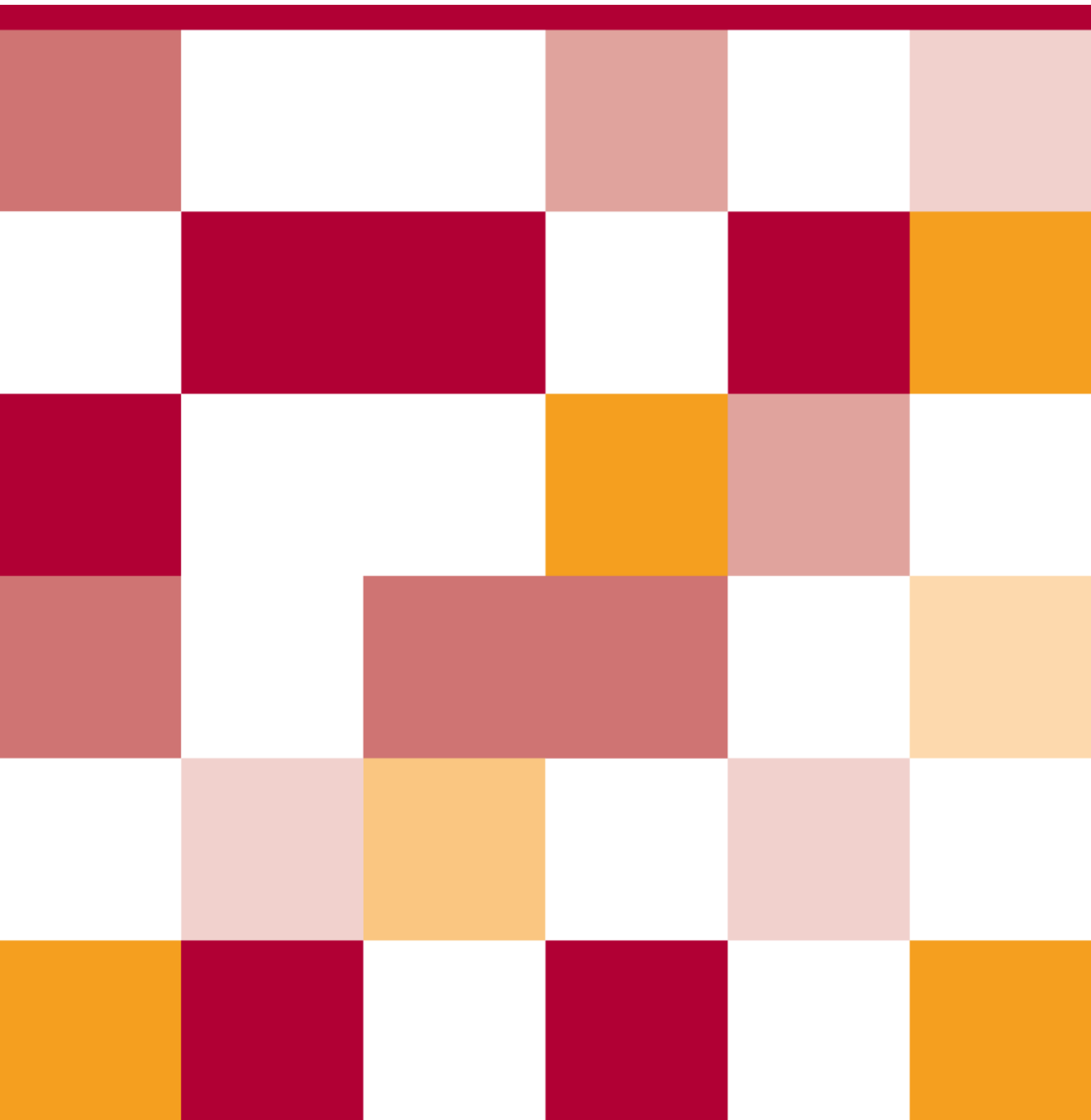




Charities Act 2006: Changes to the Accounting and Auditing Framework

**Consultation for Charities in England and Wales
(other than investment fund charities)**



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Annexes (separate documents)

Draft Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2007

Draft Charities (Accounts and Reports) Regulations 2007

Partial Regulatory Impact Assessment

SECTION 1 - Summary and questions

Legal framework

1.1 This consultation concerns:

- Changes to the law relating to charity accounts, annual reports and external scrutiny arrangements set out in Part 6 of the Charities Act 1993 (“**the 1993 Act**”). Under section 77 of the Charities Act 2006 (“**the 2006 Act**”) the Minister may make an order to reflect in charity law certain changes which are being made to company law requirements relating to audit and to make changes relating to group accounts. This order will be The Charities Act 2006 (Charitable Companies Audit and Group Accounts Provision) Order 2007. A draft version of this order is included at Annex A (“**the draft section 77 order**”).
- Changes to The Charities (Accounts and Reports) Regulations 2005 SI 572 (“**the 2005 Regulations**”) that will be made by the proposed Charities (Accounts and Reports) Regulations 2007. A draft version of these regulations is included at Annex B (“**the draft 2007 Regulations**”). The proposed changes are necessary as a consequence of the changes to Part 6 of the 1993 Act made by -
 - the Charities Act 2006 (“the 2006 Act”); and
 - the Regulatory Reform (National Health Service Charitable and Non-Charitable Trust and Accounts) Order 2005 (“the 2005 Order”).
- The draft 2007 Regulations also include proposals relating to the reporting of public benefit within the trustees’ annual report.

The draft section 77 order

1.2 The draft section 77 order will make two significant changes to Part 6 of the 1993 Act. A number of provisions in the draft 2007 Regulations will be required as a consequence of these changes.

- Currently, the accounts scrutiny provisions of Part 6 of the 1993 Act have no application to charities that are companies. The draft section 77 order will apply the accounts scrutiny provisions of Part 6 to the individual accounts of those charities that are companies, where those accounts do not have to be audited under company law. This is linked to changes in company law which will have the effect of removing the special accounts scrutiny provisions currently applying in company law to charities that are companies (section 1175 of, and schedule 9 to, the Companies Act 2006). These changes would otherwise have had the effect of creating an accounts scrutiny threshold for charities that are companies which is much higher than that applying to charities constituted in other ways.
- The draft section 77 order will also extend the scope of the new provisions relating to the preparation and scrutiny of group accounts by parent charities (see paragraph 1.5 below) to those parent charities which are companies but which do not, under company law, have any obligation to prepare group accounts.

1.3 These provisions of the draft section 77 order are designed to create a “level playing field” in terms of external scrutiny arrangements for charity accounts and for the preparation of group accounts.

How the order will be made

1.4 The draft section 77 order will be made by the Minister of the Cabinet Office in exercise of the powers conferred on her by sections 77 and 74(2) of the Charities Act 2006. As the draft section 77 order amends primary legislation it will be subject to debate by, and approval of, both houses of Parliament before it can be made and take effect.

The draft 2007 regulations

Group accounts

1.5 The 2006 Act makes a number of changes to Part 6 of the 1993 Act. Perhaps the most significant change is that it inserts a new section 49A and Schedule 5A into the 1993 Act which creates a new provision for the preparation and scrutiny of group accounts of parent charities and their subsidiary undertakings. Regulations may be made by the Minister, in exercise of the powers conferred by that Schedule to:

- set thresholds for the preparation of group accounts by parent charities, and for the scrutiny of those accounts;
- provide a framework for the preparation and scrutiny of such group accounts, and, where group accounts are prepared, for the expansion of the annual reports currently prepared by parent charities so as to include information relating to their subsidiary undertaking(s).

1.6 There are other changes made by the 2006 Act to Part 6 of the 1993 Act which are reflected in the draft 2007 Regulations. These are –

Whistleblowing

1.7 The enactment of a whistleblowing duty applying to charity auditors and examiners (new section 44A of the 1993 Act) removes the need for this issue to be addressed through regulations as it is currently. The draft 2007 Regulations therefore do not include any additional requirements in relation to the whistleblowing duty now provided for in the 1993 Act.

Independent Examination

1.8 The imposition of a stricter qualification requirement for independent examiners, in cases where the income of the charity exceeds £250,000 (new section 43(3A)), also gives rise to minor changes to the current regulations. The draft 2007 Regulations will require such examiners to report on the qualification that they

hold.

Charitable grants

- 1.9 The enactment of special rules relating to the disclosure of charitable grants contained in the new section 42(2A) of the 1993 Act (introduced by paragraph 133 of Schedule 8 to the 2006 Act) is considered to have the effect that paragraph 1(o) of schedule 1 to the 2005 Regulations would go beyond the powers which section 42(2) of the 1993 Act confers. The draft 2007 Regulations restrict the scope of this sub-paragraph accordingly thereby ensuring compatibility with the 1993 Act.

Charities administered by health service bodies

- 1.10 The 2005 Order introduced a special accounts scrutiny regime for charities administered by health service bodies in England and Wales. This regime was changed in some respects by the 2006 Act. A number of amendments to the 2005 Regulations are also required as a consequence of these changes, and are reflected in the draft 2007 Regulations.

Reporting public benefit

- 1.11 The 2006 Act reinforced the requirement that all charities must have charitable purposes which are for the public benefit. The draft 2007 Regulations include provision for charities to explain, within their annual report, on how they meet the public benefit requirement and to confirm that the charity trustees have had regard to the Commission's guidance on public benefit where that has been relevant.

Investment fund charities

- 1.12 This consultation relates only to the changes in the draft section 77 order and draft 2007 Regulations as they apply to charities other than common investment funds and common deposit funds ("investment fund charities"). As there are relatively few of this type of specialised charity, a separate consultation exercise is being undertaken in relation to changes which are proposed for the accounts preparation and scrutiny regime for investment fund charities, copies of which are available electronically at: www.cabinetoffice.gov.uk/thirdsector.

How the Regulations will be made

1.13 The draft 2007 Regulations are made by the Minister for the Cabinet Office, in exercise of the powers conferred upon her by sections 43, 44, 45 and 86(3) of the 1993 Act after consultation as required by section 86(4) of the 1993 Act. The draft 2007 Regulations will also be subject to Parliamentary scrutiny, although through a process that does not normally require debate. Some of the changes in the draft 2007 Regulations are consequent on changes that the draft section 77 order will make, so the draft 2007 Regulations will be made after the draft section 77 order has been made.

Factors for change – Small Charities that are companies

1.14 During the passage of the Company Law Reform Bill (now the Companies Act 2006) there was debate on the scrutiny arrangements for charities below the professional audit threshold(s). It was argued that:

- having different régimes for smaller charities that are companies and smaller unincorporated charities – régimes which are similar in their aims but different in detail – is unnecessarily complex and confusing;
- the independent examination régime is more appropriate for charities than the reporting accountant régime because it is a form of scrutiny designed specifically for charities (as opposed to commercial companies).

1.15 These were arguments for treating smaller charities that are companies as charities rather than companies for this purpose. The Office of the Third Sector sought the views of sector umbrella bodies who welcomed the idea and the Government accepted its merit. Parliament agreed that the audit/examination arrangements for the accounts of small charities that are companies, which are currently set out in the Companies Act 1985, would be taken out of company law and instead dealt with under charity law. The necessary amendments were made to company law by means of what is now the Companies Act 2006 (see section 1175 and Schedule 9). However, it was decided that an enabling power, set out in section 77 of the 2006 Act, should be provided in order to deal with the appropriate

changes to charity law. The draft section 77 Order will make those changes.

Factors for change – Group accounts

- 1.16 Charities are increasingly undertaking activities to further both their charitable objectives and to raise funds through the use of subsidiary undertakings. Such structures are adopted both to mitigate risk and to enable charities to undertake trading activities in a tax efficient manner.
- 1.17 The scale of activities undertaken through a subsidiary undertaking controlled by a parent charity can be significant: on occasions, the income received from the subsidiary undertaking may exceed the income generated directly by a parent charity. In such cases, if consolidated accounts are not prepared, the individual accounts of the parent charity only provide a partial picture of the scale and range of activities undertaken and of the resources controlled by a charity. However, until the changes recently introduced by the 2006 Act take effect there is no legal requirement for the preparation of group accounts by a parent charity (except by a parent charity which is a company, in those cases where company law requires the preparation of group accounts).
- 1.18 The 2006 Act has therefore inserted a new section 49A and Schedule 5A into the 1993 Act creating a legal requirement for the preparation and scrutiny of group accounts. However, in a number of areas the detailed requirements are left to be prescribed by Regulations.
- 1.19 Many of the additions and changes now being proposed to the 2005 Regulations are simply a consequence of the 2005 Order, the 2006 Act, and the draft section 77 order. This consultation is not about the merits of the 2005 Order or the 2006 Act.

Key additions to the regulations – Group accounts

- 1.20 In order to facilitate the implementation of the framework created by the 2006 Act for the preparation and scrutiny of group accounts, a number of additions to the 2005 Regulations are now proposed. In particular, the draft 2007 Regulations will:

- Set the threshold at which - in terms of the “aggregate gross income” of a parent charity and its subsidiary undertaking(s) – the obligation to prepare group accounts arises;
- Provide for the form and content of group accounts and for the methods and principles to be applied in the preparation of group accounts;
- Prescribe the information to be provided by way of notes to the group accounts;
- Set the threshold(s) at which group accounts so prepared will be subject to audit, and prescribe the nature of the scrutiny; and
- Extend the scope of the trustees’ annual report to include a report on the activities and other information relating to subsidiary undertakings included in group accounts.

1.21 The Regulations will also cover the following technical or consequential matters relating to the preparation and scrutiny of group accounts –

- requirements placed on charity trustees of parent charities to secure that financial years of the charity and its subsidiary undertaking(s) coincide, and dealing with both threshold and preparation issues in those cases where they do not coincide;
- the circumstances in which a subsidiary undertaking may or must be excluded from the group accounts;
- defining the duties of those scrutinising group accounts;
- providing those scrutinising group accounts with rights to information in relation to subsidiary undertaking(s); and
- the method of determining the aggregate gross income of a parent charity and its subsidiary undertaking(s) for threshold purposes.

Factors for change – public benefit

- 1.22 The 2006 Act includes a statutory definition that, to be a charity, an organisation must have purposes which fall within the descriptions of charitable purposes set out in the 2006 Act and that these purposes must be for the public benefit. The 2006 Act requires the Commission to publish guidance to promote awareness and understanding of the requirement that the purposes of a charity must be for the public benefit and also requires that charity trustees must have regard to this guidance when they exercise any powers or duties where this guidance is relevant.
- 1.23 In order to provide charity trustees with a mechanism through which to report on how they meet the public benefit requirement, the draft 2007 Regulations redefine what is required in the annual report to include information about how the activities of the charity further its purposes for the benefit of the public. The trustees of charities below the audit threshold, that is, charities with an annual income below £500,000, would be asked to include a brief summary of the main activities which were undertaken by the charity in order to further its purposes for the benefit to the public during the year. Trustees of charities above the audit threshold would be asked to provide a more detailed account, in the form of a review of significant activities which the charity undertook during the year in order to further the charity's purposes for the benefit of the public.
- 1.24 All charities which must prepare an annual report would be required to confirm that the charity trustees have had regard to the Commission's guidance on public benefit where it is relevant.

Structure of the draft 2007 Regulations

- 1.25 It is proposed that the changes to the 2005 Regulations are consolidated into a new statutory instrument - The Charities (Accounts and Reports) Regulations 2007 - that will replace the 2005 Regulations.

Timetable

- 1.26 This consultation will run until 14 September 2007. Analysis of the responses to consultation will follow, along with any resulting changes to the draft section 77 Order or draft 2007 Regulations. Subject to Parliamentary approval of the draft section 77 Order and draft 2007 Regulations, it is proposed that the changes take effect from 1 January 2008 and apply to the financial years of charities beginning on or after that date.

Further information

- 1.27 Section 4 of this document provides brief explanatory notes to the draft section 77 order and the draft 2007 Regulations setting out the purpose and intention of each provision.

Questions for consideration

- 1.28 In the light of the discussion and background provided in the main text of this document consultees are asked, in particular, to respond to the following questions, giving reasons for their views:

Questions:

- Q1: Do the requirements for the form and content of group accounts and related notes to the group accounts provided by the draft 2007 Regulations provide a sufficiently robust framework for their preparation?
- Q2: If not, how might the draft 2007 Regulations be strengthened to provide a workable framework for their preparation?
- Q3: Do you agree that the threshold set for the preparation of group accounts should be identical to that set for the audit of group accounts, and that the scrutiny should always take the form of an audit?
- Q4: Do you consider the draft 2007 Regulations set a reasonable threshold for the audit of group accounts? If not, what threshold do you believe to be

appropriate and why?

- Q5: In the context of a group which contains a non-charitable subsidiary undertaking should aggregate gross income be calculated by reference to that subsidiary's turnover, or by reference to those items of income or gains that would be construed as gross income in charity accounts?
- Q6: In general, do you consider that the draft 2007 Regulations provide a workable framework for the preparation and audit of group accounts? Do you have any suggestions as to how the Regulations relating to group accounts might be improved?
- Q7: Do you agree with the approach proposed in the draft section 77 order for bringing small charities that are companies into the scrutiny regime of Part 6 of the 1993 Act?
- Q8: Do the draft 2007 Regulations provide an appropriate framework for the reporting duties of auditors and independent examiners of small company charities' accounts? If not, how might they be improved?
- Q9: Do the draft 2007 Regulations provide an appropriate framework for the reporting duties of auditors of group accounts for parent charities that are companies? If not, how might they be improved?
- Q10: Small charities that are companies, but which are also exempt charities are excluded from the draft section 77 order. Does that present any particular problems?
- Q11: Do the draft 2007 Regulations provide an appropriate focus within the group annual report to enable trustees to explain the aims and objectives set for subsidiary undertakings and to explain the strategies adopted and activities undertaken to achieve them?
- Q12: Do the draft 2007 Regulations create an appropriate balance between providing relevant information about activities conducted through subsidiary undertakings and the regulatory cost of providing such information? If not, what provisions might be added or removed?
- Q13: Do you agree that it is appropriate for charities to report publicly how they meet the public benefit requirement?
- Q14: Do you agree that the annual report of a charity is the best medium through which to report public benefit? If not, please explain what other medium should be considered and why.
- Q15: Do the draft 2007 Regulations achieve the right balance in reporting public benefit and the regulatory cost of providing such information? If not, how

might the provisions be improved?

Q16: Do you have any comments about the partial Regulatory Impact Assessment (RIA) that accompanies this consultation? Does it present a sound analysis of the costs of compliance for charities and the benefits the Regulations will bring?

Q17: Do you have any comments or suggestions on the drafting of the Regulations as they apply to general and special case charities?

SECTION 2 - How to reply

- 2.1 We invite comments by 14 September 2007 at the latest. Earlier responses would be very welcome. Responses should be sent - by email if possible - to the address below. Please mark your responses "Charities Accounts and Reports - Consultation" in the e-mail subject line or on the envelope.

Please send responses to:

Helen Morgan
Office of the Third Sector
Cabinet Office
35 Great Smith Street
London SW1P 3BQ
helen.morgan@cabinet-office.x.gsi.gov.uk

Enquiries regarding the contents of this consultation document should be made to:

Ben Harrison
Office of the Third Sector
Cabinet Office
35 Great Smith Street
London SW1P 3BQ
ben.harrison@cabinet-office.x.gsi.gov.uk

or to

Ray Jones
Head of Accounting Policy
Charity Commission
Woodfield House,
Tangier,
Taunton,
Somerset
TA1 4BL
ray.jones@charitycommission.gsi.gov.uk

- 2.2 All responses will be acknowledged. In accordance with the Code of Practice on Open Government comments will be made publicly available unless respondents specifically request otherwise. If you are replying by e-mail, please make it clear in the body of your response whether or not you wish your comments to be treated as confidential.

Additional copies

- 2.3 Additional copies of this consultation document are available electronically at: <http://www.cabinetoffice.gov.uk/thirdsector>.
- 2.4 You may also photocopy them if you wish.

E-mail disclaimer

- 2.5 The information you send us may be passed to colleagues within The Office of the Third Sector and the Charity Commission and/or published in a summary of responses received to this consultation. We will assume that you are content for us to do this, and that if you are replying by e-mail, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system. However, we will respect any wish for confidentiality that you make in the main text of your submission to us.

Complaints or comments about this consultation paper

- 2.6 This consultation document has been drafted in accordance with the Cabinet Office's Code of Practice on Consultation. The Code aims to increase the involvement of people and groups in public consultations, minimising the burden it imposes on them, and giving them a proper time, a standard minimum of 12 weeks, to respond.
- 2.7 In undertaking this consultation we have sought to apply the following criteria:
- Consult widely throughout the process, allowing a minimum of 12 weeks for

written consultation at least once during the development of the policy.

- Be clear about what our proposals are, who may be affected, what questions are being asked and the timescale for responses.
- Ensure that our consultation is clear, concise and widely accessible.
- Give feedback regarding the responses received and on how the consultation process influenced the policy.
- Monitor our Department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
- Ensure our consultation follows better regulation practice, including carrying out a Regulatory Impact Assessment if appropriate.

Consultation Co-ordinator

2.8 If you have any complaints or comments about this consultation process, you should contact the Cabinet Office consultation co-ordinator by e-mail at:

ian.ascough@cabinet-office.x.gsi.gov.uk

Alternatively, you may wish to write to:

Ian Ascough
Better Regulation Executive
22 Whitehall
Kirkland House
London SW1A 2WH

SECTION 3 - Policy and background

Accounting and reporting framework

- 3.1 Charities are accountable to donors, beneficiaries and the general public for the resources they control. Good charity reporting which shows and explains how a charity is using its resources and that is reliable, consistent and available to the public is important in securing that objective. The charity accounting framework applicable to charities in England and Wales (other than charities that are companies and exempt charities) is provided by -
- Part 6 of the 1993 Act, as amended by the 2005 order and the 2006 Act. The 2006 Act is expected to be further amended by the draft section 77 order; and
 - the accounting and reporting Regulations made under the 1993 Act.
- 3.2 These provisions do not currently apply to the preparation and scrutiny of the accounts of charities that are companies. This is entirely regulated by company law. However, the effect of the draft section 77 order will be that some of the relevant provisions of Part 6 will apply to charities that are companies, in the manner outlined above.
- 3.3 The 2005 Regulations currently make provision for the form and content of charity accounts, the methods and principles adopted in their preparation, notes to the accounts and for an annual report containing information on activities and other information relating to the charity, its trustees and officers. The 2005 Regulations also make provision for determining the financial year of charities and duties of charity auditors and independent examiners and the reports which they are required to make, together with their rights to information and explanations necessary for their audit or examination.
- 3.4 The 2005 Regulations, whilst specifying the accounting statements that make up the statement of accounts (accounts) and their purpose, do not provide for the detailed content of accounts or set out in detail the methods and principles to be

adopted in their preparation. Rather the 2005 Regulations require accounts to be prepared in accordance with the methods and principles set out in the Statement of Recommended Practice – Accounting and Reporting by Charities (the Charities SORP). Similarly, in setting out the information to be disclosed by way of notes to the accounts, reference is made where possible to the methods and principles or requirements of the Charities SORP. This approach is preserved in the draft 2007 Regulations.

Groups: consolidated accounts

- 3.5 The 1993 Act was, until new measures were introduced by the 2006 Act, based on the premise that charities produce entity or individual accounts. Individual accounts reflect the transactions undertaken directly by the charity and the assets that it can control directly.
- 3.6 Charities are becoming increasingly sophisticated in the structures that they adopt to undertake their charitable activities and to generate income. Increasing use is being made of trading subsidiaries to undertake income generating trades. The separation of such trades into a subsidiary undertaking controlled by the charity allows profits to be transferred to the parent charity through gift aid arrangements allowing charities to receive such income free of income or corporation tax. Other charities will choose to conduct certain of their charitable activities through subsidiaries to help isolate the charity from risk or to enable activities to be undertaken overseas.
- 3.7 The presentation of individual accounts may therefore only reflect part of a charity's wider activities and resources it controls and deploys. Activities and resources indirectly controlled through subsidiary undertakings are omitted from individual accounts and are simply disclosed as investments in the charity's balance sheet. Consolidated or group accounts attempt to present a picture of the charity and its subsidiary undertakings as an economic unit enabling users of accounts to appreciate the wider aspects of a charity's work and the resources it deploys indirectly through a group structure.
- 3.8 Accounting Standards (Financial Reporting Standard 2: Accounting for subsidiary

undertakings) endorse this accounting approach as necessary to present a true and fair view of the group. The Charities SORP, which must be consistent with accounting standards, reflects this and recommends that all parent charities with an aggregate group income above the individual charity audit threshold should produce group accounts. The preparation of group accounts is now generally accepted sector practice.

- 3.9 The policy objective for the Regulations for group accounts is to ensure a workable framework for their preparation and audit and to do so as economically as possible in terms of the requirements introduced. Wherever possible the draft 2007 Regulations have built on the framework already provided for by the existing 2005 Regulations for individual accounts of charities. In dealing with consolidation methods and principles reliance has been placed on generally accepted accounting practice supplemented by the Charities SORP's recommendations.
- 3.10 In this way the form and content requirements for group accounts are concise. Similarly, where group accounts are prepared the notes provided for the individual accounts of a charity are simply expanded to provide information as if all the subsidiary undertakings included in the consolidation were part of the parent charity.

Questions:

Q1: Do the requirements for the form and content of group accounts and related notes to the group accounts provided by the draft 2007 Regulations provide a sufficiently robust framework for their preparation?

Q2: If not, how might the draft 2007 Regulations be strengthened to provide a workable framework for their preparation?

- 3.11 The draft 2007 Regulations provide for the threshold at which group accounts should be prepared and scrutinised. These thresholds could be set independently at differing amounts, and it would be possible to provide for the independent examination rather than audit of group accounts in some cases. However, the policy preference is that the same threshold should apply to both the preparation

and scrutiny of group accounts, and that the scrutiny should always take the form of an audit. To ask charities to prepare group accounts without the assurance offered by audit would limit their usefulness to users and it would clearly be impracticable to ask for their audit in the absence of their preparation. The approach proposed is also consistent with the Companies Act 2006 where the audit threshold for individual accounts is the same as the group accounts preparation and audit thresholds.

Questions:

Q3: Do you agree that the threshold set for the preparation of group accounts should be identical to that set for the scrutiny of group accounts, and that the scrutiny should always take the form of an audit?

- 3.12 The Charities SORP currently recommends the preparation of group accounts where the gross income of the group exceeds the audit threshold applying to an individual charity's accounts. This recommendation is generally applied by the sector. The use of the charity audit threshold also prevents the creation of subsidiary undertakings simply to avoid audit and addresses the need for audit by considering the size of the group rather than simply that of the parent charity.
- 3.13 Public accountability points towards a lower audit threshold applying to charity groups than for private commercial groups. This principle already applies to individual accounts of charities. For example, the Companies Acts' current turnover threshold for audit exemption of commercial companies is £5,600,000, whilst the corresponding threshold for charities is annual income of £500,000 following measures introduced by the 2006 Act.
- 3.14 In weighing up these considerations the draft 2007 Regulations propose a common threshold for both the preparation and audit of charity group at an aggregate gross income of £600,000 before consolidation adjustments and £500,000 net of consolidation adjustments.

Questions:

Q4: Do you consider the draft 2007 Regulations set a reasonable threshold for the audit of group accounts. If not, what threshold do you believe to be appropriate and why?

- 3.15 The Regulation defines “aggregate gross income” of a charity group by reference to the aggregate of the parent charity’s gross recorded income and that of any subsidiary undertaking that is a charity (both calculated using the existing statutory definition of gross income) and by reference to the turnover of any non-charitable subsidiary undertaking. The turnover definition is based on that in section 474 Companies Act 2006. An alternative approach would be to define aggregate gross income, in the context of a non-charitable subsidiary, not by reference to its turnover but rather by reference to those items of income or gains that would be construed as gross income in charity accounts. This creates greater consistency but would result in an additional calculation before aggregate gross income of a group could be determined.

Question:

Q5: In the context of a group which contains a non-charitable subsidiary undertaking should aggregate gross income be calculated by reference to that subsidiary’s turnover, or, by reference to those items of income or gains that would be construed as gross income in charity accounts?

- 3.16 The introduction of group accounts into charity law also necessitates the extension of a number of provisions that currently apply to individual accounts and their audit to group situations. Issues such as defining financial years, situations where subsidiary undertakings may or must be excluded from consolidation and auditors rights to information all need to be addressed. Again, the policy aim has been to be as concise as possible whilst ensuring that a workable framework is put in place. Where possible the draft 2007 Regulations mirror corresponding provisions of the Companies Act 2006.
- 3.17 In relation to group accounts, the existing audit reporting duties applying to a charity’s individual accounts are extended so as to give an opinion on the group

accounts prepared for a parent charity and its subsidiary undertaking(s).

Question:

Q6: In general, do you consider that the draft 2007 Regulations provide a workable framework for the preparation and audit of group accounts? Do you have any suggestions as to how the Regulations relating to group accounts might be improved?

Audit or examination of small charities that are companies

3.18 The commencement of section 1175 and schedule 9 of the Companies Act 2006 and the section 77 Order will make further changes for small charities that are companies, bringing their external scrutiny regime into line with that of unincorporated charities. For these purposes small company charities are those charities constituted as companies under the Companies Acts which are not required to have their accounts audited under company law.

3.19 Until now for smaller charities (i.e. those below the professional audit threshold) different arrangements apply depending on whether the charity is a company or not:

- for small charities that are companies, if gross income exceeds £90,000 but not £250,000 (£500,000 for financial years starting on or after 27 February 2007) and the balance sheet total is not more than £1.4m (£2.8m for financial years starting on or after 27 February 2007), the directors may have a report prepared on the accounts by a reporting accountant. If they do that the company is exempt from the audit requirement. Where the gross income is below £90,000, no scrutiny at all is required unless the balance sheet total threshold is exceeded;
- for non-company charities, for financial years starting on or after 27 February 2007, the gross income threshold for audit is increased from £250,000 to £500,000, and an asset threshold is introduced of £2.8m for charities with an income between £100,000 and £500,000. For both audit and independent

examination the total expenditure threshold has also been removed for financial years starting on or after 27 February 2007. Where the gross income of the charity is below £10,000 then no scrutiny at all is required. If gross income exceeds £10,000 and the audit thresholds are not exceeded, the trustees may elect for an examination by an independent examiner in place of an audit. Additionally, charities with a gross income over £250,000 that are not otherwise required to have a professional audit must have their accounts examined by an independent examiner from a recognised professional body.

- 3.20 The draft section 77 order will bring small company charities into the scrutiny regime of Part 6 of the 1993 Act. This will address a long standing sector concern about the inconsistencies between the external scrutiny arrangements applied by the Companies Act to smaller company charities and those applied by the 1993 Act to non-company charities. The extension of the accounts scrutiny regime in Part 6 to the individual accounts of small charities that are companies creates a need for the new accounting and reporting Regulations to address the reporting duties of auditors and independent examiners of small company charities.
- 3.21 The enabling power in section 77 of the 2006 Act deals with two separate matters.
- Subsection (1)(a) enables changes to be made to the 1993 Act or the 2006 Act “in consequence of, or in connection with, any changes made or to be made by any enactment to the provisions of company law relating to the accounts of charities that are companies or to the auditing of, or preparation of reports in respect of, such accounts.” Articles 3 to 8 of the draft section 77 Order are to be made under this power.
 - Subsection (1)(b) enables changes to be made to the 1993 Act or the 2006 Act “for the purposes of, or in connection with, applying provisions of Schedule 5A to the 1993 Act (group accounts) to charities that are companies that are not required to produce group accounts under company law”. Articles 2 and 9 of the draft section 77 order are to be made under this power.
- 3.22 In relation to the audit and examination of the individual accounts of small company charities, the policy approach has been to apply those duties that currently apply to non-company charities, modified, in so far as necessary, to

recognise the company law framework applying to their preparation.

- 3.23 The draft section 77 order will also extend the application of the new group accounting provisions (see paragraphs 3.5 to 3.17 above) to those parent charities which are companies but which are not required by company law to prepare group accounts. New Regulations are required to provide reporting duties for auditors undertaking the audit of group accounts under the 1993 Act. In relation to group accounts of a parent charity that is a company, the existing reporting duties of auditors as applied to the individual accounts of charities are extended so as to give an opinion on the group accounts prepared for a parent charity and its subsidiary undertaking(s).
- 3.24 The draft section 77 Order does not make any provision for exempt charities. One effect of the Companies Act 2006 amendments will be to remove the “charity” accounts scrutiny provisions which currently apply to all charities that are companies, including exempt charities, and replace them with the general company law audit regime. The effect will be that small charities that are companies and are exempt charities will be, as regards accounts scrutiny, in the same position as exempt charities that are non-charitable companies. This means that there will be no requirement for accounts scrutiny at all unless the company is over the general company audit threshold. This is because the proposals to apply the accounts scrutiny provisions of Part 6 of the 1993 Act to smaller charitable companies do not apply to exempt charities. However, we understand that there are very few companies that are exempt charities and so it has been decided that the draft order should not make provision for these charities.

Questions:

- Q7: Do you agree with the approach proposed in the draft section 77 order for bringing small charities that are companies into the scrutiny regime of Part 6 of the 1993 Act?**
- Q8. Do the draft 2007 Regulations provide an appropriate framework for the reporting duties of auditors and independent examiners of small company charities’ accounts? If not, how might they be improved?**
- Q9: Do the draft 2007 Regulations provide an appropriate framework for the reporting duties of auditors of group accounts for charities that**

are companies? If not, how might they be improved?

Q10: Small charities that are companies, but which are also exempt charities are excluded from the draft section 77 order. Does that present any particular problems?

Trustees' Annual Reports – Group accounts

- 3.25 The current 2005 Regulations set out the legal requirements for the annual report which are supplemented by the more detailed recommendations and guidance provided by the Charities SORP.
- 3.26 The annual report provides details of the aims and objectives set by a charity for the reporting year, together with details of the strategies adopted and significant activities undertaken to achieve those aims and objectives. It provides details of the achievements of the charity during the year, measured by reference to the aims and objectives set by the charity. In so doing it meets a key policy aim of enhancing accountability of charities to donors, beneficiaries and the general public.
- 3.27 Charities are increasingly undertaking activities to further both their charitable objectives and to raise funds through the use of subsidiary undertakings. The preparation of group accounts provides information on activities undertaken and resources controlled by a parent charity through subsidiary undertakings. Accompanying information contained in the annual report is vital in explaining and giving context to the numerical information contained in the accounts. It is therefore important, if this policy objective is to be maintained, for the annual report accompanying group accounts to also address these key issues in the context of the activities of both the parent charity and the subsidiary undertakings it controls.
- 3.28 The draft 2007 Regulations seek to achieve this policy aim by the introduction of a new Regulation 18. In addition to the information required in relation to the parent charity set out in Regulation 16, further information is required in relation to the significant activities of subsidiary undertakings. The focus remains on the aims

and objectives set for subsidiary undertakings, the strategies for achieving them and details of activities and achievement. In addition, key policy statements in relation to investment performance and policies, reserves and risk management are extended to include subsidiary undertakings.

Questions:

Q11: Do the draft 2007 Regulations provide an appropriate focus within the group annual report to enable trustees to explain the aims and objectives set for subsidiary undertakings and to explain the strategies adopted and activities undertaken to achieve them?

Q12: Do the draft 2007 Regulations create an appropriate balance between providing relevant information about activities conducted through subsidiary undertakings and the regulatory cost of providing such information? If not, what provisions might be added or removed?

Trustees' annual reports – Public benefit

- 3.29 The 2006 Act reinforces the requirement that all charities must have purposes which are for the public benefit and gives the Charity Commission a new objective to promote awareness and understanding of the public benefit requirement. The Act requires the Commission to publish guidance in support of that objective and requires charity trustees to have regard to that guidance when they exercise any powers or duties where the guidance is relevant.
- 3.30 The Commission also has the objective of enhancing the accountability of charities to donors, beneficiaries and the general public. Charity trustees already provide information in their annual reports which describes the activities and achievements of the charity and this should now be extended to include information about how the charity meets the public benefit requirement. Many charities are already starting to use their annual report to address the issue of how the charities purposes benefit the public.
- 3.31 It is recognised that there is a need to balance the desire for greater transparency and accountability by charities about the benefits they provide to the public, against commitments to reduce the administrative burdens on charities. A 'one

size fits all' approach to reporting on public benefit is therefore not considered to be appropriate.

- 3.32 The proposals in the draft 2007 Regulations include different requirements for smaller charities. The trustees of charities below the new statutory audit threshold introduced by the 2006 Act would be required to give a brief summary of how the charity's purposes have provided benefit to the public during the year. Larger charities, above the audit threshold, would be required to provide a more detailed account of how the charity's purposes have provided benefit to the public during the year.
- 3.33 The draft 2007 Regulations will require all those charities which must prepare an annual report to include in that report confirmation by the charity trustees that they have had regard to any guidance on public benefit published by the Commission when they exercise any powers or duties where the guidance is relevant.
- 3.34 The Charity Commission issued, on the 8th March 2007, draft public benefit guidance "Charities and Public Benefit" for public consultation. To accompany this draft guidance, the Charity Commission has also issued on its website its "Analysis of the law underpinning Charities and Public Benefit", which explains the legal basis for the principles of public benefit they have identified. Subject to the responses which it receives the Charity Commission will review the draft guidance and publish final guidance later this year.
- 3.35 Copies of the Charity Commission's consultation document "Charities and Public Benefit" and their analysis of the legal principles contained in "Analysis of the law underpinning Charities and Public Benefit" are available electronically at: www.charitycommission.gov.uk/news/pbnewsindex.asp.

Questions:

Q13: Do you agree that it is appropriate for charities to report publicly how they meet the public benefit requirement?

Q14: Do you agree that the annual report of a charity is the best medium through which to report public benefit? If not, please explain what

other medium should be considered and why.

Q15: Do the draft 2007 Regulations achieve the right balance in reporting public benefit and the regulatory cost of providing such information? If not, how might the provisions be improved?

Regulatory Impact

3.36 This consultation is accompanied by a Regulatory Impact Assessment which sets out the expected costs and benefits that the new Regulations will bring to charities and other businesses.

Questions:

Q16: Do you have any comments about the Regulatory Impact Assessment (RIA) that accompanies this consultation? Does it present a sound analysis of the costs of compliance for charities and the benefits the 2007 Regulations will bring?

Q17: Do you have any comments or suggestions on the drafting of the Regulations as they apply to general and special case charities?

SECTION 4 - Detailed proposals

- 4.1 This section acts as an explanatory note to the draft section 77 order and the draft 2007 Regulations, in so far as they apply to general and special case charities explaining briefly the purpose and intention of each Regulation.

Draft Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2007

- 4.2 The proposed amendments to the Charities Act 1993, set out in the draft 2007 Order, are to the 1993 Act including some provisions inserted by the 2006 Act. The changes are to some extent consequential on the commencement of section 1175 and schedule 9 of the Companies Act 2006 removing the special accounts scrutiny provisions currently applying in company law to charities that are companies.
- 4.3 The intention is that the relevant changes to the 1993 Act, brought about by the draft section 77 Order are commenced at the same time as the related changes made by the 2006 Act and the relevant provisions of the Companies Act 2006, namely section 1175 and schedule 9.

Article 1 – Citation, commencement and extent

- 4.4 This article provides the date on which the provisions will come into force, including which financial years of charities it will apply to, and the name by which the order will be known. It is proposed that the Order comes into force on 1 January 2008, affecting charities' financial years that begin on or after that date. Article 3 needs to come into force early since this provides the enabling power to amend the 2005 Regulations to deal with the duties of an auditor making a report on accounts prepared under section 226 of the Companies Act 1985. The order applies only to England and Wales.

Article 2 – Amendments to section 43 of the Charities Act 1993

- 4.5 This article amends section 43 of the 1993 Act, as amended by section 28 of the 2006 Act. Section 43 of the 1993 Act provides for the audit or examination of the accounts of a charity. As it stands, it does not apply to charities that are companies.
- 4.6 Article 2 amends section 43 so that the audit or examination requirements of that section apply unless the charity is required to be audited in accordance with company law. The effect of this is to apply the audit or examination requirements of charity law to charities that are companies but which fall below the company law threshold for professional audit.
- 4.7 Article 2 also identifies of persons who are qualified to act as independent examiner of a charity's accounts where the charity's annual income exceeds £250,000. This is currently done in section 43 of the 1993 Act, partly by referring to section 249D of the Companies Act 1985, but that section will be repealed by section 1175 of the Companies Act 2006.

Article 3 – Amendments to section 44 of the Charities Act 1993

- 4.8 This article makes changes to section 44 of the 1993 Act which are consequential on the amendments to section 43. It adds a provision to section 44 to allow regulations made under section 44 to cover the situation where an auditor carries out an audit under section 43 of accounts prepared under Part 7 of the Companies Act 1985. "Financial Year" is defined in section 97(1) of the Charities Act 1993, including in relation to a charity which is a company.
- 4.9 As previously noted (in paragraph 4.4 above), this article would come into force early, to enable the draft 2007 Regulations to be made before the new audit regime is brought into force.

Article 4 – Amendments to section 45 of the Charities Act 1993

- 4.10 Article 4 amends section 45(5) of the 1993 Act, which deals with the documents that must be attached to the copy of the annual report which is transmitted to the Charity Commission. The intended effect of the amendment is that these would include, where relevant, a copy of the report made by either the auditor or the

independent examiner under section 43. This article makes amendments consequential on the removal, by the Companies Act 2006, of the reporting accountant regime for small companies that are charities.

Article 5 – Amendments to section 47 of the Charities Act 1993

4.11 This article amends section 47 of the 1993 Act, which provides for the public inspection of a charity's annual report and accounts. The amendments are consequential on the amendments to section 43.

4.12 Subsection (3) of section 47 specifies what is meant by a charity's most recent accounts. In the case of charities other than companies, the "most recent accounts" are simply the most recent accounts prepared under section 42 of the 1993 Act, whereas in the case of a charitable company they are specified as the most recent accounts that have been audited, examined or which are exempt from audit.

Article 6 – Amendments to section 68A of the Charities Act 1993

4.13 This article makes a consequential change to section 68A of the 1993 Act, which is inserted by the 2006 Act. Section 68A imposes a "whistle-blowing" duty to report certain matters to the Charity Commission on the auditor or reporting accountant of a charity which is a company. As a consequence of the current proposals, section 44A of the 1993 Act will apply where the auditor or examiner of the accounts of a charitable company has been appointed under section 43, and the scope of section 68A needs to be restricted accordingly.

Article 7 – Amendments to section 69 of the Charities Act 1993

4.14 Article 7 makes a consequential amendment to section 69 of the 1993 Act to limit its effect to accounts which are subject to audit under Part 7 of the Companies Act 1985. As a consequence of the current proposals, the Charity Commission will have the power under section 43(4)(b) of the 1993 Act to order an audit of accounts of a charitable company that are not subject to audit under Part 7.

Article 8 – Amendments to schedule 5A of the Charities Act 1993

- 4.15 This article makes amendments to schedule 5A of the 1993 Act, as inserted by the 2006 Act. That schedule provides for the preparation of group accounts where a charity is a parent charity. The purpose of these amendments is to require parent charities that are companies to prepare group accounts under Schedule 5A where they are not required to do so under the corresponding provisions of company law, subject to a threshold that will be the same for charitable companies as for other charities.
- 4.16 Article 8(2) includes charitable companies in the definition of “parent charity” for the purposes of Schedule 5A. Article 8(4) amends Paragraph 3(1) of Schedule 5A to provide that the duty to prepare group accounts will apply to a parent charity which is a company if the charity is not required to prepare consolidated accounts for the year under section 227 of the Companies act 1985. The remaining provisions of Article 8 are consequential.

Draft Charities (Accounts and Reports) Regulations 2007

Regulation 1 - Citation and commencement

- 4.17 Regulation 1 provides the date on which it is proposed that the 2007 Regulations will come into force and the name by which the new Regulations will be known. It amends and replaces Regulation 1 of the 2005 Regulations.

Regulation 2 – Interpretation

- 4.18 Regulation 2 sets out how specific terms used within the new Regulations should be interpreted. It is essentially the same as Regulation 2 of the 2005 Regulations except to the extent that it is necessary to take account of the changes discussed above.

Regulation 3 - Form and content of statements of accounts

- 4.19 Regulation 3 applies only to general charities and replaces Regulation 3 of the 2005 Regulations and is largely unamended. The form and content of investment and special case charities are dealt with separately in Regulation 4 and 5 respectively.
- 4.20 Regulation 3 also provides for a commencement date for financial years which begin on or after 1 January 2008 with a provision to allow early adoption where the charity trustees determine that the new Regulation rather than Regulation 3 of the 2005 Regulations should apply. Where the new Regulation is adopted early then charity trustees must also apply Regulation 16(1)(b) of the draft 2007 Regulations in respect of preparing an annual report, where one is required.
- 4.21 Provision is also made for the form and content of charity accounts and is unchanged from the requirements of Regulation 3 of the 2005 Regulation which it replaces. The primary statements continue to consist of:

- a statement of financial activities (SoFA), and
- a balance sheet.

4.22 Regulation 3 also provides for the principles to be followed in the preparation of accounts which are unchanged from the 2005 Regulations and requires the SoFA to give a true and fair view of the incoming resources and the application of resources in the financial year and for the balance sheet to give a true and fair view of the state of affairs of the charity at the end of the financial year.

4.23 The methods and principles of the Charities SORP continue to apply in the preparation of statement of accounts thereby ensuring consistency between recommended practice and the accountancy framework provided by the Regulations.

4.24 The provisions of Regulation 3 relating to any additional information necessary to give a true and fair view and the special circumstances where a departure from the specified requirements is necessary to give a true and fair view are also unchanged from the 2005 Regulations. The new Regulation also, as in the case of the 2005 Regulations, makes provision for comparative information, their adjustment where a corresponding amount is not comparable, notes to the accounts and the signing of the balance sheet.

Regulation 4 - Form and content of statement of accounts: investment funds

4.25 Regulation 4 only applies to charities that are investment fund charities. Changes to the 2005 Regulations that affect investment fund charities are subject to a separate consultation (see paragraph 1.10).

Regulation 5 - Form and content of statements of accounts: special case charities

4.26 Regulation 5 only applies to special case charities as defined in the interpretations provided in Regulation 2 and replaces, without change, Regulation 5 of the 2005 Regulations. It provides for a commencement date for financial years which begin on or after 1 January 2008

- 4.27 Special case charities may apply a more specialist SORP (eg Registered Social Landlords and Higher & Further Education Institutions). They are subject to specific accounting rules, such as those provided by The Housing Corporation in exercise of the powers conferred on it by Section 7 and Part III of Schedule 1 to the Housing Act 1996.
- 4.28 To cater for these alternative accounting regimes, the form and content requirements of the Regulations requires special case charities to prepare accounts consisting of an income and expenditure account and balance sheet and to apply the true and fair view principle in their preparation. In addition, the Regulations provide for the signing of accounts as approved.

Regulation 6 - Financial Year

- 4.29 Regulation 6 makes provision for the financial year and accounting reference date of a charity and the circumstance in which the charity trustees may amend the accounting reference date. The Regulation replaces largely unchanged, Regulation 6 of the 2005 Regulations.

Regulation 7 – Group accounts meaning of “aggregate gross income”

- 4.30 A new Regulation 7 is introduced to explain the meaning of “aggregate gross income”. The size of the group’s aggregate gross income determines whether group accounts must be prepared, and whether those accounts must be audited. The Regulation defines “aggregate gross income” of a charity group by reference to the aggregate of the parent charity’s gross recorded income and that of any subsidiary undertaking that is a charity (both calculated using the existing statutory definition of gross income) and by reference to the turnover of any non-charitable subsidiary undertaking. The turnover definition is based on that in section 474 Companies Act 2006.

Regulation 8 - Form and content of group accounts

- 4.31 A new Regulation 8 is introduced to prescribe the form and content of group accounts required by the introduction of Schedule 5A into the 1993 Act. It sets basic requirements for the form and content of such accounts and provides for a commencement date for financial years which begin on or after 1 January 2008.

- 4.32 The Regulation requires the form and content requirements (Regulations 3, 4 and 5) that apply to the individual accounts of a charity to be applied to the group accounts on the basis that all the subsidiary undertakings included in the consolidation were part of the parent charity.
- 4.33 Paragraph (6) of the Regulation requires the charity trustees of a parent charity to secure that, except where, in their opinion, there are good reasons against it, the financial year of each of its subsidiary undertakings included in the consolidation coincides with the parent charity's own financial year. It goes on to make provision for the preparation of group accounts where the financial year of a subsidiary undertaking included in the consolidation differs from that of the parent charity,
- 4.34 The Regulation also specifies which accounts are included in the consolidation and applies generally accepted accounting practice or principle to determine necessary consolidation adjustments and the method of consolidation to be adopted when preparing group accounts and specifies that any minority interested must be identified in the performance statement and balance sheet.

Regulation 9: Exceptions relating to requirements to prepare group accounts

- 4.35 A new Regulation 9 is introduced to define the income threshold at which group accounts must be prepared under Schedule 5A of the 1993 Act. The threshold proposed follows current recommended practice contained in the Charities SORP and give exemption from the requirement to prepare group accounts where the aggregate gross income of the group does not exceed £600,000 gross (before consolidation adjustments) or £500,000 net (after consolidation adjustments).
- 4.36 In addition the Regulation provides further exceptions to the consolidation requirement in the case of long term restrictions on the rights or management that can be exercised over the subsidiary, disproportionate expense of consolidation or when the interest is held exclusively for resale.

Regulation 10: Audit of group accounts

- 4.37 A new Regulation 10 is introduced to set the income threshold at which group accounts must be audited under Schedule 5A of the 1993 Act. This group audit threshold is set at the same income threshold as that provided in Regulation 9

requiring the preparation of group accounts, ie, where the aggregate gross income of the group exceeds £600,000 gross (before consolidation adjustments) or £500,000 net (after consolidation adjustments). In view of this, there is no provision for an asset threshold.

Regulation 11: Audit of charity

- 4.38 Regulation 11 makes provision for the duties of an auditor carrying out an audit of a charity under section 43, 43A, 43B or Schedule 5A of the 1993 Act. In the context of the audit of a charity's individual accounts the duties are largely unchanged from Regulation 7 of the 2005 which are replaced.
- 4.39 There are some modifications in the case of National Health Service Charities, where the auditor is appointed by the Audit Commission or the Auditor-General for Wales. The position remains essentially as at present under the provisions of the 2005 order.
- 4.40 Where group accounts are prepared under Schedule 5A the same duties are applied so as to give an audit opinion on the group accounts of the parent charity.
- 4.41 Where the individual accounts of a small company charity have been prepared under Companies Act provisions but are now required to be audited under the Charities Act 1993 again the same duties are applied but with the audit opinion being expressed in terms of compliance with Companies Act requirements.
- 4.42 On occasions a charity that prepares receipts and payments accounts under section 42(3) may opt for their audit. The Regulation provides for the auditors duties in such circumstance which are unchanged from those contained in the 2005 Regulations.
- 4.43 Regulation 7(5) of the 2005 Regulations sets out the circumstances in which an auditor makes a written report to the Commissioners on matters of material significance. This provision has not been carried forward into the 2007 Regulations as this matter is now provided for in the new section 44A of the 1993 Act (inserted by the 2006 Act). The combined effect of sections 44A and 68A is that the whistle-blowing duty will apply to anyone auditing the accounts of

company charities.

Regulation 12 - Independent examination of charity accounts

- 4.44 Regulation 12(1) makes provision for the content of an independent examiner's report and, for non-company charities, is largely unchanged from Regulation 8 of the 2005 Regulations which it replaces. An additional requirement is added in Regulation 12(1)(d) which requires the examiner to state whether or not the charity's income exceeds £250,000 and if it does to specify the accountancy qualification scheduled in section 43(3A) held.
- 4.45 A new Regulation 12(2) is added in order to enable an independent examiner to report on a company charity that is examined under the 1993 Act. In particular reference is made to the Companies Act provisions under which the accounts are prepared and compliance with relevant requirements of the Companies Act other than the requirement to give a true and fair view.

Regulation 13 – National Health Service charities; examination of accounts

- 4.46 A new Regulation 13 is added making provision for the content of an independent examiner's report provided on the accounts of English and Welsh National Health Services charities that are examined by a person appointed by Audit Commission or by the Auditor-General for Wales respectively under section 43A and 43B of the 1993 Act. The content of the report mirrors that of other examiners' reports except that no statement of the qualification, recognised by the 1993 Act, is required where the gross income of the charity exceeds £250,000.

Regulation 14 - Audit and independent examination: supplementary provisions

- 4.47 Regulation 14 makes provision for an auditor's or independent examiner's rights of access to books, documents and records and to information and explanations necessary for the purposes of the audit or examination.
- 4.48 The provisions of the new Regulation apply these rights to English and Welsh National Health Service charities the accounts of which are audited or examined by a person appointed by the Audit Commission or by the Auditor-General for Wales respectively under section 43A and 43B of the 1993 Act. This is necessary

following the changes to section 44 of the 1993 Act which were made by paragraph 137 of Schedule 8 to the 1993 Act.

4.49 These rights as they apply to the individual accounts of a charity are unchanged from those of Regulation 9 of the 2005 Regulations which are replaced. However, additional rights are provided to enable the audit of group accounts prepared under schedule 5A of the 1993 Act to be undertaken.

4.50 The auditor of group accounts is given:

- a right of access to any books, documents and other records (however kept) which relate to any of the subsidiary undertakings included in the consolidation and which the auditor considers it necessary to inspect for the purpose of carrying out the audit;
- the right to require, in the case of any such subsidiary undertaking, such information and explanations from -
 - (i) in the case of a subsidiary undertaking which is a charity, past or present charity trustees of, or trustees for, that charity, or;
 - (ii) in the case of any subsidiary undertaking, from the subsidiary undertaking itself (if it is a body corporate incorporated in the United Kingdom) and from past or present officers or employees of that undertaking, as he considers it necessary to obtain for the purposes of carrying out the audit

Regulation 15 - Dispensation from audit or examination requirements

4.51 Regulation 15 makes provision for the circumstances in which the Commission may dispense with the audit or examination requirements for a particular charity or for a particular financial year of a charity and replaces Regulation 10 of the 2005 Regulations. The provisions of the new Regulation as they apply to the individual accounts of a charity are largely unchanged from those of Regulation 10 of the 2005 Regulations which it replaces except the provision allowing dispensation for the audit of dormant accounts is removed as the new audit thresholds would not require an audit in such cases.

- 4.52 The new Regulation also extends the Charity Commission's powers to grant a dispensation to the audit of group accounts, prepared under Schedule 5A and mirrors the exemptions already available in relation to the audit of the individual accounts of a charity. A dispensation to allow the independent examination of group accounts is not available.

Regulation 16 - Annual Reports

- 4.53 Regulation 16 makes provision for an annual report prepared by the charity trustees of a charity (other than an investment fund) in accordance with section 45(1) of the 1993 Act. The new Regulation carries forward the requirements of Regulation 11 of the 2005 Regulations subject to new disclosures in relation to public benefit.
- 4.54 A commencement date for this new Regulation is provided for financial years which begin on or after 1 January 2008 with provision to allow early adoption where the charity trustees so determine. Where this Regulation is adopted early, charity trustees must also determine under new Regulation 3(1)(b) to apply the provisions of new Regulation 3 in relation to the form and content of their accounts to ensure consistent application of the new Regulations in both their accounts and annual report.
- 4.55 Paragraph 3(a) of draft Regulation 16 requires non auditable charities to provide a brief summary of the main activities undertaken by the charity during the year in order to further its purposes for the public benefit. This sets the existing requirements in relation to a summary of main activities in a context of how those activities further the charity's purposes.
- 4.56 Paragraph 3(b) similarly extends the review of significant activities provided by auditable charities. The existing details required in relation to the aims and objectives, strategies adopted and of significant activities remains but are again set in a context of activities to further its purposes for the benefit of the public.
- 4.57 Paragraph 3(c)(i) will require all charities that prepare an annual report to include a confirmation by the charity trustees that they have, in the administration of the charity, paid due regard to any guidance published by the Commission under

section 4 of the 2006 Act on public benefit.

Regulation 18 – Annual Reports: additional information where group accounts are prepared

- 4.58 This new Regulation 18 makes provision for additional information to be provided where group accounts are prepared under Schedule 5A. Where group accounts are prepared, in addition to the information required in relation to the parent charity set out in Regulation 16, further information is required in relation to the significant activities of subsidiary undertakings and information relating to them. These disclosures are based on requirements that already apply to the parent charity but are extended to apply to subsidiary undertakings included in the consolidation.
- 4.59 In particular, the review of activities contains details of the aims and objectives set for subsidiary undertakings, the strategies for achieving them and details of achievement together with details of the principle sources of income.
- 4.60 The risk management statement and description of organisational structure is also extended to include subsidiary undertakings as are key policy statements in relation to investment performance, policies and reserves.

Regulation 19 - Revocation

- 4.61 The Regulation provides that the existing 2005 Regulations apply for all financing years beginning on or before 30 September 2007. For accounting periods commencing on or after 1 October 2007, the 2005 Regulations are revoked and the 2007 Regulations apply.

Schedule 1 to Regulation 3(10) - Notes to the accounts

- 4.62 This Schedule sets out the requirements for the information to be provided by way of notes to the accounts of general charities. It does not apply to investment fund charities or special case charities. It amends and replaces Schedule 1 to Regulation 3(10) of the 2005 Regulations.
- 4.63 The new Schedule remains unchanged from that of the 2005 Regulations except paragraph 1 (o) is amended to ensure the schedule is consistent with section 42(2A) of the 1993 Act which prohibits Regulations requiring the disclosure the

identities of grant recipients or amounts of individual grants made by a charitable trust at a time when the settlor or any spouse or civil partner of the settlor are still alive.

- 4.64 Where group accounts are prepared under Schedule 5A the notes required for individual accounts are required by Regulation 8(3) to be expanded as far as practicable to provide information as if all the subsidiary undertakings included in the consolidation were part of the parent charity.