

**EXPLANATORY MEMORANDUM TO
THE CHARITIES ACT 2011 (PRINCIPAL REGULATORS OF EXEMPT
CHARITIES) REGULATIONS 2013**

2013 No. 1764

1. 1.1 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 This instrument makes provision for the regulation as charities of further education corporations in England and Wales and the governing body of Saint David's Catholic College, and any charities connected to them.
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 that, in so far as they are charities, are comprised in Schedule 3 to the Charities Act 2011 ("the 2011 Act") or are made exempt by other legislation. These institutions do not register with the Charity Commission for England and Wales ("the Commission") and are not directly subject to its regulatory jurisdiction (though they are required to comply with the general requirements of charity law).
 - 4.2 The 2011 Act is consolidating legislation and prior to it coming into force most exempt charities derived their exemption from the Charities Act 1993 ("the 1993 Act") as amended by the Charities Act 2006 ("the 2006 Act"). The 2006 Act made changes to the way in which exempt charities are regulated as charities and those changes were part of the provisions of that Act that were consolidated into the 2011 Act.
 - 4.3 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 25 of the 2011 Act.
 - 4.4 The duty of the principal regulator, as set out in section 26 of the 2011 Act, is to do all that it or he reasonably can to promote charity law compliance by the charity trustees of the exempt charities in respect of which it or he is appointed.

4.5 This instrument prescribes the principal regulators for those exempt charities that are further education corporations in England and Wales and the governing body of Saint David’s Catholic College, and charities connected to them. A related instrument, the Charities Act 2011 (Commencement No. 2) Order 2013, brings into force provisions giving the Commission a greater regulatory role in relation to these charities.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Further education corporations (FECs) are exempt charities by virtue of section 22A of the Further and Higher Education Act 1992 (“the 1992 Act”) and Schedule 3 of the 2011 Act.

7.2 The governing body of Saint David’s Catholic College, which is designated under section 28 of the 1992 Act, was incorporated by the Saint David’s Catholic College Corporation Order 2005 and was made an exempt charity by article 8 of that Order.

7.3 Exempt charities cannot register with the Commission and, although required to comply with charity law, are exempt from the Commission’s regulatory jurisdiction (although they may ask the Commission for advice or for authorisation of actions that are outside the charity’s powers). Historically, there has been a concern that exempt charities may not have been adequately regulated for charity law purposes.

7.4 The 2011 Act contains provisions intended to improve the regulation of exempt charities as charities. The key provisions are to be found in sections 22 to 28 of, and Schedule 3 to, the 2011 Act. The policy is for exempt charities to go down one of two routes:

- For a group of exempt charities that is already subject to regulatory oversight by a person or body, where possible that person or body is also appointed as “principal regulator” with a new duty to promote charity law compliance. Such charities remain exempt and so are not registered with the Commission. This approach minimises the regulatory burden for these groups of exempt charities by relying on existing regulatory or oversight relationships, but it also gives the Commission a greater role, such as allowing the principal regulator to invite the Commission to use its regulatory powers if the principal regulator believes there may be a

concern in charity law. (The principal regulator does not itself acquire the regulatory powers open to the Commission.)

- Where it is not possible to identify a suitable person or body to become “principal regulator”, the charities lose their exempt status. This means that they come under the Commission's full regulatory jurisdiction and, in the case of further education corporations, the smallest of which has an income exceeding £5 million, they would be required to register with the Commission and comply with the other regulatory requirements arising from registration (including the submission to the Commission of accounts, a trustees’ annual report, and an annual return).

7.5 The changes to the regulation of exempt charities are being implemented in several tranches, given the different groups of charities involved. The first tranche of changes (relating to universities, students unions, national museums and galleries and Royal Botanic Gardens, Kew, the Church Commissioners, and certain colleges) came into effect in June 2010. The second tranche of changes, affecting foundation, voluntary and foundation special schools, academies and sixth form college corporations came into force in August 2011. This instrument relates to the third tranche of changes affecting further education corporations in England and Wales and Saint David’s Catholic College.

7.6 Appointing suitable principal regulators will achieve appropriate and effective regulation of further education corporations in England and Wales and Saint David’s Catholic College as charities, whilst minimising the burden of regulation.

8. Consultation outcome

8.1 The Association of Colleges, the representative body for further education colleges in England, and Colegau Cymru, the representative body for further education colleges in Wales and Saint David’s Catholic College, have indicated that appointing principal regulators is the strong preference of their members. Consequently the Cabinet Office has not undertaken formal public consultation on this proposal. The proposed principal regulators have also indicated that this option is their strong preference.

9. Guidance

9.1 The Department for Business, Innovation and Skills and the Welsh Government have communicated these forthcoming changes to the groups of affected charities or their representative bodies, and will publish details on their respective websites.

10. Impact

10.1 The impact of these instruments is limited to further education corporations in England and Wales, Saint David’s Catholic College and any charities connected to them, and the two principal regulators (the Secretary of

State for Business, Innovation and Skills and Welsh Ministers). The Regulatory Policy Committee has confirmed that this appears to be a low cost regulatory proposal: *“The impact on FECs would seem to be very small and certainly lower than the cost of the alternative option.”*

10.2 An impact assessment is attached to this memorandum and will be published alongside the explanatory memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 This instrument does not apply to small business.

12. Monitoring & review

12.1 There is a policy commitment to review the impact of these changes three years after they have taken effect.

13. Contact

David Hale at the Office for Civil Society, Cabinet Office, Tel: 020 7276 6280 or email: david.hale@cabinet-office.gsi.gov.uk can answer any queries regarding this instrument.