



House of Commons
Regulatory Reform Committee

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

Eighth Report of Session 2004–05



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Report, together with formal minutes

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The Regulatory Reform Committee

The Regulatory Reform Committee is appointed to consider and report to the House of Commons on proposals for regulatory reform orders under the Regulatory Reform Act 2001 and, subsequently, any ensuing draft regulatory reform order. It will also consider any "subordinate provisions order" made under the same Act.

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Mr Russell Brown (*Labour, Dumfries*)
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Powers

The full constitution and powers of the Committee are set out in House of Commons Standing Order No. 141, available on the Internet via www.parliament.uk.

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/regrefcom

A list of Reports of the Committee in the present Session of Parliament is at the back of this volume.

Committee staff

The current staff of the Committee are Mick Hillyard (Clerk), Stuart Deacon (Committee Specialist), Brian Dye (Committee Assistant) and Liz Booth (Secretary).

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Contents

Report	<i>Page</i>
Report under Standing Order No. 141	3
1 Introduction	3
2 Background: The present Audit and Accounting Arrangements	4
Requirements of the National Health Service Act 1977	4
Requirements of the Charities Act 1993	4
3 The report on the proposal	6
4 Other representations made on the proposal	6
5 Report on the proposal by the Lords Committee	6
6 The draft Order	6
Omission of Special Health Authorities	7
7 Recommendation	8
Formal minutes	9

**Reports from the Regulatory Reform Committee in the previous and present
Session**

inside back cover

Report under Standing Order No. 141

1. The Regulatory Reform Committee has examined the draft Regulatory Reform (National Health Service Charitable Trust Accounts and Audit) Order 2005 in accordance with Standing Order No. 141. We recommend unanimously that the Order be approved.

1 Introduction

2. The Proposal for the draft Regulatory Reform (National Health Service Charitable Trust Accounts and Audit) Order 2005 was laid before the House jointly by the Department of Health (“the Department”) and the National Assembly for Wales on 7 January 2004.¹

3. The draft Order is intended to remove an anomaly in existing legislation whereby NHS charitable bodies in England and Wales are required to produce two separate sets of accounts and submit one of them to the Department of Health and the other to the Charity Commission.² The requirements to do this are imposed by section 98 of the National Health Service Act 1977 and the Charities Act 1993. The Order would amend these Acts, together with the Audit Commission Act 1998 in order to remove the requirement that NHS bodies prepare separate accounts of NHS charities’ funds for submission to Government.

4. Prior to the establishment of the NHS in 1948, many hospitals run by local authorities or voluntary bodies held charitable funds. When the NHS came into being, responsibility for the administration of these charitable funds was transferred to the Secretary of State. NHS charities are now administered either by the board of the relevant NHS body, acting as charitable trustee, or by separate Special Trustees or Trustees for NHS Trusts.³

5. The Government laid the draft Regulatory Reform (National Health Service Charitable and Non-Charitable Trust Accounts and Audit) Order before the House on 9 February 2005, together with an explanatory memorandum on the Order jointly by the Department of Health (“the Department”) and the National Assembly for Wales.⁴

6. The House has instructed us to examine the draft Order against such of the criteria specified in Standing Order No. 141(6) as are relevant. We are also required to consider the extent to which the responsible minister has had regard to any resolution or report of the Committee or to any other representations made during the period for Parliamentary consideration. Our discussion of matters arising from our consideration is set out below.

1 Copies of the proposed Order and the explanatory memorandum are available to Members of Parliament from the Vote Office and to members of the public from the Department. The Order is also available on the Cabinet Office website: cabinetoffice.gov.uk/regulation/rra/rro/proposals.asp#nhs

2 Section 3(3) of the draft Order introduces definitions of National Health Service Charity in both England and Wales. These definitions are reproduced at Appendix I to this report.

3 In our first report, we noted that the Government calculated that in the financial year 2000/01 there were 451 NHS charities in England and Wales.

4 Copies of the draft Order and the explanatory memorandum are available to Members of Parliament from the Vote Office and to members of the public from the Department. The Order is also available on the Cabinet Office website: cabinetoffice.gov.uk/regulation/rra/rro/proposals.asp#nhs

2 Background: The present Audit and Accounting Arrangements

Requirements of the National Health Service Act 1977

7. The present audit and accounting arrangements for most NHS bodies (excluding NHS Foundation Trusts) are set out in section 98 of the National Health Service Act 1977.⁵ NHS bodies—including NHS charities—are required to prepare annual accounts in a form directed by the Secretary of State for Health and approved by the Treasury. The accounts are audited by auditors appointed by the Audit Commission.⁶ Following audit, they are submitted to the Secretary of State for Health or the National Assembly for Wales.

8. The Secretary of State for Health or the National Assembly for Wales summarises the accounts of the funds derived from the Exchequer and the funds belonging to the charitable trusts separately, and transmits them to the Comptroller and Auditor General or the Auditor General for Wales for examination. After examination, the accounts for England are presented to Parliament and those for Wales are presented to the National Assembly.

9. The Secretary of State for Health and the National Assembly for Wales have no powers to inquire into the management of NHS charities. Their powers are limited to appointing and removing trustees, determining their terms of office, summarising the accounts of charities for examination and presentation to Parliament and the National Assembly and transferring property held on trust between NHS bodies.

Requirements of the Charities Act 1993

10. In 1996 a separate and additional accounting requirement was placed on NHS charities by the entry into force of Part VI of the Charities Act 1993. NHS charities have always been required to register for charitable status and submit to the jurisdiction of the Charity Commissioners. After 1 March 1996 they were no longer exempt from the requirement in charity law that all permanently endowed charities shall send their accounts to the Charity Commissioners. NHS charities now fall within the normal accounts monitoring programme undertaken by the Charity Commission.

11. In its explanatory statement on the proposal for the Order, the Department summarised the accounting regime which applies to all charities under charity law.⁷ This is as follows:

- a) If a charity's gross income ~~or~~ its total expenditure in any one financial year exceeds £10,000, it must submit accounts to the Charity Commission. But if the gross income

5 The audit and accounting arrangements for NHS Foundation Trusts are set out in Schedule 1 (paragraphs 23 to 25) and Schedule 5 to the Health and Social Care (Community Health and Standards) Act 2003.

6 Section 61 of the Public Audit (Wales) Act 2004 (when brought into force) will require the accounts of Welsh NHS bodies to be audited by the Auditor General for Wales and laid before the National Assembly for Wales.

7 Available from the Cabinet Office Website

or total expenditure do not exceed £250,000, the accounts are permitted to be subject to an examination before submission, rather than to a full audit.

- b) Charities with a gross income or total expenditure of over £250,000 in any one financial year must prepare full accounts for submission to the Charity Commission, and are subject to a full audit.
- c) If a charity's gross income in any financial year is £100,000 or less, the charity may elect to prepare accounts of receipts and payments only, and a statement of assets and liabilities.
- d) If neither a charity's gross income, nor its total expenditure in any financial year, exceeds £10,000, it is exempt from any requirement to have its accounts examined or audited (unless the Charity Commissioners require otherwise), and it is not required to submit its annual accounts to the Charity Commissioners, unless requested to do so.
- e) The Charity Commissioners conduct routine monitoring of 'larger charities', and have powers to institute general inquiries into charities or to carry out inquiries for specific purposes.

12. The Department further recorded that NHS charity trustees presently seek a dispensation from the Charity Commission to allow the audit undertaken by the Audit Commission for the purposes of section 98 of the 1977 Act to satisfy the audit scrutiny requirements for accounts submitted to the Charity Commission.

13. The draft Charities Bill, which was introduced in the House of Lords on 20 December 2004, would make a number of changes to the present structure of charity law, in the light of proposals contained in a recent review by the Cabinet Office.⁸ The Government proposes that the present audit threshold of £250,000 should be raised to £500,000. In addition, it is proposed that the type of accounts to be prepared, and the level of audit scrutiny, should be determined by an asset threshold as well as the present income threshold.⁹

14. The House has instructed us to examine the draft Order against such of the criteria specified in Standing Order No. 141(6) as are relevant. We are also required to consider the account which the responsible minister has taken of our report on the proposal, and of any other representations made during the period for Parliamentary consideration. Our discussion of matters arising from our consideration is set out below.

8 Strategy Unit Report *Private Action, Public Benefit* available at www.number-10.uk/su/voluntary/report/index.htm

9 Fifth Report from the Regulatory Reform Committee of Session 2003-04, Proposal for the Regulatory Reform (National Health Service Charitable Trust Accounts and Audit) Order 2005, HC 438

3 The report on the proposal

15. Our report on the proposal for the Order was published on 10 March 2004.¹⁰ We concluded that a draft Order in the same terms as the proposal should be laid before the House.

16. In making our Report, we noted that the explanatory statement on the proposal did not make clear the legal basis for requiring NHS charities to assist in the audit or examination of their accounts. We therefore recommended that the derivation of this requirement should be clarified at the time the draft Order was laid before Parliament.

4 Other representations made on the proposal

17. The Department and the National Assembly for Wales record in the explanatory statement that neither received any further written representations concerning the proposal during the period for Parliamentary consideration.

5 Report on the proposal by the Lords Committee

18. The House of Lords Delegated Powers and Regulatory Reform Committee reported on the proposed Order on 11 March 2004.¹¹ The Committee considered that the proposals were an appropriate use of the powers in the Regulatory Reform Act, subject to the Department either providing a clear demonstration that no necessary protection would be lost with respect to funds held on trust by NHS bodies on a non-charitable basis, or, alternatively, continuing to apply the Department of Health Accounting arrangements to them.

6 The draft Order

19. The Department and the National Assembly for Wales have made a number of changes to the Order since the proposal was laid for initial scrutiny. These are noted and explained at paragraphs 12 to 19 of the explanatory statement laid with the draft Order; Annexes A and B to the statement record the text of these amendments to the Order. The statement records that, in addition to the various minor and substantive textual changes, the text of the Order has also been restructured with the aim of achieving enhanced clarity.

20. The Order would remove the existing requirement that NHS bodies should prepare separate accounts of NHS charities' funds for submission to Government. The

10 Fifth Report from the Regulatory Reform Committee of Session 2003-04, Proposal for the Regulatory Reform (National Health Service Charitable Trust Accounts and Audit) Order 2005, HC 438

11 www.publications.parliament.uk/pa/ld200304/ldselect/lddelreg/56/5601.htm

requirement that NHS charities submit accounts to the Charity Commission would be maintained, subject to some changes to the audit regime.

21. The Order would also make the following changes to charity law insofar as it applies to NHS charities:

- a) The 1993 Act will be amended in respect of English NHS charities to require their accounts to be audited (or in some cases examined) by a person appointed by the Audit Commission. Under present arrangements, Audit Commission auditors presently audit the NHS Exchequer accounts for each NHS body. In many cases these accounts are prepared using the same accounting systems as NHS charities.
- b) The auditors will be appointed by the Audit Commission in accordance with section 3 of the Audit Commission Act 1998, rather than in accordance with section 43(2) of the 1993 Act. Auditors under the 1993 Act are persons qualified under the provisions of the Companies Act 1989 to audit the accounts of companies.
- c) The Comptroller and Auditor General will retain the right to examine the accounts of English NHS charities, any records relating to them, and any report of an auditor or examiner appointed by the Audit Commission.
- d) In the case of Welsh NHS charities the 1993 Act will be amended to require their accounts to be audited (or in some cases examined) by the Auditor General for Wales.

22. The Department has confirmed in its explanatory statement that the requirement that NHS charities assist in the audit or examination of their accounts would, subsequent to the taking effect of the proposed Order, lie in regulation 8 of the Charities (Accounts and Report) Regulations 1995, rather than in the Audit Commission Act 1998, as stated in the explanatory statement on the proposal.

23. In paragraph 13 of the explanatory statement, it is noted that the draft Order has been amended in order to maintain protections under section 98 of the National Health Service Act 1977 in respect of non-charitable funds held on trust by NHS charities, in response to the concerns of the Delegated Powers and Regulatory Reform Committee recorded in paragraph 16 above. The amended position will be that trustees must continue to provide separate accounts in respect of these non-charitable funds, and these accounts will be audited by auditors appointed by the Audit Commission (in England) and the Auditor General in Wales. There will no longer be a requirement that trustees in England submit the accounts to the Department of Health for presentation to Parliament in a summarised form. Trustees in Wales will be required to submit accounts to the National Assembly in a non-summarised form.

24. Paragraph 14 of the statement records that the Order has been amended to take account of the passing of the Public Audit (Wales) Act 2004, which received Royal Assent on 16 September 2004.

Omission of Special Health Authorities

25. Paragraphs 15 to 17 of the explanatory statement record that two statutory instruments (S.I. 2003/1324 and S.I. 2003/983) made in 2003 under powers conferred by the

Government Resources and Accounts Act 2000 amended section 98 of the National Health Service Act 1977.¹² The Government considers that the making of these statutory instruments precludes any amendment of section 98 of the National Health Service Act 1977 relating to Special Health Authorities for a period of two years from the making of those Orders by virtue of the limitation in Section 1(4) of the Regulatory Reform Act, which prevents further amendments by means of Regulatory Reform Order for two years.

26. We have had some difficulty understanding how Statutory Instrument 2003/983 engages section 1(4) of the Regulatory Reform Act 2001, but we note the Department's view that Statutory Instrument 2003/1324 has that effect. In the light of this difficulty, the Department and the National Assembly have amended the Order to exclude Special Health Authorities.¹³ The explanatory statement records that one Special Health Authority presently holds funds on trust and this will continue to be required to provide accounts to both the Charity Commission and the Comptroller and Auditor General in Wales. The Department of Health apologises for not identifying this issue sooner and indicates in the statement that it will seek an opportunity to amend the legislation as soon as this is possible.

7 Recommendation

27. In accordance with Standing Order No. 141(15), we recommend unanimously that the draft Order be approved.

¹² Text of S.I. 2003/1324 and S.I. 2003/983 is available from hms website: <http://www.hmso.gov.uk/legislation>

¹³ Special Health Authorities are bodies established by the Secretary of State under the National Health Service Act 1977 for the purpose of providing a national service to the NHS, or directly to the public. Examples include the Dental Practice Board, the National Institute for Clinical Excellence and the NHS Pensions Agency.

Formal minutes

Tuesday 8 March 2005

Members present:

Mr Peter Pike, in the Chair

Brian Cotter

Mr Denis Murphy

Mr Dai Havard

Brian White

Mr John MacDougall

The Committee deliberated.

Draft Report [Draft Regulatory Reform (National Health Service Charitable and Non-Charitable Trust Accounts and Audit) Order 2005], proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 27 read and agreed to.

Resolved, That the Report be the Eighth Report of the Committee to the House.

Ordered, That the Chairman do make the Report to the House.

[Adjourned till a day and time to be fixed by the Chairman.]

Reports from the Regulatory Reform Committee in the last Session of Parliament

Session 2003-04

First	Proposal for the Regulatory Reform (Sunday Trading) Order 2004	108
First Special Report	Government Response to the Committee's First Special Report, Session 2002-03: <i>The operation of the Regulatory Reform Act 2001: a progress report</i>	256
Second	Proposal for the Regulatory Reform (Patents) Order 2004	337
Third	Draft Regulatory Reform (Sunday Trading) Order 2004	338
Fourth	Proposal for the Regulatory Reform (Museum of London) (Location of Premises) Order 2004	414
Fifth	Proposal for the Regulatory Reform (National Health Service Charitable Trust Accounts and Audit) Order 2004	438
Sixth	Proposal for the Regulatory Reform (Local Commissioner for Wales) Order 2004	553
Seventh	Draft Regulatory Reform (Museum of London) (Location of Premises) Order 2004	594
Eighth	Draft Regulatory Reform (Patents) Order 2004	683
Second Special Report	Draft Regulatory Reform (Museum of London) (Location of Premises) Order 2004	818
Ninth	Proposal for the Regulatory Reform (Trading Stamps) Order 2004	817
Tenth	Draft Regulatory Reform (Local Commissioner for Wales) Order 2004	900
Eleventh	Proposal for the Regulatory Reform (Fire Safety) Order 2004	684
Twelfth	Proposal for the Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2004	1056
Thirteenth	Draft Regulatory Reform (Unsolicited Goods and Services Act 1971) (Directory Entries and Demands for Payment) Order 2004	1246
Fourteenth	Proposal for the Regulatory Reform (Execution of Deeds and Documents) Order 2004	1271

Previous reports from the Regulatory Reform Committee in the present Session of Parliament

Session 2004-05

First	Proposal for the Regulatory Reform (Joint Nature Conservation Committee) Order 2005	117
Second	Proposal for the Regulatory Reform (Registration of Births and Deaths) (England and Wales) Order 2004	118
Third	Proposal for the Regulatory Reform (Prison Officers) (Industrial Action) Order 2004	148
Fourth	Draft Regulatory Reform (Joint Nature Conservation Committee) Order 2005	270
Fifth	Draft Regulatory Reform (Prison Officers) (Industrial Action) Order 2005	271
Sixth	Draft Regulatory Reform (Trading Stamps) Order 2005	272
Seventh	Draft Regulatory Reform (Execution of Deeds and Documents) Order 2005	429

All reports are available from The Stationery Office.