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STATUTORY INSTRUMENTS

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**2005 No. 1074**

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

**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(1) 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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(1) 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(2) 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—

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

**43A.**—(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—

- (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.

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

**43B.**—(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<sup>(3)</sup> 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.”

### **Consequential amendments**

5. The Charities (Accounts and Reports) Regulations 1995<sup>(4)</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

29th March 2005

*Warner*  
Parliamentary Under Secretary of State,  
Department of Health

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(3) 1998 c. 18.  
(4) S.I.1995/2724.