

15 Dec 2003

**THE REGULATORY REFORM (NHS CHARITY ACCOUNTING) ORDER
200[4]**

**EXPLANATORY STATEMENT BY THE DEPARTMENT OF HEALTH AND
THE NATIONAL ASSEMBLY FOR WALES**

CONTENTS

Paragraphs

1-13	Introduction/Background/ Present Legislative Framework
14-20	Description of Proposals
21-26	Burdens Affected – Removal or Reductions of the Burden
27-30	Removal of Inconsistencies and Anomalies
31-35	Maintenance of Necessary Protection
36-37	Expectation as To the Exercise of Rights and Freedoms
38	Compatibility with European Convention on Human Rights (ECHR)
39-40	New Burden to be imposed
41-42	Proportionality
43-44	Fair Balance
45	Desirability
46	Subordinate Provisions
47	Costs and Savings
48-49	Other Benefits
50-54	Consultation
55	Further Consultation
56	Representations Received as a Result of the Consultation
57-58	Changes to the Proposals in Light of Representations

Annex A – Analysis of Consultation Responses

Annex B - Example of the ‘Summarised Accounts for Funds Held on Trust (England) 2001-2002

Annex C - List of Consultees

Annex D - List of Consultation Respondents

Annex E - List of Further Consultation Responses

Annex F - Regulatory Impact Assessment

Appendix (1) – Calculation of Savings

INTRODUCTION

1. This statement is laid before Parliament in accordance with section 6 of the Regulatory Reform Act 2001 (“the 2001 Act”), together with the draft of the Regulatory Reform (NHS Charity Accounting Order 200 [4] (“the draft order”) which the Department of Health propose to make under section 1 of that Act. The purpose of the draft Order is to amend the NHS Act 1977. The statement will be considered at a plenary session of the National Assembly for Wales.

BACKGROUND

2. When the NHS was established, the Secretary of State for Health also took on responsibility for a large number of charitable funds previously held by voluntary and local authority hospitals. These charitable funds are administered by NHS bodies acting as trustees who have powers to receive new funds and incur expenditure in accordance with their governing documents.
3. In 2001/2002 (the last year for which audited accounts are available) there were around 450 NHS trustee bodies administering charitable funds in England and Wales with net assets of around £1.7 billion. Trustees are responsible for the administration of the individual charities and for ensuring that assets are properly managed, controlled and safeguarded in accordance with trust and charity law.
4. Trustees may be the body corporate where the board of a NHS body, for example an NHS Trust, acts collectively as a trustee for associated charitable funds, or separate bodies of trustees. The latter comprise Special Trustees, who are responsible for controlling funds held historically by many teaching and university hospitals in England, and Trustees for NHS Trusts who have replaced a number of the Special Trustees in order to align trustee and NHS Trust boundaries.
5. There are additionally many independent charities associated with the NHS, for example, Hospital Leagues of Friends who provide an invaluable contribution to the NHS. They are not considered here, and are not directly affected by these proposals. These independent charities are required only to submit their accounts to the Charity Commission under charity law, as the Government proposes should be the case for charitable funds administered by NHS bodies in the future.
6. Under the Charities Act 1993, the Charity Commission administers a general regulatory framework for charities in England and Wales. This includes the maintenance of a register of charities and oversight of the submission of annual returns and accounts in accordance with the 1993 legislation.

THE PRESENT LEGISLATIVE FRAMEWORK

7. The legislation at issue in these reforms is Section 98 of the National Health Service Act 1977, the Charities Act 1993 and the Audit Commission Act 1998. Section 98 of the National Health Service Act 1977 makes provision for the preparation of accounts by health bodies. In England these accounts are in the form directed by the Secretary of State for Health and approved by the Treasury. The functions of the Secretary of State, in respect of Wales, are exercisable by the National Assembly for Wales. Section 98 also provides for the audit of the accounts by auditors appointed by the Audit Commission and for their submission to the Secretary of State for Health or National Assembly for Wales for summarisation. The summarised accounts are examined by the Comptroller and Auditor General or Auditor General for Wales and presented to Parliament or the National Assembly for Wales. Section 98 covers both the Exchequer accounts and the separate accounts for funds held on trust, which are charitable. The proposals cover only the accounts of funds held on trust.
8. Prior to 1 March 1996, when Part VI of the Charities Act 1993 came into force, NHS charities were registrable and subject to the jurisdiction of the Charity Commissioners in the same way as other charities. They were, however, relieved from the routine requirement to send accounts to the Charity Commissioners that applied to permanently endowed charities. The implementation of Part VI of the Charities Act 1993 removed this relief and most NHS charities have been required since 1996/1997 to prepare and submit full accounts and reports to the Charity Commissioners. The effect of implementing Part VI was to bring NHS charities within the normal scope of accounts monitoring by the Charity Commissioners.
9. Under charity law:
 - charities whose gross income in any financial year is £100,000 or less may elect to prepare only simpler receipts and payments accounts and a statement of assets and liabilities;
 - charities with neither gross income nor total expenditure in excess of £10,000 are not required under charity law to submit their annual accounts to the Charity Commissioners (except on request);
 - charities whose gross income and total expenditure is £10,000 or less are also exempted from audit and examination requirements; and where the gross income and total expenditure is £250,000 or less, the accounts scrutiny requirements take the form of examination rather than a full audit;
 - larger charities are subject to routine monitoring by the Charity Commissioners who have powers to institute enquiries of charities either generally or for specific purposes. Secretary of State for Health and the National Assembly for Wales have no such powers.
10. The powers of the Secretary of State for Health and the National Assembly for Wales are limited to appointing and removing trustees and determining their terms of office, summarising the accounts and transferring property held on trust between NHS bodies.

11. In England in 2001/2002, the trustees were the body corporate acting through their boards in 413 of the total of 431 bodies administering charitable funds. There were also 18 separate bodies of trustees. In Wales, trustees were the 20 corporate bodies. In England and Wales the executive members of the board are appointed by the body itself. In England, from 1st April 2002, the Appointments Commission took over Secretary of State's responsibilities for making non-executive appointments to NHS boards and trustee appointments. The Minister for Health and Social Services appoints non-executive board members to health bodies in Wales
12. In July 2001, the Prime Minister announced that the Performance and Innovation Unit of the Cabinet Office (PIU) (since renamed the Strategy Unit) would undertake a review of the legal and regulatory framework for charities and the wider not-for-profit sector, with a view to bringing forward proposals for legislative change. "Private Action, Public Benefit", the report on the outcome of the review, was published in September 2002. It made various recommendations to Government for changes to the legal and regulatory framework for charities, including to the accounting requirements. The report was then the subject of a public consultation exercise. The Government published its response, "Charities and Not-for-Profits: A Modern Legal Framework" on 16 July 2003. The review had recommended that the audit threshold level for charities should be raised from £250,000 to £1 million. The Government accepted that the current level was too low but decided, after taking account of concerns expressed by respondents to the consultation about a loss of accountability, that the increase should be of a more modest order with the audit threshold rising to £500,000. Examination would apply to bodies with an income below £500,000. The Government also accepted that, unlike now, there should be an asset threshold as well as an income threshold. The Home Secretary has undertaken to publish a draft Charities Bill as soon as possible, which would give effect to the proposed changes to charity law.
13. The proposals, described below, on which consultation has taken place in support of the Regulatory Reform Order (RRO) are to bring the regulatory framework for NHS charities in line with other charities. The changes to thresholds proposed in the draft Charities Bill are therefore consistent with the proposals for the Regulatory Reform Order to remove the dual accounting burden on NHS charities. However, any raising of the thresholds is likely to provide potential for greater savings under the RRO.

DESCRIPTION OF PROPOSALS

14. The proposals are to amend Section 98 of the National Health Service Act 1977 by means of a Regulatory Reform Order with consequential amendments to the Charities Act 1993 and the Audit Commission Act 1998.
15. The proposals are to remove the requirements in the National Health Service Act 1977 for NHS bodies to prepare and submit accounts for funds held on trust (charity accounts) to the Secretary of State for Health or National Assembly for Wales. Consequentially there would be no summarised accounts for certification

by the Comptroller and Auditor General or Auditor General for Wales and presentation to Parliament or National Assembly for Wales. The requirement for charity accounts to be submitted to the Charity Commission under charity legislation would continue subject to proposed changes outlined below.

16. This means that NHS bodies managing charitable trust funds with an annual income of £100,000 or less would be able to prepare less complex receipts and payments accounts. Reducing this burden would benefit the charities themselves.
17. It is proposed that the existing scrutiny requirements for the accounts of NHS charities should, in substance, be preserved with the Audit Commission continuing to appoint the auditors. This will enable some smaller charities to receive a form of accounts' scrutiny that is less stringent than an audit. However, we propose to modify these requirements. This will involve the following changes to the general accounting regime prescribed by the Charities Act 1993, so far as that regime applies to NHS charities:
 - (i) the Audit Commission, rather than the charity trustees, will appoint an auditor (or in appropriate cases an examiner), qualified in accordance with section 3 of the Audit Commission Act 1998 to scrutinise the accounts. The Audit Commission currently appoints auditors to bodies listed under Section 98 of the 1977 Act and this will not introduce a new burden on either the Audit Commission or the NHS charities. The auditor will be appointed to audit the accounts, or, in a case where the option exists under charity law, may be appointed to “examine” the accounts. The examination reduces the burden on the charities and the auditors as compared to a full audit. This proposal will reduce the overall burden on many of the NHS charities and not introduce a new burden on any. The proposal to continue with audit appointments being made by the Audit Commission recognises that public bodies administer the charity funds and provides for greater independence. The Audit Commission’s auditors scrutinise the NHS Exchequer accounts, and in many instances these share similar or related systems of control with the charity funds. It therefore provides opportunities for greater efficiency by the same auditor examining both the public and charity funds;
 - (ii) the person so appointed to scrutinise the accounts of NHS charities will be qualified as mentioned in section 3 Audit Commission Act 1998 rather than mentioned in section 43(2) of the Charities Act 1993 – be a “registered auditor”¹.

Because of the specialist public sector nature of their work, and of NHS charities in particular, the Audit Commission qualification is considered more appropriate. The Audit Commission Act 1998 requires the Audit Commission to appoint auditors to NHS bodies who have an appropriate qualification, recognised by the Consultative Committee of Accounting

¹ A registered auditor is a person who is qualified under the provisions of the Companies Act 1989 to audit the accounts of companies.

Bodies. The auditors are required to work to a Code of Practice approved by Parliament and to comply with relevant ethical standards and guidance issued or adopted by their professional accountancy bodies. The Audit Commission monitors the performance of appointed auditors through a rigorous, ongoing quality review process;

- (iii) The Comptroller and Auditor General (or for Wales - the Auditor General for Wales) may examine the accounts, any records relating to them and any report of an auditor or examiner appointed by the Audit Commission. He may also undertake value for money examinations.
18. The accounts of all NHS charities will be subject to some form of external scrutiny. Unless an audit is required, the auditor will be able to choose whether to conduct an audit or an examination. The provisions in charity law which generally have the effect that the accounts of charities with both aggregate income and total expenditure of £10,000 or less in a financial year are not subject to **any** form of accounts scrutiny will cease to apply to NHS charities. As public bodies administer these funds, we do not believe it appropriate for there to be no accounts scrutiny and this will provide greater comfort to donors. This will not impose any new burden on the NHS charities as under Section 98 of the NHS Act they are all currently subject to audit irrespective of their size. In most cases there will be a reduced burden, and none will have an increase.
19. The NHS charities would be required to submit their accounts to the Charity Commission within ten months of the end of the financial year, consistent with other charities, except where the charity has both annual income and annual expenditure of £10,000 or less. This provides a longer period than allowed under NHS directions and would reduce the burden on NHS finance staff.

Extent

20. The proposals extend only to England and Wales. They only affect the charitable accounts of NHS bodies and not the other responsibilities of either the Secretary of State or the National Assembly for Wales in respect of accountability to [Parliament] for general accounts of NHS bodies. The proposals have been agreed by Welsh Ministers and will be considered at a plenary session of the National Assembly for Wales. The proposals detailed above do not cover Foundation Trusts (FTs) as under the Health and Social Care Bill FTs will appoint their own auditors. There will be no dual accounting burden placed on FTs as they will submit their accounts directly to the Charity Commission under charity legislation. Unlike other NHS bodies, whose auditors are appointed through the Audit Commission, it is proposed that FTs will appoint their own auditors/examiners under charity legislation. This will enable them, if they so choose, to appoint the same auditor as undertakes the audit of their public funds and take advantage of common systems and controls which provides opportunities for greater efficiency. This arrangement will also apply to Trustees for Foundation Trusts. Where Special Trustees hold funds for the hospital or hospitals managed by Foundation Trusts, the Audit Commission will continue to appoint auditors and the dual

accounting burden on the Special Trustees will be removed under the proposals set out in this document. The consultation, which covered all NHS bodies, was undertaken before proposals to create Foundation Trusts under the Health and Social Care Bill had been determined.

Summary of Proposals

- Remove requirement in the NHS Act 1977 for NHS bodies to submit accounts for charity accounts to the Department of Health or National Assembly for Wales. Consequentially the accounts would not be:
 - summarised;
 - presented to Parliament or National Assembly for Wales;
- Accounts would continue to be submitted to the Charity Commission.
- NHS charitable funds would be brought into line with the accounting and scrutiny requirements under Charity Law of other charities of a similar size, with the following exceptions:
 - the Audit Commission will appoint the auditors and not the trustees;
 - all charity accounts will be subject to scrutiny by a person appointed by the Audit Commission, irrespective of size;
 - auditors will be qualified as detailed in the Audit Commission Act 1998, not the Charities Act 1993;
 - the accounts may be examined by the Comptroller and Auditor General (or for Wales – the Auditor General for Wales).
- All NHS charitable funds would derive benefit from the removal of the dual accounting burden. Smaller charities would benefit most by being able to take advantage of the simpler accounts and audit scrutiny arrangements available under Charity Law.
- All NHS charities could benefit from the longer time period allowed under charity legislation for submission of the accounts

BURDENS AFFECTED AND THE REMOVAL OR REDUCTIONS OF THE BURDENS (sections 6(2)(a) and (b) of the 2001 Act)

Submission of accounts to the Department of Health / National Assembly for Wales

21. Under section 98 of the NHS Act 1977, NHS trustees are required to keep accounts for funds held on trust (charity accounts) in a form directed by the Secretary of State and to submit them to the Department of Health or National Assembly for Wales. This requirement is a burden for the purposes of the 2001 Act.

22. Under the proposals this burden will be removed. Consequentially, the charity trustees will not have to maintain accounts in accordance with the requirements of the 1977 Act, nor transmit such accounts to Secretary of State; and the accounts would not be summarised and presented to Parliament or the National Assembly for Wales. However, the Comptroller and Auditor General may examine the accounts, any records relating to them and any report of an auditor or examiner appointed by the Audit Commission.

Submission of accounts to the Charity Commission

23. NHS trustees are required under the Charities Act 1993 to submit charity accounts and reports to the Charity Commission unless their gross income and expenditure is £10,000 or less (except on request). This is a burden for the purposes of the 2001 Act. Under the proposals this burden will remain.

Audit of Accounts

24. Auditors appointed by the Audit Commission carry out the audit of all the charity accounts submitted to the Department of Health under the Audit Commission Act 1998. NHS trustees seek a dispensation from the Charity Commission to allow this audit to satisfy the audit scrutiny requirements for the accounts submitted to the Charity Commission.
25. Under the proposals, the Audit Commission will continue to appoint the auditors rather than the trustees as allowed under the Charities Act 1993. This recognises that it is common practice for NHS charities to utilise the Exchequer financial systems. The Audit Commission's appointed auditors are, therefore, well placed to provide an efficient accounts scrutiny and make judgements about the adequacies of the controls and the validity of the accounting records. The independent appointment of auditors by the Audit Commission would provide additional assurances to the public about their proper administration. The requirement on the Audit Commission to appoint auditors, and the requirement on NHS trustees to assist in the audit, are burdens for the purposes of the 2001 Act and will remain, although they will be restated in the 1993 Act rather than in the 1977 Act.
26. NHS trustees with gross income and expenditure of £250,000 or less in the current and two preceding financial years will be able to have less stringent audit scrutiny as set out in charity legislation and in line with other charities of similar size. The only exception being that the requirement for audit scrutiny would be extended to include all NHS trustees and any charitable funds that are unregistered including those with charitable gross income and expenditure of £10,000 or less. This scrutiny will be less complex than the audit carried out under the present arrangements, if the Audit Commission determines that an examination is appropriate. Other charities with this level of income and expenditure are exempted from audit examination. The option for the Audit Commission to undertake audit scrutiny is a new requirement, a burden for the

purposes of the 2001 Act. It is no greater than that currently in place and is expected usually to be less.

REMOVAL OF INCONSISTENCIES AND ANOMALIES (section 6(2)(c) of the 2001 Act)

27. The requirement for NHS charities to submit accounts to two separate bodies under different legislation is an anomaly and contrary to Government policy to reduce unnecessary burden on charities.
28. Prior to 1 March 1996, when Part VI of the Charities Act 1993 came into force, NHS charities were registrable and subject to the jurisdiction of the Charity Commissioners in the same way as other charities. They were, however, relieved from the routine requirement to send accounts to the Charity Commissioners that applied to permanently endowed charities. NHS charities were required under the NHS Act 1977 to submit accounts to the Department of Health (or from 1999 the National Assembly for Wales).
29. When Part VI of the Charities Act came into force this removed the relief for NHS trustees to routinely submit accounts to the Charity Commission in addition to those submitted to the Department of Health or National Assembly for Wales.
30. The proposal is to remove this anomaly by requiring NHS trustees only to submit accounts to the regulatory body, the Charity Commission. As part of the consultation exercise consultees were asked whether they were content with the proposal. Only 5% said that they were not content with the proposal to remove the requirement to submit two sets of accounts. (A detailed analysis of the consultation responses is at Annex A)

MAINTENANCE OF NECESSARY PROTECTION (section 6(2)(d) of the 2001 Act)

31. The Department of Health and National Assembly for Wales believe donors and the general public would continue to enjoy the necessary level of protection if this proposal was taken forward. This view is supported by the responses received from the consultation exercise – only 5 out of 79 respondents stated that the existing legislation provided protections that it would be necessary to retain. (A more detailed analysis of the responses received is at Annex A)
32. Under section 45 of the Charities Act 1993, all charities with an annual income and expenditure over £10,000 in the financial year, are required to send their accounts to the Charity Commission, which will make them

available for public inspection. In addition, under section 47, any person has the right to require any charity to send him a copy of its most recent accounts.

33. Parliament would no longer be presented with separate summarised accounts for NHS charities. An example of the summarised accounts is at Annex B. However, as these are not Exchequer funds, there is no justification for the presentation of a separate summarised account of them in terms of protection of the public purse. The summary level information is of very little value to the general public as it aggregates the accounts of bodies with charitable funds ranging from less than £1,000 to those with more than £380 million (2001/2002), and contains little detail. Although there would no longer be cumulative figures for the total funds held by NHS charities, these are of mainly academic interest to donors and the public. Details of spending by charities on the NHS are available in the Exchequer accounts.
34. Under the NHS Act 1977, the Audit Commission's appointed auditors are required to undertake an audit of the accounts of NHS charitable funds in addition to the Exchequer accounts. Under the proposed changes, auditors appointed by the Audit Commission would be required to undertake the scrutiny of the charity accounts in accordance with charity law and this would be extended to NHS charities with both aggregate income and total expenditure in the financial year of £10,000 or less. The proposal would result in an overall reduction in the audit burden while maintaining the protection auditing is designed to provide.
35. It is common practice for NHS charities to utilise the Exchequer financial systems. The Audit Commission's appointed auditors are, therefore, well placed to provide an efficient accounts scrutiny and make judgements about the adequacies of the controls and the validity of the accounting records. The independent appointment of auditors by the Audit Commission would provide additional assurances to the public about their proper administration.

EXPECTATION AS TO THE EXERCISE OF RIGHTS AND FREEDOMS (section 6(2)(e) of the 2001 Act)

36. As the changes we propose are purely beneficial, we do not believe that they would prevent anyone from exercising an existing right or freedom. However, there will no longer be a Summarised Account of Funds Held on Trust (charity funds) available for public scrutiny, Parliament, or HM Treasury. At summary level the information is of limited value and members of the general public and a Member of Parliament may request more informative information from the NHS charities themselves or the Charity Commission, than would have been available in the summarised accounts.
37. The majority of consultees did not consider that the proposals would affect anyone from exercising their rights or freedoms. (A more detailed analysis of the responses is at Annex A.)

COMPATABILITY WITH EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR)

38. The Government considers that the provisions of this proposal are compatible with Convention rights.

NEW BURDEN TO BE IMPOSED (section 6(2)(f) of the 2001 Act)

39. We propose that the existing scrutiny requirements for the accounts of NHS charities should, in substance, be preserved with the Audit Commission continuing to appoint the auditors. This will not impose a new burden on NHS charities but will provide for the continuation of an audit regime that provides additional assurances to the public about the administration of the charity funds. In summary, the NHS charities would differ from other charities of a similar size in that:

the Audit Commission, rather than the charity trustees, will appoint an auditor, qualified in accordance with section 3 of the Audit Commission Act 1998 (or in appropriate cases an examiner) to scrutinise the accounts;

the accounts of all NHS charities will be subject to some form of accounts scrutiny whereas the provisions in charity law generally have the effect that the accounts of charities with both aggregate income and total expenditure of £10,000 or less in a financial year are not subject to *any* form of accounts scrutiny. This will not impose any new burden on the NHS charities as under Section 98 of the NHS Act they are all currently subject to audit irrespective of their size. In most cases there will be a reduced burden as an examination will be appropriate.

40. The effect of these proposals is to impose on NHS charities with gross income and expenditure of £250,000 or less in the current and two preceding financial years a slightly different audit regime which permits scrutiny by an examiner rather than full audit. The requirement that the Audit Commission decide whether to appoint an auditor or examiner is also a slightly different burden from the existing one, and again a new burden for the purposes of the 2001 Act. In practice these new burdens are lighter than the existing ones, and in our view satisfy the relevant statutory tests, as described below and are supported by the responses to the consultation exercise.

PROPORTIONALITY (section 1(1) (b) and (c)(ii) of the 2001 Act)

41. We consider that the re-enactment of the provisions of the 1977 Act requiring the Audit Commission to appoint auditors, and requiring NHS charities to

assist in the audit, where gross income or expenditure exceeds £250,000, re-enacts a burden which is proportionate to the benefit which is expected to result from the re-enactment. Audit by the Audit Commission's appointed auditors affords a necessary protection as described above. The majority of responses received from the consultation said that they were content for the scrutiny of the NHS charity accounts by auditors appointed by the Audit Commission to continue. Only 1% said that they were not content. (See Annex A for detailed analysis).

42. We also consider that the new burden in the 1993 Act requiring the Audit Commission to either appoint auditors or an examiner where the gross income and expenditure of £250,000 or less in the current and two preceding financial years, and requiring NHS charities to assist in the examination, is proportionate to the benefit which is expected to result from its creation. In practice the burden is lighter than the one presently applying to such charities. In a less onerous and flexible way it affords the degree of protection which is necessary for charities of this size.

FAIR BALANCE (section 3(2)(a) of the 2001 Act

43. As to the tests referred to in section 3(2) of the 2001 Act, we are of the opinion that they are satisfied for the reasons set out above. The order taken as whole strikes a fair balance between the public interest in ensuring proper accounting for the use of charitable funds and the interests of the Audit Commission and the NHS charities in being able to operate without disproportionate financial regulation.
44. By making the audit appointment independent of the charity, and for the accounts of all NHS charities subject to audit scrutiny, this provides greater protection to the public on all of the charity funds administered by NHS bodies. The majority of consultees said that they were content for all NHS charities to be subject to some form of audit scrutiny by the auditors appointed by the Audit Commission. (See Annex A for a detailed analysis of the responses received).

DESIRABILITY (section 3 (2)(b) of the 2001 Act

45. The Order removes the burden of keeping accounts as directed by the Secretary of State and submitting them to him or to the National Assembly and also removes the burden of mandatory audit for charities with income and expenditure of £250,000 or less in the current and two preceding financial years. The removal of these burdens makes it desirable for the order to be made. By retaining auditors appointed by the Audit Commission and subjecting all of the NHS charity accounts to scrutiny, assurances are provided that are consistent across the NHS. This is in line with the arrangements for providing assurances on Exchequer accounts. This would reduce the overall

audit burden on NHS charities as a whole, whilst retaining safeguards we consider necessary to complement the overall proposals. The desirability of the proposals is also demonstrated by the consultation; 84% of consultees who answered this question said that it did not impose any burdens upon anyone. (A more detailed analysis of the responses is at Annex A).

SUBORDINATE PROVISIONS (section 6(2)(g) of the 2001 Act)

46. Section 44 of the Charities Act 1993 and the Charities (Accounts and Reports) Regulations 1995 currently apply to NHS charities and are to continue to do so. These do, however, require consequential amendments as a result of the new section 43A provisions. These amendments were identified as a matter to be dealt with by subordinate provision under Section 4(3) of the Regulatory Reform Act 2001.

Changes to the subordinate provisions are dealt with in Article 5 and 6 of, and the Schedule to, the Order. They provide for the regulations to apply to NHS charities subject to modifications to take account of the fact that the provisions on NHS charities are in a new section 43A. While further amendments are not considered likely, in the event that any were necessary it is sensible to provide for amendment of these essentially technical provisions in a Subordinate Provisions Order.

COSTS AND SAVINGS (section 6(2)(h)(i) and (ii) of the 2001 Act)

47. There are approximately 430 NHS charitable bodies most of which could make some savings with the removal of the dual accounting requirement and by being able to produce simpler accounts on a receipts and payments basis. The savings would accrue to the charities themselves. Consultees were asked to identify where savings could be achieved and provide estimates of the amounts. 73% of respondents who answered the question said that the proposals would produce a saving, the majority of which provided a value to the saving. The basis of the savings fell into three main areas: reduced audit costs, reduced preparation and staff costs and other associated miscellaneous costs, although not all of the organisations provided a detailed analysis. From the information provided by the consultees, the Department of Health was able to estimate savings between £420,532 and £483,121. Six organisations said they thought there would be minimal additional costs but most cases were not able to provide any amounts. Although potential savings have been identified, the more significant benefit of the proposal is the removal of the unnecessary administrative burden on NHS charities to prepare two sets of accounts. (A detailed analysis of the savings and costs identified in the consultation is at Annex A).

OTHER BENEFITS (section 6(2)(i) of the 2001 Act)

48. All NHS charities would benefit from having to prepare and submit accounts only to the Charity Commission. The smaller charities would be able to produce less complex accounts with less stringent accounts scrutiny requirements appropriate to their size under Charity Law. The benefits would accrue to the charities themselves releasing additional funds to fulfil donors' wishes. Forty-nine respondents to the consultation exercise agreed that this would be a benefit and would ease the burden on finance staff. In addition the majority of consultees stated that the proposals would clarify the accountability to the Charity Commission which was seen as a move towards good governance and also it would remove the anomaly that the £1.7 billion held by approximately 430 charities represents the totality of charitable support to the NHS. (A detailed analysis of the responses received is at Annex A).
49. There would be some benefits for the Secretary of State for Health and the National Assembly for Wales in the form of reduced administration costs (estimated at £10,000 per annum) arising from the removal of the requirement to summarise the accounts for funds held on trust. The role of the Charity Commission in relation to NHS charities would not be affected by these proposals.

CONSULTATION (sections 5 and section 6(2)(j) of the 2001 Act)

50. On 25th June 2002 the Government published a consultation document containing the proposals detailed in the proposed Regulatory Reform Order that this document accompanies in accordance with the code of practice on written consultation. The document was posted directly to the organisations shown in the attached Annex C with the exception of NHS corporate trustees who were informed of the consultation and provided with details of the web sites. The document was published on the following web sites:

<http://www.doh.gov.uk/nhscharitiesconsultation>

<http://www.wales.gov.uk/subihealth/content/consultaion/amend77act-e.pdf>

<http://www.cabinet-office.gov.uk/regulation/act.condocs.htm>

51. The consultation was targeted at NHS Trustees and organisations known to have direct or indirect interest in NHS charity issues. These included the Directory of Social Change, The National Council for Voluntary Organisations and various support groups.
52. The Scottish Office and Northern Ireland Office have been included in the full consultation, which is made jointly by the Secretary of State for Health and the Secretary of State for Wales.
53. The original closing date for the consultation was 25th September 2002 (a period of just over 12 weeks). It was however extended to 30th September

2002 and account has been taken of all comments received up to and including that date. There were no late replies.

54. Annex C lists those organisations that were consulted and Annex D lists those organisations that responded.

FURTHER CONSULTATION section 5(3) of the 2001 Act

55. The National Audit Office (NAO) requested in its response to the consultation and through further discussions with the Department of Health that its powers to inspect NHS related charity accounts and carry out reviews are reinstated through amendments to legislation and effected by the Regulatory Reform Order. This is a departure from the proposals set out in the original consultation whereby the NAO would only have access to the NHS charity accounts through their responsibilities for the audit of the Charity Commission. In practice this power to examine the NHS charity accounts (ie submitted to the Charity Commission) would only be exercised where there were serious matters of concern raised by the Audit Commission auditors, or as part of the NAO Value For Money programme. A sample of views on the proposed amendment to the original proposal to facilitate the NAO's new position was sought in November 2002 from number of NHS trustees, most of which had provided comments to the original consultation (see Annex E for a list of the respondents to the further consultation).

REPRESENTATIONS RECEIVED AS A RESULT OF THE CONSULTATION (section 6(2)(k) of the 2001 Act)

56. All of the twenty- five organisations that were re-consulted agreed to accept the revision to the original proposal so that the National Audit Office can have the right of access to the accounts of NHS charities.

CHANGES TO THE PROPOSALS IN LIGHT OF REPRESENTATIONS (section 5(3) and section 6(2)(l) of the 2001 Act)

57. The proposal has been amended to include the following as a result of the further consultation:

(1)The Comptroller and Auditor General may at any time in a financial year examine and inspect—

- (a) the accounts for that financial year of a National Health Service charity which is not a Welsh NHS body as defined in subsection (2);
- (b) any records relating to such accounts;
- (c) any report of a person appointed under section 43A(1) or (2) to audit or examine those accounts.

(2) The Auditor General for Wales may exercise the same rights as the Comptroller and Auditor General under subsection (1) in respect of a National Health Service charity which is a Welsh NHS body; and for these purposes a Welsh NHS body is—

- (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.”.

These provisions are reflected in the Order at section 43B.

58. All other aspects of the original consultation remain unchanged.

ANALYSIS OF CONSULTATION RESPONSES

ANNEX A

a) Are you content with the proposal to remove the requirement in the National Health Service Act for NHS Charities to:
 keep accounts in such form as the Secretary of State/National Assembly for Wales may with the approval of the Treasury direct; submit accounts to the Department of Health/National Assembly for Wales for summarisation and examination by the Comptroller and Auditor General/Auditor General for Wales and presentation to Parliament/National Assembly for Wales?

Responses by Organisation type	Content With Proposal	Not Content With Proposal	Not Answered	Total
(i) NHS bodies (England)	58	3	0	61
(ii) NHS bodies (Wales)	8	1	1	10
(iii) Other	8	0	0	8
Total	74	4	1	79

Analysis of Comments

Content with the Proposal

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
52 NHS bodies (Eng) 7 NHS bodies (Wales) 3 Other 1 NHS body (Eng) 2 Other 1 NHS body (Eng) 1 NHS body (Eng)	The majority of the respondents said they were content with the proposals but made no specific comments. Same footing as other charities. The current position is anomalous. It will reduce the burden and be compliant with the rest of the charitable sector.	<i>It is recognised that NHS charities are unjustifiably burdened by the current statutory requirement. The proposal reduces this burden and brings NHS charities in line with other charities.</i>

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
3 NHS bodies (Eng)	Support for the proposal assumes that the central level of support to NHS bodies and provision of the Manual of Accounts will not reduce.	<i>The Charity Statement of Recommended Practice (SORP), which applies to all charities, provides detailed accounts guidance and advice on any changes that occur.</i>
1 Other	It is a positive proposal and should be supported.	<i>We welcome this response and support for the proposal.</i>
1 NHS body (Eng)	While we should be answerable to the NHS for probity and efficiency, this is surely implied by our accountability to the Charity Commission and, through them to the British public.	<i>The proposal clarifies the accountability to the Charity Commission. The independent appointment of auditors by the Audit Commission will provide additional assurances to the public about the proper administration of NHS charities.</i>
1 NHS body (Wales)	It will simplify the accounting arrangements for smaller charities.	<i>Smaller charities will benefit most from the proposals, as they will be allowed to produce simpler accounts with less stringent accounts scrutiny.</i>
1 Other	We would wish to see retention of section 98(1) of the 1977 Act which allows the Comptroller and Auditor General (C&AG/AGW) to examine all accounts and any report of the auditor on them. This would ensure that the C&AG/AGW would retain his rights on behalf of Parliament. We would welcome discussion as to the changes in the role of C&AG/AGW before it is finalised.	<i>The second consultation agreed to the proposed amendment and the draft Order has been amended accordingly.</i>

Not content with the Proposal

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
2 NHS bodies (Eng)	With an annual income of circa £250,000 there are no identifiable benefits or cost savings to us.	<i>These organisations have commented on how the proposal will affect them individually. The majority of the organisations who responded identified savings (see responses to question (g)).</i>
2 NHS bodies (Eng)	These bodies were not content with the proposal on the assumption that the Manual for Accounts for Funds held on Trust and the associated template spreadsheets are no longer provided as a central resource. If it can be confirmed that the Charity Commission or the Department of Health will provide continued support in the form of the Manual for Accounts then we would support the proposal. Additional time may need to be spent preparing documents into a format consistent with the Statement of Financial Activities. Also a common, centralised guidance may be lost.	<i>The current template provided by the Department of Health is based on the Charity Statement of Recommended Practice (SORP). The SORP will continue to be available and organisations will be informed of any accounts changes. Future changes will be relative minor ones and it will not be an onerous task for NHS charities to update as appropriate.</i>
1 NHS body (Wales)	The issue on whether to continue with the requirements should be around how this requirement is met. Consideration should be given to simplifying the form of accounts, possibly to the previous formats, rather than remove the requirement.	<i>Charities are required to prepare the accounts under the Statement of Recommended Practice. This provides for the smaller charities to produce less complex accounts.</i>

b) Are you content with the proposal to make provision for the scrutiny of NHS charity accounts by auditors appointed by the Audit Commission to be continued?

Responses by Organisation type	Content With Proposal	Not Content With Proposal	Not Answered	Total
(i) NHS bodies (England)	58	1	2	61
(ii) NHS bodies (Wales)	7	0	3	10
(iii) Other	6	0	2	8
Total	71	1	7	79

Analysis of Comments

Content with the Proposal

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
9 NHS bodies (Eng) 3 NHS bodies (Wales) 1 Other	Several bodies answered that they were content for the Audit Commission to continue with the appointment of auditors but made no specific comments.	
39 NHS bodies (Eng) 4 NHS bodies (Wales)	Auditors must have operational knowledge of charities.	<i>The Audit Commission requires its auditors to comply with all the appropriate auditing, professional and ethical standards. To ensure that such standards are achieved, the Commission maintains a rigorous quality review process, which includes a detailed review of audit files for selected audits. For health bodies, the review would include a review of the files relating to the audit of the charity accounts.</i>

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
4 NHS bodies (Eng)	As many common systems (i.e. shared systems and processes) are used it makes sense to use the same auditors and prevent the duplication of work.	<p><i>The Audit Commission's auditors scrutinise the NHS Exchequer accounts. In many instances these share similar or related systems of control with the charity funds and therefore it provides opportunities for greater efficiency by the same auditor examining both the public and charity funds.</i></p>
1 Other	This would ensure all NHS charities are audited to a consistent standard by an independently appointed set of auditors with knowledge of local finance systems and the environment under which these funds are retained.	
1 NHS (body) (Eng)	There are benefits in the same auditor being appointed to the NHS Trust, which Special Trustees relate to, particularly where major re-developments are being financed by the Trustees.	<p><i>We agree with this comment. This is why this was incorporated into the proposal.</i></p>
1 Other	Probably if the Audit Commission has the required skills. If not it should be passed to specialists in the charity sector. The work should be put out to tender regularly.	<p><i>The Audit Commission requires its auditors to comply with all the appropriate auditing, professional and ethical standards. They are experienced in auditing UK Generally Accepted Accounting Procedures (UKGAAP) compliant accounts. It also operates a regular programme of market testing for a selection of audit appointments.</i></p>
1 NHS body (Eng)	Avoiding unnecessary changes to the appointed auditors facilitates and promotes the continual building of professional relationships.	<p><i>It is good practice to maintain a balance between continuity, which promotes the building of professional relationships, and objectivity by limiting the period of audit appointments. The Audit Commission has a policy of rotating audit appointments over time.</i></p>

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
1 NHS body (Eng)	Yes but we strongly disagree that the auditors should be qualified as mentioned in Section 3 of the Audit Commission Act 1998 rather than Section 43(2) of the Charities Act. We see no reason why both options cannot be made available, particularly for section 11 charities. An auditor should be appointed who is an expert in charity accounts.	<i>The reference to the Audit Commission Act reflects the powers under which the Audit Commission appoints auditors, and it would be under this power that the Commission appointed auditors to NHS charities. There are no significant differences between the qualifications required under both the Charities Act and the Audit Commission Act.</i>
1 NHS body (Eng)	Scrutiny should be against the Charity Statement of Recommended Practice (SORP).	<i>The scrutiny of the accounts will be against the SORP.</i>
1 NHS body (Eng)	Concerns about conflict of interest in situations where the charity has the same team of auditors as the NHS Trust, its beneficiary.	<i>Appointed auditors are independent of both bodies. The arrangements proposed will be no different to those that have been in place in the NHS for a number of years.</i>
1 Other	Where NHS charities have their own accounting systems and are relatively self-sufficient, you could allow them the choice of auditor (similar to the approach adopted by local government for charities that have local authorities as trustees	<i>The proposal is for the existing scrutiny requirements of NHS charities to be preserved with the Audit Commission continuing to appoint the auditors. This independent appointment of auditors will provide additional assurance to the public of the proper administration of charity funds.</i>
1 NHS body (Eng)	The independent appointment of auditors by the Audit Commission would ensure the appropriate probity and compliance with the current legislative framework.	<i>We welcome this comment. The proposal recognises the need for donors and the general public to enjoy the additional assurances that the independent appointment of auditors by the Audit Commission provides.</i>

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
1 Other	We agree that there are certain efficiencies that can be obtained by a single auditor being appointed. However, the proposal is inconsistent with the regime for the appointment of auditors to charities controlled by local government. Also the following issues need to be addressed: the relationship between the Audit Commission's Code of Practice and the Auditing Practices Board Practice Note 11 and that it is essential that the Audit Commission's auditors have the appropriate skills, knowledge and experience.	<i>The proposal provides the necessary protection to the NHS. We agree that auditors should have the necessary skills.</i>
1 Other	The dispensation given to charities under section 9(2)(a) of the Charities (Accounts and Reports) Regulations 1995 will not apply under the new arrangements. An alternative dispensation is required.	<i>The Regulatory Reform Order will amend existing legislation and reinstate NHS charities as bodies for which the Audit Commission appoints the auditors. Therefore an alternative dispensation is not required.</i>

Not Content with the Proposal

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
1 NHS body (Eng)	The Trustees are empowered and well able to appoint auditors to audit Charitable Funds' accounts and associated systems. It is not necessary for the Audit Commission to continue with this function.	<i>The proposal is for the existing scrutiny requirements of NHS charities to be preserved with the Audit Commission continuing to appoint the auditors. This independent appointment of auditors will provide additional assurance to the public of the proper administration of charity funds.</i>

c) Are you content with the proposal to make provision for the examination by auditors appointed by the Audit Commission of the accounts of NHS charities with both aggregate income and total expenditure of £10,000 or less in the relevant financial year?

Responses by Organisation type	Content With Proposal	Not Content With Proposal	Not Answered	Total
(i) NHS bodies (England)	50	1	10	61
(ii) NHS bodies (Wales)	6	1	3	10
(iii) Other	3	3	2	8
Total	59	5	15	79

Analysis of Comments

[Note: some responses refer to independent examiners. ‘Independent’ has been removed from the draft Order and Explanatory Document as they are already independent as the Audit Commission make the appointments]

Content with the Proposal

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
46 NHS bodies (Eng) 6 NHS bodies (Wales) 1 Other	The majority of responses said they were content but made no specific comment.	
2 NHS bodies (Eng) 1 Other	Providing that the degree of audit scrutiny and review is proportionate to the risk. There is little benefit in spending a disproportionate sum in audit fees or fees for independent examiners when the income and expenditure is small.	<i>As public bodies administer the funds however small we believe it appropriate for there to be accounts scrutiny, as this will provide greater comfort to the donors. The proposal does however allow for smaller charities to receive a form of accounts scrutiny that is less stringent than an audit.</i>
1 NHS body (Eng)	Providing that it is the same auditor, who audits the host NHS organisation.	<i>We have asked the Audit Commission to try to ensure that this is the case.</i>
1 NHS body (Eng)	All NHS charities however small should be audited on an annual basis to ensure integrity.	<i>The accounts of all NHS charities will be subject to some form of annual external scrutiny.</i>

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
1 Other	This will ensure all NHS charities will be examined independently in accordance with charity legislation and appropriate audit standards. We would also hope that this change would enable the Audit Commission to identify and report on key trends, concerns and produce a report on the level of stewardship and governance adopted by NHS trusts over these funds. This would enable the Comptroller & Auditor General to consider whether it would be appropriate to report to Parliament on key issues and decide whether work need to be undertaken by the C&AG through his exercise of inspection/access rights.	<p><i>The proposal will give the Comptroller and Auditor General access rights.</i></p> <p><i>This is a matter for the Audit Commission.</i></p>

Not Content with the Proposal

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
1 Other	Not necessary for a review of funds with income and expenditure of £10 thousand or less. NHS charities should be treated the same as other charities, i.e. exempt from audit requirements and send their accounts to the Charity Commission on an annual basis. We are not aware that separate audit appointment processes apply to NHS charity appointments currently. Could require changes in practices.	<p><i>As public bodies administer the funds, we believe it appropriate for there to be some form of accounts scrutiny, , to provide greater comfort to donors. At present, auditors appointed to the host body are automatically appointed to the charity. We do not envisage any change in this process.</i></p>
Responses by	Comments made by	Department of Health and National

Organisation type	Respondents	Assembly for Wales Response
1 Other	<p>We do not consider that the benefits outlined for additional scrutiny of NHS charities outweigh the costs that will be associated with the additional scrutiny. There is a minimum level of cost associated with an independent examination and we consider that this would place an unnecessary burden of funds of less than £10 thousand.</p>	<p><i>Currently all NHS charities have a full audit irrespective of size. The examination will reduce the burden on smaller charities who will be able to produce less complex accounts with less stringent audit requirements appropriate to their size in line with other charities.</i></p>
1 Other	<p>Where exemption from producing accounts, or being subject to an audit currently exists under Charity Law, then NHS charities should not have to produce a limited form of accounts or be subject to independent financial review. It would however be appropriate for appointed auditors to perform an independent financial review of any accounts produced under the request of the Charity Commissioners.</p>	<p><i>Whilst the proposal reduces the overall burden on NHS charities, it also recognises that as public bodies they are required to produce either a simpler form of accounts or be subject to an independent financial review as assurances to the public of the proper administration of the funds.</i></p>
1 NHS body (Wales)	<p>As there is no material difference in the work performed by the NHS charity and the external auditor, an ‘audit’ is preferred, rather than an ‘independent examination’.</p>	<p><i>All NHS charity accounts will be subject to scrutiny by auditors appointed by the Audit Commission who will provide either an ‘audit’ or an ‘examination’. Charities with gross income or expenditure of less than £250,000 will be subject a slightly different audit regime, which permits an examination rather than a full audit.</i></p>

d) What protections does the existing legislation provide which it would be necessary for us to retain?

Responses by Organisation type	None to Retain	Protections to Retain	Not Answered	Total
(i) NHS bodies (England)	54	1	6	61
(ii) NHS bodies (Wales)	5	2	3	10
(iii) Other	2	2	4	8
Total	61	5	13	79

Analysis of Comments

No Protections to Retain

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
54 NHS bodies (Eng) 4 NHS bodies (Wales) 2 Other	The majority of respondents answered none to this question and did not make any specific comment.	
1 NHS body (Wales)	Theoretically, protection is provided by the Charities Act. However, there is a certain 'comfort factor' from the additional audit provided within the auspices of the NHS.	<i>It is proposed that the existing scrutiny requirements for the accounts of NHS charities be preserved with the Audit Commission continuing to appoint auditors.</i>

Protections to Retain

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
1 NHS body (Eng)	Not clear if Trust would still be required to include Charitable Accounts as part of Annual report. I believe it should form part of Annual Report.	<i>The Charities Act 1993 requires charities to submit their annual reports to the Charity Commission, which are subsequently made available to the public. NHS charities are not required to produce an annual report under NHS legislation.</i>

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
1 Other	Retain exemption under Part IV of the Charities Act 1993 that allows charities with gross income and expenditure of £10k or less not to have to submit their accounts to the Charity Commissioners (except on request) or be subject to audit and examination requirements. This would be consistent with the requirement not to impose additional legal burdens under the Regulatory Process Order.	<i>The provisions in charity law that allows charities with gross income and expenditure of £10,000 or less not to be subject to any form of accounts scrutiny will not apply to NHS charities. As public bodies administer these funds, we do not consider that it would be appropriate for there to be no accounts scrutiny and this will provide greater assurance to donors. This will not impose any additional burdens on NHS charities as they are all currently subject to audit irrespective of their size and in most cases it will be reduced.</i>
1 NHS body (Wales)	Charity accounts should be published at same time and with same mechanisms as main NHS accounts. This should include publicity and inclusion in the Annual Report.	<i>Under section 45 of the Charities Act 1993, all charities with an annual income or expenditure over £10,000 are required to send their accounts to the Charity Commission. The Commission requires submission of the annual accounts within 10 months of the financial year end-date. We have received positive responses from most organisations on the revised timescales. The accounts and annual reports of all NHS charities are available for public inspection. Also under section 47 of the Act any member of the public has the right to request any charity to send them a copy of its accounts.</i>
1 NHS body (Wales)	Best practice dictates that there should be joint coverage at the AGM of each NHS body. The accountability to Ministers should be retained and clarified in the new accounting and auditing framework.	<i>The Charity Commission has powers to institute enquiries of charities either generally or for specific purposes. Ministers have no such powers. Their powers are limited to appointing and removing trustees, determining their terms of office and transferring property held on trust. These proposals further clarify this position.</i>

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
1 Other	<p>Any new arrangements will need to ensure that the principle of stewardship is upheld and is improved on, that there is some assessment as to how this principle is working in practice and Parliament is informed if there are concerns sufficiently important for them to consider. With the proposed removal of the summarised accounts, it is imperative that the Comptroller and Auditor General retains his inspection/access rights under legislation. This would provide Parliament and the National Assembly for Wales with a report should there be any matters of significant concern that he feels should be examined further.</p>	<p><i>The amended proposal as a result of the further consultation will retain the Comptroller and Auditor General's access rights.</i></p>

e) Would the proposed changes prevent anyone from exercising an existing right or freedom that they might reasonably expect to continue to exercise? If so in what way(s)?

Responses by Organisation type	Would Not Affect Rights or Freedoms	Would Affect Rights or Freedoms	Not Answered	Total
(i) NHS bodies (England)	55	0	6	61
(ii) NHS bodies (Wales)	6	1	3	10
(iii) Other	5	1	2	8
Total	66	2	11	79

Analysis of Comments

Would Not Affect Rights or Freedoms

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
54 NHS bodies (Eng) 6 NHS bodies (Wales) 4 Other	The majority of responses stated that the proposed changes would not prevent anyone from exercising an existing right or freedom, but did not provide specific comments.	
1 NHS body (Eng)	If through consultation it becomes apparent that summarised information is required then information requirements should be reviewed.	<i>The consultation exercise did not highlight that the summarised information would be required.</i>
1 Other	No providing the C7AG's and AGW's access rights are protected on behalf of Parliament, we do not feel it appropriate to expect to receive and audit summarised accounts.	<i>The proposal has been amended to reflect this.</i>

f) Do these proposals impose any burdens upon anyone?

Responses by Organisation type	Do Not Impose Burdens	Impose Burdens	Not Answered	Total
(i) NHS bodies (England)	51	6	4	61
(ii) NHS bodies (Wales)	5	2	3	10
(iii) Other	3	3	2	8
Total	59	11	9	79

Analysis of Comments

Do Not Impose Burdens

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
51 NHS bodies (Eng) 5 NHS bodies (Wales) 2 Other	The majority of respondents stated that the proposals do not impose any burdens but made no specific comments.	
1 Other	The Department of Health will need to consider whether these funds will fall under the 'Whole of Government' Resource Accounting initiative, when over the next few years the accounts of trusts will fall within the Department's consolidation boundary. Under the Resource Accounting Manual there may be a requirement for at least a note to be included in the departmental resource account summarising the assets, liabilities and monies trust hold in stewardship. We would welcome a view from the Department, with advice from Treasury, as to whether this would be necessary.	<i>HM Treasury has determined that it is not appropriate to consolidate the NHS charities and the Exchequer accounts.</i>

Impose Burdens

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
<p>3 NHS bodies (Eng)</p> <p>1 NHS body (Wales)</p>	<p>Additional burden for charities if central support, including guidance and standard proformas, are not provided.</p> <p>There is a slight burden on larger charities in that it is assumed that the Assembly will not deal with the current standard format of the accounts and professional standards. This would require larger Trusts to spend more time drawing up the format and keeping up to date with all required accounting changes.</p>	<p><i>The Charity Commission provides guidance on the format of the accounts and advice on any changes that occur.</i></p>
<p>1 Other</p>	<p>Extra work for the Audit Commission. Also in some instances charities have to rely on help from the auditor in producing their accounts, as they cannot justify employing someone with the necessary skills.</p>	<p><i>The Audit Commission currently appoints auditors to all bodies listed under Section 98 of the National Health Service Act 1977. Therefore it will not introduce a new burden on either the Audit Commission or the NHS charities. The Commission actively discourages auditors from compromising their independence by becoming directly involved in the production of accounts. We are not aware of any instances where the necessary skills are not available. The cost of preparing the accounts has to be met by the charity and it is the responsibility of the Trustees to ensure that it is adequately resourced to fulfil this function.</i></p>
<p>1 NHS body (Eng)</p>	<p>Auditors would have more Trusts charity accounts to verify.</p>	<p><i>The Audit Commission currently appoints auditors to all bodies listed under Section 98 of the National Health Service Act 1977. Therefore it will not introduce a new burden on either the Audit Commission or the NHS charities. The Commission actively discourages auditors from compromising their independence by becoming directly involved in the production of accounts. We are not aware of any instances where the necessary skills are not available. The cost of preparing the accounts has to be met by the charity and it is the responsibility of the Trustees to ensure that it is adequately resourced to fulfil this function.</i></p>

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
1 NHS body (Eng)	Potential burden on NHS organisations to separately recreate the working papers to produce the accounts suitable for submission to the Charity Commission and the subsequent diseconomies of scale. Also the possible need by organisations to research and identify changes from previous years accounting procedures and accounting disclosure requirements.	<i>NHS charities currently have to produce accounts and an annual report to the Charity Commission. Therefore the proposal does not create an additional burden. The Charity Commission provides advice on changes to procedures and disclosures.</i>
1 Other	The proposals appear to retain an unnecessary burden in the form of the central review requirements	<i>The Charity Commission's review arrangements will be the same as for other charities.</i>
1 NHS body (Eng)	The NHS Manual for Accounts incorporates the current requirements of Charitable Funds Legislation. If the proposal was to go ahead we would be required to be more involved with the Charitable Fund Legislation without the benefit afforded by the NHS Manual for Accounts.	<i>The appropriate part of the NHS Manual for Accounts is based on the Charity Statement of Recommended Practice (SORP). The SORP will continue to be available and organisations will be informed of any accounts changes. Future changes will be relative minor ones and it will not be an onerous task for NHS charities to update as appropriate.</i>
1 NHS body (Wales)	Potentially, the proposals increase the burden on individuals if they are required to take positive action to exercise right.	<i>There are no plans to amend section 47 of the Charities Act 1993 under which any member of the public has the right to request any charity to send them a copy of its accounts and annual report.</i>

g) What costs or savings may arise as a result of these changes and to whom? Please provide details of the basis of your estimates.

Table A

Responses by Organisation type	Savings/ (Additional Costs) Identified	No Savings	Not Answered	Total
(i) NHS bodies (England)	40 (4)	8	9	61
(ii) NHS bodies (Wales)	4 (1)	4	1	10
(iii) Other	5 (1)	0	2	8
Total	49 (6)	12	12	79

Table B – Annual Savings by Value

No. of Consultees	Value (£)	Range From (£)	Range To (£)
1	3000		
1	2950		
1	2500		
1	2050		
3	2000		
2	1730		
1	1650		
1	1470		
1	1450		
1	1350		
3	1250		
1	1200		
1	1150		
1	1100		
2	1000		
1	874		
1	750		
1	670		
2	600		
2	500		
1	350		
1	225		
1		1000	2000
1		850	2900
1		800	1200
16	No value specified		
Total	49	2,650	6,100

Table C – Basis for Savings

Expense Type	Annual Cost (£)	No. of Consultees
Audit Costs		
Familiarisation with NHS Manual of Accounts	1070	19
Checking consistency of CTFs with annual accounts and integrity of CTFs	3835	19
Signing & filing CTFs	2437	16
Other costs stationery etc	105	2
District Audit	700	1
Internal Audit	200	1
Preparation costs-staff costs		
Staff familiarisation with NHS Manual of Accounts	4730	19
Website download time etc	712	17
Preparation and checking of CTF forms	3140	19
Translation of Forms – Staff time costs	200	1
Signing and consideration by Trustees	1508	18
Additional staffing and temporary costs due to tight timetable	3770	6
Postage, stationery etc	725	14
Other costs	325	6
Other costs		
Costs of NAO visit preparation	50	2
Any ad hoc costs which have occurred over the last few years as a result of queries around the CTF forms	32	2
Total value of specified savings	23539	
Value of unspecified savings (including range mid-point)	20135	
Total Savings	£43,674	

Table D – Estimated Savings for the Department of Health (including overheads)

Task	Value
Work Area	(£)
Preparation of Manual	2,500
Preparation of Excel files	1,000
Answering queries	1,000
Accounts processing	2,500
Summarised accounts	500
Miscellaneous	1,500
Data provision	1,000
TOTAL	10,000

Table E Analysis of Comments

Savings Identified

Responses by Organisation	Comments made by Respondents	Department of Health and National Assembly for Wales Response
12 NHS bodies (Eng) 1 NHS body (Wales)	Several organisations stated there would be savings without making any specific comments.	<p><i>Every effort is made to ensure that administrative costs are kept to a minimum. These proposals will provide additional savings to charities</i></p>
26 NHS bodies (Eng) 1 NHS body (Wales)	Will remove a small number of tasks in the finance department.	
1 Other	The area that most annoys potential funders is high administrative costs, bank charges etc. People give money for a purpose and are suspicious when management costs are excessive or inappropriate because of outdated regulations.	
1 NHS body (Eng)	We would expect there to be some savings in administrative costs.	

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
1 Other	Savings should arise primarily in respect of the time saved by accountants in preparing and submitting the second set of accounts. This could be 2 days per NHS charity. The cost of consolidation at the Department of Health would also be saved. 1 Other (56)	<i>The proposal allows for the potential for all NHS charities to make savings.</i>
1 NHS body (Eng)	Potential saving in audit fee as greater coverage required to discharge duty under full audit as opposed to independent review.	<i>Currently all NHS charities have to produce complex accounts to allow for summarisation. Under the proposals smaller charities will be able to prepare simpler accounts and they will be able to have a level of accounts scrutiny proportionate to their size.</i>
1 Other	There will be savings in audit fees and administration costs to the smaller NHS charities in particular.	
1 Other	The audit input is likely to be reduced because of smaller charities opting for independent examination and the removal of the requirement to prepare summarisation schedules.	
1 Other	If savings accrue the charities should benefit to offset any additional costs incurred in the past.	<i>Savings will accrue to the charities themselves</i>
1 NHS body (Wales)	Savings should be expected from the Audit Commission and the Department of Health/National Assembly for Wales – as these bodies sever their connections with Charitable Accounts.	
1 Other	The Comptroller and Auditor will no longer be required to undertake a full audit of the summarised accounts. These cost savings will be passed onto the relevant Department on the basis of reduced audit fees.	<i>The Comptroller and Auditor General is not funded from the Department of Health's vote.</i>

Additional Costs Identified

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
1 NHS body (Eng)	Additional costs could be incurred if the auditors chose to use a specialist charity audit team instead of the normal NHS team.	<p><i>The Audit Commission's auditors scrutinise the NHS Exchequer accounts. In many instances these share similar or related systems of control with the charity funds and therefore it provides opportunities for greater efficiency by the same auditor examining both the public and charity funds.</i></p>
1 NHS body (Eng)	Audit fees would increase if external audit had to come back and audit charitable funds rather than do them in one hit with the exchequer audit	
1 Other	There may be additional costs to the charities for one-off audits unless the same firm is appointed to several charities administered at the same site and where the work can be conducted contemporaneously.	<p><i>Each NHS body will produce one set of accounts under an umbrella arrangement, which requires one audit.</i></p>
1 NHS body (Eng)	If audits were separately timed or in different formats there may be some additional cost, though at present it is impossible to accurately predict these.	
1 NHS body (Wales)	Additional fees for separate audit visits/work,	<p><i>Charities are required to prepare the accounts under the Statement of Recommended Practice (SORP). The current accounts template provided by the Department of Health is based on the SORP.</i></p>
1 NHS body (Wales)	Some additional staffing costs may be experienced due to need to maintain the required format by individual trusts, minimal less than £500 per annum.	

No Savings

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
1 NHS body (Eng)	This Trust does not believe that any savings will accrue. The additional work involved in completing and auditing the 2 sets of accounts is about 1-2 hours. In practice one set was completed and the information then copied across. The auditors used the same principle of auditing one version then ensuring that the same figures were used.	<p><i>The current accounts template provided by the Department of Health was based on the Charity Statement of Recommended Practice (SORP). This was to ensure that the two sets of accounts were compatible and the burden was kept to a minimum. The SORP will continue to be made available by the Charity Commission and organisations will be informed of any accounts changes</i></p>
1 NHS body (Eng)	Unable to calculate, need to consider how any changes to the level of central support would affect the administration costs of the charity.	
1 NHS body (Eng)	I do not believe it will result in financial savings. If the Department of Health does not continue to produce the Manual for Accounts it may result in extra work, as the document is easier to read and follow than the Charity – Statement of Recommended Practice.	
1 NHS body (Eng)	The withdrawal of the Manual for Accounts and associated accounts templates will lead to an increase in the time and effort required from Finance staff to complete the accounts. The present regime means that an overall framework is provided to each charity with only specific SORP issues within the accounts to be decided locally. Our auditors have indicated that on the basis of this proposal, that it is unlikely that there would be any reduction in their audit work or fee.	

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
1 NHS body (Eng)	The bulk of preparation and audit time is focussed on the charity accounts and the annual report. By and large the NHS requirements are a by-product of these activities, so there would be little savings.	
1 NHS body (Eng)	In our case the cost savings will be marginal. The biggest savings will be made by the smaller charities with a turnover less than £100,000 but it is impossible for me to quantify for that. There will presumably be some saving made at the Department of Health because they will no longer be involved (at least not to the same level as before).	<i>The current accounts template provided by the Department of Health was based on the Charity Statement of Recommended Practice (SORP). This was to ensure that the two sets of accounts were compatible and the burden was kept to a minimum. The SORP will continue to be made available by the Charity Commission and organisations will be informed of any accounts changes</i>
1 NHS body (Eng)	The proposed changes would remove a small number of tasks from the Finance Department. These costs, are however fixed costs and no material savings are anticipated.	
1 NHS body (Eng)	Other processes currently carried out would simply be superseded by replacement worksheet, input keying and other fact-finding investigations.	
1 NHS body (Eng)	It is unlikely that any savings or costs would happen as a result of these changes.	
1 NHS body (Wales)	This Trust would not expect to make any identifiable savings as a result of the proposed changes, as the workload would remain identical.	

h) Should any provisions of the proposed order be designated as subordinate to facilitate adjustments that may become desirable in the future?

Responses by Organisation type	Yes There Should be Provisions	No	Not Answered	Total
(i) NHS bodies (England)	48	3	10	61
(ii) NHS bodies (Wales)	3	0	7	10
(iii) Other	1	2	5	8
Total	52	5	22	79

Analysis of Comments

Yes. There should be Provisions

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
45 NHS bodies (Eng) 3 NHS bodies (Wales)	This should regularise NHS charities in line with other similar charities, as a consequence a facility should be put in place for any thresholds to be amended by the Secretary of State without having to revisit this exercise.	<p><i>The thresholds are set out in charity regulations and are subject to review. This will keep NHS charities in line with other charities.</i></p>
1 NHS body (Eng)	It is important that the limits between the criteria are indexed to avoid this proposal being outdated.	
1 NHS body (Eng)	Requirement for audit of charities with income less than £10k .	
1 NHS body (Eng)	Consideration should be given to: i) Amendment to de minimis limits ii) Planned changes with NHS configuration – the NHS Plan	
1 Other	In principle, we would support maximum flexibility, for example if the qualification criteria for independent examiners were subject to subordinate provisions, they could be relaxed more easily at a later date.	

i) Are there any other benefits?

Responses by Organisation type	Yes Other Benefits	No Other Benefits	Not Answered	Total
(i) NHS bodies (England)	46	3	12	61
(ii) NHS bodies (Wales)	6	0	4	10
(iii) Other	4	2	2	8
Total	56	5	18	79

Analysis of Comments

Other Benefits

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
39 NHS bodies (Eng) 2 NHS bodies (Wales) 1 Other	The clarification of accountability to the Charity Commission is a further move towards good governance of these charities.	<i>These comments show support for the measures set out in the proposal.</i>
29 NHS bodies (Eng) 2 NHS bodies (Wales)	It removes the anomaly that the £1,700 million held by 450 Charities is perceived to represent the totality of charitable support for the NHS.	
42 NHS bodies (Eng) 5 NHS bodies (Wales) 1 Other	The Charity Commission's timetable for producing Annual Accounts and associated Annual Reports is more realistic than the timetable set by the Department of Health. It eases the burden on finance staff.	
1 Other	If charities are looked at individually rather than several in the round, there will be a need for each charity to have its financial affairs in good order. Under materiality, it might have been possible for some charities to get away with producing little for audit.	

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
<p>1 NHS body (Eng) 1 NHS body (Wales)</p>	<p>Financial and administrative benefits should be realised at the Department of Health and the National Assembly for Wales. 1 NHS body (England) (ref:49) 1 NHS body (Wales) (ref:81)</p>	<p><i>There will be some benefits associated with the summarisation. However, most of the processes are mechanised.</i></p>
<p>1 Other</p>	<p>The changes should allow more time to be spent on the proper use of the funds for the purpose they were donated.</p>	<p><i>The retention of the overheads will benefit the charities.</i></p>
<p>1 NHS body (Wales)</p>	<p>The proposal is a clear opportunity to simplify the accountability requirements and create less burden on smaller Trusts. However there must be further clarity in terms of any accountability to the National Assembly for Wales.</p>	<p><i>The Charity Commission has powers to institute enquiries of charities either generally or for specific purposes. The Secretary of State for Health and the National Assembly for Wales have no such powers. Their powers are limited to the appointing and removing trustees, determining their terms of office and transferring property held on trust. These proposals further clarify the position</i></p>
<p>1 NHS body (Eng)</p>	<p>The clarification of accountability to the Charity Commission is seen as a move towards good governance. However due regard must be paid to the dual role of the Charity Commission as adviser and enforcer which can still be seen as a conflict of interest.</p>	<p><i>The accounts of all NHS charities will be subject to review by auditors appointed by the Audit Commission, who will ensure compliance with Charity and NHS Trust law.</i></p>

j) Please add any further comments you may like to make.

Analysis of Comments

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
2 NHS bodies (Eng)	The deadline for submitting the accounts to the Charity Commission is 8 months later than the NHS. Although any extra time is welcome, in practice it makes sense for the auditors to continue auditing them concurrently with the accounts of the Trust. Otherwise there would be additional audit costs as a result of carrying out a separate visit. Therefore it makes sense to continue working to the same deadline as the NHS. This is purely good practice and would be entirely a matter for each individual Trust to consider. Also need for inclusion in the Trust Annual Report.	<i>Many of the responses received from organisations have indicated that the extended deadline for submitting the accounts is welcomed. The 1993 Charities Act requires charities to submit their annual report to the Charities Commission.</i>
1 NHS body (Eng)	This should be implemented without delay.	<i>This comment supports the proposal.</i>
1 NHS body (Eng)	A good accounts manual from the Department of Health or the Charity Commission Accounts would be desirable/necessary. There would only be a saving if the Charity Commission required a set of ‘ccforms’ of reduced complexity, would that be justifiable?	
1 NHS body (Eng)	To make a worthwhile time saving NHS Charities and auditors would require the continuance of a manual to assist in the completion of the annual accounts cforms, which can be used in line with the Charity SORP.	<i>Charities are required to produce accounts under the Statement of Recommended Practice (SORP).</i>
1 NHS body (Eng)	I assume the accounts would be submitted in template format as currently this works well.	<i>The accounts will be in the same format as currently submitted to the Charity Commission.</i>

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
1 Other	<p>Although NHS bodies will be required to comply with the Charities Statement of Recommended Practice (SORP), a lack of Department of Health guidance will require a change in working practices for NHS bodies. There are some issues which are specific to NHS charities (eg transfer of funds) on which NHS bodies may still require guidance and we consider that it would be helpful for the mechanisms for the provision of such guidance in the future are explained.</p>	<p><i>The proposals only affect the accounts and not the other responsibilities. The current procedures for these will continue.</i></p>
1 NHS body (Eng)	<p>As a Corporate Trustee the Trust would still require production and audit of the Charitable fund accounts to be completed to allow publication as part of the Trust's Annual Report and accounts.</p>	<p><i>NHS legislation does not require corporate trustees to publish their accounts in the Trust's annual report, however, under the Charities Act 1993 NHS charities are required to produce an annual report and submit it to the Charity Commission. Trustees are responsible for ensuring that they are available.</i></p>
1 NHS body (Wales)	<p>The Trust would wish to ensure that funding provided at this level for audit purposes were left intact.</p>	<p><i>Audit costs are charged to the Charity itself. They are not funded from the Exchequer.</i></p>

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
1 NHS body (Wales)	<p>Charitable resources are key to some areas and provide an essential funding stream to NHS organisations. To remove this essential funding stream altogether would be wrong at Parliamentary level. However it is assumed that this would be overcome by placing an emphasis on reporting this through Trust accounts by highlighting it through ‘Other Operating Income’ disclosure in the main accounts. This would clarify the position to the public that it is not just the £1,700 million held by NHS charities that help to fund some NHS services. To aid the public on this issue there may be a need to describe by way of narrative in the main accounts and annual report.</p>	<p><i>Revenue income from charitable funds is already included within ‘Other Operating Income – ‘charitable and other contributions to expenditure’ and capital donations are also separately identified in the accounts. There are currently no proposals to change this.</i></p>

Miscellaneous Comments

(Defined in correspondence and not categorised in questions a to j above)

Analysis of Comments

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
<p>1 NHS body (Eng)</p> <p>1 NHS body (Wales)</p>	<p>If central guidance does not continue to be available, the additional administration for the NHS as a whole and for the Charities Commission in resolving queries may outweigh the savings.</p> <p>I would not like to see a position whereby 37 organisations in Wales would be querying accounting guidelines with the Charity Commissioners and setting different standards for audit purposes. If this were to happen it is likely that the costs would increase rather than decrease due to duplication of effort. I believe there is a continued role for WAG (or another forum) to provide a lead to produce and maintain accounting standards with the Charity Commissioners. I would not wish to see WAG lose all responsibility for Charitable Funds.</p>	<p><i>The Charity Statement of Recommended Practice (SORP) which applies to all charities provides detailed accounts guidance and advice on any changes that occur.</i></p>
<p>1 NHS body (Wales)</p>	<p>Although the Assembly will no longer consolidate the accounts, it would be helpful for the detail to be worked through via the Trust Accounting Group (TAG) so that there continues to be a consistent approach across Wales etc, including software/presentation.</p>	<p><i>TAG will continue as a discussion group. NHS charities are required to prepare their accounts under the Statement of Recommended Practice (SORP). This provides detailed guidance to ensure that all organisations prepare their accounts in a consistent format.</i></p>

Responses by Organisation type	Comments made by Respondents	Department of Health and National Assembly for Wales Response
1 NHS body (Wales)	There are concerns around losing the support/control of the National Assembly Wales and the duplication of work (and watering down of expertise) at health bodies. Also the lack of consistency and disclosure between health bodies (through complying with Charity Commission requirements).	
1 NHS body (Wales)	Missing from the consultation document is the recognition that the charitable funds, and particularly the trustees of the funds, cannot be separated from the host statutory body The requirements for good governance etc cannot be separated from that of the host NHS body. The Department of Health and the Welsh Assembly Government should set out the framework for this.	<i>The Department of Health plans to ensure governance assurance for corporate bodies making reference to their responses to conform to Charity Commission guidance when acting as trustees.</i>

ANNEX B

Summarised Accounts for Funds Held on Trust (England) 2001/2002

Statement of Secretary of State's and Accounting Officer's Responsibilities

Section 98 (4) of the National Health Service Act 1977 requires the Secretary of State to prepare a statement of accounts for each financial year in the form and on the basis determined by the Treasury. The accounts are prepared by the Accounting Officer on behalf of the Secretary of State on an accruals basis and must present fairly the state of affairs of the Funds Held on Trust by health authorities, NHS trusts, primary care trusts, special health authorities, special trustees, and Section 11 trustees at the year end and their incoming resources and application of resources for the financial year.

In preparing the accounts the Accounting Officer is required to:

- observe the accounts direction issued by the Treasury, including the relevant accounting and disclosure requirements, and apply suitable accounting policies on a consistent basis;
- make judgements and estimates on a reasonable basis;
- state whether applicable accounting standards have been followed and disclose and explain any material departures in the financial statements;
- prepare the financial statements on the going concern basis, unless it is inappropriate to do so.

The Treasury have appointed the Permanent Secretary and Chief Executive of the National Health Service as the Accounting Officer for the summarised account of Funds Held on Trust. His relevant responsibilities, including his responsibility for the propriety and regularity of the public finances for which he is answerable and for keeping proper records, are set out in the Accounting Officers' memorandum issued by the Treasury and published in "Government Accounting".

D3 [this reference refers to the pages in the Summarised Accounts and are referred to throughout the annex]

The Certificate and Report of the Comptroller and Auditor General to the Houses of Parliament

I certify that I have audited the financial statements on pages D5 to D14 under the National Health Service Act 1977. These financial statements have been prepared under the historical cost convention as modified by the revaluation of certain fixed assets and the accounting policies set out on pages D7 to D9.

Respective responsibilities of the Accounting Officer and Auditor

As described on page D3, the Accounting Officer, on behalf of the Secretary of State, is responsible for the preparation of financial statements in accordance with section 98(4) of the National Health Service Act 1977 and with the directions made thereunder by the Treasury. The Accounting Officer is also responsible for the preparation of the Foreword to the Summarised Accounts. My responsibilities, as independent auditor, are established by statute and guided by the Auditing Practices Board and the auditing profession's ethical guidance.

I report my opinion as to whether the financial statements presents fairly the state of affairs of the Funds Held on Trust by health authorities, Primary Care Trusts, NHS Trusts, special health authorities and special trustees and have been properly prepared in accordance with section 98(4) of the National Health Service Act 1977 and the directions thereunder by the Treasury. I also report if, in my opinion, the Foreword is not consistent with the financial statements, if the Accounting officer has not kept proper records, or if I have not received all the information and explanation I require for my audit.

Basis of audit opinion

I conducted my audit in accordance with United Kingdom Auditing Standards issued by the Auditing Practices Board. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the financial statements. It also includes an assessment of the significant estimates and judgements made by the Accounting Officer in the preparation of the financial statements, and of whether the accounting policies are appropriate to the circumstances if the Funds Held on Trust by health authorities, Primary Care Trusts, special trustees, consistently applied and adequately disclosed.

I planned and performed my audit so as to obtain all the information and explanations which I considered necessary in order to provide me with sufficient evidence to give reasonable assurance that the financial statements are free from material misstatement, whether caused by error or by fraud or other irregularity. In forming my opinion I also evaluated the overall adequacy of the presentation of information in the financial statements.

Opinion

In my opinion

the financial statements present fairly the state of affairs of the Funds Held on Trust by health authorities, Primary Care Trusts, NHS Trusts, special health authorities and special trustees at 31 March 2002 and their incoming resources and application of resources for the year then ended and have been properly prepared in accordance with section 98(4) of the National Health Service 1977 and with the directions made thereunder by the Treasury.

John Bourne
Comptroller and Auditor General

28 February 2003

National Audit Office
157-197 Buckingham Palace Road
Victoria
London SW1W 9SP

D4

Statement of Financial Activities for the year ended 31 March 2002

2000-2001

	Note	Unrestricted Funds £000	Restricted Funds £000	Endowment Fund £000	Total Funds £000	Total Funds £000
Incoming resources						
Donations, legacies and similar resources						
Donations		69,736	76,429	-	146,165	152,314
Legacies		35,746	25,549	68	61,363	64,527
Grants receivable						
from NHS bodies		2,316	1,871	2,074	6,261	1,279
other grants receivable		930	1,743	-	2,673	3,148
Total donations, legacies and similar resources		108,728	105,592	2,142	216,462	221,268
Operating activities						
Activities for generating funds		2,423	5,319	-	7,742	6,290
Activities in the furtherance of the charities objectives		8,715	1,217	-	9,932	8,144
		11,138	6,536	0	17,674	14,434
Investment income		50,721	16,875	174	67,770	73,137
Other incoming resources		5,222	4,871	3,322	13,415	18,361
Total incoming resources		175,809	133,874	5,638	315,321	327,200
Resources expended						
Cost of generating funds		7,347	,767	31	11,145	10,360
Charitable expenditure:						
Grants payable to other NHS charities	2.1	3,201	11,415	1,298	45,914	39,487
Other grants payable	2.1	125,595	70,366	7	195,968	254,521
Activities in furtherance of charitable activities	2.2	48,300	48,281	294	96,875	92,390
Support cost		1,049	262	2	1,313	772
Management and administration		7,872	5,337	34	13,243	12,697
Total resources expended		223,364	139,428	1,666	364,458	410,227
Net (outgoing)/incoming resources before transfers		(47,555)	(5,554)	3,972	(49,137)	
Gross transfer between funds		(20,190)	(16,456)	36,646	-	-
Net (outgoing)/incoming resources		(67,745)	(22,010)	40,618	(49,137)	(83,027)
Gains on revaluation of own fixed assets		30,941	82	791	31,814	5,848
(Losses) on revaluation and disposal of fixed assets		(17,946)	(15,921)	(4,988)	(38,855)	(79,665)
Net movement in funds		(54,750)	(37,849)	36,421	(56,178)	(156,844)
Fund balances brought forward at 31 March 2001		773,601	453,996	510,738	1,738,335	
Fund balances carried forward at 31 March 2002		718,851	416,147	547,159	1,682,157	

All recognised gains and losses are included in the Statement of Financial Activities, and all activities are continuing.

The notes at pages D 4 to D14 form part of this account.

D5

Balance Sheet as at 31 March 2002

	Notes	Unrestricted Funds	Restricted Funds	Endowment Funds	31 March 2002 £000 Total Funds	31 March 2001 £000 Total Funds
Fixed Assets						
Intangible assets		4	-	3	7	-
Tangible assets	5	111,115	5,913	21,687	138,715	112,908
Inalienable and historic assets		902	-	3,274	4,176	3,328
Investments	6.1	<u>641,330</u>	<u>363,690</u>	<u>525,361</u>	<u>1,530,381</u>	<u>1,588,879</u>
Total Fixed Assets		<u>753,351</u>	<u>369,603</u>	<u>550,325</u>	<u>1,673,279</u>	<u>1,705,115</u>
Current Assets						
Stocks		187	45	-	232	274
Debtors	7	25,365	12,300	2,911	40,576	39,561
Short term investments and deposits		49,463	57,769	10,003	117,235	112,537
Cash at bank and in hand		<u>42,869</u>	<u>32,087</u>	<u>1,149</u>	<u>76,105</u>	<u>83,743</u>
		<u>117,884</u>	<u>102,201</u>	<u>14,063</u>	<u>234,148</u>	<u>236,115</u>
Creditors: Amounts falling due within one year	8.1	(95,957)	(42,015)	(10,177)	(148,149)	(130,199)
Net Current Assets		<u>21,927</u>	<u>60,186</u>	<u>3,886</u>	<u>85,999</u>	<u>105,916</u>
Total Assets less Current Liabilities		<u>775,278</u>	<u>429,789</u>	<u>554,211</u>	<u>1,759,278</u>	<u>1,811,031</u>
Creditors: Amounts falling due after more than one year	8.2	(46,379)	(6,997)	(25)	(53,401)	(58,758)
Provisions for liabilities and charges		(10,048)	(6,645)	(7,027)	(23,720)	(13,938)
Funds of the Charities		<u>718,851</u>	<u>416,147</u>	<u>547,159</u>	<u>1,682,157</u>	<u>1,738,335</u>
Funds of the Charities at 31 March 2001		<u>773,601</u>	<u>453,996</u>	<u>510,738</u>		

The notes at pages D7 to D14 form part of this account.

Nigel Crisp
Accounting Officer

28 November 2002

D6

Notes to the Account

Accounting Policies

1.1 Accounting Convention

This account has been prepared in accordance with the Statement of Recommended Practice issued in October 2000 - Accounting and Reporting by Charities, and with accounting standards and policies for the NHS approved by the Secretary of State and the accounts direction issued by Treasury.

1.2 Cash flow statement

A cash flow statement is not provided within this account because the Statement of Recommended Practice - Accounting and Reporting for Charities - does not require one except for charities categorised as "large". The majority of individual accounts of funds held on trust fall below the relevant size criteria and so do not therefore include a cash flow statement.

1.3 Incoming Resources

a. All incoming resources are included in full in the Statement of Financial Activities as soon as the following three factors can be met:

- i) entitlement - arises when a particular resource is receivable or the charity's right becomes legally enforceable;
- ii) certainty - when there is reasonable certainty that the incoming resource will be received;
- iii) measurement - when the monetary value of the incoming resources can be measured with sufficient reliability.

b. *Gifts in kind*

- i) Assets given for distribution by the funds are included in the Statement of Financial Activities only when distributed.
- ii) Assets given for use by the funds (e.g. property for its own occupation) are included in the Statement of Financial Activities as incoming resources when receivable.
- iii) Gifts made in kind but on trust for conversion into cash and subsequent application by the funds are included in the accounting period in which the gift is sold.

In all cases the amount at which gifts in kind are brought into account is either a reasonable estimate of their value to the funds or the amount actually realised. The basis of the valuation is disclosed in the annual reports of NHS organisations.

c. *Intangible income*

Intangible income (eg the provision of free accommodation) is included in the accounts with an equivalent amount in outgoing resources, if there is a financial cost borne by another party. The value placed on such income is the financial cost of the third party providing the resources.

Resources Expended

The Funds Held Trust account is prepared in accordance with the accruals concept. A liability (and consequently, expenditure) is recognised in the accounts when there is a legal or constructive obligation, capable of reliable measurement, arising from a past event.

Resources expended are split into two main categories being the costs of generating funds and the actual costs of charitable activities. The costs of generating funds are the costs associated with generating income for the Funds Held on Trust. A grant is any payment which is made voluntarily to any institution or to an individual in order to further the charities' objectives, without receiving goods or services in return.

D7

Costs of activities in the furtherance of charitable activities is expenditure incurred in the provision of services or goods. Support costs are an integral and material part of the costs of activities in the furtherance of charitable activities and/or expenditure incurred in paying grants. Management and administrative expenditure includes direct and indirect costs (as distinct from directly pursuing charitable activities). Direct costs include those of external and internal audit and legal advice for trustees, the indirect costs include office and communication costs.

1.4 Fixed Assets

a. Capitalisation

All assets falling into the following categories are capitalised:

- (i) intangible assets where they are capable of being used for more than one year and have a cost, individually or as a group, equal to or greater than £5,000.
- (ii) tangible assets which are capable of being used for more than one year, and have a cost equal to or greater than £5,000;
- (iii) groups of tangible fixed assets which are interdependent or would normally be provided or replaced as a group with a total value in excess of £5,000 and an individual value of £250 or more.

b. Valuation

Fixed assets are valued as follows:

- (i) Intangible assets held for operational use are valued at historic cost. Surplus intangible assets are valued at the net recoverable amount;
- (ii) Land, buildings, installations and fittings are stated at open market value for their existing use. Valuations are usually carried out professionally at five yearly intervals, although some accounts have valuations conducted annually. The last valuation was made on the 1 April 2000. Between valuations the appropriate indices provided by the Valuation Office Agency; and published in the Manual for Accounts are applied to revalue the assets;
- (iii) equipment is valued at the lower of estimated net replacement cost or recoverable amount;
- (iv) assets in the course of construction are valued at current cost.

c. Depreciation

Depreciation is charged on each main class of fixed asset as follows

- (i) Intangible assets are amortised on a straight line basis over their estimated lives up to a maximum of 20 years. The carrying amount of intangible fixed assets is reviewed for impairment at the end of the first full year following acquisition and in other periods if events or changes in circumstances indicate the carrying value may not be recoverable;
- ii) land and assets in the course of construction are not depreciated;
- (iii) buildings, installations and fittings are depreciated on their revalued amount over the assessed remaining life of the asset as advised by the professional valuers;
- (iv) equipment is depreciated over the estimated life of the asset using the following standard lives:

	Years	
Fittings, other engineering plant & equipment	15	
Furniture		10
Mainframe IT installations	8	
Vehicles	7	
Soft furnishings	7	
Office and IT equipment	5	

d. *Donated Assets*

Donated assets are capitalised at their valuation on full replacement cost basis on receipt and are revalued and depreciated as described above.

1.5 Investment Fixed Assets

Investment fixed assets are shown at market value.

- (i) Property assets are not depreciated but are shown at market valuation. Valuations are carried out by a professional valuer at five yearly intervals. The last such valuation was at 1 April 2000. Between valuations trustees make a best estimate of market value. Valuation gains and losses are recorded in the Statement of Financial Activities with the balance sheet reflecting the revalued amounts.
- (ii) Quoted stocks and shares are included in the balance sheet at mid-market price, ex-dividend.
- (iii) Other investment fixed assets are included at trustees' best estimate of market value.

1.6 Pensions Contributions

The cost of employer pensions contributions to the NHS Superannuation and other schemes is charged to the Statement of Financial Activities.

1.7 Bodies included in this account

This account summarises the underlying accounts of the charitable funds held by health authorities, NHS trusts, primary care trusts, special trustees, Section 11 trustees and special health authorities.

2.Details of resources expended - grants

2.1 Grants Payable	Unrestricted Funds	Restricted Funds	Endowment Funds	Total Funds	Total 2000-2001 Funds
-	£000	£000	£000	£000	£000
Patients welfare and amenities	15,092	21,641	6	36,739	33,550
Staff welfare and amenities	11,949	10,025	1	21,975	19,057
Research	38,121	16,797	-	54,918	49,809
Contributions to NHS	75,584	30,779	20	106,383	173,270
Miscellaneous	18,050	2,539	1,278	21,867	18,322
	<u>158,796</u>	<u>81,781</u>	<u>1,305</u>	<u>241,882</u>	<u>294,008</u>
	Unrestricted Funds	Restricted Funds	Endowment Funds	Total Funds	Total 2000-2001 Funds
	£000	£000	£000	£000	£000
2.2 Other					
Patients welfare and amenities	10,108	11,865	2	21,975	26,863
Staff welfare and amenities	8,462	8,161	157	16,780	16,012
Research	6,951	16,944	-	23,895	25,190
Contributions to NHS	5,989	7,331	125	13,445	10,326
Miscellaneous	16,790	3,980	10	20,780	13,999
	<u>48,300</u>	<u>48,281</u>	<u>294</u>	<u>96,875</u>	<u>92,390</u>
Total direct charitable expenditure (note 3.1)			<u><u>294</u></u>	<u><u>338,757</u></u>	<u>386,398</u>

D9

3. Analysis of total resources expended

3.1	Cost of Generating Funds £000	Direct Charitable Expenditure £000	Support Costs £000	Management and Administration £000	Total £000	Total 2000-2001 £000
Staff	1,931	3,353	617	2,260	8,161	7,845
Depreciation	65	1,522	-	200	1,787	
Impairments	-	6,558	-	-	6,558	180
Auditors remuneration:						
Audit fee 1	-	-	-	1,290	1,290	1,198
Other fees	141	-	-	200	341	195
Indemnity insurance	3	10	-	67	80	225
Bought-in services from NHS	2,597	3,590	591	5,729	12,507	11,603
Other	6,408	323,724	105	3,497	333,734	387,175
	11,145	338,757	1,313	13,243	364,458	410,227

1 The audit fee represents the cost for the audit of the underlying financial statements carried out by auditors appointed by the Audit Commission

3.2 Analysis of staff costs

	Total £000	Total 2000-2001 £000
Salaries and wages	7,187	6,937
Social security costs	599	608
Other pension costs	375	300
	8,161	7,845
Average monthly number of employees in the year:	383	391

4. Changes in resources available for charity use

	Unrestricted Funds £000	Restricted Funds £000	Endowment Funds £000	Total Funds £000	Total 2000-2001 Funds £000
Net movement in funds for the year	(54,750)	(37,849)	36,421	(56,178)	(156,844)
Net movement in tangible fixed assets:	20,429	148	4,904	25,481	10,305
Net movement in funds available for future activities	(34,321)	(37,701)	41,325	(30,697)	(146,539)

5. Fixed Assets

	Freehold Land and Buildings £000	Other Interests in Land and Buildings £000	Plant and Machinery £000	Fixtures, Fittings and Equipment £000	Assets under £000	Total £000
Gross Value						
Balance at 31 March 2001	97,323	4,695	34	9,584	9,265	120,901
Additions and transfers	8,560	758	166	388	(768)	9,104
Revaluations and indexation	19,708	2	-	94	7,471	27,275
Impairments	(6,921)	-	-	-	-	(6,921)
Disposals	(4,847)	-	-	(307)	-	(5,154)
Balance at 31 March 2002	<u>113,823</u>	<u>5,455</u>	<u>200</u>	<u>9,759</u>	<u>15,968</u>	<u>145,205</u>
Accumulated Depreciation						
Balance at 31 March 2001	7,111	373	24	485	0	7,993
Additions and transfers	(44)	402	64	54	-	476
Impairments	(1,405)	-	-	-	-	(1,405)
Disposals	(164)	-	-	(4)	-	(168)
Revaluations and indexation	(2,236)	43	-	1	-	(2,192)
Charge for the year	1,423	126	22	215	-	1,786
Balance at 31 March 2002	<u>4,685</u>	<u>944</u>	<u>110</u>	<u>751</u>	<u>0</u>	<u>6,490</u>
Net Book Value at 31 March 2002	<u>109,138</u>	<u>4,511</u>	<u>90</u>	<u>9,008</u>	<u>15,968</u>	<u>138,715</u>
Net Book Value at 31 March 2001	<u>90,212</u>	<u>4,322</u>	<u>10</u>	<u>9,099</u>	<u>9,265</u>	<u>112,908</u>
Historic cost at 31 March 2002						<u>33,369</u>

6. Analysis of Fixed Asset Investments:

Fixed Asset Investments	31 March	
	£000	2001 £000
Market value at 31 March	1,588,879	1,673,471
Less: Disposals at carrying value	(411,512)	(461,886)
Add: Acquisitions at cost	378,677	484,293
Net gain on revaluation	(25,663)	(106,999)
Closing market value	<u>1,530,381</u>	<u>1,588,879</u>
Historic cost at 31 March	<u>1,241,653</u>	<u>1,163,849</u>

<i>6.2 Market value at 31 March:</i>	Held in UK £000	Held outside UK £000	Total £000	31 March 2001 £000
Investment properties	238,324	-	238,324	297,785
Investments listed on Stock Exchange	884,307	144,618	1,028,925	1,034,274
Investments in a Common Deposit Fund or Common Investment Fund	165,762	10,183	175,945	150,560
Unlisted securities	3,498	1,312	4,810	14,062
Cash held as part of the investment portfolio	74,712	-	74,712	70,273
Other investments	7,189	476	7,665	21,925
	<u>1,373,792</u>	<u>156,589</u>	<u>1,530,381</u>	<u>1,588,879</u>

7. Analysis of debtors

7.1 Amounts falling due within one year:

	31 March	
	£000	£000
Amounts due from subsidiary and associated undertakings	753	281
Trade debtors	2,541	2,167
Prepayments	662	794
Accrued income	22,779	22,039
Other debtors	12,295	12,329
Total debtors falling due within one year	<u>39,030</u>	<u>37,610</u>

7.2 Amounts falling due after more than one year:

Amounts due from subsidiary and associated undertakings	264	323
Trade debtors	-	7
Prepayments and accrued income	-	148
Other debtors	1,282	1,473
Total debtors falling due after more than one year	<u>1,546</u>	<u>1,951</u>
Total debtors	<u>40,576</u>	<u>39,561</u>

8. Analysis of creditors

8.1 Amounts falling due within one year:

		31 March 2001 £000
Loans and overdrafts	1,160	1,827
Trade creditors	6,207	5,985
Amounts due to subsidiary and associated undertakings	10,037	5,928
Other creditors	74,113	58,173
Accruals	51,076	55,291
Deferred income	5,556	2,995
Total creditors falling due within one year	148,149	130,199

8.2 Amounts falling due after more than one year:

Loans and overdrafts	8,585	7,707
Other creditors		42,566
Accruals and deferred income		2,250
Total creditors falling due after more than one year	53,401	58,758
Total creditors	201,550	188,957

10. Contingencies

Contingent liabilities totalling £2,581,000 (2000-2001 £50,000) have not been accrued in the accounts. These mostly relate to grants which trustees expect to pay only if the recipient raises additional funds.

Contingent gains amount to £1,249,000 (2000-2001 £796,000) and relate to legacies and other potential income where the precise amount and timing of the receipt is unknown.

11. Commitments

The trusts have the following commitments:

		2000-2001
Charitable projects	45,213	59,046
Capital	40,866	48,668
Other	20,304	9,309
	106,383	117,023

12. Related party transactions

Health authorities, NHS trusts, primary care trusts, special health authorities, special trustees and Section 11 trustees have statutory authority to accept, hold and administer any property on trust for all or any purpose relating to the health service. This property is accounted through the Funds Held on Trust accounts managed by boards and trustees. Most of the trustees are also members of the associated NHS trust boards, health authority boards, and primary care trust boards. During the year, the Funds Held on Trust accounts had a significant number of material transactions with their associated health authorities, NHS trusts and primary care trusts.

D13

13. Financial instruments

FRS 13, Derivatives and Other Financial Instruments, requires disclosure of the role that the financial instruments have had during the period in creating or changing the risks an entity faces in undertaking its activities. Financial instruments, as defined by FRS 13, play a more limited role in creating or changing risk in the Funds Held on Trust than would be the case of listed companies to which FRS 13 mainly applies. The Funds Held on Trust receive the majority of their income in the form of donations and have a relatively low amount of borrowings. However, significant investments are made and are the source of the main financial risk.

Interest rate risk

The Funds Held on Trust are exposed to fluctuations in interest rates on the monies invested in deposits and the stock market.

Fair value risk

All assets and liabilities are shown at their fair values in the financial statements. The Funds Held on Trust are exposed to the risk on the value of funds invested, with gains and losses recognised in the Statements of Financial Activities.

Liquidity risk

The majority of expenditure is financed from donations and legacies and there are limited borrowings. The Funds Held on Trust are not, therefore exposed to significant liquidity risk.

THE NATIONAL HEALTH SERVICE FUNDS HELD ON TRUST (ENGLAND) ACCOUNTS DIRECTION GIVEN BY THE TREASURY

The Treasury, in pursuance of Section 98 (4) of the National Health Service Act 1977 hereby gives the following direction:

1. In this direction, unless the context otherwise requires -

"the Act" means the National Health Service Act 1977;

"the Authorities" refers to all Health Authorities, Special Health Authorities, NHS Trusts, Primary Care Trusts, all Special Trustees appointed in pursuance of Section 29(1) of the National Health Service Reorganisation Act 1973 and Section 95(1) of the National Health Service Act 1977 (as amended) and to any trustees for an NHS trust appointed in pursuance of Section 11 of the National Health Service and Community Care Act 1990.

2. The summarised account of the Authorities' funds held on trust required by Section 98(4) of the Act to be prepared by the Secretary of State shall, in respect of the financial year ended 31 March 2001 and subsequent financial years, be as set out in the following paragraphs and Schedule.

3. The summarised account shall comprise:

- (a) a foreword;
- (b) a statement of financial activities;
- (c) a balance sheet;
- (d) such notes as may be necessary for the purposes referred to in paragraph 4 below.

4. The summarised account shall present fairly the financial activities for the year and the state of affairs as at the end of the financial year and separately show the charitable and non charitable funds held on trust. Subject to this requirement the summarised account shall also, without limiting the information given, meet:

- (a) the accounting and disclosure requirements of the Companies Act;
- (b) generally accepted accounting practice in the United Kingdom including accounting standards issued or adopted by the Accounting Standards Board;
- (c) all relevant guidance given by the Charity Commission;
- (d) any disclosure and accounting requirements which the Treasury may issue from time to time;

insofar as these are appropriate to the Authorities' funds held on trust and are in force for the financial year for which the summarised account is to be prepared.

5. This accounts direction shall be reproduced as an appendix to the published summarised account.

David Loweth
HEAD OF CENTRAL ACCOUNTANCY TEAM
HM TREASURY
D15

19 November 2001

SCHEDULE

Foreword

1. The foreword shall include a statement that the summarised account has been prepared in accordance with a direction given by the Treasury in accordance with Section 98 (4) of the National Health Service Act 1977;

Statement of Financial Activities and Balance Sheet

2. The statement of financial activities and balance sheet shall follow the prescribed format shown in SORP2000;

Notes to the Account

3. The notes to the account shall include details of the accounting policies adopted,

4. Further explanatory notes to the account shall be provided wherever they are necessary in order to give users a proper understanding of the accounts;

Application of the Requirements of the Companies Act and Accounting Standards

5. The disclosure exemptions permitted by the Companies Act shall not apply unless specifically authorised by the Treasury;

6. The summarised account is not required to include an income & expenditure account;

7. The summarised account is not required to include a cash flow statement as required by FRS 1;

8. The summarised account is not required to include a note showing historical cost profits and losses as described in FRS 3.

Other

9. The foreword and balance sheet shall be signed by the Accounting Officer and dated.

LIST OF CONSULTEES

CONSULTATION LIST

Special Trustees

Trustees for NHS Trusts

NHS Trusts

Primary Care Trusts

Health Authorities

Special Health Authorities

Directory of Social Change

Local Government Association

Leonard Cheshire Foundation

Mencap

National Association of Citizens Advice Bureaux

National Childbirth Trust

National Council for Voluntary Organisations

The Association of Community Health Councils for England and Wales

The Consumers' Association

The National Association of Leagues of Hospital Friends

The NHS Support Federation

The Patients Association

Audit Commission

Auditor General for Wales

Comptroller and Auditor General

Charity Commission

Department for Transport, Local Government and the Regions

Home Office

HM Treasury

National Assembly for Wales

Northern Ireland Office

Scottish Office

Wales Office

Bar Association

Charity Law Association

Law Society

British Medical Association

Community Practitioners & Health Visitors Association

Healthcare Financial Management Association

National Health Service Confederation

The Chartered Institute of Public and Finance

The Institute of Chartered Accountants in England and Wales

British Chambers of Commerce

Confederation for Business & Industry

Federation of Small Business
Institute of Directors
Trades Union Congress

Association of Educational Psychologists
Association of Magisterial Officers
Association of Teachers and Lecturers
Association of University Teachers
Bakers, Food and Allied Workers Union
British Dietetic Association
British Orthoptic Society
Broadcasting, Entertainment, Cinematograph and Theatre Union
Chartered Society of Physiotherapy
Communication Workers Union
Community and District Nursing Association
The Community and Youth Workers' Union
FDA
GMB
Hospital Consultants and Specialists Association
National Union of Mineworkers
National Union of Rail, Maritime and Transport Workers
National Union of Teachers
Public and Commercial Services Union
Society of Radiographers
Transport and General Workers' Union
UCAC
Union of Construction, Allied Trades and Technicians
UNISON

LIST OF CONSULTATION RESPONDENTS

NHS bodies (England)

Addenbrooke's NHS Trust
Barts and The London NHS Trust
Birmingham Heartlands and Solihull Mental Health NHS Trust
Buckinghamshire Mental Health Trust
Cheltenham and Tewkesbury Primary Care Trust
Crawley Primary Care Trust
Doncaster and Bassetlaw Hospitals NHS Trust
Epsom and St Helier NHS Trust
Frimley Park Hospitals Hospital NHS Trust
Guildford and Waverley Primary Care Trust
King's College Hospital NHS Trust
Luton and Dunstable Hospital NHS Trust
Martin Slatter, Chelsea & Westminster Healthcare NHS Trust
Newcastle upon Tyne Hospitals NHS Trust
North Hampshire Primary Care Trust
North Staffordshire Combined Healthcare NHS Trust
North Surrey Primary Care Trust
Nottingham City Hospital NHS Trust
Nuffield Orthopaedic Centre NHS Trust
Oxford Learning Disability NHS Trust
Oxford Radcliffe Hospitals NHS Trust
Peterborough Hospitals NHS Trust
Royal Brompton and Harefield NHS Trust
Royal Surrey County Hospital NHS Trust
Salisbury Healthcare NHS Trust
South Devon Healthcare NHS Trust
South Peterborough Primary Care Trust

Special Trustees for Great Ormond Street Hospital for Children
Special Trustees for Nottingham University Hospital
Special Trustees for St Mary's Hospital

Taunton and Somerset NHS Trust
The Royal Marsden NHS Trust

Trustees for Barts and The London NHS Trust
Trustees for Birmingham Children's Hospital NHS Trust
Trustees for Guy's and St Thomas Hospital NHS Trust
Trustees for Hammersmith Hospitals NHS Trust
Trustees for King's College Hospital NHS Trust
Trustees for Newcastle upon Tyne Hospitals NHS Trust
Trustees for Royal Free Hampstead NHS Trust
Trustees for Sheffield Teaching Hospitals NHS Trusts
Trustees for St George's Healthcare NHS Trust

Trustees for the United Bristol Healthcare NHS Trust
Trustees for University College London Hospitals NHS Trust
Trustees for University Hospital Birmingham NHS Trust

University Hospital Birmingham NHS Trust
University Hospitals of Leicester NHS Trust
Wednesbury & West Bromwich Primary Care Trust
West Hampshire NHS Trust
West Kent Shared Service Agency
West Midlands Ambulance Service NHS Trust
West Suffolk Hospitals NHS Trust
West Sussex Health & Social Care NHS Trust

NHS Bodies(Wales)

Bro Morgannwg NHS Trust
Bro Taf Health Authority
Cardiff and Vale NHS Trust
Conwy & Denbighshire NHS Trust
Gwent Healthcare NHS Trust
North Wales Health Authority
North West Wales NHS Trust
Pembrokeshire and Derwen NHS Trust
Pontypridd & Rhondda NHS Trust
Welsh Ambulance Services NHS Trust

Other Bodies

Audit Commission
Charity Finance Directors Group
Chartered Institute Public Finance Accountancy
Institute of Chartered Accountants in England & Wales
Mazars
National Audit Office
Queen Alexandra College

10 Anonymous Replies

LIST OF FURTHER CONSULTATION RESPONDENTS

Birmingham, Heartlands and Solihull Mental Health NHS Trust

Camden Primary Care Trust

Cardiff and Vale NHS Trust

Doncaster & Bassetlaw Hospitals NHS Trust

Newcastle upon Tyne Hospitals NHS Trust

North Bristol NHS Trust

Nottingham City Hospitals NHS Trust

Oxford Radcliffe Hospitals NHS Trust

Royal Brompton & Harefield NHS Trust

Special Trustees for Great Ormond Street Hospital for Children

Special Trustees for the Royal National Orthopaedic Hospital

Special Trustees for St Mary's Hospital

The Royal Marsden NHS Trust

Trustees for Barts and The London NHS Trust

Trustees for Guy's and St Thomas Hospital NHS Trust

Trustees for the Hammersmith Hospitals NHS Trust

Trustees for King's College Hospital NHS Trust

Trustees for Sheffield Teaching Hospitals NHS Trusts

Trustees for St George's Healthcare NHS Trust

Trustees for United Bristol Healthcare NHS Trust

Trustees for University College London Hospitals NHS Trust

Trustees for University Hospital Birmingham NHS Trust **[check]**

3 anonymous replies

REGULATORY IMPACT ASSESSMENT

Amending the Provisions in Section 98 of the 1977 National Health Service Act for NHS Trustees to submit accounts to the Department of Health or National Assembly for Wales for summarisation and presentation to Parliament or the National Assembly for Wales.

1. Introduction

This proposed measure would amend Section 98 of the 1977 National Health Service Act.

2. Purpose and intended effect

Issue

- 2.1 Section 98 of the National Health Service Act 1977 makes provision for the preparation of accounts by English health bodies in the form directed by the Secretary of State for Health and approved by the Treasury. It also provides for their audit and submission to the Secretary of State for Health for summarisation, examination by the Comptroller and Auditor General and presentation to Parliament. The National Assembly for Wales undertakes the functions of the Secretary of State for Wales. Examination of accounts of Welsh health bodies for financial years beginning in and after 1999 are undertaken by the Auditor General for Wales who is required to present these accounts to the National Assembly for Wales. This legislation covers both the Exchequer accounts and the separate accounts for funds held on trust which are charitable. The proposed measures cover only the accounts of funds held on charitable trust.
- 2.2 The purpose of Section 98 was to provide accountability to Parliament and an approved accounting and auditing regime for the funds held on trust by NHS trustees. When this provision came into force, NHS trustees were excepted from the duty to routinely send accounts to the Charity Commission. The 1993 Charities Act imposed for the first time a routine duty on the trustees of NHS charities to send accounts to the Charity Commission, if the income or expenditure of the charitable funds exceeded £10,000. The accountability to Parliament or National Assembly for Wales is therefore unnecessary as the funds are now fully within the scope the monitoring activities of the Charity Commission. The charities are therefore unjustifiably burdened by the statutory requirements to provide their accounts to two separate bodies.
- 2.3 Prior to 1 March 1996 when Part VI of the 1993 Charities Act came into force, NHS charities were registrable and subject to the jurisdiction of the Charity Commission in the same way as other charities. They were, however, relieved from the routine duty to send accounts to the Charity Commission of permanently endowed charities. From 1996/97 this relief has been removed and NHS Trustees

have been required to submit accounts and reports to the Charity Commission in just the same way as the trustees of other charities. The effect of implementing Part VI was to bring NHS trustees within the normal scope of accounts monitoring by the Charity Commissioners. Larger charities are subject to routine monitoring by the Charity Commissioners who have powers to institute enquiries of charities either generally or for specific purposes. Secretary of State for Health has no such powers.

- 2.4 The 1993 Charities Act imposed for the first time a routine duty on the trustees of NHS charities to send accounts to the Charity Commissioners, if the income or expenditure of the charitable funds exceeded £10,000. From the financial year 1996/97 most trustees were required to send accounts to two Government bodies. The requirement for the Department of Health to summarise has required all charity accounts to be prepared and audited on the same basis. This has burdened the smaller charities as they have been unable to take advantage of charity law that allows them to prepare less complex accounts and have audits appropriate to their size.

Objective

- 2.5 It is considered that the Section 98 of the NHS Act 1977 imposes a burden on the charities of NHS bodies and, following the implementation of the 1993 Charities Act, is no longer appropriate or necessary and should therefore be disapplied as regards NHS charities.

Risk assessment

- 2.6 Under existing legislation NHS charities have to prepare and submit two sets of accounts. This places an unnecessary burden on the charities who have to meet the cost of it themselves.
- 2.7 It is not considered that there will be risk in amending Section 98 of the NHS Act 1977 as proposed:
- We do not believe that the necessary level of protection for donors and the general public would be reduced if this proposal was taken forward.
 - Particulars about all registered charities can be obtained from the Charity Commission.
 - Under charity law all charities with an annual income or expenditure over £10,000 in the financial year are required to send their accounts to the Charity Commission, which will make them available to the public.
 - In addition, any person has the right to require any charity to send him a copy of its most recent accounts.
- 2.8 Parliament and the National Assembly for Wales would no longer be presented with separate summarised accounts for NHS charities. However as these are not voted monies, this is an anomaly. The summary level information is of very little value to the general public as it aggregates the accounts of bodies with charitable funds ranging from less than £1,000 to those with more than £380 million, and contains little detail.

2.9 Under NHS legislation the Audit Commission's appointed auditors are required to carry out the audit of the accounts of NHS charitable funds in addition to the Exchequer accounts. Under the proposed changes, the auditors appointed by the Audit Commission would be required to undertake the scrutiny of the charity accounts in accordance with charity law and this would be extended to NHS charities with aggregate income and total expenditure of £10,000 or less in the financial year. This would require consequential amendments to the Charities Act 1993, the Audit Commission Act 1998, as consequential, the Charities (Accounts and Reports) Regulations 1995. While recognising that these are not public funds, this would provide additional assurances to the public about the administration of the charity funds. In many cases health bodies share financial systems with their Exchequer activities and this provides opportunities for more efficient audits.

3. Options

There are two options:

- Option 1 leave matters as they are. As has been indicated earlier, it is the view of the Department of Health and the National Assembly for Wales that Section 98 represents a burden to the charities.
- Option 2 remove the requirement for the NHS trustees to prepare charity accounts under the direction of the Department of Health or National Assembly for Wales. The Department of Health and National Assembly for Wales suggest this is the option to take forward.

4. Issues of equity and fairness

Removing the dual accounting requirement would put small NHS charities on the same footing as other small charities, with the exception that NHS charities will aggregate both income and total expenditure of £10,000 or less in a financial year. This burden will be no greater than existing scrutiny requirements and sometimes less. For all NHS charities this means removal of unnecessary duplication of work.

5. Compliance costs for business, charities, and voluntary organisations

5.1 Business sectors affected

This proposal would affect around 450 NHS trustees and their charities. There would be less activity for accountants, auditors and finance staff with marginal administrative savings for the charities. These savings would accrue to the charities and hence the NHS. There are also potential savings to the Department of Health by removing the requirement for the accounts to be summarised and the associated administrative processes

Consultees were asked to estimate the potential savings to their NHS charities. The potential savings are generic and likely to be representative across similar sized NHS charities. It is therefore reasonable to assess the potential saving to NHS charities by extrapolating these details.

5.2 Compliance Cost for NHS Charities

Benefits

Option 1: no change

Option 2: less charitable money will be spent on accountants, administration and auditors fees – more on the intended purpose of the charity. Based on the responses from the consultation it is estimated an annual savings to NHS charities of between £420,532 and £483,121. (Appendix (1) details the basis of the calculation for the savings) There will also be approximately £10,000 savings to the Department of Health.

Costs

Option 1: same

Option 2: Additional minimal costs. Only 6 respondents stated that there would possibly be additional costs of which only 1 body gave a value of £500 per annum. The 6 respondents commented that the additional costs may occur if the audit of the NHS charities is not undertaken at the same time as the audit for the Exchequer accounts.

5.3 Voluntary organisations

Voluntary organisations that make donations to NHS trustees will benefit in the same manner as other donors as less money will be spent on administration and other overheads. These proposals will not impact on their activities in any other way.

6. **Competition Assessment**

This is a wide-ranging regulation that has an impact on the charity sector as a whole. We were unable to identify any sector within the charity market for which there will be any adverse competition effects arising out of the proposals. In general, it is likely that this regulation will have beneficial effects for competition as a result of the reduction in the regulatory burden faced by the NHS charities. The NHS charities, which would otherwise have the option of adopting the less stringent accounting and inspection requirements generally enjoyed by other none NHS charities (and of making associated cost-savings), are currently deprived of the option to do so. The current proposals are therefore seen as increasing the ability of charities administered by NHS trustees to compete with similar charities in the wider charitable market. Given that barriers to entry would be reduced, and that we have not been able to identify market participants that will be adversely

affected by this regulation, we do not intend to carryout a detailed competition assessment at this stage.

7. Enforcement, Sanctions Monitoring and Review

The provisions of the Charities Act will continue to apply unchanged.

8. Summary and recommendation

	<u>Costs</u>	<u>Benefits</u>
Option 1	no extra	no extra
Option 2	minimal additional- £500 quantified	savings to NHS charities in the range of £420,000 - £480,000 per annum; savings to Department of Health £10,000 per annum

In removing this burden, we consider that this would benefit all of the NHS trustee bodies and their charities. All of the bodies would benefit by only having to prepare one set of accounts. In addition the smaller charities would have the opportunity to prepare less complex accounts with less stringent audit requirements appropriate to their size in line with other charities.

TABLE A - ANALYSIS OF RESPONSES TO SAVINGS – QUESTION (g)

Criteria	Total No. of Bodies	Detailed Analysis (i)	Value Specified (ii)	Value not Specified (iii)	No Savings (iv)	Not Answered (v)
A NHS charities with income or expenditure <£10k	63	1	-	-	2	-
B/C NHS charities with income and expenditure between £10k and £250k	146	-	1	4	4	1
D NHS charities with income and expenditure .£250k	210	23	8	8	6	9
TOTAL	419	24	9	12	12	10

Notes:

(i) Number of respondents who provided breakdown of savings.

(ii) Number of respondents who provided a value to the anticipated savings but did not give a detailed analysis.

(iii) Number of respondents who said there would be a saving but did not give a value.

(v) Number of respondents who did not answer the question.

APPENDIX 1

NHS charities in Category A (table A above) may make savings from

**preparing simpler accounts
an audit examination instead of a full audit
reduced bureaucracy in preparing one set of accounts**

NHS charities in Category B (table A above) may make savings from

**preparing simpler accounts
an audit examination instead of a full audit
reduced bureaucracy in preparing one set of accounts**

NHS charities in Category C (table A above) may make savings from

**preparing simpler accounts where gross income is <£100,00
an audit examination instead of a full audit
reduced bureaucracy in preparing one set of accounts**

NHS charities in Category D (table A above) may make savings from

reduced bureaucracy in preparing one set of accounts

APPENDIX 1

TABLE B - VALUE OF SAVINGS BASED ON RESPONSES TO CONSULTATION EXERCISE

Only the administrative savings were calculated as the majority of responses received were from NHS bodies that fall into the criteria (D) and will not benefit from reduced audit requirements or savings from preparing simpler accounts.

Criteria D	
Total no. of bodies = 210 No. of bodies which gave value = 31 Value of savings from consultation exercise = £35,900 No. of bodies with no savings = 6 No. of bodies who answered = 45	
Calculation of maximum savings	(number of bodies – number of bodies who said there would be no saving) ÷ number. of bodies which gave value) x value of savings (210 – 6 = 204 ÷ 31) x £35,900 = <u>£236,245</u>
Calculation of minimum savings	(number of bodies with no savings ÷ number of bodies who answered) x number of bodies (6 ÷ 45) x 210 = 28 (extrapolated number of no savings) maximum savings x (number of bodies – extrapolated number of no savings) ÷ number of bodies £243,194 x (210 – 28) ÷ 210 = <u>£210,768</u>
Criteria D maximum savings = £236,245 Criteria D minimum savings = £210,768	

TABLE B - VALUE OF SAVINGS BASED ON RESPONSES TO CONSULTATION EXERCISE

Criteria A, B/C	
Total no. of bodies A + B/C 63+146= 209	
Calculation of maximum savings	Maximum savings criteria D (see note) x (number of bodies A,B/C ÷ number of bodies criteria A, B/C who said there would be no saving) £236,245 x (209 ÷ 2) = <u>£246,876</u>
Calculation of minimum savings	Minimum savings criteria D (see note) x (number of bodies A, B/C ÷ number of bodies criteria D) £210,768 x (209 ÷ 210) = <u>£209,764</u>
Criteria A, B/C maximum savings = £246,876 Criteria A, B/C minimum savings = £209,764	
TOTAL ALL NHS BODIES	
Administrative maximum savings total =£483,121	Criteria D maximum + criteria A, B/C maximum £236,245 + £246,876 = £ 483,121
administrative minimum savings total = £420,532	Criteria D minimum + criteria A, B/C minimum £210,768 + £209,764 = £420,532
Plus: unquantified savings from audit and simplified accounts	

Note:

Criteria D savings used as a proxy as there were insufficient responses from groups A, B and C to provide reliable extrapolation.

**TABLE C - VALUE OF SAVINGS USING THE WEIGHTED MID-POINT SAVINGS
BASED ON RESPONSES TO CONSULTATION EXERCISE (See Table A)**

CRITERIA	MAXIMUM SAVINGS	MINIMUM SAVINGS	WEIGHTED MID-POINT SAVINGS
D	£236,245 (see note 1)	£35,900 (see note 2)	£203,757 (see note 3)
A, B/C	£246,876 (see note 4)	£35,900 (see note 2)	£203,757 (see note 5)
TOTAL	£483,121	£71,800	£407,514

Notes:

1. Calculation of maximum savings for criteria D =
 $((\text{number of bodies criteria D} - \text{number of bodies criteria D who said there would be no savings}) \div \text{number of bodies which gave value}) \times$
value of savings from consultation exercise; $(210 - 6 = 204 \div 31) \times £35,900 = £236,245$
2. Minimum value of value of savings from consultation exercise. It assumes only those organisations that responded would have a saving. As all NHS charities would benefit by preparing only one set of accounts this assumption is not robust.
3. Calculation of weighted mid-point savings for criteria D =
 $(\text{value of savings from consultation exercise} \div \text{number of respondents who gave a value} + \text{number of respondents who said there would be no saving}) \times \text{number of bodies criteria D}$ $(£35,900 \div 37) \times 210 = £203,757$
4. Calculation of maximum savings for criteria A, B/C =
maximum savings criteria D (figure used as A, B/C insufficient responses to allow calculation) $\times (\text{number of bodies criteria A, B/C} \div \text{D} - \text{number of bodies who criteria A, B/C who said there would be no saving})$; $£236,245 \times (209 \div 2) = £246,876$
5. See note 3 for calculation. Criteria D calculation used due to insufficient responses for A, B/C.
6. The calculations exclude additional savings from reduced audit and simpler accounts.
7. **The weighted mid-point has been discarded from the Regulatory Impact Assessment as the assumption that only NHS charities that responded would make savings is inappropriate as all will benefit from preparing just one set of accounts.**

APPENDIX 1

ANALYSIS OF DEPARTMENT OF HEALTH SAVINGS

Estimated savings within Department of Health (including overheads):

Preparation of Manual	£2,500
Preparation of Excel files	£1,000
Answering queries	£1,000
Accounts processing	£2,500
Summarised accounts	£500
Miscellaneous	£1,500
Data provision	£1,000
Total	£10,000 per annum