



## 2008 CHAPTER 12

### PART 8

#### CHARITY ACCOUNTS, REPORTS AND RETURNS

##### **Duty to keep accounting records**

**63.**—(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 64(1), 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 6 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 6 years mentioned in subsection (3) 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**

**64.—**(1) The charity trustees of a charity shall (subject to subsection (3)) 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 Department.

(2) Without prejudice to the generality of subsection (1), 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.

(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).

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

(a) any statement of accounts prepared by them under subsection (1), or

(b) any account and statement prepared by them under subsection (3);

for at least 6 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 63 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 Department may by order amend subsection (3) 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 6 (see section 72).

**Annual audit or examination of charity accounts**

**65.**—(1) Subsection (2) applies to a financial year of a charity if the charity's gross income in that year exceeds £500,000.

(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) is eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006 (c. 46); or
- (b) is a member of a body for the time being specified in regulations under section 66 and is under the rules of that body eligible for appointment as auditor of the charity.

(3) If subsection (2) does not apply to a financial year of a charity, 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).

This is subject to the requirements of subsection (4) where the gross income exceeds £100,000, and to any order under subsection (6).

(4) If subsection (3) applies to the accounts of a charity for a year and the charity's gross income in that year exceeds £100,000, a person qualifies as an independent examiner for the purposes of paragraph (a) of that subsection if (and only if) that person is an independent person who is—

- (a) a member of one of the bodies listed in subsection (5); or
- (b) a Fellow of the Association of Charity Independent Examiners.

(5) The bodies referred to in subsection (4)(a) 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.

(6) Where it appears to the Commission—

- (a) that subsection (2), or (as the case may be) subsection (3), has not been complied with in relation to a financial year of a charity within 10 months from the end of that year, or
- (b) that, although subsection (2) 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 a 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.

(7) If the Commission makes an order under subsection (6) 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.

(8) The expenses of any audit carried out by an auditor appointed by the Commission under subsection (7), including the auditor's remuneration, shall be recoverable by the Commission—

- (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), from the funds of the charity.

(9) 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);

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

(10) The Department may by order—

- (a) amend subsection (1), (3) or (4) by substituting a different sum for any sum for the time being specified there;
- (b) amend subsection (4) or (5) 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.

(11) 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 16 of the Companies Act 2006 (c. 46).

**Supplementary provisions relating to audits, etc.**

**66.—**(1) The Department may by regulations make provision—

- (a) specifying one or more bodies for the purposes of section 65(2)(b);
- (b) with respect to the duties of an auditor carrying out an audit under section 65, including provision with respect to the making of a report on—
  - (i) the statement of accounts prepared for the financial year in question under section 64(1),
  - (ii) the account and statement so prepared under section 64(3), or
  - (iii) the accounts so prepared under section 394 of the Companies Act 2006 (duty to prepare individual accounts),as the case may be;
- (c) with respect to the making of a report by an independent examiner in respect of an examination carried out under section 65;
- (d) conferring on such an auditor or on an independent 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 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 65(2) or (3) 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 any facility to which the auditor or independent examiner is entitled by virtue of subsection (1)(d) or (e), 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**

**67.—**(1) This section applies to a person (A) acting as an auditor or independent examiner appointed by or in relation to a charity under section 65.

(2) If, in the course of acting in the capacity mentioned in subsection (1), A 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 A 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 22 or 33,

A 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), A becomes aware of any matter—

- (a) which does not appear to be one that A is required to report under subsection (2), but
- (b) which A has reasonable cause to believe is likely to be relevant for the purposes of the exercise by the Commission of any of its functions,

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

(4) Where the duty or power under subsection (2) or (3) has arisen in relation to A, the duty or power is not affected by A subsequently ceasing to act in that capacity.

(5) Where A makes a report as required or authorised by subsection (2) or (3), no duty to which A 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 a capacity as such.

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

### **Annual reports**

**68.—**(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 to its trustees or officers,

as may be prescribed by regulations made by the Department.

(2) Without prejudice to the generality of subsection (1), 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;

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*Status: This is the original version (as it was originally enacted).*

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(b) enabling the Commission to dispense with any requirement prescribed by virtue of subsection (1)(b) 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) A copy of the annual report required to be prepared under this section in respect of a financial year shall be transmitted to the Commission by the charity trustees—

- (a) within 10 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.

(4) Subject to subsection (5), a 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 64(1) or (as the case may be) a copy of the account and statement so prepared under section 64(3), together with—

- (a) where the accounts of the charity for that year have been audited under section 65, 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 65, a copy of the report made by the independent examiner in respect of the examination carried out under that section.

(5) Subsection (4) does not apply to a charity which is a company, and a 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 15 of the Companies Act 2006 (c. 46), together with—

- (a) where the accounts of the charity for that year have been audited under Part 16 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 65, 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.

**Public inspection of annual reports, etc.**

**69.**—(1) Subject to subsection (2), any document kept by the Commission in pursuance of section 68(6) 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 lesser period as it may specify.

(2) The Commission may direct that subsection (1) does not apply—

- (a) in relation to any document specified, or of a description specified, in the direction, or
- (b) in such circumstances as are so specified.

(3) Subject to subsection (4), where any person—

- (a) requests the charity trustees of a charity in writing to be provided with a copy of the charity's most recent accounts or (if subsection (6) 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 2 months beginning with the date on which it is made.

(4) The Commission may direct that subsection (3) does not apply—

- (a) in relation to charity trustees specified, or of a description specified, in the direction, or
- (b) in such circumstances as are so specified.

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

- (a) in the case of a charity other than one falling within paragraph (b), a reference to the statement of accounts or account and statement prepared in pursuance of section 64(1) or (3) 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;
- (b) in the case of a charity which is a company, a reference to the most recent annual accounts of the company prepared under Part 15 of the Companies Act 2006 (c. 46) 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 65(3)(a); or



(iii) they relate to a year in respect of which the company is exempt from audit under Part 16 of the Companies Act 2006 and neither section 65(2) nor section 65(3) applied to them.

(6) This subsection applies if an annual report has been prepared in respect of any financial year of a charity in pursuance of section 68(1).

(7) In subsection (3) the reference to a charity's most recent annual report is a reference to the annual report prepared in pursuance of section 68(1) in respect of the last financial year of the charity in respect of which an annual report has been so prepared.

### **Annual returns by charities**

**70.—**(1) Every charity shall prepare in respect of each of its financial years an annual return in such form, and containing such information, as may be prescribed by regulations made by the Department.

(2) Any such return shall be transmitted to the Commission by the date by which the charity trustees are, by virtue of section 68(3), required to transmit to the Commission the annual report required to be prepared in respect of the financial year in question.

(3) The Commission may dispense with the requirements of subsection (1) 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.

### **Offences**

**71.—**(1) If any requirement imposed—

- (a) by section 68(3) (taken with section 68(4) and (5), as applicable), or
- (b) by section 69(3) or 70(2),

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 is 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 one-tenth 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 that person took all reasonable steps for securing that the requirement in question would be complied with in time.

**Group accounts**

- 72.** The provisions of Schedule 6 shall have effect with respect to—
- (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.