



House of Commons
Regulatory Reform Committee

**Proposal for the
Regulatory Reform
(National Health
Service Charitable
Trust Accounts and
Audit) Order 2004**

Fifth Report of Session 2003–04



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*Report, together with formal minutes and
written evidence*

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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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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/parliamentary_committees/regulatory_reform_committee.cfm.

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

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Summary

The purpose of the proposal is to remove an anomaly in existing legislation whereby NHS charitable bodies in England and Wales are obliged to prepare two separate sets of accounts: one, audited by the Audit Commission, for submission to the Department of Health, and another for submission to the Charity Commission.

The Department proposes to remove the existing burden on NHS charities whereby they are required to submit audited accounts to the Department of Health for summarisation and eventual presentation to Parliament with the NHS Summarised Accounts. It proposes that the requirement on NHS charities in England and Wales to submit their audited accounts to the Charity Commission should continue, with certain modifications to provide for continued Audit Commission scrutiny and for an examination, rather than an audit, of certain NHS charity accounts.

The Committee considers that the proposal is desirable, and recommends that a draft order in the same terms as the proposal should be laid before the House.

1 Report under Standing Order No. 141

1. The Regulatory Reform Committee has examined the proposal for the Regulatory Reform (National Health Service Charitable Trust Accounts and Audit) Order 2004 in accordance with Standing Order No. 141. We have concluded that a draft order in the same terms as the proposal should be laid before the House.

2 Introduction

2. On 7 January 2004 the Government laid before Parliament a proposal for the Regulatory Reform (National Health Service Charitable Trust Accounts and Audit) Order 2004 in the form of a draft of an order and an explanatory memorandum from the Department of Health (the Department) and the National Assembly for Wales.¹

3. The proposed order deals with the accounting arrangements for charitable funds administered by National Health Service bodies, known as National Health Service charitable trusts (“NHS charities”).² The Department stresses that other charities associated with the National Health Service (for example, Hospital Leagues of Friends) are independent of NHS bodies. They are not affected by these proposals.³

4. Before the establishment of the NHS in 1948, charitable funds were often held by hospitals operated by local authorities or voluntary concerns. On the establishment of the NHS, the Secretary of State for Health took on responsibility for administration of the charitable funds. NHS charities are now administered either by the board of the relevant NHS body, acting as a charitable trustee, or by separate Special Trustees or Trustees for NHS Trusts.⁴ In England, non-executive NHS board members and trustees are appointed by the Appointments Commission. In Wales, the Minister for Health and Social Services of the Welsh Assembly Government makes non-executive board appointments to health bodies.⁵ The trustees of each charity are responsible for the administration of their charity and for ensuring that its assets are properly managed and applied in accordance with charity law.

5. In the explanatory statement the Department indicated that in the financial year 2000/01 there were 451 NHS charities in England and Wales. Of the 431 in England, 413 were administered by the relevant NHS body acting as a charitable trustee and 18 by separate

1 Copies of the proposal are available to Members of Parliament from the Vote Office and to members of the public from the Department. The proposal is also available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/regulation/act/proposals.htm>

2 Article 3(3) of the draft order, which inserts new section 43A into the Charities Act 1993, defines an NHS charity as follows: “a charitable trust, the trustees of which are (a) a Strategic Health Authority, a Special Health Authority, a Primary Care Trust, a Local Health Board or a National Health Service trust; (b) special trustees appointed under section 29(1) of the National Health Service Reorganisation Act 1973 and section 95(1) of the National Health Service Act 1977; (c) trustees for a National Health Service trust appointed under section 11 of the National Health Service and Community Care Act 1990; or (d) trustees for a Primary Care Trust appointed under section 96B of the National Health Service Act 1977”.

3 Explanatory statement, para 5

4 A number of NHS charities, which were administered by Special Trustees, are now administered by Trustees for NHS Trusts in order to align their boundaries with those of the relevant Trusts.

5 Explanatory statement, para 11

Special Trustees, while the 20 trusts in Wales were all administered by NHS bodies.⁶ Annex F of the explanatory statement provides an overall figure of 419 NHS charities. The Department has explained that this reflected the number of charities at the end of the 2001/02 financial year.⁷

6. At the end of the 2002/03 financial year there were 338 NHS charities in England and Wales. The Department has explained that this reduction in numbers follows internal reorganisation within the NHS.⁸ The Department has supplied figures for the number of NHS trustees and bodies administering charitable funds at the end of the financial year 2002/03. These are set out in Figure 1.

Figure 1: Number of NHS charities operating in England and Wales at 31 March 2003, by category

Country	Category	Number
England	Corporate Trustees	302
	Trustees for NHS Trusts	11
	Special Trustees	5
	Total	318
Wales	Corporate Trustees	20
	Total	20
Total (England and Wales)		338

Source: Department of Health memorandum (Appendix B)

7. At 31 March 2002, the end of the last financial year for which audited figures are available, the sum of charitable funds held by all NHS charities in England and Wales amounted to £1,682 million.⁹ Funds held by individual charities in the financial year 2001/02 ranged from less than £1,000 to over £380 million.¹⁰

8. The regulatory impact assessment prepared for the proposal gave figures for the numbers of NHS charities in England and Wales at 31 March 2002, broken down by

6 *Ibid.*

7 Explanatory statement, annex F, and Appendix B, para 8

8 Appendix B, para 8

9 Summarised accounts for NHS funds held on trust for the financial year 2001/02: Explanatory statement, annex B

10 Explanatory statement, para 33

annual income and expenditure band.¹¹ These bands indicate the different levels of audit scrutiny to which charity accounts are subject under the Charities Act 1993.¹²

9. On the basis of their provisional unaudited accounts for the financial year 2002/03, the Department has provided a similar breakdown of the income and expenditure of the 338 NHS charities which were operating in England and Wales at the end of that financial year. The details are given in Figure 2.

Figure 2: Number of NHS charities operating in England and Wales at 31 March 2003, by total annual income and expenditure band

Country	Total annual income or expenditure	Number of charities
England	Less than £10,000	25
	Between £10,000 and £250,000	125
	Over £250,000	168
	Total	318
Wales	Less than £10,000	4
	Between £10,000 and £250,000	3
	Over £250,000	13
	Total	20

Source: Department of Health memorandum (Appendix B)

Present audit and accounting arrangements

Requirements of the National Health Service Act 1977

10. The present audit and accounting arrangements for most NHS bodies (excluding the proposed NHS Foundation Trusts) are set out in section 98 of the National Health Service Act 1977.¹³ 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. Following audit, they are submitted to the Secretary of State for Health or the National Assembly for Wales.

11 Explanatory statement, annex F

12 See below, para 14

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

11. The Secretary of State for Health or the National Assembly for Wales summarise the accounts of the funds derived from the Exchequer and the funds belonging to the charitable trusts separately, and transmit 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.¹⁴

12. 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.¹⁵

Requirements of the Charities Act 1993

13. 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.

14. The explanatory statement summarises the accounting regime which applies to all charities under charity law. This is as follows:

- 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 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.
- 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.
- 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.
- 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 order otherwise), and it is not required to submit its annual accounts to the Charity Commissioners, unless requested to do so.

14 An example of the summarised accounts for NHS charities (the accounts presented to Parliament for the financial year 2001/02) is attached to the explanatory statement as Annex B.

15 Explanatory statement, paras 9, 10

- 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.¹⁶

15. The Department explains 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 (see paragraph 10 above) to satisfy the audit scrutiny requirements for accounts submitted to the Charity Commission.¹⁷

16. The Department has indicated that changes are proposed to the present structure of charity law, following a Cabinet Office review. 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.¹⁸ A draft Charities Bill, intended to give effect to these changes and others, was announced in the Queen’s Speech.

3 Purpose of the proposal

17. The purpose of the proposal is to remove the dual accounting burden identified above, whereby NHS charities are obliged to submit accounts to the Secretary of State or National Assembly for Wales, under section 98 of the National Health Service Act 1977 (the 1977 Act), and to the Charity Commissioners under the Charities Act 1993 (the 1993 Act). The proposal would amend section 98 of the 1977 Act and make amendments to the 1993 Act and the Audit Commission Act 1998 (the 1998 Act).

18. The Department proposes to remove the requirement that NHS bodies should prepare separate accounts of NHS charities’ funds for submission to Government. The requirement for NHS charities to submit accounts to the Charity Commission would be maintained, subject to certain proposed changes to the audit regime. These changes will apply in respect of NHS charities only.

19. NHS charities would, under the Charity Commission regime, be required to submit accounts to the Commission within 10 months of the end of the financial year, consistent with other charities which are subject to reporting requirements. The Department states that this period is longer than that provided for under the accounts directions issued by the Secretary of State for Health under the 1977 Act.¹⁹

20. The changes to charity legislation which the Department proposes should apply in the case of NHS charities are as follows:

- a) The 1993 Act will be amended in respect of NHS charities to require their accounts to be audited (or in some cases examined) by a person appointed by the Audit Commission. The Department notes that Audit Commission auditors presently audit

¹⁶ Explanatory statement, para 9

¹⁷ Explanatory statement, para 24

¹⁸ Explanatory statement, para 12

¹⁹ Explanatory statement, para 19

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. The Department has pointed out that “there are no significant differences between the qualifications required under both the Charities Act and the Audit Commission Act.” In the Department’s opinion, the independent appointment of auditors will provide an additional assurance to the public as to the proper administration of charity funds.²⁰
- c) The Comptroller and Auditor General, or the Auditor General for Wales, shall retain the right to examine the accounts of NHS charities, any records relating to them, and any report of an auditor or examiner appointed by the Audit Commission.
- d) The provision in charity law exempting charitable bodies with income and total expenditure of £10,000 or less in a financial year from any financial scrutiny will not apply to NHS charities. The Department believes that, as NHS charities are administered by public bodies, it is appropriate that the accounts of all NHS charities should be subject to some form of scrutiny, as they are at present under the 1977 Act.

21. Several consultation responses raised the issue of whether the same Audit Commission team will be appointed to carry out the audit of the host NHS body and of its associated NHS charity. This issue is discussed further at paragraph 90 below.

4 Extent of the proposal’s application

22. The Department states that the proposals extend to England and Wales only. Welsh Ministers have agreed the proposals.

23. As the proposed order would remove a function of the National Assembly, namely summarising the accounts of NHS charities for examination by the Auditor General for Wales prior to presentation, it requires the agreement of the National Assembly. The Department states that the proposals are to be considered at a plenary session of the Assembly.²¹ We have also consulted the Audit Committee of the Assembly to ascertain its opinion as to whether the proposed order would remove any necessary protection.²²

The Public Audit (Wales) Bill [Lords]

24. The Public Audit (Wales) Bill [*Lords*] was introduced in the House of Lords on 11 November 2003.²³ Consideration in Grand Committee was completed on 26 February 2004. The Bill would transfer to the Auditor General for Wales (“the AGW”) most of the

20 Explanatory statement, annex A, p 6

21 Explanatory statement, para 20

22 See below, para 71

23 HL Bill (2003–04) 1. The Bill, as amended in Grand Committee, has now been reprinted as HL Bill (2003–04) 31.

functions currently exercised in Wales by the Audit Commission.²⁴ The AGW and his staff are to be known as the Wales Audit Office (WAO).

25. The Wales Office has stated that Parliamentary Counsel were instructed to take account of the proposed regulatory reform order in drafting the Bill.²⁵ The Government estimates that, should it successfully complete its Parliamentary stages, the Bill will receive Royal Assent in June or July 2004. The Wales Office indicates that consequential amendments to the Bill, to take account of the amendments made to the existing law by the proposed order, will be tabled at the Bill's Committee stage in the Commons.²⁶

26. The Bill would, if passed, alter the arrangements for auditing all National Health Service bodies in Wales, including NHS charities.²⁷ Clause 60 of the present Bill requires the accounts of a Welsh NHS body prepared under section 98(2) of the 1977 Act to be audited by the AGW.²⁸ Clause 60 of the Bill further requires Welsh NHS bodies to submit accounts to the AGW no later than five months after the end of the financial year. The AGW is under a duty to examine and certify the accounts, and lay them before the Assembly, together with a copy of his report on them, no later than four months after the date of receipt.

27. Following the coming into force of the proposed order, NHS charities in Wales will no longer prepare accounts under the 1977 Act, and will therefore not be subject to audit by the AGW. The Government therefore proposes to amend the Bill to make provision for a consequential amendment to the Charities Act 1993, providing that the accounts of NHS charities in Wales are to be subject to scrutiny by the AGW, and that the AGW shall elect whether the accounts of NHS charities in Wales are to be audited or examined.²⁹

28. The requirement on NHS charities in Wales to submit accounts to the National Assembly will therefore cease. NHS charities in Wales will continue to be subject to the requirement that they submit accounts to the Charity Commission, as described at paragraph 14 above.

Foundation Trusts

29. The proposal does not cover instances where charitable funds are held by NHS Foundation Trusts. Foundation Trusts established by the Health and Social Care (Community Health and Standards) Act 2003 (the 2003 Act) are to appoint their own auditors to perform audits of the money they receive from the Exchequer. The Department explains that Foundation Trusts will, under charity legislation, be able to appoint the same

24 Explanatory Notes to the Public Audit (Wales) Bill [*Lords*], HL Bill (2003–04) 1–EN, para 3. The definition of a “Welsh NHS body” in the Bill includes “a body of 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 trust all or most of whose hospitals, establishments and facilities are situated in Wales” (HL Bill (2003–04) 31, para 59(d)).

25 Under an agreement between the National Assembly and the Secretary of State for Wales, made under s. 41 of the Government of Wales Act 1998, the Assembly Compliance Officer of the Welsh Assembly Government is answerable to the Wales Office in respect of the Bill (Appendix I, para 6). The views of the Compliance Officer set out in Appendix I are therefore treated as those of the Wales Office.

26 A table indicating the proposed amendments is set out in the annex to Appendix I.

27 Appendix I, para 1

28 HL Bill (2003–04) 1–EN, para 118

29 Appendix I, paras 1, 4, 5

auditors to audit their charitable funds, thus “tak[ing] advantage of common systems and controls” and “provid[ing] opportunities for greater efficiency.”³⁰

30. The consultation on the proposed order was undertaken before the Government’s proposals to create Foundation Trusts were determined.³¹ We therefore asked the Department to indicate, in the light of the passage of the 2003 Act, how far the proposals would extend to NHS charities associated with NHS Trusts once those trusts were designated as Foundation Trusts. The Department has explained how the proposed accounting arrangements would apply to NHS Trusts after designation:³²

- a) In cases where an NHS trust was the corporate trustee of an NHS charity, and that trust was designated a Foundation Trust, the Foundation Trust would become the corporate trustee. The Foundation Trust would be responsible for the choice and appointment of auditors to carry out the audit of its public funds: similarly, the Foundation Trust, in its capacity as a corporate trustee for the NHS charity, would be able to appoint the same auditor to audit the charitable funds, pursuant to the requirements of the Charities Act 1993.³³
- b) In the case where there was a body of trustees for an NHS charity associated with an NHS Trust, and that trust was designated a Foundation Trust, the body of trustees would continue to administer the associated NHS charity, and would be able to appoint auditors as above.
- c) Where Special Trustees were appointed for a named hospital which was designated a Foundation Trust, the Special Trustees would continue to administer the charitable funds. In this case, the provisions of the proposed order would apply to the NHS charity’s account and audit arrangements.

5 Assessment of the proposal against the Standing Order No. 141(6) criteria

Inappropriate use of delegated legislation

31. The proposal appears to be appropriate for delegated legislation.

Removal of burdens

32. The Department considers that the proposal removes one burden, namely the requirement under section 98 of the National Health Service Act 1977 for NHS trustees to keep accounts of charitable funds held on trust in a form directed by the Secretary of State or the National Assembly for Wales, and the requirement to submit the accounts to the

30 *Ibid.*

31 *Ibid.*

32 Appendix B, para 9

33 *Ibid.*, and explanatory statement, para 20

Department of Health or the National Assembly. This is done by article 2 of the draft order, which makes the necessary amendments to section 98 of the 1977 Act.

33. We consider that the Department has adequately identified a burden, and that the proposal removes a burden imposed on NHS charities.

34. In addition, we consider that the proposal may remove a further burden. Article 3(2) of the draft order removes, in respect of NHS charities, the requirement in section 43 of the Charities Act 1993 that the charity should have its accounts audited or examined. NHS charities therefore no longer need to seek a dispensation from this requirement (see paragraph 15 above).

New and re-enacted burdens and the statutory tests

New burdens

New burdens on the Audit Commission and examiners of accounts

35. The proposal would impose new burdens on the Audit Commission as follows:

- a) The Audit Commission will be required, under new section 43A of the Charities Act 1993 (inserted by article 3(3) of the draft order) to provide an auditor to audit the accounts of NHS charities whose gross income or total expenditure in any financial year exceeds £250,000.
- b) Similarly, the Audit Commission will be required to decide whether the accounts of charities whose gross income or total expenditure does not exceed the £250,000 threshold require a full audit or an examination, and to appoint an auditor or examiner as appropriate.

Although in practice the auditor or examiner may be the same person who is appointed by the Audit Commission to audit the relevant NHS body under section 98(1) of the National Health Service Act 1977, the requirements on the Commission nevertheless constitute a new burden for the purposes of the Regulatory Reform Act.

36. The Department regards these new provisions as preserving the present scrutiny requirements under the audit regime of the Audit Commission (with the proviso that charities whose gross income or total expenditure does not exceed £250,000 threshold may receive an examination rather than a full audit). It states that this does not impose a new burden on NHS charities.

37. While we agree with this description of the effects of the new burdens, we note that the new burden identified at paragraph 35.a) above is described in the explanatory statement as a re-enacted burden,³⁴ and the new burden at paragraph 35.b) is mentioned only in passing.³⁵ **We consider that the burdens on the Audit Commission identified by the Department are in fact new burdens, and not re-enacted ones.**

³⁴ Explanatory statement, paras 25 and 41

³⁵ Explanatory statement, para 40

38. In addition, new section 43A(5) of the 1993 Act (inserted by article 3(3)) re-enacts the existing section 43(7)(b), which provides for the Charity Commissioners to give directions about how the examiners shall carry out examinations of NHS charities. This provision in existing charity law is disapplied from operating in relation to NHS charities by new subsection 43(10), inserted by article 3(2) of the draft order.

39. This re-enacted provision might be considered to re-enact a burden on the Audit Commission first imposed in the 1993 Act.³⁶ Since under the existing audit regime the audit of accounts of NHS charities is mandatory, the provisions of section 43(7)(b) of the 1993 Act do not apply to NHS charities. As, under the proposal, NHS charities with a gross income or total expenditure not exceeding £250,000 may be subject to an examination of their accounts, rather than a full audit, the provision that the Charity Commission shall give directions about examinations of NHS charities constitutes a new burden on examiners appointed by the Audit Commission. **We therefore consider that new section 43A(5) constitutes a burden on the examiners.**

Requirements on NHS charities

40. The explanatory statement states that there will be a requirement on NHS charities to assist in the audit or examination of their accounts.³⁷ The Department states that this requirement derives from sections 6 and 48 of the Audit Commission Act 1998.³⁸ The requirement presently applies to NHS charities, as their accounts are audited by Audit Commission auditors under the provisions of the 1998 Act. It appears, however, that under the proposal these provisions will not apply to NHS charities, as their accounts will be excluded from those subject to audit under the Act by the amendment made to schedule 2 to the Act by article 4 of the proposed order.

41. We note, however, that regulation 8 of the Charities (Accounts and Report) Regulations 1995,³⁹ which imposes similar requirements to those in section 6 of the 1998 Act, is to be applied to the accounts of NHS charities with modifications as set out in the Schedule to the draft order.

42. While it appears that the requirement is to be found in existing legislation, which the proposal will apply to NHS charities, the Department has not yet been able to confirm the derivation of this requirement in the terms set out in the explanatory statement.⁴⁰ **We are concerned that the legal basis of one aspect of the proposal remains unclear at this stage of the proposal's progress. We consider that the legal basis for this requirement ought to be established before the House is asked to consider the draft order. We therefore expect the Department to set out the derivation of this requirement in the explanatory statement to accompany the draft order.**

36 The Committee initially invited the Department to assess the burden as a re-enacted one: Appendix B, para 1

37 Explanatory statement, paras 25 and 42

38 Appendix B, para 1

39 S.I. 1995/2724

40 Appendix K

43. We take this opportunity to remind Departments that explanatory statements laid before Parliament should be adequately prepared. In particular the claims made in such statements should always be supported by sufficient evidence and legal analysis.

Re-enacted burdens

44. There is one re-enacted burden in the draft order. New section 43B of the 1993 Act (inserted by article 3(3)) re-enacts the existing provisions of section 98 (1) of the National Health Service Act 1977 in respect of the rights of the Comptroller and Auditor General and the Auditor General for Wales to inspect the accounts of NHS charities, any records relating to them and any auditor's report on them. This provision is disapplied from operating in respect of the accounts of NHS trusts by article 2(3) of the draft order.

45. This re-enacted burden was not identified by the Department in the explanatory statement. We therefore asked the Department whether it considered that the draft order would re-enact this burden, and, if so, how it believed that the re-enacted burden would meet the proportionality test set out in the Regulatory Reform Act.

46. The Department agreed with us that the provisions of article 3(3), inserting new section 43B into the 1993 Act, maintained the present access and inspection rights of the Comptroller and Auditor General, and therefore re-enacted a burden.

47. We consider the proportionality of this re-enacted burden at paragraphs 55 to 57 below.

New burdens: proportionality, fair balance and desirability

48. The Department considers that the two burdens described at paragraphs 35.a) and 35.b) above are proportionate to the benefit which is expected to result from their creation. It considers that the provision for audit of NHS charity accounts above the £250,000 threshold by Audit Commission auditors reinstates the current position and is appropriate. It also states that the provision allowing the Audit Commission to determine whether there should be an audit or an examination of accounts of NHS charities below the £250,000 threshold is in practice "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."⁴¹

49. The third new burden replicates for NHS charities the provision empowering the Charity Commissioners to give directions about the examination of charity accounts. The Department argues that as the burden of examination is less onerous than the present audit requirements, the new burden on examiners of NHS charity accounts necessarily meets the proportionality test.

50. We consider that the new burdens are proportionate to the benefit which is expected to result from their creation.

51. The Department argues that the new burdens meet the fair balance test, since the order taken as a whole balances the public interest in ensuring proper accounting for charitable

41 Explanatory statement, para 42

funds with the interest of the Audit Commission and the charities themselves in operating free from disproportionate financial regulation.⁴² The Department states that the majority of respondents to the consultation were content for all NHS charities to be subject to some form of audit scrutiny by Audit Commission auditors.

52. We agree that the provisions of the order, taken as a whole, satisfy the fair balance test set out in section 3 of the Regulatory Reform Act.

53. The Department has stated that the removal of the dual accounting burden on NHS charities makes the order desirable to be made. It also cites the consistency of audit arrangements which will remain across NHS charities, the reduction of the overall audit burden on NHS charities, and the retention of safeguards as factors contributing to this assessment.

54. The Department also states that the order “removes the burden of mandatory audit” for charities below the £250,000 threshold.⁴³ We note that the Department has not identified the mandatory audit requirement as a burden within the meaning of the 2001 Act. **We nevertheless consider that the order satisfies the test of desirability set out in section 3(2)(b) of the Regulatory Reform Act.**

Re-enacted burdens: proportionality

55. The Department has agreed with our view that the proposed order would re-enact a burden in existing legislation. We asked the Department for its assessment of how this re-enacted burden would meet the proportionality test.

56. The burden maintains the rights of the Comptroller and Auditor General to inspect the accounts of NHS charities, any records relating to them and any auditor’s report on them. The Department indicates that the proposed order would maintain the access and inspection rights, but would not require routine examinations. The Department anticipates that the impact of the burden would be significantly reduced, and states that the present burden is, in practice, mainly borne by the Department of Health and the National Assembly for Wales, which summarise the accounts of NHS charities and transmit them onwards for audit. This, however, appears to confuse the right of the Comptroller and Auditor general to inspect NHS charity accounts with his duty to examine and certify the summarised accounts. The Department notes that there has only been one report on an NHS charity involving the charity itself in the past 25 years.

57. The Department also considers that the re-enacted right secures accountability and is therefore proportionate. **We agree.**

Maintenance of necessary protection

58. The Department considers that in removing the requirement for NHS charity accounts to be prepared and submitted to the Secretary of State or the National Assembly for Wales

42 Explanatory statement, para 43

43 Explanatory statement, para 45

for summarisation, examination and presentation to Parliament, the proposal does not remove any necessary protection.

Availability of accounts

59. The Department states that under the Charities Act 1993 the accounts of all NHS charities with annual income and expenditure of over £10,000 in a financial year are required to be sent to the Charity Commission, where they are made open for public inspection, and that in addition any person has the right to require a charity to provide a copy of its most recent accounts. The proposal does not alter this position.

Auditing of public bodies

60. The Department considers that the proposed changes in the draft order will maintain the level of protection presently existing in regard to the audit arrangements for NHS charities. It considers that retaining the independent appointment of auditors by the Audit Commission will provide “additional assurances to the public” about the proper administration of NHS charities.⁴⁴

Financial reporting to Parliament and the National Assembly for Wales

61. The Department considers that it is not necessary for summarised accounts of NHS charities to be presented to Parliament or the National Assembly for Wales, since the sums accounted for do not derive from the Exchequer and are not therefore from the public purse. It argues that there is little information in the summarised accounts which is of value to the general public, as the accounts of all NHS charities are aggregated and therefore, the Department considers, of academic interest.

62. The Department states that details of expenditure by the charities on the NHS itself are available in the Exchequer accounts presented to Parliament. We note that the Exchequer accounts are themselves summarised, so the figure available to Parliament will be of the total sums transferred from NHS charities to the NHS by financial year.

63. The response to the consultation submitted on behalf of the Comptroller and Auditor General and the Auditor General for Wales noted that Parliament would no longer enjoy the right to see the summary accounts of a large proportion of the monies held on trust by NHS charities.⁴⁵

64. The Comptroller and Auditor General disputed the assertion in the consultation document that the present reporting arrangements were anomalous since the monies reported upon were not sums voted by Parliament. He gave a number of examples of precedents for the accounts of funds on trust being presented to Parliament—for instance, trading fund accounts and client funds of the Child Support Agency—on the grounds that such bodies were public bodies publicly accountable for the management and discharge of the monies they hold. In addition, he noted that if monies held on trust were lost, they

44 Explanatory statement, paras 34–35

45 Response not printed

might have to be made good by sums voted by Parliament, a risk which would be reduced if there were proper controls in place.

65. For these reasons the Comptroller and Auditor General argued that any new arrangement for financial reporting of NHS charities should uphold and improve on the principle of public stewardship of public monies, should provide for an assessment of how well the principle is working in practice, and should ensure that Parliament is informed if there are concerns sufficiently important to be considered. The Comptroller recommended that the Audit Commission should be able to make an overview report, identifying any concerns arising from their audits or examinations, which would inform the Comptroller and enable him to make a report to Parliament if appropriate. In addition, the Comptroller argued strongly that his rights of access and inspection should be retained in case Audit Commission reports identified areas which needed to be examined further.

66. In response to the Comptroller's observations, the Department re-consulted on an amended proposal which would retain the Comptroller's right of access and inspection. The Comptroller's rights of access and inspection over NHS charity accounts are now to be re-stated in the relevant section of the Charities Act 1993.

Presentation of summarised accounts to the House of Commons

67. We have considered whether the removal of the requirement that summarised accounts of NHS charities be presented to Parliament would affect the House's ability to exercise its financial scrutiny. We sought the views of the Chairman of the Public Accounts Committee, the Clerk of the Journals and the Librarian of the House.

68. The Chairman of the Public Accounts Committee remarked that not all charities associated with the NHS were included in the summarised account, and its usefulness was thus limited. The Committee did not therefore consider that the removal of the summarised account from those presented to the House would significantly diminish Parliament's overview of the accounts of NHS charities.⁴⁶

69. The Clerk of the Journals, as custodian of papers laid before the House, was concerned about the extent to which the proposed order might limit the ability of the House to examine the accounts of NHS charities and the NHS itself. He noted that while the enactment of the proposed order "would marginally reduce the total information spontaneously made available to the House", there was no record of the House having considered any accounts in this class in modern times. He considered that, since the Comptroller and Auditor General was to retain the power to inspect individual accounts, or a series of accounts, of NHS charities, and to report on them to the House if he so decided, no significant loss of necessary protection would ensue. Furthermore, since the auditing of individual accounts of NHS charities would remain within the public sector, the auditing would ultimately be subject to Parliamentary scrutiny.⁴⁷

70. The Librarian of the House set out the Library's obligations to the House in respect of the preservation and continued availability to Members of material such as the accounts of

46 Appendix C: Letter to the Chairman from Edward Leigh MP, Chair of the Public Accounts Committee

47 Appendix E: Letter to the Clerk of the Committee from the Clerk of the Journals

public bodies. The Library does not at present routinely receive the individual accounts of NHS charities, nor of their associated NHS Trusts, although they are available from the Charity Commission.⁴⁸ The Librarian's view was that, on balance, no obviously useful purpose is served for Parliament by the inclusion of summarised accounts of charitable trusts with the NHS summarised accounts for England.

Presentation of summarised accounts to the National Assembly for Wales

71. We asked the Chair of the Audit Committee of the National Assembly for Wales to indicate whether, in her view, the removal of the present requirement that the summarised accounts of NHS charities in Wales be presented to the Assembly would remove any necessary protection or impair the Assembly's exercise of its financial scrutiny.

72. The Chair of the Audit Committee has indicated that the Audit Committee is satisfied that the Order will not impair the Assembly's exercise of its financial scrutiny, and is content for it to be made.⁴⁹

73. We consider that the proposed order will not remove any necessary protection.

Preventing exercise of rights or freedoms

74. The Department does not consider that the proposal would prevent anyone from exercising a right or freedom which they might otherwise expect to exercise. It argues that members of the public will be able to receive more informative information about particular charities from their individual accounts, available via the Charity Commission, than are available in the summarised accounts presented to Parliament.

75. We consider that the proposal does not prevent any person from continuing to exercise any right or freedom which he or she might reasonably expect to continue to exercise.

Adequate consultation

76. The Department published the consultation document on 25 June 2002, and the initial consultation period closed on 30 September 2002, after a brief extension.⁵⁰ The Department states that the consultation was "targeted at NHS Trustees and organisations known to have direct or indirect interests in NHS issues", including the Directory of Social Change, the National Council of Voluntary Organisations and other support groups. The consultation was also extended to the Scotland Office and the Northern Ireland Office.⁵¹ A total of 79 consultees responded to the initial consultation, comprising 61 NHS bodies in England, 10 NHS bodies in Wales and 8 other respondents.

48 Appendix F: Letter to the Clerk of the Committee from the Librarian of the House of Commons

49 Appendix D: Letter to the Chairman from Janet Davies AM, Chair of the Audit Committee of the National Assembly

50 The list of organisations consulted is set out in annex C of the explanatory statement. A list of the respondents is attached at Annex D of the explanatory statement, and a summary of the consultation responses is attached at Annex A.

51 Explanatory statement, paras 50–53

77. The Department has indicated that the majority of respondents were content with the proposals. Four respondents were not content with the proposal to remove the requirement in section 98 of the National Health Service Act 1977 to submit accounts for summarisation; one respondent was not content for the present arrangements for Audit Commission scrutiny to be continued; and five respondents were not happy with the proposal that NHS charities with total income or total expenditure of £10,000 or less should be required to prepare accounts and submit them to Audit Commission inspection.

78. A number of respondents noted their concerns that centralised NHS guidance on the preparation and submission of accounts, presently available to NHS charities when they prepare accounts for submission under section 98 of the 1977 Act, would no longer be available. In its comments on consultation responses, the Department has indicated that the relevant accounting guidance hitherto issued to NHS charities has been based on the Charity Statement of Recommended Practice (SORP). NHS charities will continue to be required to prepare their accounts in accordance with SORP.⁵² The Department has stated that “future changes [to accounting requirements] will be relatively minor ones, and it will not be an onerous task for NHS charities to update [the requirements] as appropriate.”

79. Since this might be a particular issue for small charities, which could find that the provision of additional guidance on the preparation of accounts might incur additional costs, to be found from the funds of the charity itself, we asked the Department to clarify the arrangements envisaged for the issue of accounting guidance to NHS charities no longer required to submit accounts for summarisation.

80. The Department has confirmed that, under the proposals, the departmental guidance presently issued to NHS charities would no longer be issued, although the present guidance could be used by NHS charities “as a baseline”. It argues that the trustees of NHS charities would have access to Charity Commission guidance and support from the accounts section of the Commission, as do other charities. The Department considered that any additional expenditure by NHS charities “would be *de minimis*”, and would be offset by overall savings for NHS charities.⁵³

81. A number of small charities took exception to the requirement that NHS charities with annual gross income or expenditure of £10,000 or less will be required to prepare accounts for examination and submission to the Charity Commission, since charities are at present exempt from this requirement under the Charities Act 1993.

82. The Department has argued that the requirement is appropriate for two reasons: first, that NHS charities are public bodies and their funds should therefore be subject to independent scrutiny, and second, that all NHS charities are presently required to prepare accounts under section 98 of the 1977 Act, irrespective of size, so the proposal imposes no additional burden.

52 See, for example, explanatory statement, annex A, p 18

53 Appendix B, para 5

Changes in response to initial consultation

83. The Comptroller and Auditor General and Auditor General for Wales, in his response to the consultation, expressed strong reservations about the possible diminution of financial control over public monies implicit in the original proposals. His concerns have been more fully set out at paragraphs 63 to 65 above.

84. In response, the Department decided to re-consult on an amended proposal which would ensure that the Comptroller retained his present powers to inspect the accounts of NHS charities. The Department carried out the re-consultation by seeking the views of a sample of 25 NHS charities, the majority of which had provided responses to the initial consultation.⁵⁴ The Department has indicated that all the bodies re-consulted on the amended proposal are content for the proposal to proceed as amended.

85. All the charities consulted as part of the re-consultation exercise are members of the “Informal Group of Charities Associated with NHS Bodies”, which provided a joint response to the Department following a meeting held on 2 November 2002. We asked the Department to supply more information about this group, and to indicate whether the Department considered the group to be properly representative of the opinion of NHS charities.

86. The Department states that the ‘Informal Group’ is comprised of NHS charities holding funds valued at £5 million or more.⁵⁵ It holds between two and four meetings annually, to which Department of Health and Charity Commission representatives are invited. Since, in the Department’s view, the group has a high level of experience in NHS charity matters, the Department considers that it is able to provide a view which reflects issues affecting all NHS charities. Given the nature of the proposal under re-consultation, this method may have appeared appropriate to the Department. We nevertheless note that, by definition, the Group does not include any representatives of small charities, which may have their own particular concerns; nor does it appear to include representatives of any NHS charities in Wales. We find it surprising that the Department did not seek to undertake re-consultation more widely across the NHS charity sector.

87. We consider that the proposal has been the subject of, and taken appropriate account of, adequate consultation.

Costs and benefits

88. The Department states that the significant benefit of the proposal is the removal of an unnecessary administrative burden on NHS charities, which are presently required to prepare two sets of accounts. In addition to this administrative benefit, the Department has also sought to calculate the likely overall savings for the NHS charity sector, based on an extrapolation of the information received from the consultation exercise.

54 The bodies consulted are listed at annex E of the explanatory statement.

55 Appendix B, para 6

Costs

89. The Department believes that additional costs to the NHS charities involved will be minimal. According to the Regulatory Impact Assessment, six out of the 79 respondents to the consultation identified possible costs from the removal of the dual accounting requirement. These respondents indicated that there may be additional costs for charities if the audit were not undertaken at the same time as the audit of NHS trust Exchequer funds.⁵⁶ Only one response provided a firm figure for the likely annual cost, if incurred (£500 per annum).

90. In response to remarks in one consultation response, the Department indicated that it had asked the Audit Commission to “try to ensure” that the same Audit Commission auditor audits the accounts of the host NHS body and its associated NHS charity.⁵⁷ Elsewhere, however, it stated that “at present [Audit Commission] auditors appointed to the host body are automatically appointed to the charity. We do not envisage any change in this process.”⁵⁸ We asked the Department to explain this apparent discrepancy.

91. The Department has stated in response that the Audit Commission presently appoints the same auditors for the accounts of the host NHS body and its associated charity.⁵⁹ The appointment of auditors to particular bodies is a matter for the Audit Commission and not the Department, and the Department recognises that there could in the future be circumstances where the Commission considers that a joint appointment could be inappropriate. While the Department has asked the Audit Commission to ensure that joint appointments continue, it recognises that the final decision on the appointment of auditors will continue to lie with the Commission.

Benefits

92. 49 of the 79 respondents to the consultation identified benefits or savings from the proposal. 33 respondents identified specific financial savings, while 12 identified no savings.

93. Based on these responses, the Department has calculated that the savings to NHS charities will be between £420,000 and £480,000 per annum, with an additional saving to the Department of Health of £10,000 per annum in administrative costs.⁶⁰

94. On the basis of the regulatory impact assessment which has been prepared, we are satisfied that the proposals have been the subject of, and taken appropriate account of, estimates of increases or reductions in costs or other benefits which may result from the implementation of the proposed order.

56 Explanatory statement, Annex F, para 5.2

57 Explanatory statement, annex A, p 8

58 *Ibid*, p 9

59 Appendix B, para 7

60 Explanatory statement, Annex F, para 8: a more detailed calculation of the estimated savings is set out at appendix 1 to annex F

Subordinate provisions

95. The Charities (Accounts and Report) Regulations 1995⁶¹ make detailed provision for charity accounts and reporting requirements. They apply to NHS charities. As a consequence of the changes proposed in the draft order, they will require modification in relation to NHS charities in order to make reference to new section 43A of the Charities Act, to be inserted by the draft order. Article 5 of the draft order applies the Regulations to NHS charities with the Schedule to the proposed order.

96. The Department proposes that any subsequent amendments to these technical provisions may be made by a subordinate provisions order.⁶² While it considers that further amendments are not likely, it states that it is sensible to allow them to be made by subordinate provisions order subject to the negative resolution procedure.

97. We consider that the designation of subordinate provisions in the draft order is appropriate, and the proposed level of Parliamentary scrutiny in respect of them is also appropriate.

6 Conclusion

98. We consider that a draft order in the same terms as the proposal should be laid before the House.

61 S.I. 1995/2724

62 Appendix B

Formal minutes

Wednesday 10 March 2004

Members present:

Mr Peter Pike, in the Chair

Brian Cotter

Chris Mole

Mr Dai Havard

Mr Denis Murphy

Mr Mark Lazarowicz

Dr Doug Naysmith

Mr Andrew Love

Brian White

The Committee deliberated.

Draft Report [Proposal for the Regulatory Reform (National Health Service Charitable Trust Accounts and Audit) Order 2004], 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 98 read and agreed to.

Summary agreed to.

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

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

Several papers were ordered to be appended to the Report.

Ordered, That the Appendices to the Report be reported to the House.

[Adjourned till Tuesday 23 March at 9.30 am

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Appendix A

Letter from the Clerk of the Committee to the Department of Health

Proposal for the draft Regulatory Reform (National Health Service Charitable Trusts Accounts and Audit) Order 2004: request for further information

Thank you for your appearance before the Committee yesterday, and for the extremely helpful briefing you and your colleagues from the Charity Commission and the National Assembly for Wales gave on the proposal.

The Committee considered the proposal at its subsequent meeting and resolved to seek further information from the Department. The issues which concern the Committee are set out below, together with questions arising from them, under the relevant categories for consideration set out in the Regulatory Reform Act and the Committee's Standing Order.

Whether the proposal satisfies the conditions of proportionality between burdens and benefits set out in sections 1 and 3 of the Regulatory Reform Act 2001 (S.O. No. 141(6)(k))

1. The explanatory statement indicates that the proposed order will place a requirement on NHS charities to assist in the audit or examination of their accounts. It is not immediately apparent that this requirement derives from the proposed order.

Q 1 Please indicate where the requirement on NHS charities to assist the Audit Commission with audits or examinations is to be found, either in the existing legislation or in the proposed order.

2. It appears to the Committee that the proposed order may re-enact two of the burdens in existing legislation:—

- (a) New section 43A(5) of the Charities Act 1993 (the 1993 Act), inserted by article 3(3) of the draft order, appears to re-enact the burden in existing section 43(7)(b) which new subsection 43(10) (inserted by article 3(2)) disapplies.
- (b) New section 43B of the 1993 Act, inserted by article 3(3) of the draft order, appears to re-enact the existing provisions of section 98(1) of the National Health Service Act 1977 in respect of the inspection rights of the Comptroller and Auditor General and the Auditor General for Wales, which article 2(3) of the draft order disapplies.

Q 2 Please indicate whether the Department considers that the draft order would re-enact the burdens described in paragraphs 2a) and 2b) above: and, if so, whether it believes that the re-enacted burdens meet the test of proportionality set out in section 1(1)(b) of the 2001 Act.

3. It appears to the Committee that, in terms of the 2001 Act, the proposal would also impose new burdens on the Audit Commission, which are not explicitly identified in the explanatory statement (paragraph 39):—

- (a) New section 43A of the 1993 Act, inserted by article 3(3) of the draft order, requires the Audit Commission to provide an auditor to audit the accounts of NHS charities whose gross income or total expenditure in any financial year exceeds £250,000.
- (b) In the same section, the Audit Commission is required to determine whether the accounts of charities whose income or expenditure does not exceed the £250,000 threshold require either a full audit or an examination, and to appoint an Audit Commission auditor or examiner as appropriate.

Q 3 Please indicate whether the Department considers that the draft order would impose the new burdens described in paragraphs 3a) and 3b) above; and, if so, whether it believes that these new burdens meet the test of proportionality set out in section 1(1)(b) of the 2001 Act.

Whether the proposal has been the subject of, and taken appropriate account of, adequate consultation (S.O. No. 141(6)(d))

4. The summary of consultation responses (at Annex A of the explanatory statement) indicates that a number of respondents were concerned that guidance on the preparation and submission of accounts, presently available to NHS charities when they prepare accounts for submission under section 98 of the 1977 Act, would no longer be available. In its marginal comments on the consultation responses, the Department has indicated that the accounting guidance issued to NHS charities has been based on the Charity Statement of Recommended Practice (SORP), and that this requirement will continue.

5. The arrangements envisaged have not been set out in full in the body of the explanatory statement. It is therefore difficult to ascertain whether the proposals are likely to result in an increased administrative or financial outlay for NHS charities.

Q 4 Please indicate whether, under the proposals, NHS charities will still be able to receive guidance from the Department of Health on the preparation of their annual accounts; if not, what forms of guidance will be available to NHS charities; and whether the Department considers that NHS charities are likely to incur additional expenditure in the preparation of their accounts if Department of Health guidance is no longer available.

6. The explanatory statement (paragraph 55) indicates that a sample of views was sought on the proposed amendment to the original proposal, which would give the Comptroller and Auditor General the power to examine the accounts of NHS charities submitted to the Charity Commission. The response from the sample indicates that the amendment to the proposal was discussed and approved at a meeting of the Informal Group of Charities Associated with NHS Bodies on 20 November 2002.

Q 5 Please indicate how the “Informal Group of Charities Associated with NHS Bodies” is constituted, and the bodies which are members of the Group; how often the Group meets; and whether, in the Department’s opinion, the Group is properly representative of the opinion of NHS charities in England and in Wales.

Whether the proposal has been the subject of, and taken appropriate account of, estimates of increases or reductions in costs or other benefits which may result from its implementation (S.O. No. 141(6)(m))

7. The Committee has examined the statements made by the Department in the explanatory statement concerning the appointment of Audit Commission auditors to audit the accounts of NHS charities and the appropriate NHS host body. A number of consultees indicated in their responses that they would like the auditor appointed to the host body to audit the accounts of the NHS charity. Against one response (explanatory statement, annex A, p. 9) the Department has stated that “[Audit Commission] auditors appointed to the host body are automatically appointed to the charity. We do not envisage any change in this process.” But against another response requesting joint appointments (annex A, p. 8) the Department has stated that “we have asked the Audit Commission to try to ensure that this is the case.”

Q 6 Please clarify, in the light of apparently conflicting observations in the explanatory statement, whether there will be any change to the existing arrangements whereby the same Audit Commission auditors are appointed to scrutinise the accounts both of the host NHS body and of its associated charity.

Other matters arising from the Committee's consideration (S.O. No. 141(5))

8. The figures for the number of NHS charities in England and Wales in the financial year 2001/02 appeared to differ between the explanatory statement and the accompanying regulatory impact assessment (annex F). It would assist the Committee to have a definitive statement of the number of NHS charities in England and Wales as at the end of the most recent financial year for which figures are available.

Q 7 Please indicate the total number of NHS charities in England and in Wales, and indicate how many fall into each category of trusteeship at the end of the last financial year for which figures are available.

Q 8 Please also indicate how many of those charities had income or expenditure of less than £10,000; how many had income or expenditure between £10,000 and £250,000, and how many had income or expenditure exceeding £250,000, in respect of the last financial year for which figures are available.

9. The explanatory statement (paragraph 20) gives an indication of the extent to which the proposals will extend to the proposed NHS Foundation Trusts. It does not appear to explain what the relationship will be between an NHS Trust and its associated NHS charity once the NHS Trust has been designated a Foundation Trust.

Q 9 Please indicate the extent to which it is envisaged that the proposals will extend to NHS charities associated with NHS trusts, once those trusts are designated as foundation trusts under the Health and Social Care (Community Health and Standards) Act 2003.

I would be grateful to receive your response to the above questions, together with any further information the Department believes would be helpful to the Committee, not later than **Friday 6 February**.

Appendix B

Letter from the Department of Health to the Clerk of the Committee

Proposal for the Regulatory Reform (National Health Service Charitable Trust Accounts and Audit) Order 2004

Thank you for your letter dated 21 January 2004. I have detailed below the Department of Health's response to the questions raised by the Committee. Also included is some additional information for the Committee, which clarifies paragraph 46 of the Explanatory Document.

1. The explanatory statement indicates that the proposed order will place a requirement on NHS charities to assist in the audit or examination of their accounts. It is not immediately apparent that this requirement derives from the proposed order.

Q 1 Please indicate where the requirement on NHS charities to assist the Audit Commission with audits or examinations is to be found, either in the existing legislation or in the proposed order.

The requirement for NHS charities to assist in the audit or examination of their accounts is contained in the Audit Commission Act 1998, which provides access powers for auditors appointed by the Audit Commission. Section 6 of the Act provides for the auditor's right to documentation and information and section 48 provides for the provision of information and documents to the Audit Commission and any person authorised by it.

2. It appears to the Committee that the proposed order may re-enact two of the burdens in existing legislation:—

- (a) *New section 43A(5) of the Charities Act 1993 (the 1993 Act), inserted by article 3(3) of the draft order, appears to re-enact the burden in existing section 43(7)(b) which new subsection 43(10) (inserted by article 3(2)) disapplies.*
- (b) *New section 43B of the 1993 Act, inserted by article 3(3) of the draft order, appears to re-enact the existing provisions of section 98(1) of the National Health Service Act 1977 in respect of the inspection rights of the Comptroller and Auditor General and the Auditor General for Wales, which article 2(3) of the draft order disapplies.*

Q 2 *Please indicate whether the Department considers that the draft order would re-enact the burdens described in paragraphs 2a) and 2b) above: and, if so, whether it believes that the re-enacted burdens meet the test of proportionality set out in section 1(1)(b) of the 2001 Act.*

The Committee is correct that new section 43A(5) of the draft Order does re-enact the burden. It brings NHS charities in line with other charities and provides a legally defined structure. However, the burden of examination is lighter and less onerous than an audit for both NHS charities and the auditors and therefore meets the test of proportionality as set out in section 1(1)(b) of the 2001 Act.

The new section 43B of the 1993 Act maintains the Comptroller and Auditor General's (C&AG)(or the Auditor General for Wales (AGW)) access and inspection rights. The proposal is not for the C&AG and the AGW to routinely examine NHS charities accounts as is required under the present legislation. Therefore this is a significant reduction in the present burden, which is mainly borne by Department of Health (DH) and National Assembly for Wales (NAW), and not the charities themselves. Although these access and inspection provisions will be continued to our knowledge there has only been one such report on NHS charities which involved the charities themselves over the last 25 years. It maintains a protection on behalf of Parliament and secures accountability and we believe it is proportionate.

3. *It appears to the Committee that, in terms of the 2001 Act, the proposal would also impose new burdens on the Audit Commission, which are not explicitly identified in the explanatory statement (paragraph 39):—*

- (a) *New section 43A of the 1993 Act, inserted by article 3(3) of the draft order, requires the Audit Commission to provide an auditor to audit the accounts of NHS charities whose gross income or total expenditure in any financial year exceeds £250,000.*
- (b) *In the same section, the Audit Commission is required to determine whether the accounts of charities whose income or expenditure does not exceed the £250,000 threshold require either a full audit or an examination, and to appoint an Audit Commission auditor or examiner as appropriate.*

Q 3 *Please indicate whether the Department considers that the draft order would impose the new burdens described in paragraphs 3a) and 3b) above: and, if so, whether it believes that these new burdens meet the test of proportionality set out in section 1(1)(b) of the 2001 Act.*

The draft Order reinstates the current position. Where only an examination is required this is less demanding and onerous on the Audit Commission and also on NHS charities and therefore does meet the test of proportionality as set out in the 2001 Act.

4. *The summary of consultation responses (at Annex A of the explanatory statement) indicates that a number of respondents were concerned that guidance on the preparation and submission of accounts, presently available to NHS charities when they prepare accounts for submission under section 98 of the 1977 Act, would no longer be available. In its marginal comments on the consultation responses, the Department has indicated that the accounting guidance issued to NHS charities has been based on the Charity Statement of Recommended Practice (SORP), and that this requirement will continue.*

5. *The arrangements envisaged have not been set out in full in the body of the explanatory statement. It is therefore difficult to ascertain whether the proposals are likely to result in an increased administrative or financial outlay for NHS charities.*

Q 4 *Please indicate whether, under the proposals, NHS charities will still be able to receive guidance from the Department of Health on the preparation of their annual accounts; if not, what forms of guidance will be available to NHS charities; and whether the Department considers that NHS charities are likely to incur additional expenditure in the preparation of their accounts if Department of Health guidance is no longer available.*

Under the proposals the DH/NAW guidance will not be issued. NHS charities will, however, be able to use current DH or NAW guidance as a baseline. NHS Trustees will have access to Charity Commission guidance and also support from the Charity Commission accounts section in the same way as other charities. If any additional expenditure were to be incurred by NHS charities it would be de minimis and there would be overall savings for NHS charities as is reflected in the consultation responses.

6. *The explanatory statement (paragraph 55) indicates that a sample of views was sought on the proposed amendment to the original proposal, which would give the Comptroller and Auditor General the power to examine the accounts of NHS charities submitted to the Charity Commission. The response from the sample indicates that the amendment to the proposal was discussed and approved at a meeting of the Informal Group of Charities Associated with NHS Bodies on 20 November 2002.*

Q 5 *Please indicate how the “Informal Group of Charities Associated with NHS Bodies” is constituted, and the bodies which are members of the Group; how often the Group meets; and whether, in the Department’s opinion, the Group is properly representative of the opinion of NHS charities in England and in Wales.*

The ‘Informal Group of Charities Associated with NHS bodies’ is made up of NHS charities which hold funds valued at £5 million or more. The group has a high level of experience in NHS charity matters and is therefore in our opinion can provide a view reflecting issues affecting all NHS charities. It holds 2-4 meetings per year to which the Department of Health and the Charity Commission are invited. Twenty-two members of the ‘Group’ provided a response to the original consultation and were included in the 79 responses received. There were 3 new respondees from the members of the ‘Group’.

7. *The Committee has examined the statements made by the Department in the explanatory statement concerning the appointment of Audit Commission auditors to audit the accounts of NHS charities and the appropriate NHS host body. A number of consultees indicated in their responses that they would like the auditor appointed to the host body to audit the accounts of the NHS charity. Against one response (explanatory statement, annex A, p. 9) the Department has stated that “[Audit Commission] auditors appointed to the host body are automatically appointed to the charity. We do not envisage any change in this process.” But against another response requesting joint appointments (annex A, p. 8) the Department has stated that “we have asked the Audit Commission to try to ensure that this is the case.”*

Q 6 *Please clarify, in the light of apparently conflicting observations in the explanatory statement, whether there will be any change to the existing arrangements whereby the same Audit Commission auditors are appointed to scrutinise the accounts both of the host NHS body and of its associated charity.*

The apparent conflict reflects the fact that, currently, in each case the Audit Commission appoints the same auditors for the accounts of the host NHS body and its associated charity. This is however a matter for the Audit Commission and there could be circumstances where the Commission would decide this is inappropriate. The Department of Health has thus asked the Audit Commission to ensure that for NHS Trusts and Primary Care Trusts that this arrangement continues whenever possible; however under the proposals final decisions on this will continue to lie with the Audit Commission.

8. *The figures for the number of NHS charities in England and Wales in the financial year 2001/02 appeared to differ between the explanatory statement and the accompanying regulatory impact assessment (annex F). It would assist the Committee to have a definitive statement of the number of NHS charities in England and Wales as at the end of the most recent financial year for which figures are available.*

Q 7 *Please indicate the total number of NHS charities in England and in Wales, and indicate how many fall into each category of trusteeship at the end of the last financial year for which figures are available.*

Q 8 *Please also indicate how many of those charities had income or expenditure of less than £10,000; how many had income or expenditure between £10,000 and £250,000, and how many had income or expenditure exceeding £250,000, in respect of the last financial year for which figures are available.*

The figure of around 450 NHS trustee bodies administering charitable funds (paragraph 3 of the Explanatory Document) reflects the numbers for 2000-01. The 419 shown at Annex F are the number of NHS Trustees at the 31st March 2002. A table reflecting the latest figures, which are for 2002-03, as requested above is attached. The reduction in numbers reflects changes in the structure of the NHS. Please note these numbers remain subject to audit.

9. *The explanatory statement (paragraph 20) gives an indication of the extent to which the proposals will extend to the proposed NHS Foundation Trusts. It does not appear to explain what the relationship will be between an NHS Trust and its associated NHS charity once the NHS Trust has been designated a Foundation Trust.*

Q 9 *Please indicate the extent to which it is envisaged that the proposals will extend to NHS charities associated with NHS trusts, once those trusts are designated as foundation trusts under the Health and Social Care (Community Health and Standards) Act 2003.*

For those NHS trusts that become foundation trusts, under the Health and Social Care Act 2003 the arrangements would be as follows:

- (a) where the NHS trust was a corporate trustee, the foundation trust will become the corporate trustee (see paragraph 20 of the Explanatory Document, and the Health and Social Care Act 2003);
- (b) where there was a body of trustees for the NHS trust it will become the body of trustees for the foundation trust; and
- (c) where special trustees were appointed for a named hospital this will continue line with the proposals of the RRO.

The Department would also like to take this opportunity provide the Committee with the some clarification on paragraph 46 of the Explanatory Document, to bring out the effect of proposals in the draft Order and explain why the procedure is considered appropriate. The following amended paragraphs better reflect what the proposal sets out to do. The position is:

The Charities (Accounts and Reports) Regulations 1995 currently apply to NHS charities. Article 5 and the Schedule to the Order provide for the Regulations to continue 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.

Article 5 and the Schedule to the Order were identified as a matter to be dealt with by subordinate provision under section 4(3) of the Regulatory Reform Act 2001. Article 6 of the Order designates article 5 and the Schedule as subordinate provisions. 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, which would be subject to the negative resolution procedure.

6 February 2004

Appendix C

Letter from the Chairman to the Chairman of the Public Accounts Committee

Proposal for the Regulatory Reform (National Health Service Charitable Trust Accounts and Audit) Order 2004

I am writing in connection with the Government's proposal for the above Order, which was laid before Parliament on 7 January. The proposed Order purports to remove a dual accounting burden from National Health Service charitable trusts ("NHS charities") in England and Wales. I enclose copies of both the proposed Order and the explanatory statement prepared by the Department of Health and the National Assembly for Wales.

NHS charities in England and Wales are presently required to prepare and submit accounts both to the Secretary of State for Health or the National Assembly for Wales as appropriate, under section 98 of the National Health Service Act 1977, and to the Charity Commission under Part VI of the Charities Act 1993. The Department of Health states that the proposed Order would remove the requirement on NHS charities in England to prepare and submit accounts to the Secretary of State for Health, for summarisation and eventual presentation to Parliament as part of the NHS Summarised Accounts for England. (A copy of the relevant section of the summarised accounts is attached to the explanatory statement at annex B.)

Should the proposed Order be enacted, Parliament would therefore no longer receive summarised accounts in respect of NHS charities in England. The Department states that all individual NHS charities in England would still be required to prepare annual accounts, and would be obliged to have them audited or examined by the Audit Commission or its nominees. Those charities with total annual income or expenditure of above £10,000 would also be required to submit their audited or examined accounts to the Charity Commission. The proposal has been amended in the light of the original consultation to provide that the Comptroller and Auditor General shall retain his powers of inspection of NHS charities' accounts, related records and audit or examination reports, and may undertake value for money reports on NHS charities.

The Regulatory Reform Committee considered the above proposal at its meeting earlier this week, and resolved to seek your view on the proposed Order, as Chairman of the Public Accounts Committee. In particular the Committee would appreciate your view on an issue directly affecting the House, namely whether the removal of the present requirement that the summarised accounts of NHS charities in England be presented to the House will remove any necessary protection or impair the House's exercise of its financial scrutiny.

The Clerk of the Committee is writing in similar terms to the Clerk of the Journals and the Librarian of the House of Commons.⁶³

22 January 2004

63 The Chairman wrote in similar terms to the Chair of the Audit Committee of the National Assembly for Wales.

Appendix D

Letter from the Chairman of the Public Accounts Committee to the Chairman

Thank you for your letter dated 22 January 2004, in which you ask for views on whether the removal of the requirement that the summarised accounts of NHS Charities in England be presented to the House will remove any necessary protection or impair the House's exercise of its financial scrutiny.

My understanding is that this Order, being made under section 1 of the Regulatory Reform Act 2001, seeks to remove the requirement for NHS charities to prepare accounts for the Department of Health to summarise into a Funds Held on Trust summarised account, audited by the Comptroller and Auditor General, as well as preparing and submitting accounts to the Charity Commission. 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 burdens on charities.

Following successful passage of the Order, the accounts for all NHS Charities will be prepared by the bodies themselves, audited, or examined, by auditors appointed by the Audit Commission and will be reported directly to the Charity Commission. Information on individual NHS charities and the sector will be available from the charities themselves and from the Charity Commission. As a further protection, the rights of the Comptroller and Auditor General to inspect the accounts of NHS charities and conduct value for money studies have been retained. Not all charities associated with the NHS are included in the summarised account and thus its usefulness is limited.

We do not therefore consider that the removal of the summarised account significantly diminishes Parliament's overview of NHS charities.

25 February 2004

Appendix E

Letter from the Chair of the Audit Committee of the National Assembly for Wales to the Chairman

Thank you for your letter of 29 January, drawing my attention to the above Order to remove a dual accounting burden on NHS charities. In order to inform your Committee's consideration of the Order, you asked for my view, as Chair of the Audit Committee of the National Assembly for Wales.

As a result of your letter, the Audit Committee considered the implications of the Order and the view of the Auditor General for Wales, at its meeting on 12 February. Having done so, the Committee is satisfied that the Order will not impair the Assembly's exercise of its financial scrutiny and is content for it to be made.

On behalf of the Audit Committee, I should like to thank you again for bringing this to our attention and for setting a positive example for co-operation between committees of the House of Commons and the National Assembly. We very much welcome such links and hope that we can continue to work together on matters of common interest.

17 February 2004

Appendix F

Letter from the Clerk of the Journals to the Clerk of the Committee

Thank you for your letter, and for including the Journal Office in your consultation on the proposed Order.

My primary concern must be the extent, if any, to which the enactment of the Order would significantly limit the ability of the House to examine the accounts of the NHS charitable trusts, and of the NHS.

Although the enactment of the proposed Order would marginally reduce the total information spontaneously made available to the House, there is no record of the House considering any of these accounts in modern times.

The proposal retains the powers of the Comptroller & Auditor General to inspect individual accounts and to report thereon, or on a series of accounts, to the House if he so decides. Moreover, the auditing of individual NHS charitable trust accounts will remain within the public sector, and therefore ultimately subject to scrutiny by Parliament.

In these circumstances I do not believe that the proposal will result in any significant loss of necessary protection in respect of Parliament's scrutiny of NHS accounts.

28 January 2004

Appendix G

Letter from the Librarian of the House of Commons to the Clerk of the Committee

Thank you for your letter of 23 January and for the government's explanatory note about its proposals for ending the requirement that NHS charitable trusts should provide their accounts to the Secretary of State for Health for subsequent inclusion in the NHS Summarised Accounts for England. I have consulted our health specialist as she is the most likely user of such accounts. She has in turn consulted other colleagues.

At the moment the Library does not routinely receive the individual accounts of these charities (or those of individual NHS Trusts). If there were a scandal or other reason to examine the individual accounts of a specific charity, summary accounts are usually available on the Charity Commission website and a full set of accounts and governing document should be available on demand from the Charity Commission, possibly subject to fees for photocopying and postage. The summarised accounts printed in the NHS (England) Summarised Accounts (e.g. HC 493 of 2002/3) would not be much help in this situation although they might be useful if a Member wanted to place a charity within the context of NHS charities in general.

Where material such as the accounts of a public body is laid before the House (whether all the accounts or simply a summary), there is a continuing obligation on the Library to keep the relevant documents and make them available to the House, its committees or individual Members should they need them. This applies to all laid papers, whether or not they contain the order to print. That means in turn that the documents are readily available within Parliament indefinitely should they be needed. In practice, we normally transfer what the Journal Office terms Act papers to the Record Office after a time. We keep ourselves anything published in the sessional papers (ie as House of Commons or Command papers).

We have tended to take a fairly inclusive view of what financial (or other) information should be reported to Parliament by public bodies. Where there is a choice, we have to take account of such considerations as

whether the information is readily available elsewhere; how much use would be made of it within Parliament; the potential cost to the supplying organisations (which in some circumstances can be significant); and the cost to us, especially our own storage requirements.

It is clear that the information about individual charities will be available through the accounts submitted to the Charity Commissioners, so that requiring the accounts also to be submitted to the Secretary of State for Health is a duplication of effort that seems unnecessary. Our records for the past ten years or so show that there have been no enquiries placed with the research service about these particular charities. That does not necessarily mean that there have been no enquiries at all but suggests that there has not been a high level of interest. In theory, the summarised accounts would enable us to answer some questions relating to the role of such charities within the NHS that we could not answer from individual accounts. In practice it is impossible to say how often such questions are likely to arise, but past evidence suggests that they would not be frequent. As far as costs are concerned, the accounts have to be prepared anyway, so the additional cost to the supplying organisations of submitting those accounts to the Secretary of State for Health are likely to be minimal. The cost to us of receiving the summarised accounts as part of the NHS (England) Summarised Accounts would be negligible, as would the savings if the summarised accounts were no longer included. We are therefore neutral on that point.

We would not want to receive (and therefore, presumably, keep) the accounts of the individual charities, especially as they are easily available elsewhere. Since the summarised accounts appear to be of only limited interest and infrequently, if ever, used, we do not think that Parliament would be deprived of significant information if the raw material for their preparation no longer had to be supplied to the Secretary of State for Health. On balance we think there is no obviously useful purpose served *for Parliament* by the inclusion of the summary accounts for the charitable trusts with the NHS (England) accounts and we could manage without them.

There is, however, an accountability issue on which the Comptroller and Auditor General is possibly better placed than we are to give an opinion. We are conscious that there may be situations or problems that we have not foreseen. In particular, how much information do the charities have to supply to the Trusts that administer them? Is it more or less than they have to supply to the Charity Commissioners? Is it possible to gain an overview of how well (or badly) the individual trusts administer 'their' charities? Is there enough information in the public domain about the charities to answer such questions? It is really a question of whether their status as charities, with the obligation to report to the Charity Commissioners, is sufficient to ensure an adequate level of accountability.

I should add that we are very grateful for being consulted about this and are glad that you thought of asking our views. Apart from our obligations to the House in relation to parliamentary documentation, we are substantial users of the information those documents contain and often have problems in relation to ensuring their continuing supply.

2 February 2004

Appendix H

Letter from the Clerk of the Committee to the Assembly Compliance Officer, Welsh Assembly Government

Proposal for the Regulatory Reform (National Health Service Charitable Trust Accounts and Audit) Order 2004: relationship with the Public Audit (Wales) Bill [*Lords*]

The Public Audit (Wales) Bill [*Lords*] completed its Committee stage in the House of Lords on 26 February, and has been reprinted, with amendments, as House of Lords Bill 31.

As you know, the Bill makes provision for a Welsh Audit Office under the Auditor General for Wales, who would also exercise most of the functions currently exercised in Wales under the Audit Commission. It appears that the Bill would alter the arrangements for accounts and audit of NHS bodies in Wales in a way which would amend the provision which is presently proposed to be made by the Regulatory Reform (National Health Service Charitable Trust Accounts and Audit) Order 2004.

It is not immediately clear how the provisions of the proposed order are intended to be amended or modified by the passage of the Bill. It would assist the Committee in its consideration of the proposal if the Department could provide a memorandum addressing the following points:

- whether the provisions of the Public Audit (Wales) Bill will apply to the accounts and audit of NHS charities in Wales;
- if so, what provision in the bill will bring NHS charities in Wales within the audit responsibilities of the proposed Wales Audit Office;
- whether, under the provisions of the bill, NHS charities in Wales will be required to submit accounts to the Wales Audit office;
- whether NHS charities in Wales will continue to be subject to the requirements of the Charities Act 1993, as amended by the proposed regulatory reform order;
- what arrangements are to be made for the audit of NHS charity accounts in Wales under new section 43A of the Charities Act 1993, as inserted by article 3 of the proposed order;
- whether the bill will, in effect, reinstate the dual accounting burden on NHS charities in Wales which the proposed regulatory reform order would remove for NHS charities in England and Wales, and if not, why not; and
- whether it is anticipated that the bill will receive Royal Assent before the proposed order is made, and, if not, whether the bill will amend or modify any of the provisions of the proposed regulatory reform order.

It would be of great assistance to the Committee if a memorandum could be provided addressing the points above, and supplying any further information which may be relevant to the Committee's consideration, by Wednesday 3 March at the latest.

27 February 2004

Appendix I

Letter from the Assembly Compliance Officer, Welsh Assembly Government to the Clerk of the Committee

Thank you for your letter of 27th February.

We have been aware of the above Order (“the Order”) for some considerable time, and have taken account of it in our instructions to Parliamentary Counsel in relation to the Public Audit (Wales) Bill (“the Bill”). It would appear that the Order is likely to be made before the Bill receives Royal Assent. We estimate Royal Assent being received in June or July 2004, subject to the successful passage of the Bill through Parliament. On that basis, Parliamentary Counsel has advised us that the consequential amendments to our Bill, including consequential amendments which the Bill will need to make to the legislation amended by the Order, should be tabled when the Bill reaches the House of Commons.

In answer to the specific questions in your letter (I am working from the draft Order laid before Parliament on 7th January 2004):

- 1) As the Bill stands, it will apply to the accounts and audit of NHS charities in Wales. It is intended that the Auditor General for Wales (“AGW”) will audit their accounts. If the Order is made as presently drafted, this will require an amendment to the Bill, inserting a new consequential amendment of the Charities Act 1993 (please see attached table of suggested amendments to the Bill consequent on the Order).
- 2) As the Bill stands, clause 60(1) of the Bill, together with paragraphs 2 and 38 of Schedule 2 to the Bill (which amend s. 98 National Health Service Act 1977 and Schedule 2 to the Audit Commission Act 1998 respectively) will bring NHS charities in Wales within the audit responsibilities of the Auditor General.

The “Wales Audit Office” is merely intended to be the “business name” of the Auditor General for Wales and his staff. The Bill does not create a body called the Wales Audit Office.
- 3) The intention is that NHS charities in Wales will be required to submit accounts to the Auditor General. If the Order is made as presently drafted, the Bill will have to make a consequential amendment to the Charities Act 1993.
- 4 and 5) The Charities Act 1993 will have to be amended by the Bill to ensure that the accounts of NHS charities in Wales are audited, or examined, by the Auditor General for Wales. The 1993 Act will have to be amended so as to include a definition of “NHS charities in Wales” (or similar expression), which will be charitable trusts, the trustees of which at any time during the financial year in question are one or more Welsh NHS bodies, as that expression is defined in clause 59 of the Bill. Please see attached table for further detail.
- 6) No. The Wales Office, which is responsible for the Bill and to which I am answerable, in relation to the Bill, under an agreement made between the Assembly and the Secretary of State for Wales, under s. 41 Government of Wales Act 1998, is content with the policy intention of the Order in respect of removing the dual accounting burden. The Bill does not affect article 2 of the draft Order, which removes NHS charity accounts from the duty to submit account to the Secretary of State for Health/National Assembly for Wales.
- 7) As I have indicated above we anticipate that the Order will be made before the Public Audit (Wales) Bill receives Royal Assent.

I would be grateful if you could alert me to any other regulatory reform orders of which you may be aware that could impact on the Bill.

2 March 2004

Proposal for the Regulatory Reform (National Health Service Charitable Trust Accounts and Audit) Order 2004

	Amendment made by RRO	Suggested amendment in PAWB
Charities Act 1993		
Art 2	Amends s.98 of the National Health Service Act 1977 to exclude NHS charity accounts from the requirements of s.98	No amendments necessary
Art 3(2)	<p>Inserts s.43A into the Charities Act 1993.</p> <p>(1) Provides for the accounts of an NHS charity to be audited by a person appointed by the Audit Commission where the criteria set out in s.43(1) are met (ie. total expenditure exceeds £250,000)</p> <p>(2) Provides that in any other case NHS charity accounts may, at the election of the Audit Commission be audited by a person appointed by the Audit Commission or examined by a person so appointed.</p> <p>(3) s.3 of the ACA 1998 to apply in relation to s.43A(1) or (2)(a)</p>	<p>Insert amendment so that in the case of NHS charities in Wales, accounts to be audited by the AGW</p> <p>Audit or examination in Wales to take place at the election of the AGW.</p>
Audit Commission Act 1998		
Art 4(3)	Amends Sch 2 of Audit Commission Act 1998. Amends para 1(g) to exclude from bodies specified in s 98(1) of the National Health Service Act 1977 accounts which relate to the property of any charity administered by such a body.	<p>No substantive amendment necessary. Paragraph 38 of Schedule 2 to the Bill takes Welsh NHS bodies out of the remit of the Audit Commission in any event. Clause 60 defines Welsh NHS bodies' accounts by reference to s.98(1) of the 1977 Act. Paragraph 2 of Schedule 2 to the Bill, unaffected. Paragraph 38 of Schedule 2 to the Bill takes Welsh NHS bodies out of the remit of the Audit Commission in any event.</p> <p>But drafting amendment necessary to para. 38 of Schedule 2 to the Bill, as a result of article 4(2) – new words inserted after “1977”.</p>
Charities (Accounts and Reports) Regulations 1995		
Sch	Consequential amendments relating to reg 6 and 7 of the Charities Act 1993	No amendment required

Appendix J

E-mail from the Clerk of the Committee to the Department of Health

There is one further query on the proposal arising from your response to the Committee's request for information.

The point at issue is the requirement on NHS charities to assist in the audit or examination of their accounts, which was outlined in the explanatory statement. You indicated in your letter of 6 February that the requirement was contained in sections 6 and 48 of the Audit Commission Act 1998. These sections apply to bodies which are subject to audit under the 1998 Act.

But the effect of article 4 of the proposed order is to amend Schedule 2 to the 1998 Act, thereby removing NHS charity trustees from the list of bodies subject to audit under the 1998 Act. It appears that sections 6 and 48 of the 1998 Act will not, as a consequence, apply to NHS charities.

However, regulation 8 of the Charities (Accounts and Report) Regulations 1995, which imposes similar requirements to those in section 6 of the 1998 Act, is to be applied to the accounts of NHS charities (with modifications as set out in the Schedule to the draft order). We wonder whether this is in fact where the requirement lies, and not in sections 6 and 48 of the 1998 Act.

I would be grateful if you could look at the point again and indicate whether the interpretation above is accurate.

27 February 2004

Appendix K

Letter from the Department of Health to the Clerk of the Committee

Thank you for your e-mail of 27 February 2004 about the requirement on NHS charities to assist in the audit or examination of their accounts.

We have consulted the solicitors of the Department of Health, the Charity Commission and the Audit Commission. Unfortunately the position is not totally clear and our solicitors are discussing the matter with Parliamentary Counsel. We will advise the Committee of the outcome as soon as possible.

I apologise for any inconvenience caused. Please do not hesitate to contact me should you require any additional information.

9 March 2004

Reports from the Regulatory Reform Committee since 2001

The following reports were published during the present Parliament by the Regulatory Reform Committee under its previous name, the Deregulation and Regulatory Reform Committee.

Session 2001-02

First	Proposal for the Regulatory Reform (Special Occasions Licensing) Order 2001	265
Second	Draft Regulatory Reform (Special Occasions Licensing) Order 2001	388
Third	Draft Deregulation (Disposals of Dwelling-Houses By Local Authorities) Order 2001	449
Fourth	Proposal for the Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002	583
Fifth	Draft Deregulation (Restaurant Licensing Hours) Order 2002 Draft Deregulation (Bingo and other Gaming) Order 2002 Proposal for the Regulatory Reform (Golden Jubilee Licensing) Order 2002	599
Sixth	Proposal for the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002	663
Seventh	Draft Regulatory Reform (Golden Jubilee Licensing) Order 2002 Draft Regulatory Reform (Voluntary Aided Schools Liabilities and Funding) (England) Order 2002	677
Eighth	Proposal for the Regulatory Reform (Carer's Allowance) Order 2002	691
Ninth	Draft Deregulation (Correction of Birth and Death Entries in Registers or Other Records) Order 2002 Proposal for the Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002	708
Tenth	Draft Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 Draft Regulatory Reform (Carer's Allowance) Order 2002	807
First Special Report	Further report on the Handling of Regulatory Reform Orders	389

The following Reports were published by the Regulatory Reform Committee during the present Parliament under its current name.

Session 2001-02

Eleventh	Draft Regulatory Reform (Vaccine Damage Payments Act 1979) Order 2002	867
Twelfth	Proposal for the Regulatory Reform (Removal of the 20 Member Limit) Order 2002	1104
Thirteenth	Proposal for the Regulatory Reform (Sugar Beet Research and Education) Order 2003	1247
Fourteenth	Draft Regulatory Reform (Removal of 20 Member Limit in Partnerships Etc.) Order 2002	1303
Second Special Report	The Operation of the Regulatory Reform Act: Government Response to the Committee's First Special Report of Session 2001-02	1029
Third Special Report	The Handling of Regulatory Reform Orders (III)	1272

Session 2002-03

First	Proposal for the Regulatory Reform (Credit Unions) Order 2002 Proposal for the Regulatory Reform (Special Occasions Licensing) Order 2002	82
Second	Proposal for the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003	182
Third	Proposal for the Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003	183
Fourth	Draft Regulatory Reform (Special Occasions Licensing) Order 2002	193
Fifth	Proposal for the Regulatory Reform (Housing Management Agreements) Order 2003	328
Sixth	Draft Regulatory Reform (Credit Unions) Order 2003 Draft Regulatory Reform (Assured Periodic Tenancies) (Rent Increases) Order 2003	329
Seventh	Proposal for the Regulatory Reform (Schemes under Section 129 of the Housing Act 1988) (England) Order 2003	436
Eighth	Draft Regulatory Reform (Housing Management Agreements) Order 2003	520
Ninth	Proposal for the Regulatory Reform (British Waterways Board) Order 2003	521
Tenth	Proposal for the Regulatory Reform (Schemes under Section 129 of the Housing Act 1988) (England) Order 2003	549

Eleventh	Draft Regulatory Reform (Sugar Beet Research and Education) Order 2003	591
Twelfth	Draft Regulatory Reform (British Waterways Board) Order 2003	682
Thirteenth	Proposal for the Regulatory Reform (Gaming Machines) Order 2003	715
Fourteenth	Draft Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 Draft Regulatory Reform (Gaming Machines) Order 2003	1210
First Special Report	The operation of the Regulatory Reform Act 2001: a progress report	908

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

All reports are available from The Stationery Office.