

Draft Order laid before Parliament under section 74(5) of the Charities Act 2006, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2008 No.

CHARITIES, ENGLAND AND WALES

**The Charities Act 2006 (Charitable Companies
Audit and Group Accounts Provisions) Order 2008**

Made - - - -

Coming into force in accordance with article 1

This Order is made in exercise of the powers conferred by sections 74(2) and 77 of the Charities Act 2006(1).

A draft of this instrument has been approved by a resolution of each House of Parliament pursuant to section 74(5) of that Act.

Accordingly the Minister for the Cabinet Office makes the following Order:

Citation, commencement, application and extent

1.—(1) This Order may be cited as the Charities Act 2006 (Charitable Companies Audit and Group Accounts Provisions) Order 2008 and, subject to paragraph (2), comes into force on 1st April 2008.

(2) This article and article 3 come into force on the day after the day on which this Order is made.

(3) The amendments made by this Order have effect in relation to financial years of charities beginning on or after 1st April 2008.

(4) In paragraph (3) “financial year” has the same meaning as in the Charities Act 1993(2).

(1) 2006 c. 50; section 78(6) defines “the Minister” for the purposes of the Act; section 74(7) defines “relevant Minister” for the purposes of section 74.

(2) 1993 c.10; section 43 was amended by the Deregulation and Contracting Out Act 1994 (c.40), section 28, the Charities Act 1993 (Substitution of Sums) Order 1995 (S.I. 1995/2696), the Regulatory Reform (National Health Service Charitable and Non-Charitable Trust Accounts and Audit) Order 2005 (S.I. 2005/1074) and the Charities Act 2006 (c.50), section 28 and Schedule 8, paragraph 134. Section 44 was amended by the Charities Act 2006, Schedule 8, paragraph 137. Section 45 was amended by the Deregulation and Contracting Out Act 1994, section 29, the Companies Act 1985 (Audit Exemption) Regulations 1994 (S.I. 1994/1935), the Regulatory Reform (National Health Service Charitable and Non-charitable Trust Accounts and Audit) Order 2005 and the Charities Act 2006, Schedule 7 and Schedule 8, paragraph 138. The amendments made to section 45 by Schedule 7 to the Charities Act 2006 are not yet in force. The functions exercisable by the Secretary of State under sections 43 to 45 of the Charities Act 1993 were transferred to the Minister for the Cabinet Office by the Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951). Section 47 was amended by the Deregulation and Contracting Out Act 1994, Schedule 11, paragraph 12, and Schedule 17, the Companies Act 1985 (Audit Exemption) Regulations 1994 and the Charities Act 2006, Schedule 8, paragraphs 96 and 140. Section 68A was

(5) This Order extends to England and Wales only.

Amendments of the Charities Act 1993

2.—(1) Section 43 of the Charities Act 1993 (annual audit or examination of charity accounts) is amended as follows.

(2) In subsection (2)(a)(3), for “charity were a company” substitute “accounts of the charity were required to be audited in accordance with Part 7 of the Companies Act 1985”.

(3) In subsection (3A)(4), for paragraphs (a) to (c) substitute—

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

(4) After subsection (3A) insert—

- “(3B) The bodies referred to in subsection (3A)(a) above are—
 - (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.”.

(5) After subsection (8)(b)(5) insert—

- “(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.”.

(6) For subsection (9) substitute—

- “(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.”.

3. In section 44(1)(b)(6) of the Charities Act 1993 (supplementary provisions relating to audits etc.), at the end of sub-paragraph (ii) insert—

“or

- (iii) the accounts so prepared under section 226 of the Companies Act 1985 (duty to prepare individual accounts).”.

inserted by the Charities Act 2006, section 33 and amended by the Companies Act 2006 (Commencement No.3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194). Section 69 was amended by the Charities Act 2006, Schedule 8, paragraph 154. Schedule 5A was inserted by the Charities Act 2006, Schedule 6. There are other amendments to the Charities Act 1993 not relevant to this Order.

(3) Section 43(2)(a) was substituted by the Charities Act 2006, section 28(3).

(4) Section 43(3A) was substituted by the Charities Act 2006, section 28(5).

(5) Section 43(8) was substituted by the Charities Act 2006, section 28(6).

(6) Section 44(1)(b) was amended by the Charities Act 2006, Schedule 8, paragraph 137.

4. In section 45(5)(7) of the Charities Act 1993(annual reports), for the words from “a copy of any auditors’ report” to the end substitute—

- “(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.”.

5. In section 47(3)(c)(8) of the Charities Act 1993 (public inspection of annual reports etc.)—

- (a) for sub-paragraph (ii) substitute—
 - “(ii) they have been examined by an independent examiner under section 43(3)(a) above;”;and
- (b) in sub-paragraph (iii) for “by virtue of section 249A(1) of that Act;” substitute “under Part 7 of the Companies Act 1985 and neither section 43(2) nor section 43(3) above applied to them;”.

6. In section 68A(1)(9) of the Charities Act 1993 (duty of charity’s auditors etc. to report matters to Commission), for the words from “acting as” to “as they apply” substitute “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”.

7.—(1) Section 69 of the Charities Act 1993(10) (investigation of accounts) is amended as follows.

- (2) In subsection (1) before “accounts of the charity” insert “relevant”.
- (3) After subsection (1) insert –
 - “(1A) “Relevant accounts” means accounts required to be audited under Part 7 of the Companies Act 1985.”.

8.—(1) Schedule 5A(11) to the Charities Act 1993 (group accounts) is amended as follows.

- (2) In paragraph 1 (interpretation) for sub-paragraph (2) substitute—
 - “(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.”.
- (3) In paragraph 2 (accounting records)—
 - (a) in sub-paragraph (1) after “of this Act” insert “or, as the case may be, section 221 of the Companies Act 1985 (duty to keep accounting records)”;
 - and
 - (b) in sub-paragraph (2) after “of this Act” insert “or section 221 of the Companies Act 1985”.
- (4) In paragraph 3 (preparation of group accounts) for sub-paragraph (1) substitute—
 - “(1) This paragraph applies in relation to a financial year of a charity if—
 - (a) the charity is a parent charity at the end of that year; and

(7) Section 45(5) was amended by the Deregulation and Contracting Out Act 1994 (c.40), section 29, the Companies Act 1985 (Audit Exemption) Regulations 1994 (S.I. 1994/1935) and the Charities Act 2006, Schedule 8, paragraph 138.

(8) Section 47(3)(c) was substituted by the Companies Act 1985 (Audit Exemption) Regulations 1994 (S.I. 1994/1935).

(9) Section 68A was inserted by the Charities Act 2006, section 33. Section 68A was amended by the Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) Order 2007 (S.I. 2007/2194).

(10) Section 69 was amended by the Charities Act 2006, Schedule 8, paragraph 154.

(11) Schedule 5A was inserted by the Charities Act 2006, Schedule 6.