://www.parliament.uk/commons/lib/research/notes/snpc-03745.pdf>

⁴⁶ *The Governance of Britain: Constitutional Renewal* Cm 7342 Ministry of Justice March 2008

⁴⁷ HC 1027 2007-08 <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmpacomm/1027/102703.htm>

- Joint presentation of NAO corporate plan by Chairman and C&AG to Board and Commission

Advertisements for both the posts of C&AG and Chair of the NAO appeared on 2 October 2008 in the *Financial Times*.⁴⁸ The candidate brief noted that it was intended to appoint the Chair firstly, who would then participate in the final consideration of candidates for the C&AG. The selection panel for the C&AG was given as the Chairman of the Public Accounts Committee, a Treasury Permanent Secretary, Tim Burr as current C&AG and the new chairman of the NAO. The panel for the Chair was identical, apart from the latter.⁴⁹

Sir Andrew Likierman, the former head of the Government Accountancy Service, was appointed Chair of NAO as announced in December 2009.⁵⁰ According to *Accountancy Age*, Sir Edward Leigh said he was 'delighted' with the appointment of 'an outstanding candidate with profound knowledge and experience of both the public and the private sectors and with a distinguished academic record' and looked forward to working with him.

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.⁵¹

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 2009.⁵² 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.⁵³

⁴⁸ The salary for the chair post was given as £50,000 pa for one day a week.

⁴⁹ *Odgers Ray and Berndtson Candidate Briefs for Chair of the National Audit Office and C&AG* October 2008.

⁵⁰ "Andrew Likierman to chair National Audit Office" 15 December 2008 *Accountancy Age*

⁵¹ "Appointment of the Comptroller and Auditor General" 16 January 2009 *No 10 gov.uk*
<http://www.number10.gov.uk/Page18044>

⁵² HC 256 2008-09 <http://www.parliament.the-stationery-office.com/pa/cm200809/cmselect/cmpublic/256/9780215526564.pdf>

⁵³ *Ibid*

Appendix: Comptrollers and Auditors General since 1834⁵⁴

Exchequer

(Comptroller-General)

1834 Sir J. Newport
1839 Lord Monteagle
1865 Sir W. Dunbar

Exchequer and Audit Department

(Comptroller and Auditor-General)

1867 Sir W. Dunbar
1888 Sir C. Ryan
1896 R. Mills
1900 D. Richmond

Comptroller and Auditor-General

1900 D. Richmond
1904 Sir J. Kempe
1911 Sir H. Gibson
1921 Sir M. Ramsay
1931 Sir G. Upcott
1946 Sir F. Tribe
1958 Sir E. Compton
1966 Sir B. Fraser
1971 Sir D. Pitblado
1976 Sir D. Henley
1981 Sir G. Downey
1988 Sir J. Bourn

Source for 1834-1900: Chris Cook & Brendan Keith, *British historical facts 1830-1900*, p 148

Source for 1900 to date: David Butler & Gareth Butler, *Twentieth-century British political facts*, p 206 (correction in respect of Sir G. Upcott)

⁵⁴ Supplied by Andrew Parker, Parliament and Constitution Centre