

A proposal in the form of a draft Order laid before both Houses of Parliament under section 6(1) of the Regulatory Reform Act 2001.

STATUTORY INSTRUMENTS

Draft 4 - 2004 No. []

REGULATORY REFORM

NATIONAL HEALTH SERVICE

**The Regulatory Reform (National Health Service Charitable Trust
Accounts and Audit) Order 2004**

Made - - - - *2004*

Coming into force - - *1st April 2004*

Whereas—

- (a) the Secretary of State for Health (“the Secretary of State”) consulted—
 - (i) such organisations as appeared to him to be representative of interests substantially affected by his proposals for this Order,
 - (ii) the National Assembly for Wales, and
 - (iii) such other persons as he considered appropriate;
- (b) as a result of that consultation it appeared to the Secretary of State that it was appropriate to vary his proposals, and he undertook such further consultation with respect to the variations as appeared to him appropriate;
- (c) following the consultation mentioned in recitals (a) and (b) the Secretary of State considered it appropriate to proceed with the making of this Order;
- (d) [a document containing the Secretary of State’s proposals was laid before Parliament as required by section 6 of the Regulatory Reform Act 2001⁽¹⁾ and the period for Parliamentary consideration under section 8 of that Act expired;
- (e) the Secretary of State had regard to the representations made during that period and in particular to [*name any Parliamentary Report*];
- (f) a draft of this Order was laid before Parliament with a statement giving details of those representations [*and the changes to the Secretary of State’s proposals in the light of them*];
- (g) the draft was approved by resolution of each House of Parliament;]
- (h) this Order removes a function of the National Assembly for Wales, and the Assembly has agreed that it be made;
- (i) the Secretary of State is of the opinion that this Order does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom he might reasonably expect to continue to exercise; and
- (j) this Order creates burdens affecting persons in the carrying on of certain activities, and the Secretary of State is of the opinion that—

⁽¹⁾ 2001 c.6.

- (i) the provisions of this Order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burdens being created, and
- (ii) the extent to which this Order removes or reduces one or more burdens, or has other beneficial effects for persons affected by the burdens imposed by the existing law, makes it desirable for this Order to be made;

Now therefore the Secretary of State, in exercise of the powers conferred by section 1 and 4(3) of the Regulatory Reform Act 2001, hereby makes the following Order:—

Citation, commencement and extent

1.—(1) This Order may be cited as the Regulatory Reform (National Health Service Charitable Trust Accounts and Audit) Order 2004 and shall come into force on 1st April 2004.

(2) This Order extends to England and Wales only.

Amendments to the National Health Service Act 1977⁽²⁾

2.—(1) Section 98 of the National Health Service Act 1977 is amended as follows.

(2) In subsection (1), paragraphs (d), (dd) and (ddd) are omitted.

(3) After subsection (6), there is inserted—

“(7) In a case where a body referred to in subsection (1) is a trustee of a charitable trust, the references in subsections (1), (2) and (4) to accounts do not include accounts relating to the charitable trust.”.

Amendments to the Charities Act 1993⁽³⁾

3.—(1) The Charities Act 1993 is amended as follows.

(2) In section 43, after subsection (9), there is inserted—

“(10) Nothing in this section applies in relation to a financial year of a charity where, at any time in the year, the charity is a National Health Service charity (as defined in section 43A).”.

(3) After section 43 there is inserted—

“**43A.**—(1) This section applies in relation to a financial year of a charity where, at any time in the year, the charity is a National Health Service charity.

(2) In any case where the criterion set out in subsection (1) of section 43 is met in respect of a financial year of a National Health Service charity, the accounts of the charity for that financial year shall be audited by a person appointed by the Audit Commission.

(3) In any other case, the accounts of the charity for that financial year shall, at the election of the Audit Commission, be—

- (a) audited by a person appointed by the Audit Commission; or
- (b) examined by a person so appointed.

(4) Section 3 of the Audit Commission Act 1998 (c.18) applies in relation to any appointment under subsection (2) or (3)(a).

(5) The Commissioners may give such directions as they think appropriate with respect to the carrying out of an examination in pursuance of subsection (3)(b); and any such directions may either be of general application or apply to a particular charity only.

⁽²⁾ 1997 c.49; relevant amendments were made by section 11(7) of the National Health Service and Community Care Act 1990 and section 65, Schedule 4, paragraph 4 and 33(1) and (2)(b) of the Health Act 1999.

⁽³⁾ 1993 c.10.

(6) In this section—

“Audit Commission” means the Audit Commission for Local Authorities and the National Health Service in England and Wales;

“National Health Service charity” means a charitable trust, the trustees of which are—

- (a) a Strategic Health Authority, a Special Health Authority, a Primary Care Trust, a Local Health Board or a National Health Service trust;
- (b) special trustees appointed under section 29(1) of the National Health Service Reorganisation Act 1973 (c.32) and section 95(1) of the National Health Service Act 1977 (c.49);
- (c) trustees for a National Health Service trust appointed under section 11 of the National Health Service and Community Care Act 1990 (c.19); or
- (d) trustees for a Primary Care Trust appointed under section 96B of the National Health Service Act 1977.

43B.—(1) Where, at any time in the financial year of a charity, the charity is a National Health Service charity—

- (a) the accounts of the charity for the year;
- (b) any records relating to those accounts; and
- (c) any report of a person appointed under section 43A (2) or (3) to audit or examine those accounts,

may be examined and inspected at any time by the appropriate authority.

(2) The appropriate authority is the Comptroller and Auditor General, except in a case falling within subsection (3).

(3) Where the accounts relate to a National Health Service charity which is a Welsh National Health Service charity, the appropriate authority is the Auditor General for Wales.

(4) For the purposes of this section—

“National Health Service charity” has the same meaning as in section 43A;

a National Health Service charity is a “Welsh National Health Service charity” if its trustees are—

- (a) a Local Health Board;
- (b) a Special Health Authority performing functions only or mainly in respect of Wales;
- (c) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in Wales or any trustees appointed under section 11 of the National Health Service and Community Care Act 1990 (c.19) for such a trust; or
- (d) special trustees appointed under section 29(1) of the National Health Service Reorganisation Act 1973 (c.32) and section 95(1) of the National Health Service Act 1977 (c.49) for a trust all or most of whose hospitals, establishments and facilities are situated in Wales.”.

(4) In section 45—

- (a) in subsections (4)(a) and (b), after “43” there is inserted “or 43A”;
- (b) in subsection (4)(b), after “examiner” there is inserted “or person”; and for the second “that” there is substituted “the relevant”.

(5) In section 46(3) there are substituted for the words “sections 43 to 45” the words “section 43, 44 or 45”.

Amendments to the Audit Commission Act 1998⁽⁴⁾

4.—(1) The Audit Commission Act 1998 is amended as follows.

(2) In Schedule 2, at the end of paragraph 1(g), after “1977” there is inserted “(except in its capacity as trustee of a charity)”.

Consequential amendments

5. The Charities (Accounts and Reports) Regulations 1995⁽⁵⁾ apply in relation to a National Health Service charity (as defined in section 43A of the Charities Act 1993), subject to the modifications set out in the Schedule.

Subordinate provisions

6.—(1) Article 5 and the Schedule to this Order are subordinate provisions for the purposes of section 4(3) of the Regulatory Reform Act 2001.

(2) A subordinate provisions order (within the meaning of section 4(4) of that Act) made in respect of those provisions shall be subject to annulment in pursuance of a resolution of either House of Parliament.

SCHEDULE

Article 5

The Charities (Accounts and Reports) Regulations 1995 apply as if—

7. in regulation 6—

- (a) in paragraph (1), for “43” there were substituted “43A”,
- (b) in paragraphs (2)(b) and (3)(b), for the words from “falling” to “section 43(2)” there were substituted “appointed under section 43A(2) or (3)(a)”,
- (c) in paragraphs 2(d) and 3(d), for “43” there were substituted “43A”; and for the words from “made” to the end of those paragraphs there were substituted the words “which apply to a National Health Service charity (as defined in that section)”,
- (d) in paragraph (6), for “by charity trustees” there were substituted “under section 43A(2) or (3)(a) of the 1993 Act”,
- (e) paragraph (7) were omitted;

8. in regulation 7—

- (a) in the opening words, for “An independent examiner” there were substituted “A person”; and for “43” there were substituted “43A”,
- (b) in paragraph (d), for “43” there were substituted “43A”; and for “(7)(b)” there were substituted “(5)”; and

9. in regulation 8—

- (a) in paragraph (1), for “An auditor or independent examiner” there were substituted “A person”; and for “43” there were substituted “43A”,
- (b) in paragraph (2), for “an auditor or independent examiner” there were substituted “a person”.

Signed by authority of the Secretary of State for Health

⁽⁴⁾ 1988 c.18.

⁽⁵⁾ S.I.1995/2724.

[Date] 2004

Name
Department of Health

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 1 of the Regulatory Reform Act 2001. It reduces the burdens imposed on NHS charities by removing the requirement for their accounts to be audited under the National Health Service Act 1977 and making amendments to various other statutes which deal with the auditing of charity accounts.

Article 2 amends section 98 of the National Health Service Act 1977 to remove the accounts of NHS charities from the requirements of that section (which relate to accounts and audit).

Article 3 amends the Charities Act 1993 to provide for the audit or examination of the accounts of NHS charities by persons appointed by the Audit Commission and gives the Comptroller and Auditor General and the Auditor General for Wales access to the accounts and background documents.

Article 4 amends the Audit Commission Act 1998 to remove the accounts of NHS charities from the audit requirements of that Act.

Articles 5 and 6 make consequential amendments by way of subordinate provisions under section 4(3) of the Regulatory Reform Act 2001 and apply the Charities (Accounts and Reports) Regulations 1995 to NHS charities subject to the modifications set out in the Schedule.

