
STATUTORY INSTRUMENTS

2005 No. 1074

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

Amendments to the Charities Act 1993

3.—(1) The Charities Act 1993⁽¹⁾ 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”.