

CHARITIES ACT 2006

EXPLANATORY NOTES

THE ACT

Commentary on Sections

Section 29: Duty of auditor etc. of charity which is not a company to report matters to Commission.

117. Auditors of registered charities which are not companies have a specific statutory duty (a “whistleblowing” duty) to report to the Charity Commission abuse or significant breaches of charity law or regulation. This duty arises under regulation 7(5) of the Charities (Accounts and Reports) Regulations 2005¹. Auditors who comply with the duty have statutory protection from the risk of action for breach of confidence or defamation. Auditors of charitable companies, however, would have to rely on the protection given by case law if they made a similar report in the ‘public interest’.
118. *Subsection (1)* of section 29 inserts new section 44A into the 1993 Act. Currently section 44 of the 1993 Act confers on the Secretary of State a power to make regulations about the duties of auditors under section 43; that power has been exercised in the Charities (Accounts and Reports) Regulations 2005. Regulation 7(5) of those regulations imposes on the auditor of a charity a duty to communicate to the Commissioners in writing any matter relating to the activities or affairs of the charity which he has reasonable cause to believe is, or is likely to be, of material significance for the exercise in relation to the charity of the Commissioners' functions under section 8 (inquiries) or 18 (protective powers) of the 1993 Act. The effect of that duty is to release an auditor acting in pursuance of regulation 7(5) from his duty of confidentiality to the trustees of the charity and to enable him to report relevant matters about the charity without risking action for breach of confidence. The new section 44A prescribes the “whistleblowing” duties and powers of auditors and extends those duties and powers to independent examiners. New section 44A also provides that, where auditors or independent examiners act in accordance with their “whistleblowing” duties or powers, no duty to which they are subject – such as the duty of confidentiality towards their clients - would be contravened merely as a result of the information or opinion contained in their report (section 44A(1)-(7)).
119. *Subsection (2)* of section 29 amends section 46 of the 1993 Act, which makes special provision as respects the accounts and annual reports of exempt and excepted charities. Subsection (2)(b) provides for new sections 46(2A) and (2B) to be inserted after section 46(2) of the 1993 Act. It confers on the auditor or independent examiner of an exempt charity which is not a company the same duties, powers and protection as auditors and independent examiners of unincorporated charities are given under new section 44A(2) to (7).

¹ SI 2005/572