

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

2011 No. 1726

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

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.

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.