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**2005 No. [ ]**

**REGULATORY REFORM**

**NATIONAL HEALTH SERVICE, ENGLAND AND WALES**

**The Regulatory Reform (National Health Service Charitable and Non-Charitable Trust Accounts and Audit) Order 2005**

*Made* - - - - - *2005*

*Coming into force* - - - *in accordance with article 1(2)*

Whereas—

- (a) the Secretary of State for Health (“the Secretary of State”) consulted—
  - (i) such organisations as appeared to him to be representative of interests substantially affected by his proposals for this Order,
  - (ii) the National Assembly for Wales, and
  - (iii) such other persons as he considered appropriate;
- (b) as a result of that consultation it appeared to the Secretary of State that it was appropriate to vary his proposals, and he undertook such further consultation with respect to the variations as appeared to him appropriate;
- (c) following the consultation mentioned in recitals (a) and (b) the Secretary of State considered it appropriate to proceed with the making of this Order;
- (d) a document containing the Secretary of State’s proposals was laid before Parliament as required by section 6 of the Regulatory Reform Act 2001<sup>(a)</sup> and the period for Parliamentary consideration under section 8 of that Act expired;
- (e) the Secretary of State had regard to the representations made during that period and in particular to the House of Lords Delegated Powers and Regulatory Reform Committee’s Eleventh Report of Session 2003-04 and the House of Commons Regulatory Reform Committee’s Fifth Report of Session 2003-04;
- (f) a draft of this Order was laid before Parliament with a statement giving details of those representations and the changes to the Secretary of State’s proposals in the light of them;
- (g) the draft was approved by resolution of each House of Parliament;
- (h) this Order removes a function of the National Assembly for Wales, and the Assembly has agreed that it be made;

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<sup>(a)</sup> 2001 c.6.

- (i) the Secretary of State is of the opinion that this Order does not remove any necessary protection or prevent any person from continuing to exercise any right or freedom he might reasonably expect to continue to exercise; and
- (j) this Order creates burdens affecting persons in the carrying on of certain activities, and the Secretary of State is of the opinion that—
  - (i) the provisions of this Order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burdens being created, and
  - (ii) the extent to which this Order removes or reduces one or more burdens, or has other beneficial effects for persons affected by the burdens imposed by the existing law, makes it desirable for this Order to be made;

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

**Citation, commencement and extent**

1.—(1) This Order may be cited as the Regulatory Reform (National Health Service Charitable and Non-Charitable Trust Accounts and Audit) Order 2005.

(2) This Order comes into force on 31st March 2005 and has effect in relation to the financial year of a trust starting on or after 1st April 2004.

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

**Amendments to the National Health Service Act 1977**

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

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

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

(8) In a case where a body referred to in subsection (1)(za) and (bb) to (ddd) is a trustee of an English non-charitable trust, the references in subsections (2) and (4) to accounts do not include accounts relating to the non-charitable trust.

(9) In a case where a body referred to in subsection (1)(za) and (bb) to (ddd) is a trustee of a Welsh non-charitable trust, the references in subsection (4) to accounts do not include accounts relating to the non-charitable trust.

(10) In this section—

“English non-charitable trust” means a non-charitable trust, the trustees of which are—

- (a) a Strategic Health Authority;
- (b) a Primary Care Trust;
- (c) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in England;
- (d) trustees appointed in pursuance of section 11 of the National Health Service and Community Care Act 1990 (c.19), or special trustees appointed in pursuance of 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 National Health Service trust falling within paragraph (c); or

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(a) 1977 c.49; relevant amendments were made by section 11(7) of the National Health Service and Community Care Act 1990 and section 65, Schedule 4, paragraph 4 and 33(1) and (2)(b) of the Health Act 1999.

- (e) trustees for a Primary Care Trust appointed in pursuance of section 96B of the National Health Service Act 1977; and

“Welsh non-charitable trust” means a non-charitable trust, the trustees of which are—

- (a) a Local Health Board;
- (b) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in Wales; or
- (c) trustees appointed in pursuance of section 11 of the National Health Service and Community Care Act 1990 (c.19), or special trustees appointed in pursuance of 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 National Health Service trust falling within paragraph (b).”.

### **Amendments to the Charities Act 1993**

3.—(1) The Charities Act 1993<sup>(a)</sup> is amended as follows.

(2) In section 43 (annual audit or examination of charity accounts) after subsection (9), there is inserted—

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

(3) After section 43 there is inserted—

#### **“43A Annual audit or examination of English National Health Service charity accounts**

(1) This section applies in relation to a financial year of a charity where, at any time in the year, the charity is an English National Health Service charity.

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

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

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

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

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

(6) The Comptroller and Auditor General may at any time examine and inspect—

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

(7) In this section—

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

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

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<sup>(a)</sup> 1993 c.10.

- (a) a Strategic Health Authority;
- (b) a Primary Care Trust;
- (c) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in England;
- (d) trustees appointed in pursuance of section 11 of the National Health Service and Community Care Act 1990 (c.19), or special trustees appointed in pursuance of 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 National Health Service trust falling within paragraph (c); or
- (e) trustees for a Primary Care Trust appointed in pursuance of section 96B of the National Health Service Act 1977.

#### **43B Annual audit or examination of Welsh National Health Service charity accounts**

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

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

(3) In any other case, the accounts of the charity for that financial year shall, at the election of the Auditor General for Wales, be audited or examined by the Auditor General for Wales.

(4) In this section—

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

- (a) a Local Health Board;
- (b) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in Wales; or
- (c) trustees appointed in pursuance of section 11 of the National Health Service and Community Care Act 1990 (c.19), or special trustees appointed in pursuance of 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 National Health Service trust falling within paragraph (b).”.

(4) In section 45 (annual reports)—

- (a) in subsections (4)(a) and (b), after “43” there is inserted “, 43A or 43B”;
- (b) in subsection (4)(b), for the words from “independent examiner” to the end substitute “person carrying out the examination”.

(5) In section 46(3) (special provision as respects accounts and annual reports of exempt and other excepted charities), there are substituted for the words “sections 43 to 45” the words “section 43, 44 or 45”.

#### **Amendments to the Audit Commission Act 1998**

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

(2) In Schedule 2 (accounts subject to audit), after paragraph 1B, there is inserted—

“1C. Section 2 does not apply to the accounts of a body specified in section 98(1)(za) or (bb) to (ddd) of the National Health Service Act 1977 in its capacity as a trustee of a charitable trust.”.

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(a) 1998 c.18.

## Consequential amendments

5. The Charities (Accounts and Reports) Regulations 1995<sup>(a)</sup> apply in relation to an English National Health Service charity or Welsh National Health Service charity (as defined in sections 43A and 43B of the Charities Act 1993 respectively), subject to the modifications set out in the Schedule.

## Subordinate provisions

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

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

Signed by authority of the Secretary of State for Health

[Date] 2005

*Name*  
Department of Health

## SCHEDULE

Article 5

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

- (a) in regulation 6—
  - (i) in paragraph (1), for “43” there were substituted “43A or 43B”,
  - (ii) in relation to a Welsh National Health Service charity, in paragraphs (2)(a) and (3)(a), the words “the name and address of the auditor and” were omitted,
  - (iii) in relation to an English National Health Service charity, in paragraphs (2)(b) and (3)(b), for the words beginning with “falling” and ending with “section 43(2)” there were substituted “appointed under section 43A(2) or (3)(a)”,
  - (iv) in relation to a Welsh National Health Service charity, in paragraphs (2)(b) and (3)(b), the words after “him” were omitted,
  - (v) in paragraphs (2)(d) and (3)(d), for “43” there were substituted “43A or 43B”; and for the words after the word “regulations” to the end of those paragraphs there were substituted the words “which apply to an English National Health Service charity or Welsh National Health Service charity (as defined in sections 43A and 43B of that Act respectively)”,
  - (vi) in paragraph (6), for “by charity trustees” there were substituted “under section 43A(2) or (3)(a) of the 1993 Act”,
  - (vii) paragraph (7) were omitted;
- (b) in regulation 7—
  - (i) for the opening words beginning with “An” and ending with “Act”, there were substituted “Where a person has carried out an examination of the accounts of an English National Health Service charity under section 43A of the 1993 Act or the Auditor General for Wales has carried out an examination of the accounts of a Welsh

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(a) S.I. 1995/2724.

- National Health Service charity under section 43B of that Act, that person or as the case may be the Auditor General for Wales”,
- (ii) in relation to a Welsh National Health Service charity, in paragraph (a) the words “his name and address and” were omitted,
  - (iii) in relation to a Welsh National Health Service charity, in paragraph (b) the words after “him” were omitted,
  - (iv) in relation to an English National Health Service charity, in paragraph (d), for “43” there were substituted “43A”, and for “ (7)(b)” there were substituted “(5)”,
  - (v) in relation to a Welsh National Health Service charity, in paragraph (d), for “43” there were substituted “43B”, and the words after the word “Act” to the end of the paragraph were omitted,
  - (vi) in relation to a Welsh National Health Service charity, in paragraphs (e), (f) and (g) for “examiner’s” or “examiner”, there were substituted “Auditor General for Wales” or as the case may be, “Auditor General for Wales”;
- (c) in regulation 8—
- (i) in relation to an English National Health Service charity,
    - (aa) in paragraph (1), for “An auditor or independent examiner” there were substituted “A person”; and for “43” there were substituted “43A”, and
    - (bb) in paragraph (2), for “an auditor or independent examiner” there were substituted “a person”, and
  - (ii) in relation to a Welsh National Health Service charity,
    - (aa) in paragraph (1) for “An auditor or independent examiner” there were substituted “The Auditor General for Wales”; and for “43” there were substituted “43B”, and
    - (bb) in paragraph (2), for “Such an auditor or independent examiner” there were substituted “The Auditor General for Wales”.

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

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

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

Article 3 amends the Charities Act 1993 to provide for the audit or examination of the accounts of English NHS charities by persons appointed by the Audit Commission and for the audit or examination of the accounts of Welsh NHS charities by the Auditor General for Wales. It also gives the Comptroller and Auditor General access to the accounts and background documents where a person has carried out an audit or examination in the case of an English National Health Service charity. The Commissioners can give directions about examinations.

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

Article 5 applies the Charities (Accounts and Reports) Regulations 1995 to NHS charities, subject to the modifications set out in the Schedule. Article 6 designates Article 5 and the Schedule as subordinate provisions under section 4(3) of the Regulatory Reform Act 2001.