

**EXPLANATORY MEMORANDUM TO
THE CHARITIES ACT 2006 (PRINCIPAL REGULATORS OF EXEMPT
CHARITIES) REGULATIONS 2011**

2011 No. XXXX

1. This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations prescribe principal regulators for several classes of exempt educational charities: foundation and voluntary schools¹, sixth form colleges² and academies³.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 Exempt charities are those institutions which, in so far as they are charities, are comprised in Schedule 2 to the Charities Act 1993 (“the 1993 Act”) or are made exempt by other legislation. The Charities Act 2006 (“the 2006 Act”) makes several changes to the way in which exempt charities are regulated.

4.2 These changes include provision for the appointment, by the Minister for the Cabinet Office (“the Minister”), of a body or Minister of the Crown as principal regulator for an exempt charity. The power of appointment is in section 13 of the 2006 Act.

4.3 The duty of the principal regulator, as set out in section 13(2) of the 2006 Act, is to do all that it or he reasonably can to promote charity law

¹ References in this Explanatory Memorandum to foundation and voluntary schools are to governing bodies of foundation, voluntary and foundation special schools, foundation bodies established under section 21 of the School Standards and Framework Act 1998, and connected institutions.

² References in this Explanatory Memorandum to sixth form colleges are to sixth form college corporations within the meaning of the Further and Higher Education Act 1992.

³ References in this Explanatory Memorandum to academies are to qualifying academy proprietors under section 12 of the Academies Act 2010.

compliance by the charity trustees of the exempt charities in respect of which it or he is appointed.

4.4 Subject to Parliamentary approval, the Charities Act 2006 (Changes in Exempt Charities) Order 2011 (“the Order”) re-confers exempt charity status on foundation and voluntary schools, and on sixth form colleges. These Regulations prescribe the principal regulators for those exempt charities.

4.5 Under section 12 of the Academies Act 2010, a qualifying academy proprietor is an exempt charity. These Regulations prescribe their principal regulator.

5. Territorial Extent and Application

5.1 The Regulations apply to England and Wales.

5.2 There are no academies or sixth form colleges in Wales, and the Regulations therefore make provision for the appointment of a principal regulator in Wales only in respect of foundation and voluntary schools in Wales. The Welsh Ministers have confirmed that they are content to undertake the principal regulator role.

6. European Convention on Human Rights

6.1 The Parliamentary Secretary, Cabinet Office, Nick Hurd has made the following statement regarding human rights in respect of these Regulations:

In my view the provisions of the Regulations are compatible with the Convention rights.

7. Policy background

The Charities Act 2006

7.1 Exempt charities enjoy the status and the fiscal benefits accorded to other charities. Like all charities, they are required to comply with charity law, but they do not register with the Charity Commission for England and Wales (“the Commission”) and they fall outside the Commission’s monitoring and investigative powers (though not of the Commission’s advice-giving powers). Since the 2006 Act, these exemptions are only granted to charities that are already adequately supervised by another Government department or public body, and where that body additionally takes on responsibility for promoting compliance with their charity law obligations.

7.2 The 2006 Act made provision for more proportionate and appropriate regulation of exempt charities. The 2006 Act:

- (a) enables the Minister to appoint a principal regulator for an exempt charity (section 13);

(b) enables the Minister to make further changes to Schedule 2 to the 1993 Act to confer or remove exempt charity status (section 11(12) of the 2006 Act); and

(c) increases the regulatory jurisdiction of the Commission in respect of exempt charities (sections 12 and 14 and Schedule 5).

Appointment of Principal Regulators

7.3 The Regulations prescribe principal regulators for the following groups of exempt charities:

(a) The Secretary of State for Education for the governing bodies of foundation, voluntary or foundation special schools in England, foundation bodies in England established under section 21 of the School Standards and Framework Act 1998, and connected institutions (regulation 2);

(b) The Welsh Ministers for the governing bodies of foundation, voluntary or foundation special schools in Wales, foundation bodies in Wales established under section 21 of the School Standards and Framework Act 1998, and connected institutions (regulation 3);

(c) The Secretary of State for Education for sixth form college corporations (regulation 4);

(d) The Secretary of State for Education for qualifying academy proprietors (within the meaning of section 12 of the Academies Act 2010) (regulation 5).

Disclosure of information

7.4 Section 10A of the 1993 Act, as applied by section 10B of that Act, regulates the disclosure of information obtained by a principal regulator in its or his capacity as such. Specific rules apply to the disclosure of Revenue and Customs information.

7.5 A “responsible person” commits an offence if he or she discloses Revenue and Customs information contrary to the specific rules set out in section 10A of the 1993 Act.

7.6 Section 10B(4) of the 1993 Act requires the Minister to specify the definition of “responsible person” that will apply for the purposes of section 10A as it applies to principal regulators. Regulation 6 specifies the definition that is to apply in relation to the principal regulators prescribed by the Regulations.

7.7 Section 10B(5) of the 1993 Act enables the Minister to make amendments or other modifications to existing legislation to ensure that existing provisions regarding the disclosure of information by or to a body or Minister to do not apply to the body or Minister in its or his capacity as

principal regulator. Regulation 8 makes the necessary amendments to the relevant provisions in Education Act 1996.

Other provisions

7.8 Section 13(5) of the 2006 Act enables the Minister to make amendments or other modifications of existing legislation that are considered appropriate for facilitating, or otherwise in connection with, a person or body undertaking the role of principal regulator. Regulation 7 amends the Apprenticeships, Skills, Children and Learning Act 2009 (“the ASCL Act”) to enable the Young People’s Learning Agency for England (“the YPLA”) to assist, advise, or provide information to, the Secretary of State for Education in connection with his role as principal regulator of academies and sixth form colleges.

7.9 The proposal to re-confer exempt charity status on foundation and voluntary schools and sixth form colleges, and to appoint suitable principal regulators for these institutions and for academies, was announced in a Written Ministerial Statement on 30th March 2011. The statement is available here:

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110330/wmstext/110330m0001.htm#11033059000018>

8. Consultation outcome

8.1 The Office for Civil Society undertook a consultation in 2010 on proposals to re-confer exempt charity status on foundation and voluntary schools, and appoint the Secretary of State for Education as principal regulator in England, and the Welsh Ministers as principal regulator in Wales.

8.2 Responses were received from a number of schools and their representative bodies. Almost all respondents agreed that exempt status should be re-conferred on foundation and voluntary schools in England and Wales. Respondents were generally of the view that the Secretary of State for Education would be a suitable principal regulator in England and that the Welsh Ministers would be a suitable principal regulator in Wales. Several respondents commented on the need to minimise the regulatory burden on the schools. A summary of consultation responses is available at:

www.cabinetoffice.gov.uk

8.3 A consultation has not been carried out on the proposed appointment of the Secretary of State for Education as principal regulator of academies, or sixth form colleges.

8.4 During the passage of the Academies Act 2010, Ministers agreed that a principal regulator would be required for academies. It was originally proposed that the YPLA be appointed as the principal regulator as it currently undertakes much of the day to day work of funding and regulating academies on behalf of the Secretary of State. However, following the review of public bodies, the YPLA will, subject to the will of Parliament, be succeeded next

year by an Education Funding Agency, an executive agency of the Department for Education. Therefore, it is now considered more appropriate to appoint the Secretary of State for Education as principal regulator, because he has the existing roles of funding and regulating academies. In practice, the YPLA (and its proposed successor the EFA) will carry out much of the necessary information gathering which would then be used to report to and advise the Secretary of State.

8.5 Sixth form college corporations were created by the ASCL Act. Prior to that, institutions providing sixth form education, though referred to colloquially as sixth form colleges, were not legally distinct as a category. It was always intended that sixth form college corporations would be exempt charities as this was the status of the institutions that were already providing sixth form education. It was agreed between the Cabinet Office and the Department for Education that exempt status should be conferred by the Order, rather than through the ASCL Act itself, but the making of the Order has been delayed pending the review of public bodies mentioned above. The Order accordingly confers exempt status on sixth form college corporations, and the Regulations appoint the Secretary of State for Education as their principal regulator.

8.6 The Department for Education, Commission, Welsh Assembly Government, and YPLA have all worked closely with the Cabinet Office on the development of the Regulations.

9. Guidance

9.1 The Commission is working with the Department for Education and Welsh Assembly Government to assist them in preparing for the principal regulator role, and to provide training for staff on the basic principles of charity law and regulation.

9.2 Memoranda of understanding are being drawn up to formalise the details of the relationship between the principal regulators and the Commission. A committee of principal regulators will meet regularly to share best practice and ensure consistency in the application of charity law requirements.

9.3 The principal regulators will need to consider what, if any, additional guidance the charities themselves may need (see section 10.4 below).

10. Impact

10.1 The 2006 Act was the subject of a Regulatory Impact Assessment, including a specific chapter on the proposals relating to exempt charities. The impact assessment on exempt charities is available at the link below:

http://webarchive.nationalarchives.gov.uk/20100407162256/http://www.cabinetoffice.gov.uk/third_sector/law_and_regulation/charities_act_2006/background.aspx

10.2 The intention remains to minimise regulatory requirements on exempt charities, whilst ensuring that they come within a proportionate regulatory framework that includes promoting compliance with charity law obligations.

10.3 There are expected to be no additional costs for the exempt charities in respect of which a principal regulator is appointed. They will not, for example, be required to prepare additional charity accounts, reports and returns under the 1993 Act.

10.4 The role of principal regulators is to promote compliance with charity law obligations. How a principal regulator fulfils its duty will vary from one principal regulator to another, but there are two aspects. First, a principal regulator can work with the relevant exempt charities and the Commission to identify particular issues on which charity law guidance may be required and signpost or disseminate such guidance. Second, where there is a serious breach of charity law by an exempt charity, the principal regulator will, if considered appropriate, be able to invite the Commission to investigate, and if necessary and appropriate, the Commission could use its regulatory enforcement powers (although not without consulting the principal regulator first).

10.5 The principal regulators proposed in the Regulation anticipate incorporating the duty of principal regulator into their existing work without any material impact on resources.

10.6 An impact assessment relating to each of the groups of charities affected by the Regulations is annexed to this Memorandum.

11. Regulating small business

11.1 The Regulations do not apply to small business.

12. Monitoring & review

12.1 Section 73 of the 2006 Act requires the Minister to appoint a person to review the operation of the Act within five years of enactment, and for the report of the review to be laid before Parliament. The review, which will commence later this year, will include evaluating the impact of changes made to exempt charities and the effectiveness of principal regulators in promoting compliance with charity law.

12.2 However, as the 2006 Act review is expected to follow shortly after the changes made by these Regulations, it is unlikely that a meaningful assessment of them could be made in that review. There is a policy commitment to review the impact of these changes three years after they have taken effect.

13. Contact

Lindsey Bromwell at the Office for Civil Society, Cabinet Office, Tel: 020 7271 6273 or email: lindsey.bromwell@cabinet-office.gsi.gov.uk can answer any queries regarding these instruments.

Title: Exempt Charities - Foundation and Voluntary Schools Lead department or agency: Office for Civil Society, Cabinet Office Other departments or agencies: Department for Education Welsh Assembly Government Charity Commission	Impact Assessment (IA)
	IA No:
	Date: 24/02/2011
	Stage: Enactment
	Source of intervention: Domestic
	Type of measure: Secondary legislation
Contact for enquiries: Ben Harrison 0207 271 6282 Lindsey Bromwell 020 721 6273	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Exempt charities are not registered with or regulated by the Charity Commission. 'Principal regulators' are existing regulators that take on the role of promoting charity law compliance for exempt charities. In 2009 Foundation and Voluntary Schools (F&V schools) lost their exempt status due to technical reasons. Transitional protections have ensured that F&V schools do not have to register with the Charity Commission. These protections expire in September 2011. The proposal is to re-confer exempt charity status on F & V schools, and appoint the Secretary of State for Education as "principal regulator" of F&V schools in England, and the Welsh Assembly Government as principal regulator of F&V Schools in Wales.

What are the policy objectives and the intended effects?

The policy objective is to ensure that there is proportionate but effective oversight of charities under charity law whilst keeping the regulatory burden to the minimum necessary. For exempt charities we try to find a suitable principal regulator that already has a regulatory relationship with the group of exempt charities to take on the responsibility of promoting charity law compliance. This avoids dual regulation by both the Commission and the existing regulator. In the case of F&V schools the SoS for Education already has regulatory powers under education law for schools in England, as has the Welsh Assembly Government for schools in Wales. SoS for Education and the Welsh Assembly have confirmed that they are content to take on the principal regulator role for F&V schools.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 1 - reconfer exempt status and appoint an appropriate principal regulator. This is the preferred option supported by F&V schools and the Charity Commission. F&V schools would not be required to register with the Charity Commission. The principal regulator would be responsible for promoting their compliance with charity law. Charity Commission could enforce compliance if necessary but only after consultation with the principal regulator. The principal regulator role dovetails with the Secretary of State's existing oversight/regulatory responsibilities for F&V schools. This avoids duplicating regulatory functions and minimises regulatory burden. Option 2 - Do nothing. F&V schools would lose transitional protections and have to register with the Charity Commission, increasing regulatory burden (both for F&V schools and the Commission) Option 3 - reconfer exempt status but do not appoint principal regulator. This would leave F&V schools without any regulation under charity law which could lead to non-compliance and would create an inconsistent approach to regulation.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?

It will be reviewed from 2011 as part of the overall review of the Charities Act 2006 and then after 3 years from commencement.

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Yes

SELECT SIGNATORY Sign-off For enactment stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: Date:

Summary: Analysis and Evidence

Policy Option 1

Description:

Option 1 - Re-confer exempt status and appoint an appropriate principal regulator

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 20.01

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low			
High			
Best Estimate	0	0	0

Description and scale of key monetised costs by 'main affected groups'

There are not considered to be any significant new costs to the F&V schools under this approach. The Department for Education and Welsh Assembly Government would incur some costs in terms of staff time however these are not considered to be significant as they will be building on existing regulatory oversight processes and mechanisms.

Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low			
High			
Best Estimate	11.50	0.99	20.01

Description and scale of key monetised benefits by 'main affected groups'

Number of F&V schools = 8,000 approx. Indirect costs of registering for a charity = £168.50 per organisation. Average cost to the Charity Commission of registering a charity = £1,269.5. Annual costs of submitting returns to the Charity Commission = £123.5. Therefore transition cost = $(168.5 \times 8000) + (1,269.5 \times 8000) = £11.5m$. Annual cost = $(123.5 \times 8000) = £0.9m$.

Other key non-monetised benefits by 'main affected groups'

This approach will ensure effective charity regulation of F&V schools whilst minimising the burden of regulation. It was the favoured approach by F&V schools and their representative groups on consultation.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5

The annual reporting costs are based on figures for charities with an income of over £1m. We are assuming that all F&V schools have a turnover in excess of £1m however we think that a majority of primary schools that have F&V status will have an annual income of less than this. It is not possible to give an accurate figure for the number of governing bodies as some F&V schools will share a governing body with another school (ie federations). However, as of February 2011 there were approx 8,000/8,150 F&V schools.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope Yes/No
New AB:	AB savings:	Net:	Policy cost savings:	

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		England and Wales			
From what date will the policy be implemented?		01/08/2011			
Which organisation(s) will enforce the policy?		YPLA/ Charity Commission			
What is the annual change in enforcement cost (£m)?		N/A			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		N/A			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A	
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs:		Benefits:	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Charities Act 2006
2	Regulatory Impact Assessment of Charities Act 2006
3	Charities Act 2006 (Commencement no.5, Transitional and Transitory provisions and savings) Order 2008 as amended in 2009 and 2010
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	-	-	-	-	-	-	-	-	-	-
Annual recurring cost	-	-	-	-	-	-	-	-	-	-
Total annual costs	-	-	-	-	-	-	-	-	-	-
Transition benefits	11.50	-	-	-	-	-	-	-	-	-
Annual recurring benefits	0.99	0.99	0.99	0.99	0.99	0.99	0.99	0.99	0.99	0.99
Total annual benefits	12.49	0.99	0.99	0.99	0.99	0.99	0.99	0.99	0.99	0.99

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

Problem under consideration;

Foundation and Voluntary schools were, until 2009 classed as “exempt” charities. They lost their exempt status due to a technicality rather than as a result of a policy decision.

By Foundation and Voluntary schools we mean governing bodies of foundation, voluntary and foundation special schools, foundation bodies established under s.21 of the Schools Standards and Framework Act 1998 and bodies connected with such schools.

As of February 2011, there were 1298 foundation schools, 6827 voluntary schools, 43 foundation special schools, and 1 foundation body established under s.21 of the Schools Standards and Framework Act 1998. (NB the premises of such schools are often held on charitable trusts by separate foundations that are “excepted charities” – see below).

Generally, all charities in England and Wales must be registered with and regulated by the Charity Commission (“the Commission”). There are three broad exceptions to this rule.

- 1) Very small charities, with an annual income below £5,000 which are not required to register with the Commission but are subject to its regulatory jurisdiction.
- 2) “excepted charities “ with annual gross income below £100,000 which are not required to register with the Commission but are subject to its regulatory jurisdiction.
- 3) ”exempt charities” These institutions are not registered with the Commission and are currently not subject to the direct regulatory jurisdiction of the Commission. They are exempt because that are considered to be adequately supervised by another body or authority. Most exempt charities are listed in Schedule 2 to the Charities Act 1993 (“the 1993 Act”) but some categories have been created by other legislation. Other examples of exempt charities are universities and the Boards of trustees of various museums and galleries.

In 2002, the Strategy Unit (SU) found that whilst exempt charities may have their activities regulated by another body, they was not sufficient oversight of them as charities; a view generally supported on public consultation. The Charities Act 2006 (“the 2006 Act”) therefore made a number of changes to improve the regulation of exempt charities.

In essence, the 2006 Act will mean exempt charities go down one of two routes:

- 1) Wherever possible we have identified Ministers or bodies that already have regulatory oversight of groups of exempt charities to become the “principal regulator” for that group of exempt charities and take on a role in promoting charity law compliance. For example the Secretary of State for Culture, Media and Sport in relation to exempt national museums and galleries, and the Higher Education Funding Council for England in relation to higher education institutions in England. In these cases the “principal regulator” already has a regulatory relationship with the relevant group of charities, although not specifically in relation to their being charities.
- 2) Where we have been unable to identify a suitable Minister or body to become “principal regulator” of a group of exempt charities, that group of exempt charities will lose its exempt charity status. The group will become “excepted charities”. This means that they come under the Charity Commission's full regulatory jurisdiction, and if their income exceeds £100,000 would be required to register with the Commission.

The role of the principal regulator is to promote compliance by the charity trustees with their charity law obligations. The Minister for the Cabinet Office has the power under section 13 of the 2006 Act to appoint a principal regulator for a category of exempt charities and to make

related consequential amendments to existing legislation. Principal regulators will not have any of the Charity Commission's investigation or enforcement powers, but will be able to call on the Commission to investigate a charity for which the principal regulator is responsible. The 2006 Act also makes a number of amendments to the 1993 Act to increase the Commission's regulatory jurisdiction in respect of exempt charities. The Commission must consult the relevant principal regulator before exercising any specific power in relation to an exempt charity.

The advantage of the principal regulator approach is that it avoids any regulatory duplication, and minimises the impact on the exempt charities whilst ensuring that they are subject to charity regulation. The Commission is already developing a Memorandum of Understanding with the Department for Education to explain how the Commission and the principal regulator will work together, which will be published once agreed.

It is important that F&V schools are aware of and comply with charity law. Without appropriate oversight of F&V schools it would be difficult to promote their compliance with charity law. This could lead to instances of non-compliance which might damage public trust and confidence in F&V schools or the wider charitable sector.

As F&V schools in England are already overseen by the Secretary of State for Education under education law, appointing the same person as the principal regulator means that he can oversee F&V schools in England as a whole. The Welsh Assembly Government performs a similar role for F&V schools in Wales, and is the most appropriate body to take on the principal regulator role in Wales.

Rationale for intervention;

If exempt status were not to be re-conferred, over 8,000 F&V schools would have to register with the Commission and come directly under its regulation. This would represent a significant burden on the schools (and the Commission). In particular it would lead to F&V schools coming under multiple accounting and reporting regimes, which would represent a significant regulatory burden. Consultation in 2010 found that F&V schools want to remain exempt and have a principal regulator.

Policy objective;

The objective of the policy is to ensure that there is appropriate and proportionate oversight of F&V schools as charities, whilst avoiding regulatory duplication or additional administrative burdens.

In order to re-confer exempt charity status on F&V schools, the Minister for the Cabinet Office must be satisfied, in accordance with section 11(12) of the 2006 Act, that this approach is desirable in the interests of ensuring appropriate or effective regulation of F&V schools in connection with compliance by their charity trustees with their legal obligations in exercising control and management of the administration of those institutions.

Description of options considered (including do nothing);

Option 1 – Re-confer Exempt Status and Appoint the Secretary of State for Education as Principal Regulator

This is the preferred option.

Under this option, an Order made under s.11(11) of the 2006 Act would re-confer exempt charity status on F&V schools. That would be accompanied by regulations appointing the

Secretary of State for Education as principal regulator of F&V schools in England, and the Welsh Assembly Government as principal regulator of F&V schools in Wales.

This is considered the most effective approach to meet the policy objective and the Secretary of State for Education has stated that this is his preferred option for the regulation of F&V schools.

This approach will ensure that F&V schools are aware of their responsibilities under charity law whilst minimising the additional regulatory burden placed upon them.

Costs: There are expected to be no material additional costs for F&V schools under this option. DfE (in England) and the Welsh Assembly Government (in Wales) will have to take on additional responsibility of promoting charity law compliance, but the costs involved are not considered significant. DfE and the Welsh Assembly Government would also be principal regulator for any charities linked to F&V schools, which would also be exempt by virtue of paragraph (w) of Schedule 2 to the Charities Act 1993, which may include endowment funds.

Benefits: This approach ensures effective and proportionate oversight of F&V schools as charities whilst keeping bureaucracy to a minimum by avoiding dual regulation. Failure to re-confer exempt charity status would result in additional regulatory requirements for F&V schools in having to register with and report to the Charity Commission. The Secretary of State has an existing role of funding and overseeing F&V schools which dovetails with the Principal Regulator role. Under this approach the number of organisations which oversee F&V schools is kept to a minimum, avoiding duplication and it would be consistent with the proposed approach for Academies and sixth form colleges.

Option 2 – Do Nothing

This approach is considered undesirable. Failing to re-confer exempt charity status on F&V schools would result in them having (by law) to register with, and be directly regulated by, the Charity Commission. This would represent a new and avoidable administrative burden for the F&V schools, both in initially registering with the Charity Commission, and in routine annual reporting to the Commission. In particular, F&V schools would be required to prepare additional Charities SORP compliant accounts, unnecessarily duplicating their existing accounting processes. This approach would also represent a significant burden for the Charity Commission (in registering and regulating over 8,000 new charities) at a time when its resources are stretched.

Costs: Significant. Costs to the F&V schools of registration with the Charity Commission (estimated at £12M in total in year 1). Ongoing annual accounting and reporting costs of £1M. Significant resource implications for the Charity Commission in registering and regulating over 8,000 new charities.

Benefits: Limited (particularly when compared to the costs). This approach would ensure that F&V schools were overseen for their charity law compliance (albeit directly by the Charity Commission, in addition to their other lines of accountability). Arguably it might make these charities more visible and publically accountable, unless Secretary of State for Education as principal regulator would be able to establish a comparable framework under which information about these charities was easily publicly available.

Option 3 – Re-Confer Exempt Status and appoint an alternative Principal Regulator (a person or body other than the Secretary of State for Education in England, and the Welsh Assembly Government in Wales)

Consideration was given to whether there might be other potential principal regulators for F&V schools, and several options were considered and discounted.

Option 4 – Re-Confer Exempt Status but do not appoint Principal Regulator

Re-conferring exempt status without appointing a principal regulator was not considered a viable option as it would not be possible to argue that this approach would ensure appropriate or effective regulation of F&V schools as charities (as required by the test in s.11(12) Charities Act 2006).

Risks and assumptions;

See above

Administrative burden and policy savings calculations;

See above

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p> <p>There will be an overall review of the Charities Act 2006 in 2011 which will consider the steps taken to improve regulation of exempt charities. We will look at this matter again by 2014</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>To ensure effective regulation of the charitable sector whilst minimising regulatory burden.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>We will work with the principal regulator on establishing the data available for the review.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>The baseline is registration and regulation by the Charity Commission.</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>Appropriate regulation to ensure compliance whilst minimising the burden of regulation.</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p> <p>We will have annual contact with the principal regulator and the Charity Commission.</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]</p> <p>N/A</p>

Add annexes here.

Title: Exempt Charities - Sixth Form Colleges Lead department or agency: Office for Civil Society, Cabinet Office Other departments or agencies: Department for Education Young Persons Learning Agency (YPLA) Charity Commission	Impact Assessment (IA)
	IA No:
	Date: 25/02/11
	Stage: Enactment
	Source of intervention: Domestic
	Type of measure: Secondary legislation
Contact for enquiries: Ben Harrison 0207 271 6282 Lindsey Bromwell 0207 271 6273	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Exempt charities cannot be registered with or supervised by the Charity Commission. The policy approach that we have taken regarding exempt charities is for them either to have a 'principal regulator', meaning an existing regulator that will also promote charity law compliance, or to lose their exempt status. Sixth Form College Corporations (of which there are 94) were created by the Apprenticeships, Skills, Learning and Children (ASCL) Act 2009. The organisations that became sixth form college corporations were previously exempt charities, and it was always envisaged that exempt status would be re-conferred on them. These changes confer exempt status on Sixth Form College Corporations and appoint the Secretary of State for Education as their Principal Regulator.

What are the policy objectives and the intended effects?

The policy objective is to ensure that there is effective regulation of charities under charity law whilst avoiding duplication of regulatory requirements. Appointing a principal regulator would achieve this objective. The YPLA already regulates the funding arrangements of sixth form colleges under powers vested in it by the SoS for Education. Due to the Public Bodies Review, YPLA will be abolished and its responsibilities will revert to SoS for Education. SoS for Education has decided to set up an internal executive agency called the EFA to continue to collect data from Sixth Form Colleges that would inform the SoS for Education in his role as principal regulator. SoS for Education has confirmed that his preference is to appoint him as the principal regulator.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 1 - reconfer exempt charity status and appoint SoS for Education as a principal regulator. This would ensure that sixth form colleges can remain exempt charities and is the preferred option. Option 2 - Do nothing. This is less preferable as sixth form colleges would then have to register with the Charity Commission as well as being regulated by SoS for Education. We do not recommend this option. Option 3 - reconfer exempt status but do not appoint principal regulator. This would leave sixth form colleges without any regulation under charity law which could lead to non-compliance and would create an inconsistent approach to charity regulation. If there were instances of misuse of charitable funds by Sixth Form Colleges, this could damage public trust and confidence in the charitable sector.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed from 2011 as part of the overall review of the Charities Act 2006.
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	Yes

SELECT SIGNATORY Sign-off For enactment stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: Date:

Summary: Analysis and Evidence

Policy Option 1

Description:

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0.24

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0	£0	£0
High	£0	£0	£0
Best Estimate	£0	£0	£0

Description and scale of key monetised costs by 'main affected groups'

The Principal regulator would incur some costs in terms of staff time however this would be absorbed into the running costs of the organisation and so would not have any material impact.
The sixth form college charities will not incur any costs as a result of these changes.

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NA	NA	NA
High	NA	NA	NA
Best Estimate	0.14	0.01	0.24

Description and scale of key monetised benefits by 'main affected groups'

Reconferring exempt status means the 94 sixth form colleges will save money as they won't have to register with or be directly regulated by the Charity Commission. Indirect cost of registering for the charity= £168.50. Costs to the Charity Commission of registering a charity: between £169 and £2,370 (av. £1,269.5) depending on complexity. Cost of producing annual return for charities over £1m turnover= £123.52. Transition cost: $(168.50 \times 94) + (1269.5 \times 94) = £0.13m$. Annual cost = $(123.5 \times 94) = £0.01m$

Other key non-monetised benefits by 'main affected groups'

This will ensure regulation of sixth form colleges as charities without duplicating regulation by multiple bodies.

Key assumptions/sensitivities/risks

Sixth Form College corporations currently have an income of between £2.4m and £15.5m

Discount rate (%)

3.5

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		England and Wales			
From what date will the policy be implemented?		01/08/2011			
Which organisation(s) will enforce the policy?		DfE / Charity Commission			
What is the annual change in enforcement cost (£m)?		N/A			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		N/A			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A	
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs:		Benefits:	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	No	
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	
Small firms Small Firms Impact Test guidance	No	
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Charities Act 2006
2	Regulatory Impact Assessment of Charities Act 2006
3	Apprenticeships, Skills, Children and Learning Act 2009
4	

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	-	-	-	-	-	-	-	-	-	-
Annual recurring cost	-	-	-	-	-	-	-	-	-	-
Total annual costs	-	-	-	-	-	-	-	-	-	-
Transition benefits	0.14	-	-	-	-	-	-	-	-	-
Annual recurring benefits	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Total annual benefits	0.15	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

There is discretion for departments and regulators as to how to set out the evidence base. However, it is desirable that the following points are covered:

Problem under consideration;

Sixth form college corporations were created by the Apprenticeships, Skills, Children and Learning Act 2009 (“the ASCL Act”), which amended the Further and Higher Education Act 1992. Prior to that, institutions providing sixth form education, though referred to colloquially as sixth form colleges, were not legally distinct as a category. It was always intended that sixth form college corporations would be exempt charities as this was the status of the institutions that were already providing sixth form education. It was agreed between the Cabinet Office and the Department for Education that exempt status should be conferred by the Order, rather than through the ASCL Act itself, but the making of the Order has been delayed pending a decision as to who to appoint as principal regulator (the decision had to be delayed pending the review of public bodies). The effect is that the 94 sixth form college corporations in England (there are none in Wales) are currently required to register with the Commission and meet the accounting and reporting requirements that flow from registration, although these requirements have not been enforced to date. As exempt charities still have to comply with charity law we are proposing to appoint a principal regulator that will ensure their compliance with the law.

Generally, all charities in England and Wales must be registered with and regulated by the Charity Commission (“the Commission”). There are three broad exceptions to this rule.

1. Very small charities, with an annual income below £5,000 which are not required to register with the Commission but are subject to its regulatory jurisdiction.
2. “excepted charities “ with annual gross income below £100,000 which are not required to register with the Commission but are subject to its regulatory jurisdiction.
3. ”exempt charities” These institutions are not registered with the Commission and are currently not subject to the direct regulatory jurisdiction of the Commission. They are exempt because they are considered to be adequately supervised by another body or authority. Most exempt charities are listed in Schedule 2 to the Charities Act 1993 (“the 1993 Act”). Other examples of exempt charities are universities and the Boards of trustees of various museums and galleries.

In 2002, the Strategy Unit (SU) found that whilst exempt charities may have their activities regulated by another body, they were not being sufficiently regulated as charities. Following consultation the government accepted the SU findings. The Charities Act 2006 (“the 2006 Act”) therefore made a number of changes to improve the regulation of exempt charities. In essence, the 2006 Act will mean exempt charities go down one of two routes:

1. Wherever possible we have identified Ministers or bodies that already have regulatory oversight of groups of exempt charities to become the “principal regulator” for that group of exempt charities and take on a role in promoting charity law compliance. For example the Secretary of State for Culture, Media and Sport in relation to exempt national museums and galleries, and the Higher Education Funding Council for England in relation to higher education institutions in England. In these cases the “principal regulator” already has a regulatory relationship with the relevant group of charities, although not specifically in relation to their being charities.
2. Where we have been unable to identify a suitable Minister or body to become “principal regulator” of a group of exempt charities, that group of exempt charities will lose its exempt charity status. The group will become “excepted charities”. This means that they come under the Charity Commission's full regulatory jurisdiction, and if their income exceeds £100,000 would be required to register with the Commission.

The role of the principal regulator is to promote compliance by the charity trustees with their charity law obligations. The Minister for the Cabinet Office has the power under section 13 of the 2006 Act to appoint a principal regulator for a category of exempt charities and to make related consequential amendments to existing legislation. Principal regulators will not have any of the Charity Commission's investigation or enforcement powers, but will be able to call on the Commission to investigate a charity for which the principal regulator is responsible. The 2006 Act also makes a number of amendments to the 1993 Act to increase the Commission's regulatory jurisdiction in respect of exempt charities. The Commission must consult the relevant principal regulator before exercising any specific power in relation to an exempt charity.

The advantage of the principal regulator approach is that it avoids any regulatory duplication, and minimises the impact of regulation on exempt charities whilst ensuring that they become subject to charity regulation. The Commission is already developing a Memorandum of Understanding with the Department for Education to outline how the Commission and the Principal Regulator will work together, which will be published once agreed.

It is important that sixth form colleges are aware of and comply with charity law. Without suitable oversight of sixth form colleges it would be difficult to promote their compliance with charity law. This could lead to instances of non-compliance which might damage public trust and confidence in academies or the wider charitable sector.

Rationale for intervention;

See above

Policy objective;

To ensure effective and appropriate regulation for exempt charities including sixth form college corporations. We want to achieve appropriate, effective and proportionate charity regulation and feel it is more sensible for the existing regulator to take on the role of charity regulation rather than make all sixth form colleges corporations register with the Charity Commission, thereby creating two regulators for the same organisations. The Charity Commission would retain the ability to enforce charity law compliance at the request of the principal regulator.

Description of options considered (including do nothing);

Option 1 – Re-confer Exempt Status and Appoint Principal Regulator

This would ensure that sixth form colleges remain exempt from regulation by the Charity Commission whilst ensuring that they can be effectively regulated under charity law. This avoids duplicating regulatory function. This saves money for sixth form colleges as they will not have to be regulated by two regulators. A principal regulator will promote compliance with charity law and may ask the Charity Commission to use its enforcement powers where there is suspected mismanagement. This helps ensure that public trust and confidence in charities remains high.

Option 2 – Do Nothing (register with and regulated by the Charity Commission)

Current legislation means that sixth form colleges are required to register and be regulated by the Charity Commission. In practice this has not yet been enforced. Unless we re-confer exempt status, all sixth form colleges will have to register with the Commission and comply with its reporting regime. This will put additional regulatory requirements on sixth form colleges as they already are regulated by the YPLA. We advise against this approach.

Option 3 – Re-Confer Exempt Status but do not appoint Principal Regulator

This would leave sixth form colleges without any regulation under charity law. Sixth Form colleges may be unaware of their duties under charity law. This could lead to non-compliance and damage to the reputation of the charitable sector. Charities gain significant tax advantages and it is important that these can be justified to the public. If a principal regulator is not appointed, we could be criticised for creating an uneven playing field for charities.

Costs and benefits of each option;

See above

Risks and assumptions;

See above

Administrative burden and policy savings calculations;

See above

Wider impacts;

The Minister for the Cabinet Office is responsible for ensuring effective regulation of the charitable sector. It is important that it is as easy as possible to run charities whilst safeguarding against misuse and mismanagement of charitable funds.

Summary and preferred option with description of implementation plan.

Option 1 is the preferred option. This would be implemented through secondary legislation to re-confer exempt status and then appoint a principal regulator. We expect this to take place during the current Parliament.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p> <p>There will be an overall review of the Charities Act 2006 in 2011 which will consider the steps taken to improve regulation of exempt charities. We will look at this matter again by 2014</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>To ensure effective regulation of the charitable sector whilst minimising regulatory burden.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>We will work with the principal regulator on establishing the data available for the review.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>The baseline is registration and regulation by the Charity Commission.</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>Appropriate regulation to ensure compliance whilst minimising the burden of regulation.</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p> <p>We will have annual contact with the principal regulator and the Charity Commission. YPLA will be collating monitoring information in the short term until they are abolished and their function is taken over DfE.</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]</p> <p>N/A</p>

Add annexes here.