

This consolidated version of the accounts and audit provisions in the Charities Act 1993 has been prepared by the Office of the Third Sector to assist readers of the draft Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008. Amendments made by the draft Order are highlighted, as are amendments made by provisions of the Charities Act 2006 expected to come into force on 1st April 2008. Amendments made by provisions of the Charities Act 2006 that are not expected to be in force by 1st April have not been included.

This document is not intended to constitute legal advice. Those involved in the preparation and scrutiny of charity accounts should seek appropriate legal advice if in any doubt about the law.

CHARITIES ACT 1993

PART 6

CHARITY ACCOUNTS, REPORTS AND RETURNS

Duty to keep accounting records

41.—(1) The charity trustees of a charity shall ensure that accounting records are kept in respect of the charity which are sufficient to show and explain all the charity's transactions, and which are such as to—

- (a) disclose at any time, with reasonable accuracy, the financial position of the charity at that time, and
- (b) enable the trustees to ensure that, where any statements of accounts are prepared by them under section 42(1) below, those statements of accounts comply with the requirements of regulations under that provision.

(2) The accounting records shall in particular contain—

- (a) entries showing from day to day all sums of money received and expended by the charity, and the matters in respect of which the receipt and expenditure takes place; and
- (b) a record of the assets and liabilities of the charity.

(3) The charity trustees of a charity shall preserve any accounting records made for the purposes of this section in respect of the charity for at least six years from the end of the financial year of the charity in which they are made.

(4) Where a charity ceases to exist within the period of six years mentioned in subsection (3) above as it applies to any accounting records, the obligation to preserve those records in accordance with that subsection shall continue to be discharged by the last charity trustees of the charity, unless the Commission consents in writing to the records being destroyed or otherwise disposed of.

(5) Nothing in this section applies to a charity which is a company.

Annual statements of accounts

42.—(1) The charity trustees of a charity shall (subject to subsection (3) below) prepare in respect of each financial year of the charity a statement of accounts complying with such requirements as to its form and contents as may be prescribed by regulations made by the Minister.

(2) Without prejudice to the generality of subsection (1) above, regulations under that subsection may make provision—

- (a) for any such statement to be prepared in accordance with such methods and principles as are specified or referred to in the regulations;
- (b) as to any information to be provided by way of notes to the accounts;

and regulations under that subsection may also make provision for determining the financial years of a charity for the purposes of this Act and any regulations made under it.

(2A) Such regulations may, however, not impose on the charity trustees of a charity that is a charitable trust created by any person (“the settlor”) any requirement to disclose, in any statement of accounts prepared by them under subsection (1)—

- (a) the identities of recipients of grants made out of the funds of the charity, or
- (b) the amounts of any individual grants so made,

if the disclosure would fall to be made at a time when the settler or any spouse of civil partner of his was still alive.(a)

(3) Where a charity’s gross income in any financial year does not exceed £100,000, the charity trustees may, in respect of that year, elect to prepare the following, namely—

- (a) a receipts and payments account, and
- (b) a statement of assets and liabilities,

instead of a statement of accounts under subsection (1) above.

(4) The charity trustees of a charity shall preserve—

- (a) any statement of accounts prepared by them under subsection (1) above, or
- (b) any account and statement prepared by them under subsection (3) above,

for at least six years from the end of the financial year to which any such statement relates or (as the case may be) to which any such account and statement relate.

(5) Subsection (4) of section 41 above shall apply in relation to the preservation of any such statement or account and statement as it applies in relation to the preservation of any accounting records (the references to subsection (3) of that section being read as references to subsection (4) above).

(6) The Minister may by order amend subsection (3) above by substituting a different sum for the sum for the time being specified there.

(7) Nothing in this section applies to a charity which is a company.

(8) Provisions about the preparation of accounts in respect of groups consisting of certain charities and their subsidiary undertakings, and about other matters relating to such groups, are contained in Schedule 5A to this Act (see section 49A below).(b)

Annual audit or examination of charity accounts

43.—(1) Subsection (2) below applies to a financial year of a charity if—

- (a) the charity’s gross income in that year exceeds £500,000; or
- (b) the charity’s gross income in that year exceeds the accounts threshold and at the end of the year the aggregate value of its assets (before deduction of liabilities) exceeds £2.8 million.

“The accounts threshold” means £100,000 or such other sum as is for the time being specified in section 42(3) above.

(2) If this subsection applies to a financial year of a charity, the accounts of the charity for that year shall be audited by a person who—

- (a) would be eligible for appointment as auditor of the charity under Part 2 of the Companies Act 1989 if the accounts of the charity were required to be audited in accordance with Part 7 of the Companies Act 1985(c), or
- (b) is a member of a body for the time being specified in regulations under section 44 below and is under the rules of that body eligible for appointment as auditor of the charity.

(a) Section 42(2A) inserted by the Charities Act 2006, Schedule 8, paragraph 133(1) and (2).

(b) Section 42(8) inserted by the Charities Act 2006 Schedule 8, paragraph 133(1) and (3);.

(c) Section 43(2)(a) amended by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, article 2(2).

(3) If subsection (2) above does not apply to a financial year of a charity but its gross income in that year exceeds £10,000, the accounts of the charity for that year shall, at the election of the charity trustees, either—

- (a) be examined by an independent examiner, that is to say an independent person who is reasonably believed by the trustees to have the requisite ability and practical experience to carry out a competent examination of the accounts, or
- (b) be audited by such a person as is mentioned in subsection (2) above.

This is subject to the requirements of subsection (3A) below where the gross income exceeds £250,000, and to any order under subsection (4) below.

(3A) If subsection (3) above applies to the accounts of a charity for a year and the charity's gross income in that year exceeds £250,000, a person qualifies as an independent examiner for the purposes of paragraph (a) of that subsection if (and only if) he is an independent person who is—

- (a) a member of one of the bodies listed in subsection (3B) below; or
- (b) a Fellow of the Association of Charity Independent Examiners.(a)

(3B) The bodies referred to in subsection (3A)(a) above are—(b)

- (a) the Institute of Chartered Accountants in England and Wales;
- (b) the Institute of Chartered Accountants of Scotland;
- (c) the Institute of Chartered Accountants in Ireland;
- (d) the Association of Chartered Certified Accountants;
- (e) the Association of Authorised Public Accountants;
- (f) the Association of Accounting Technicians;
- (g) the Association of International Accountants;
- (h) the Chartered Institute of Management Accountants;
- (i) the Institute of Chartered Secretaries and Administrators;
- (j) the Chartered Institute of Public Finance and Accountancy.

(4) Where it appears to the Commission—

- (a) that subsection (2), or (as the case may be) subsection (3) above, has not been complied with in relation to a financial year of a charity within ten months from the end of that year, or
- (b) that, although subsection (2) above does not apply to a financial year of a charity, it would nevertheless be desirable for the accounts of the charity for that year to be audited by such person as is mentioned in that subsection,

the Commission may by order require the accounts of the charity for that year to be audited by such a person as is mentioned in that subsection.

(5) If the Commission makes an order under subsection (4) above with respect to a charity, then unless—

- (a) the order is made by virtue of paragraph (b) of that subsection, and
- (b) the charity trustees themselves appoint an auditor in accordance with the order,

the auditor shall be a person appointed by the Commission.

(6) The expenses of any audit carried out by an auditor appointed by the Commission under subsection (5) above, including the auditor's remuneration, shall be recoverable by the Commission—

(a) Section 43(3A)(a) to (c) substituted by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 2(3).

(b) Section 43(3B) inserted by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 2(4).

- (a) from the charity trustees of the charity concerned, who shall be personally liable, jointly and severally, for those expenses; or
- (b) to the extent that it appears to the Commission not to be practical to seek recovery of those expenses in accordance with paragraph (a) above, from the funds of the charity.

(7) The Commission may—

- (a) give guidance to charity trustees in connection with the selection of a person for appointment as an independent examiner;
- (b) give such directions as it thinks appropriate with respect to the carrying out of an examination in pursuance of subsection (3)(a) above;

and any such guidance or directions may either be of general application or apply to a particular charity only.

(8) The Minister may by order—

- (a) amend subsection (1)(a) or (b), (3) or (3A) above by substituting a different sum for any sum for the time being specified there;
- (b) amend subsection (3A) by adding or removing a description of person to or from the list in that subsection or by varying any entry for the time being included in that list.
- (c) amend subsection (3B) by adding or removing a body to or from the list in that subsection or by varying any entry for the time being included in that list.(a)

(9) Nothing in this section applies in relation to the accounts of a charity for a financial year if those accounts are required to be audited in accordance with Part 7 of the Companies Act 1985.(b)

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

Annual audit or examination of English National Health Service charity accounts

43A.—(1) This section applies in relation to a financial year of a charity where, at any time in the year, the charity is an English National Health Service charity.

(2) In any case where paragraph (a) or (b) of section 43(1) is satisfied in relation to a financial year of an English National Health Service charity, the accounts of the charity for that financial year shall be audited by a person appointed by the Audit Commission.

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

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

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

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

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

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

(a) Section 43(8)(c) inserted by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 2(5).

(b) Section 43(9) substituted by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 2(6).

(7) In this section—

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

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

- (a) a Strategic Health Authority;
- (b) a Primary Care Trust;
- (c) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in England;
- (d) trustees appointed in pursuance of paragraph 10 of Schedule 4 to the National Health Service Act 2006 for a National Health Service trust falling within paragraph (c).
- (da) special trustees appointed in pursuance of section 29(1) of the National Health Service Reorganisation Act 1973, section 95(1) of the National Health Service Act 1977 and section 212(1) of the National Health Service Act 2006 for such a National Health Service trust, or
- (e) trustees for a Primary Care Trust appointed in pursuance of paragraph 12 of Schedule 3 to the National Health Service Act 2006.

Annual audit or examination of Welsh National Health Service charity accounts

43B.—(1) This section applies in relation to a financial year of a charity where, at any time in the year, the charity is a Welsh National Health Service charity.

(2) In any case where paragraph (a) or (b) of section 43(1) is satisfied in relation to a financial year of a Welsh National Health Service charity, the accounts of the charity for that financial year shall be audited by the Auditor General for Wales.

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

(4) In this section—

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

- (a) a Local Health Board;
- (b) a National Health Service trust all or most of whose hospitals, establishments and facilities are situated in Wales;
- (c) trustees appointed in pursuance of paragraph 10 of Schedule 3 to the National Health Service (Wales) Act 2006 for a National Health Service trust falling within paragraph (b); or
- (d) special trustees appointed in pursuance of section 29(1) of the National Health Service Reorganisation Act 1973, section 95(1) of the National Health Service Act 1977 and section 160(1) of the National Health Service (Wales) Act 2006 for such a National Health Service trust.

(5) References in this Act to an auditor or an examiner have effect in relation to this section as references to the Auditor General for Wales acting under this section as an auditor or examiner.

Supplementary provisions relating to audits etc

44.—(1) The Minister may by regulations make provision—

- (a) specifying one or more bodies for the purposes of section 43(2)(b) above;
- (b) with respect to the duties of an auditor carrying out an audit under section 43, 43A or 43B above, including provision with respect to the making by him of a report on—
 - (i) the statement of accounts prepared for the financial year in question under section 42(1) above, or

- (ii) the account and statement so prepared under section 42(3) above, or
 - (iii) the accounts so prepared under section 226 of the Companies Act 1985 (duty to prepare individual accounts);(a)
as the case may be;
 - (c) with respect to the making of a report—
 - (i) by an independent examiner in respect of an examination carried out by him under section 43 above; or
 - (ii) by an examiner in respect of an examination carried out by him under section 43A or 43B above;
 - (d) conferring on such an auditor or on an independent examiner or examiner a right of access with respect to books, documents and other records (however kept) which relate to the charity concerned;
 - (e) entitling such an auditor or an independent examiner or examiner to require, in the case of a charity, information and explanations from past or present charity trustees or trustees for the charity, or from past or present officers or employees of the charity;
 - (f) enabling the Commission, in circumstances specified in the regulations, to dispense with the requirements of section 43(2) or (3) above in the case of a particular charity or in the case of any particular financial year of a charity.
- (2) If any person fails to afford an auditor or an independent examiner or examiner any facility to which he is entitled by virtue of subsection (1)(d) or (e) above, the Commission may by order give—
- (a) to that person, or
 - (b) to the charity trustees for the time being of the charity concerned,
- such directions as the Commission thinks appropriate for securing that the default is made good.

Duty of auditors etc to report matters to Commission

44A.—(1) This section applies to— (b)

- (a) a person acting as an auditor or independent examiner appointed by or in relation to a charity under section 43 above,
- (b) a person acting as an auditor or examiner appointed under section 43A(2) or (3) above, and
- (c) the Auditor General for Wales acting under section 43B(2) or (3) above.

(2) If, in the course of acting in the capacity mentioned in subsection (1) above, a person to whom this section applies becomes aware of a matter—

- (a) which relates to the activities or affairs of the charity or of any connected institution or body, and
- (b) which he has reasonable cause to believe is likely to be of material significance for the purposes of the exercise by the Commission of its functions under section 8 or 18 above,

he must immediately make a written report on the matter to the Commission.

(3) If, in the course of acting in the capacity mentioned in subsection (1) above, a person to whom this section applies becomes aware of any matter—

- (a) which does not appear to him to be one that he is required to report under subsection (2) above, but

(a) Section 44(1)(b)(iii) inserted by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 3.

(b) Section 44A was inserted by the Charities Act 2006, section 29(1). For transitional provisions and savings see paragraph 8 of Schedule 10 to the 2006 Act

- (b) which he has reasonable cause to believe is likely to be relevant for the purposes of the exercise by the Commission of any of its functions,

he may make a report on the matter to the Commission.

(4) Where the duty or power under subsection (2) or (3) above has arisen in relation to a person acting in the capacity mentioned in subsection (1), the duty or power is not affected by his subsequently ceasing to act in that capacity.

(5) Where a person makes a report as required or authorised by subsection (2) or (3), no duty to which he is subject is to be regarded as contravened merely because of any information or opinion contained in the report.

(6) In this section “connected institution or body”, in relation to a charity, means—

- (a) an institution which is controlled by, or
(b) a body corporate in which a substantial interest is held by,

the charity or any one or more of the charity trustees acting in his or their capacity as such.

(7) Paragraphs 3 and 4 of Schedule 5 to this Act apply for the purposes of subsection (6) above as they apply for the purposes of provisions of that Schedule.

Annual reports

45.—(1) The charity trustees of a charity shall prepare in respect of each financial year of the charity an annual report containing—

- (a) such a report by the trustees on the activities of the charity during that year, and
(b) such other information relating to the charity or its trustees or officers,
(c) as may be prescribed by regulations made by the Minister.

(2) Without prejudice to the generality of subsection (1) above, regulations under that subsection may make provision—

- (a) for any such report as is mentioned in paragraph (a) of that subsection to be prepared in accordance with such principles as are specified or referred to in the regulations;
(b) enabling the Commission to dispense with any requirement prescribed by virtue of subsection (1)(b) above in the case of a particular charity or a particular class of charities, or in the case of a particular financial year of a charity or of any class of charities.

(3) Where a charity’s gross income in any financial year exceeds £10,000, a copy of the annual report required to be prepared under this section in respect of that year shall be transmitted to the Commission by the charity trustees—

- (a) within ten months from the end of that year, or
(b) within such longer period as the Commission may for any special reason allow in the case of that report.

(3A) Where a charity’s gross income in any financial year does not exceed £10,000, a copy of the annual report required to be prepared under this section in respect of that year shall, if the Commission so requests, be transmitted to it by the charity trustees—

- (a) in the case of a request made before the end of seven months from the end of the financial year to which the report relates, within ten months from the end of that year, and
(b) in the case of a request not so made, within three months from the date of that request,

or, in either case, within such longer period as the Commission may for any special reason allow in the case of that report.

(4) Subject to subsection (5) below, any copy of an annual report transmitted to the Commission under this section shall have attached to it a copy of the statement of accounts prepared for the financial year in question under section 42(1) above or (as the case may be) a copy of the account and statement so prepared under section 42(3) above, together with—

- (a) where the accounts of the charity for that year have been audited under section 43, 43A or 43B above, a copy of the report made by the auditor on that statement of accounts or (as the case may be) on that account and statement;
- (b) where the accounts of the charity for that year have been examined under section 43, 43A or 43B above, a copy of the report made by the person carrying out the examination.

(5) Subsection (4) above does not apply to a charity which is a company, and any copy of an annual report transmitted by the charity trustees of such a charity under this section shall instead have attached to it a copy of the charity's annual accounts prepared for the financial year in question under Part 7 of the Companies Act 1985, together with—(a)

- (a) where the accounts of the charity for that year have been audited under that Part of that Act, a copy of the report made by the auditor on those accounts;
- (b) where the accounts of the charity for that year have been audited under section 43 above, a copy of the report made by the auditor on those accounts;
- (c) where the accounts of the charity for that year have been examined under that section, a copy of the report made by the person carrying out the examination.

(6) Any copy of an annual report transmitted to the Commission under this section, together with the documents attached to it, shall be kept by the Commission for such period as it thinks fit.

(7) The charity trustees of a charity shall preserve, for at least six years from the end of the financial year to which it relates, any annual report prepared by them under subsection (1) above of which they have not been required to transmit a copy to the Commission.

(8) Subsection (4) of section 41 above shall apply in relation to the preservation of any such annual report as it applies in relation to the preservation of any accounting records (the references to subsection (3) of that section being read as references to subsection (7) above).

(9) The Minister may by order amend subsection (3) or (3A) above by substituting a different sum for the sum for the time being specified there.

Special provision as respects accounts and annual reports of exempt and other exempted charities

46.—(1) Nothing in sections 41 to 44 or section 45(b) above applies to any exempt charity; but the charity trustees of an exempt charity shall keep proper books of account with respect to the affairs of the charity, and if not required by or under the authority of any other Act to prepare periodical statements of account shall prepare consecutive statements of account consisting on each occasion of an income and expenditure account relating to a period of not more than fifteen months and a balance sheet relating to the end of that period.

(2) The books of accounts and statements of account relating to an exempt charity shall be preserved for a period of six years at least unless the charity ceases to exist and the Commission consents in writing to their being destroyed or otherwise disposed of.

(3) Nothing in section 43, 44 or 45 above applies to any charity which—

- (a) falls within section 3(5)(c) above, and
- (b) is not registered.

(4) Except in accordance with subsection (7) below, nothing in section 45 above applies to any charity (other than an exempt charity or a charity which falls within section 3(5)(c) above) which—

- (a) is excepted by section 3(5) above, and
- (b) is not registered.

(a) Section 45(5)(a) to (c) substituted by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 4.

(b) Section 46(1) amended by the Charities Act 2006, section 29(2)(a). For transitional provisions and savings see paragraph 8 of Schedule 10 to the 2006 Act.

(5) If requested to do so by the Commission, the charity trustees of any such charity as is mentioned in subsection (4) above shall prepare an annual report in respect of such financial year of the charity as is specified in the Commission's request.

(6) Any report prepared under subsection (5) above shall contain—

- (a) such a report by the charity trustees on the activities of the charity during the year in question, and
- (b) such other information relating to the charity or to its trustees or officers,

as may be prescribed by regulations made under section 45(1) above in relation to annual reports prepared under that provision.

(7) The following provisions of section 45 above shall apply in relation to any report required to be prepared under subsection (5) above as if it were an annual report required to be prepared under subsection (1) of that section—

- (a) subsection (3), with the omission of the words preceding “a copy of the annual report”, and
- (b) subsections (4) to (6).(a)

(8) Any reference in this section to a charity which falls within section 3(5)(c) above includes a reference to a charity which falls within that provision but is also excepted from registration by section 3(5)(b) above.

Public inspection of annual reports etc

47.—(1) Any document kept by the Commission in pursuance of section 45(6) above shall be open to public inspection at all reasonable times—

- (a) during the period for which it is so kept; or
- (b) if the Commission so determines, during such longer period as it may specify.

(2) Where any person—

- (a) requests the charity trustees of a charity in writing to provide him with a copy of the charity's most recent accounts or (if subsection (4) below applies) of its most recent annual report, and
- (b) pays them such reasonable fee (if any) as they may require in respect of the costs of complying with the request,

those trustees shall comply with the request within the period of two months beginning with the date on which it is made.

(3) In subsection (2) above the reference to a charity's most recent accounts is—

- (a) ...
- (b) in the case of a charity other than one falling within paragraph (c) or (d) below, a reference to the statement of accounts or account and statement prepared in pursuance of section 42(1) or (3) above in respect of the last financial year of the charity in respect of which a statement of accounts or account and statement has or have been so prepared;
- (c) in the case of a charity which is a company, a reference to the most recent annual accounts of the company prepared under Part 7 of the Companies Act 1985 in relation to which any of the following conditions is satisfied—
 - (i) they have been audited;
 - (ii) they have been examined by an independent examiner under section 43(3)(a) above;(b)

(a) Section 46(7) substituted by the Charities Act 2006, Schedule 8 paragraph 139(1) and (6).

(b) Section 47(3)(c)(ii) substituted by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 5(a).

(iii) they relate to a year in respect of which the company is exempt from audit under Part 7 of the Companies Act 1985 and neither section 43(2) nor section 43(3) above applied to them;(a) and

(d) in the case of an exempt charity, a reference to the accounts of the charity most recently audited in pursuance of any statutory or other requirement or, if its accounts are not required to be audited, the accounts most recently prepared in respect of the charity.

(4) This subsection applies if an annual report has been prepared in respect of any financial year of a charity in pursuance of section 45(1) or 46(5) above.

(5) In subsection (2) above the reference to a charity's most recent annual report is a reference to the annual report prepared in pursuance of section 45(1) or 46(5) in respect of the last financial year of the charity in respect of which an annual report has been so prepared.

Annual returns by registered charities

48.—(1) Subject to subsection (1A) below, every registered charity shall prepare in respect of each of its financial years and annual return in such form, and containing such information, as may be prescribed by regulations made by the Commission.

(1A) Subsection (1) above shall not apply in relation to any financial year of a charity in which the charity's gross income does not exceed £10,000.

(6) Any such return shall be transmitted to the Commission by the date by which the charity trustees are, by virtue of section 45(3) above, required to transmit to the Commission the annual report required to be prepared in respect of the financial year in question.

(7) The Commission may dispense with the requirements of subsection (1) above in the case of a particular charity or a particular class of charities, or in the case of a particular financial year of a charity or of any class of charities.

(8) The Minister may by order amend subsection (1A) above by substituting a different sum for the sum for the time being specified there.

Offences

49.—(1) If any requirement imposed—

- (a) by section 45(3) or (3A) above (taken with section 45(3B), (4) and (5), as applicable), or
- (b) by section 47(2) or 48(2) above,

is not complied with, each person who immediately before the date for compliance specified in the section in question was a charity trustee of the charity shall be guilty of an offence and liable on summary conviction to the penalty mentioned in subsection (2).

(2) The penalty is—

- (a) a fine not exceeding level 4 on the standard scale, and
- (b) for continued contravention, a daily default fine not exceeding 10% of level 4 on the standard scale for so long as the person in question remains a charity trustee of the charity.

(3) It is a defence for a person charged with an offence under subsection (1) to prove that he took all reasonable steps for securing that the requirement in question would be complied with in time.

Group accounts

49A. The provisions of Schedule 5A to this Act shall have effect with respect to—(b)

(a) Section 43(3)(c)(iii) amended by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 5(b).

(b) Section 49A inserted by the Charities Act 2006, section 30..

- (a) the preparation and auditing of accounts in respect of groups consisting of parent charities and their subsidiary undertakings (within the meaning of that Schedule), and
- (b) other matters relating to such groups.

PART 8

CHARITABLE COMPANIES

Duty of charity's auditors etc to report matters to Commission(a)

68A.—(1) Section 44A(2) to (7) above shall apply in relation to a person acting as an auditor of a charitable company appointed under Chapter 2 of Part 16 of the Companies Act 2006 (appointment of auditors) as they apply(b) in relation to a person such as is mentioned in section 44A(1).

(2) For this purpose any reference in section 44A to a person acting in the capacity mentioned in section 44A(1) is to be read as reference to his acting in the capacity mentioned in subsection (1) of this section.

(3) In this section “charitable company” means a charity which is a company.

Investigation of accounts

69.—(1) In the case of a charity which is a company the Commission may by order require that the condition and relevant(c) accounts of the charity for such period as the Commission thinks fit shall be investigated and audited by an auditor appointed by the Commission, being a person eligible for appointment as a company auditor under section 25 of the Companies Act 1989.

(1A) “Relevant accounts” means accounts required to be audited under Part 7 of the Companies Act 1985.(d)

(2) An auditor acting under subsection (1) above—

- (a) shall have a right of access to all books, accounts and documents relating to the charity which are in the possession or control of the charity trustees or to which the charity trustees have access;
- (b) shall be entitled to require from any charity trustee, past or present, and from any past or present officer or employee of the charity such information and explanation as he thinks necessary for the performance of his duties;
- (c) shall at the conclusion or during the progress of the audit make such reports to the Commission about the audit or about the accounts or affairs of the charity as he thinks the case requires, and shall send a copy of any such report to the charity trustees.

(3) The expenses of any audit under subsection (1) above, including the remuneration of the auditor, shall be paid by the Commission.

(4) If any person fails to afford an auditor any facility to which he is entitled under subsection (2) above the Commission may by order give to that person or to the charity trustees for the time being such directions as the Commission thinks appropriate for securing that the default is made good.

(a) Section 68A inserted by the Charities Act 2006, section 33. For transitional provisions see paragraph 10 of Schedule 10 to the 2006 Act.

(b) Section 68A(1) amended by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 6.

(c) Section 69(1) amended by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 7(2).

(d) Section 69(1A) inserted by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 7(3).

SCHEDULE 5A(a)

GROUP ACCOUNTS

Interpretation

1.—(1) This paragraph applies for the purposes of this Schedule.

(2) A charity is a “parent charity” if it is (or is to be treated as) a parent undertaking in relation to one or more other undertakings in accordance with the provisions of section 258 of, and Schedule 10A to, the Companies Act 1985.(b)

(3) Each undertaking in relation to which a parent charity is (or is to be treated as) a parent undertaking in accordance with those provisions is a “subsidiary undertaking” in relation to the parent charity.

(4) But sub-paragraph (3) does not have the result that any of the following is a “subsidiary undertaking”—

- (a) any special trusts of a charity,
- (b) any institution which, by virtue of a direction under section 96(5) of this Act, is to be treated as forming part of a charity for the purposes of this Part of this Act, or
- (c) any charity to which a direction under section 96(6) of this Act applies for those purposes.

(5) “The group”, in relation to a parent charity, means that charity and its subsidiary undertaking or undertakings, and any reference to the members of the group is to be construed accordingly.

(6) For the purposes of—

- (a) this paragraph, and
- (b) the operation of the provisions mentioned in sub-paragraph (2) above for the purposes of this paragraph,

“undertaking” has the meaning given by sub-paragraph (7) below.

(7) For those purposes “undertaking” means—

- (a) an undertaking as defined by section 259(1) of the Companies Act 1985, or
- (b) a charity which is not an undertaking as so defined.

Accounting records

2.—(1) The charity trustees—

- (a) of a parent charity, or
- (b) of any charity which is a subsidiary undertaking,

must ensure that the accounting records kept in respect of the charity under section 41(1) of this Act or, as the case may be, section 221 of the Companies Act 1985 (duty to keep accounting records)(c) not only comply with the requirements of that provision but also are such as to enable the charity trustees of the parent charity to ensure that, where any group accounts are prepared by them under paragraph 3(2), those accounts comply with the relevant requirements.

(a) Schedule 5A was inserted by the Charities Act 2006, section 30. For transitional provisions see paragraph 17 of Schedule 10 to the 2006 Act.

(b) Paragraph 1(2) was substituted by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 8(2).

(c) Paragraph 2(1) amended by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 8(3)(a).

(2) If a parent charity has a subsidiary undertaking in relation to which the requirements of section 41(1) of this Act or section 221 of the Companies Act 1985(a) do not apply, the charity trustees of the parent charity must take reasonable steps to secure that the undertaking keeps such accounting records as to enable the trustees to ensure that, where any group accounts are prepared by them under paragraph 3(2), those accounts comply with the relevant requirements.

(3) In this paragraph “the relevant requirements” means the requirements of regulations under paragraph 3.

Preparation of group accounts

3.—(1) This paragraph applies in relation to a financial year of a charity if—(b)

(a) the charity is a parent charity at the end of that year; and

(b) (where it is a company) it is not required to prepare consolidated accounts for that year under section 227 of the Companies Act 1985 (duty to prepare group accounts), whether or not such accounts are in fact prepared.

(2) The charity trustees of the parent charity must prepare group accounts in respect of that year.

(3) “Group accounts” means consolidated accounts—

(a) relating to the group, and

(b) complying with such requirements as to their form and contents as may be prescribed by regulations made by the Minister.

(4) Without prejudice to the generality of sub-paragraph (3), regulations under that sub-paragraph may make provision—

(a) for any such accounts to be prepared in accordance with such methods and principles as are specified or referred to in the regulations;

(b) for dealing with cases where the financial years of the members of the group do not all coincide;

(c) as to any information to be provided by way of notes to the accounts.

(5) Regulations under that sub-paragraph may also make provision—

(a) for determining the financial years of subsidiary undertakings for the purposes of this Schedule;

(b) for imposing on the charity trustees of a parent charity requirements with respect to securing that such financial years coincide with that of the charity.

(6) If the requirement in sub-paragraph (2) applies to the charity trustees of a parent charity (other than a parent charity which is a company)(c) in relation to a financial year—

(a) that requirement so applies in addition to the requirement in section 42(1) of this Act, and

(b) the option of preparing the documents mentioned in section 42(3) of this Act is not available in relation to that year (whatever the amount of the charity’s gross income for that year).

(6A) If the requirement in sub-paragraph (2) applies to the charity trustees of a parent charity in relation to a financial year and the charity is a company, that requirement so applies in addition to the requirement in section 226 of the Companies Act 1985 (duty to prepare individual accounts).(d)

(7) Sub-paragraph (2) has effect subject to paragraph 4.

(a) Paragraph 2(2) amended by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 8(3)(b).

(b) Paragraph 3(1) substituted by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 8(4).

(c) Paragraph 3(6) amended by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 8(5).

(d) Paragraph 3(6A) inserted by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 8(6).

Exceptions relating to requirement to prepare group accounts

4.—(1) The requirement in paragraph 3(2) does not apply to the charity trustees of a parent charity in relation to a financial year if at the end of that year it is itself a subsidiary undertaking in relation to another charity.

(2) The requirement in paragraph 3(2) does not apply to the charity trustees of a parent charity in relation to a financial year if the aggregate gross income of the group for that year does not exceed such sum as is specified in regulations made by the Minister.

(3) Regulations made by the Minister may prescribe circumstances in which a subsidiary undertaking may or (as the case may be) must be excluded from group accounts required to be prepared under paragraph 3(2) for a financial year.

(4) Where, by virtue of such regulations, each of the subsidiary undertakings which are members of a group is either permitted or required to be excluded from any such group accounts for a financial year, the requirement in paragraph 3(2) does not apply to the charity trustees of the parent charity in relation to that year.

Preservation of group accounts

5.—(1) The charity trustees of a charity shall preserve any group accounts prepared by them under paragraph 3(2) for at least six years from the end of the financial year to which the accounts relate.

(2) Subsection (4) of section 41 of this Act shall apply in relation to the preservation of any such accounts as it applies in relation to the preservation of any accounting records (the references to subsection (3) of that section being construed as references to sub-paragraph (1) above).

(3) For the purposes of sub-paragraph (2), section 41 applies as if subsection (5) of that section were omitted.(a)

Audit of accounts of larger groups

6.—(1) This paragraph applies where group accounts are prepared for a financial year of a parent charity under paragraph 3(2) and—

- (a) the aggregate gross income of the group in that year exceeds the relevant income threshold, or
- (b) the aggregate gross income of the group in that year exceeds the relevant income threshold and at the end of the year the aggregate value of the assets of the group (before deduction of liabilities) exceeds the relevant assets threshold.

(2) In subparagraph (1)—

- (a) the reference in paragraph (a) or (b) to the relevant income threshold is a reference to the sum prescribed as the relevant income threshold for the purposes of that paragraph, and
- (b) the reference in paragraph (b) to the relevant assets threshold is a reference to the sum prescribed as the relevant assets threshold for the purposes of that paragraph.

“Prescribed” means prescribed by regulations made by the Minister.

(3) This paragraph also applies where group accounts are prepared for a financial year of a parent charity under paragraph 3(2) and the appropriate audit provision applies in relation to the parent charity’s own accounts for that year.

(4) If this paragraph applies in relation to a financial year of a parent charity by virtue of subparagraph (1) or (3), the group accounts for that year shall be audited—

- (a) (subject to paragraph (b) or (c) below) by a person within section 43(2)(a) or (b) of this Act;
- (b) if section 43A of this Act applies in relation to that year, by a person appointed by the Audit Commission (see section 43A(7));

(a) Paragraph 5(3) inserted by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 8(7).

- (c) if section 43B of this Act applies in relation to that year, by the Auditor General for Wales.

(5) Where it appears to the Commission that sub-paragraph (4)(a) above has not been complied with in relation to that year within ten months from the end of that year—

- (a) the Commission may by order require the group accounts for that year to be audited by a person within section 43(2)(a) or (b) of this Act, and
- (b) if it so orders, the auditor shall be a person appointed by the Commission.

(6) Section 43(6) of this Act shall apply in relation to any such audit as it applies in relation to an audit carried out by an auditor appointed under section 43(5) (reading the reference to the funds of the charity as a reference to the funds of the parent charity).

(7) Section 43A(4) and (6) of this Act apply in relation to any appointment under sub-paragraph (4)(b) above as they apply in relation to an appointment under section 43A(2).

(8) If this paragraph applies in relation to a financial year of a parent charity by virtue of sub-paragraph (1)—

- (a) (subject to paragraph (b) below) the appropriate audit provision shall apply in relation to the parent charity's own accounts for that year (whether or not it would otherwise so apply);
- (b) where the parent charity is a company and its own accounts for that year are not required to be audited in accordance with Part 7 of the Companies Act 1985, section 43(2) of this Act shall apply in relation to those accounts (whether or not it would otherwise so apply).(a)

(9) In this paragraph “the appropriate audit provision”, in relation to a financial year of a parent charity, means—

- (a) (subject to paragraph (b), (c) or (d)(b) below) section 43(2) of this Act;
- (b) if section 43A of this Act applies in relation to that year, section 43A(2);
- (c) if section 43B of this Act applies in relation to that year, section 43B(2);
- (d) if the parent charity is a company, section 43(2) of this Act or Part 7 of the Companies Act 1985 (as the case may be).(c)

Examination of accounts of smaller groups

7.—(1) This paragraph applies where—

- (a) group accounts are prepared for a financial year of a parent charity under paragraph 3(2), and
- (b) paragraph 6 does not apply in relation to that year.

(2) If—

- (a) this paragraph applies in relation to a financial year of a parent charity, and
- (b) sub-paragraph (4) or (5) below does not apply in relation to it,

subsection (3) to (7) of section 43 of this Act shall apply in relation to the group accounts for that year as they apply in relation to the accounts of a charity for a financial year in relation to which subsection (2) of that section does not apply, but subject to the modifications in sub-paragraph (3) below.

(3) The modifications are—

- (a) any reference to the charity trustees of the charity is to be construed as a reference to the charity trustees of the parent charity;

(a) Paragraph 6(8) substituted by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 8(8).
(b) Paragraph 6(9)(a) amended by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 8(9).
(c) Paragraph 9(6)(d) inserted by the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008, art 8(10).

- (b) any reference to the charity's gross income in the financial year in question is to be construed as a reference to the aggregate gross income of the group in that year; and
- (c) any reference to the funds of the charity is to be construed as a reference to the funds of the parent charity.

(4) If—

- (a) this paragraph applies in relation to a financial year of a parent charity, and
- (b) section 43A of this Act also applies in relation to that year,

subsections (3) to (6) of that section shall apply in relation to the group accounts for that year as they apply in relation to the accounts of a charity for a financial year in relation to which subsection (2) of that section does not apply.

(5) If—

- (a) this paragraph applies in relation to a financial year of a parent charity, and
- (b) section 43B of this Act also applies in relation to that year,

subsection (3) of that section shall apply in relation to the group accounts for that year as they apply in relation to the accounts of a charity for a financial year in relation to which subsection (2) of that section does not apply.

(6) If the group accounts for a financial year of a parent charity are to be examined or audited in accordance with section 43(3) of this Act (as applied by sub-paragraph (2) above), section 43(3) shall apply in relation to the parent charity's own accounts for that year (whether or not it would otherwise so apply).

(7) Nothing in sub-paragraph (4) or (5) above affects the operation of section 43A(3) to (6) or (as the case may be) section 43B(3) in relation to the parent charity's own accounts for the financial year in question.

Supplementary provision relating to audits etc

8.—(1) Section 44(1) of this Act shall apply in relation to audits and examinations carried out under or by virtue of paragraph 6 or 7, but subject to the modifications in sub-paragraph (2) below.

(2) The modifications are—

- (a) in paragraph (b), the reference to section 43, 43A or 43B of this Act is to be construed as a reference to paragraph 6 above or to any of those sections as applied by paragraph 7 above;
- (b) also in paragraph (b), the reference to any such statement of accounts as is mentioned in sub-paragraph (i) of that paragraph is to be construed as a reference to group accounts prepared for a financial year under paragraph 3(2) above;
- (c) in paragraph (c), any reference to section 43, 43A or 43B of this Act is to be construed as a reference to that section as applied by paragraph 7 above;
- (d) in paragraphs (d) and (e), any reference to the charity concerned or a charity is to be construed as a reference to any member of the group; and
- (e) in paragraph (f), the reference to the requirements of section 43(2) or (3) of this Act is to be construed as a reference to the requirements of paragraph 6(4)(a) or those applied to paragraph 7(2) above.

(3) Without prejudice to the generality of section 44(1)(e), as modified by sub-paragraph (2)(d) above, regulations made under that provision may make provision corresponding or similar to any provision made by section 389A of the Companies Act 1985 (c. 6) in connection with the rights exercisable by an auditor of a company in relation to a subsidiary undertaking of the company.

(4) In section 44(2) of this Act the reference to section 44(1)(d) or (e) includes a reference to that provision as it applies in accordance with this paragraph.

Duty of auditors etc to report matters to Commission

9.—(1) Section 44A(2) to (5) and (7) of this Act shall apply in relation to a person appointed to audit, or report on, any group accounts under or by virtue of paragraph 6 or 7 above as they apply in relation to a person such as is mentioned in section 44A(1).

(2) In section 44A(2)(a), as it applies in accordance with sub-paragraph (1) above, the reference to the charity or any connected institution or body is to be construed as a reference to the parent charity or any of its subsidiary undertakings.

Annual reports

10.— (1) This paragraph applies where group accounts are prepared for a financial year of a parent charity under paragraph 3(2).

(2) The annual report prepared by the charity trustees of the parent charity in respect of that year under section 45 of this Act shall include—

- (a) such a report by the trustees on the activities of the charity's subsidiary undertakings during that year, and
- (b) such other information relating to any of those undertakings,

as may be prescribed by regulations made by the Minister.

(3) Without prejudice to the generality of sub-paragraph (2), regulations under that sub-paragraph may make provision—

- (a) for any such report as is mentioned in paragraph (a) of that sub-paragraph to be prepared in accordance with such principles as are specified or referred to in the regulations;
- (b) enabling the Commission to dispense with any requirement prescribed by virtue of sub-paragraph (2)(b) in the case of a particular subsidiary undertaking or a particular class of subsidiary undertaking.

(4) Section 45(3) to (3B) shall apply in relation to the annual report referred to in sub-paragraph (2) above as if any reference to the charity's gross income in the financial year in question were a reference to the aggregate gross income for the group in that year.

(5) When transmitted to the Commission in accordance with sub-paragraph (4) above, the copy of the annual report shall have attached to it both a copy of the group accounts prepared for that year under paragraph 3(2) and—

- (a) a copy of the report made by the auditor on those accounts; or
- (b) where those accounts have been examined under section 43, 43A or 43B of this Act (as applied by paragraph 7 above), a copy of the report made by the person carrying out the examination.

(6) The requirements in this paragraph are in addition to those in section 45 of this Act.

Excepted charities

11.—(1) This paragraph applies where—

- (a) a charity is required to prepare an annual report in respect of a financial year by virtue of section 46(5) of this Act,
- (b) the charity is a parent charity at the end of the year, and
- (c) group accounts are prepared for that year under paragraph 3(2) by the charity trustees of the charity.

(2) When transmitted to the Commission in accordance with section 46(7) of this Act, the copy of the annual report shall have attached to it both a copy of the group accounts and—

- (a) a copy of the report made by the auditor on those accounts; or
- (b) where those accounts have been examined under section 43, 43A or 43B of this Act (as applied by paragraph 7 above), a copy of the report made by the person carrying out the examination.

(3) The requirement in sub-paragraph (2) is in addition to that in section 46(6) of this Act.

Exempt charities

12. Nothing in the preceding provisions of this Schedule applies to an exempt charity.

Public inspection of annual reports etc

13. In section 47(2) of this Act, the reference to a charity's most recent accounts includes, in relation to a charity whose charity trustees have prepared any group accounts under paragraph 3(2), the group accounts most recently prepared by them.

Offences

14.—(1) Section 49(1) of this Act applies in relation to a requirement within sub-paragraph (2) as it applies in relation to a requirement within section 49(1)(a).

(2) A requirement is within this sub-paragraph where it is imposed by section 45(3) or (3A) of this Act, taken with—

- (a) section 45(3B), (4) and (5), and
- (b) paragraph 10(5) or 11(2) above,

as applicable.

(3) In sub-paragraph (2) any reference to section 45(3), (3A) or (3B) of this Act is a reference to that provision as applied by paragraph 10(4) above.

(4) In section 49(1)(b) the reference to section 47(2) of this Act includes a reference to that provision as extended by paragraph 13 above.

Aggregate gross income

15. The Minister may by regulations make provision for determining for the purposes of this Schedule the amount of the aggregate gross income for a financial year of a group consisting of a parent charity and its subsidiary undertaking or undertakings.