



HFMA briefing
March 2024



Charity regulators

Update for NHS charities

March 2024

The CPD Standards Office

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Introduction

This paper is intended to update members on recent guidance from the three charity regulators and other relevant bodies that is likely to have an impact the financial management and governance of NHS charities. It is based on the information that is available from their websites.

While every care had been taken in the preparation of this briefing, the HFMA cannot in any circumstances accept responsibility for errors or omissions and are not responsible for any loss occasioned to any person or organisation acting or refraining from action as a result of any material in it.

Statement of Recommended Practice (SORP)

There has been no further update since the Financial Reporting Council (FRC) issued a project update on 29 September advising that the anticipated effective date for the new FRS102 is now financial reporting periods beginning on or after 1 January 2026.

It is still expected that the new FRS102 accounting standard will be issued in the summer of 2024. Once the new FRS102 is issued and its effective date is set, the work on the exposure draft of the new SORP can be completed and it can then be issued for comment. This is likely to be in early 2025.

HFMA in its response to the FRC's proposals for updating FRS102 (known as FRED82) focussed on those changes set out in FRED82 that are most likely to affect NHS charities. In particular, HFMA supported the clarification around recognising legacies, requested that low value donations such as chocolates are not required to be valued, and that changes to revenue recognition for income from contracts (IFRS 15) is as straight forward as possible. While welcoming alignment with IFRS 16 for leasing transactions, the HFMA asked the FRC to look again at lease arrangements between charities or other public benefit entities.

The current edition of the charities SORP was published in 2018 and is effective for periods starting on or after 1 January 2019¹

Charity Commission for England and Wales

Charities Act

The Charities Act 2022² received Royal Assent in February 2022. It has been progressively brought into effect. To date provisions now in effect are:

- paying trustees for providing goods to the charity (effective from 1 October 2022)
- fundraising appeals that do not raise enough or raise too much money (effective from 1 October 2022, the changes are reflected in guidance)
- further measures took effect from autumn 2023 in relation to charity constitutions, appointing and paying trustees and charity mergers.
- concession to spend small endowments raised to £25,000
- power to borrow from endowment up to 25% of its value without requiring approval from the Commission
- ability to make loss-making social investments under the total return framework for endowment
- simplification of aspects of the process that has to be followed in disposing of charity land.

¹ Charities SORP, [Download a SORP](#), accessed February 2023

² [Charities Act 2022](#)

[new] More changes came into force on 7 March³:

- making changes to governing documents
- selling, leasing and otherwise disposing of charity land
- charity mergers
- powers that enable the Charity Commission to:
 - authorise a trustee to be paid for work completed for a charity when it would be inequitable for them not to be paid
 - confirm defective or potentially defective trustee appointments.

[updated] The provisions relating to ex gratia payments remain outstanding and these are anticipated to be affected in early 2024. To learn more view the Charity Commission's briefing: [Charities gain new powers as more legislative changes come into force](#).

Guidance

[new] In February 2024 the Commission has published its new five-year strategy 2024-2029, the key points of note are:

- '...expert Charity Commission that is fair, balanced, and independent so that charity can thrive'
- Priority 1: We will be fair and proportionate in our work, and clear about our role which includes being: 'more explicit on the standard of evidence we require to be able to consider concerns raised about charities, and the threshold for our action'
- Priority 2: We will support charities to get it right but take robust action where we see wrongdoing and harm which includes placing 'equal emphasis on being a source of support to trustees, and on being a tough enforcer'
- Priority 3: We will speak with authority and credibility, free from the influence of others which involves tackling divisive issues that come against the sector 'in a way the seeks to promote respect, tolerance, and kindness'
- Priority 4: We will embrace technological innovation and strengthen how we use our data which includes evolving the 'public Register, so that information about charities is easy to find, transparent and helps the public to make informed choices about charity'
- Priority 5: We will be the expert Commission, where our people are empowered and enabled to deliver excellence in regulation with a culture that is 'committed to working together in a way that is supportive, collaborative, and innovative to achieve our ambitions'

Recently updated or issued guidance include:

- guidance updated in June 2023 to reflect the parts of the Charities Act 2022 that came into effect on 14 June 2023:
 - [Permanent endowment - rules for charities](#)
 - [Total return framework](#)
 - [Sales, leases, transfers or mortgages \(CC28\)](#)
- [Investing charity money \(CC14\)](#) has been updated for the outcome of a court case and the Charities Act 2022 with amendments for social investments. All charities should have an investment policy, even if they are simply investing cash.
- [Fundraising guidance \(CC20\)](#) has been updated for the Charities Act 2022 and section 9.3 now cross refers to advice on what to do if an appeal fails (raises too little or too much).

³ Charity Commission for England and Wales, [Charities Act 2022: information about the changes being introduced](#), March 2024

- **[new]** As part of the annual return trustees are asked to confirm in the governance question whether they have a policy on internal financial controls. Trustees should refer to [Internal financial controls for charities \(CC8\)](#) for what is expected
- **[new]** [NHS charities guidance](#) has been updated - topics covered include when is a fund restricted and the boundary between what the charity can fund and what is exchequer funded. [Charities and public service delivery: an introduction and overview](#) is more detailed related guidance.
- **[new]** [Accepting, refusing and returning donations to your charity](#) sets out the legal rules for making decisions around donations. The starting point should be to keep the donation.

Office of the Scottish Charity Regulator (OSCR)

Legislation

[updated]. The Charities (Regulation and Administration) (Scotland) Act 2023 is now in force and OSCR is now looking to publish filed accounts for all registered charities and take forward its enhanced regulatory powers.

In respect of the review of governance of NHS endowment funds was published in 2021⁴. The Cabinet Secretary for Health and Social Care's response accepted the recommendations and started the process for changing legislation to reflect new arrangements⁵ but no developments as yet.

Guidance

Recently updated or issued guidance includes:

- **[new]** Video talk [top tips for a well-managed charity](#)
- **[new]** The [annual return](#) has been updated with new guidance on completion and new questions
- **[new]** [Digital strategy](#) includes a focus on automation and exploring the potential to use AI tools in regulation.

Charity Commission for Northern Ireland

Legislation

The Charities Act (Northern Ireland) 2022⁶ received Royal Assent in March 2022. The Charity Commission for Northern Ireland (CCNI) published extensive information⁷ on what it means for charities in Northern Ireland. CCNI has also published [an explanation of the effect of the Act](#).

Guidance

Recently updated or issued guidance includes:

- **[new]** [CCNI reserves guidance](#)
- **[new]** [Cyber-crime advice](#)
- **[new]** [Traffic light system on accounts filing by charities has gone live and flags late filing](#)
- **[new]** [Guidance on paying trustees](#)
- **[new]** [Presentations](#) to CCNI's 2024 AGM (including one on cyber security)

⁴ Scottish Government, [Governance of NHS endowment funds: review report](#), October 2021

⁵ Scottish Government, [Independent review of governance of NHS endowments: Health Secretary statement](#), October 2021

⁶ [Charities Act \(Northern Ireland\) 2022](#)

⁷ Charity Commission for Northern Ireland, [The Charities Act \(Northern Ireland\) 2022: information pack](#), May 2022

Fundraising Regulator (England, Wales and Northern Ireland)

[new] A leading NHS charity was in the news in February due to criticism being made of the culture and practices of a professional fundraising organisation which it had engaged. The NHS charity was able to engage proactively with the Fundraising Regulator having subscribed to its register. If your NHS charity is [accepting donations or engaging in fundraising and not yet registered](#), then the trustee(s) may wish to consider if registration is right for them too.

[updated] The fundraising regulator (FR) issued a [blog in October by Paul Winyard](#) that notes concerns about issues when engaging professional fundraisers to undertake face to face fundraising include:

- inadequate training of the street fundraisers
- high pressure tactics
- excessive commissions.

This is all to act as a reminder that charities should comply with the *Fundraising code*⁸ and it is the charity's responsibility to ensure that this is the case. Subsequently the regulator undertook a [market inquiry into the use of subcontracting in face-to-face fundraising](#) and the report on this is due out in 2024.:

[new] The regulator [investigated the Hospitals Charity](#) after concerns were flagged and following the conclusion of its inquiry made a referral to the Charity Commission for England and Wales.

[new] [The fundraising levy](#), that finances the work of the Fundraising Regulator, is being restructured.

[new] The [annual complaints report 2023](#) offers insights on issues that came up in public fundraising.

Scottish Fundraising Adjudication Panel

The [Panel](#) aims to enhance sector self-regulation of fundraising, raise standards and deals with fundraising complaints relating to Scottish registered charities. The Panel endorses the Fundraising Regulator's code (see above) and maintains a register of charities⁹ that have adopted its fundraising guarantee. Subscribing Scottish charities display the approved logo.

Codes of governance

None of the charity regulators produce a code of governance, however, they do work with bodies that produce the codes in each nation:

- England and Wales - [Charity governance code](#)
- Scotland - [Scotland's third sector governance forum](#) and [The Scottish governance code for the third sector](#)
- Northern Ireland - [DIY committee guide](#) and the [Code of good governance](#).

⁸ Fundraising Regulator, [Fundraising code of practice](#), updated June 2021

⁹ Scottish Fundraising Adjudication Pane, [Register of charities](#), accessed July 2023

About the HFMA

The Healthcare Financial Management Association (HFMA) is the professional body for finance staff in healthcare. For over 70 years, it has provided independent and objective advice to its members and the wider healthcare community. It is a charitable organisation that promotes best practice and innovation in financial management and governance across the UK health economy through its local and national networks.

The association also analyses and responds to national policy and aims to exert influence in shaping the wider healthcare agenda. It has particular interest in promoting the highest professional standards in financial management and governance and is keen to work with other organisations to promote approaches that really are 'fit for purpose' and effective.

The HFMA offers a range of qualifications in healthcare business and finance at undergraduate and postgraduate level and can provide a route to an MBA in healthcare finance. The qualifications are delivered through HFMA's Academy which was launched in 2017 and has already established strong learner and alumni networks.

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