EXPLANATORY MEMORANDUM TO

THE CHARITIES ACT 2006 (PRINCIPAL REGULATORS OF EXEMPT CHARITIES) (No.2) REGULATIONS 2011

2011 No. 1727

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 a principal regulator for "connected" exempt charities of sixth form college corporations and academies[1].

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

3.1 These Regulations relate to two affirmative resolution instruments concerning exempt charities, and they remedy an oversight in one of those instruments. The Regulations:

3.1.1 will come into force within 21 days of being laid i.e. in breach of the 21 day rule, and

3.1.2 will not amend the provisions of section 71A of the Apprenticeships, Skills, Children and Learning Act 2009 ("the ASCL Act"), as might otherwise have been expected.

3.2 Sixth form college corporations and academies are exempt charities from 1 August 2011: exempt charity status is conferred on sixth form college corporations by the Charities Act 2006 (Changes in Exempt Charities) Order 2011 ("the Order"), and on academies by section 12(4) of the Academies Act 2010. Exempt status is conferred by adding to the list of exempt charities in Schedule 2 to the Charities Act 1993. By inserting academies (new paragraph (ca)) and sixth form college corporations (new paragraph (cd)), exempt status is also conferred on charities that are "connected" to academies and sixth form college corporations (paragraph (w) of Schedule 2).

3.3 In essence, connected charities are subsidiary charities which are established for one or more of the purposes of the parent charity, and are administered by or on behalf of the parent charity. The most common examples in this context are endowment funds or school prize funds held on special trusts.

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

3.4 The Charities Act 2006 (Principal Regulators of Exempt Charities) Regulations 2011 ("the No. 1 Regulations") prescribe the Secretary of State for Education as principal regulator of academies and sixth form college corporations. Due to an oversight, the No. 1 Regulations do not make provision for the appointment of a principal regulator for exempt charities "connected" to sixth form college corporations and academies.

3.5 These Regulations ("the No. 2 Regulations") rectify the oversight by appointing the Secretary of State for Education as principal regulator of academies' and sixth form college corporations' connected charities.

3.6 The No. 2 Regulations come into force on 1 August, in accordance with the timetable laid down in the Order and No. 1 Regulations. However, regrettably this means that the commencement of this instrument will not comply with the 21 day rule. As the Order and No. 1 Regulations were made under the affirmative procedure, and both provide on their face for commencement on 1 August, this date cannot be changed. The alternative would be to delay the commencement of the No. 2 Regulations, so that charities connected with academies and sixth form college corporations become exempt on 1 August, but have no principal regulator appointed until a short time later. However, this would give rise to several potential difficulties:

3.6.1 In exercising the power in section 11 of the Charities Act 2006 ("the 2006 Act"), to confer exempt status on sixth form college corporations, the Minister for the Cabinet Office must be satisfied that the test in subsection (12) is met, namely that exercising the power will result in more appropriate or effective regulation of the charities concerned. In practice, satisfying the test means that at the same time as exempt status is conferred on the relevant charities, a principal regulator is appointed to promote compliance.

3.6.2 1 August was chosen as the commencement date of the provisions that confer exempt status and appoint principal regulators as many of the relevant parent charities' financial years begin on 1 August.

3.6.3. On conferring exempt status and appointing a principal regulator, various provisions in the 2006 Act are required to be commenced, by way of a Commencement Order, in relation to the exempt charities affected. Delaying the appointment of a principal regulator for connected charities would require complex provision to be made in the Commencement Order, risking confusion for the parent charities concerned, and their principal regulators.

3.7 The No. 1 Regulations are made (inter alia) under section 13(4)(b) of the 2006 Act. The affirmative procedure was required to be followed, as provided by section 74(4) of the 2006 Act, because the No. 1 Regulations amend provisions in primary legislation. The amendments are:

3.7.1 To substitute new section 537C in the Education Act 2006. The new section, which concerns disclosure of information by or to principal regulators of exempt charities, is drafted in broad terms so it will apply, without the need for amendment, to the principal regulator appointed in relation to charities connected to academies and sixth form college corporations;

3.7.2 To insert new section 71A in the ASCL Act. This section permits the Young People's Learning Agency ("the YPLA") to assist the Secretary of State for Education in his role as principal regulator of sixth form college corporations and academies. It might have been expected that the No. 2 Regulations would amend this provision, so as to permit the YPLA expressly to provide the same assistance in relation to charities connected to academies and sixth form college corporations. However, for the No. 2 Regulations to do this, the affirmative procedure would have to be followed. It is not considered necessary to do this as, following the review of public bodies, the YPLA is (subject to the will of Parliament) to be succeeded early next year by an executive agency of the Department for Education. So by the time an affirmative instrument could be taken through Parliament to amend section 71A, the YPLA is likely to have ceased to exist.

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"). The 2006 Act makes several changes to the way in which exempt charities are regulated as charities.

4.2 The 2006 Act:

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

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

4.2.3 increases the regulatory jurisdiction of the Commission in respect of those exempt charities for whom a principal regulator has been appointed (sections 12 and 14 and Schedule 5).

4.3 The Order (which is made under section 11(1)) confers exempt status on sixth form college corporations and their connected charities (and on foundation and voluntary schools and certain charities connected to them), and section 12(4) of the Academies Act 2010 confers exempt status on academies and their connected charities.

4.4 The No. 1 Regulations (which are made under section 13) appoint a principal regulator for sixth form college corporations and academies (and foundation and voluntary schools and their connected charities).

4.5 A Commencement Order brings into force, in relation to each of these categories of exempt charity, the relevant provisions of the 2006 Act.

5. Territorial Extent and Application

5.1 The Regulations extend to England and Wales. However there are no academies or sixth form college corporations in 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 The 2006 Act made provision for proportionate regulation of exempt charities as charities. A package of changes is due to come into force on 1 August 2011, conferring exempt status on academies, sixth form college corporations and their connected charities, and appointing the Secretary of State for Education as principal regulator. An oversight means that no principal regulator was appointed for charities connected to academies and sixth form college corporations. These Regulations seek to correct that oversight.

Appointment of Principal Regulators

7.2 These Regulations prescribe the Secretary of State for Education as the principal regulator for the following groups of exempt charities:

(a) exempt charities connected to sixth form college corporations;

(b) exempt charities connected to academies.

7.3 For the purpose of 7.4 (a) and 7.4 (b) ‘connected to’ means any exempt charity which is administered by or on behalf of the relevant institution and is established for the general purposes of, or for any special purpose of or in connection with that institution.

7.4 In practice, connected charities are broadly considered to be subsidiary charities of their parent institution, and their accounts are consolidated into the parent charity’s accounts. Appointing the Secretary of State for Education as their principal regulator completes the regulatory picture that academies and sixth form college corporations are expecting. Examples of connected charities include endowment or prize funds. Examples of charities not connected are Parent Teacher Associations, which although clearly linked to particular schools, are administered independently of the schools, and would not be consolidated into the schools’ accounts.

Disclosure of information

7.5 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.

7.6 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.

7.7 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 4 of the Regulations specifies the definition that is to apply in relation to the principal regulator of the connected charities prescribed by these Regulations.

8. Consultation outcome

8.1 A consultation has not been carried out on the proposed appointment of the Secretary of State for Education as principal regulator of charities connected to academies, or sixth form college corporations.

8.2 However, Ministers agreed during the passage of the Academies Act 2010 that a principal regulator would be required for academies. It was originally proposed that the YPLA be appointed as the principal regulator, but following the public bodies review the YPLA is to be succeeded next year (subject to the will of Parliament) by an executive agency of the Department for Education.

8.3 Sixth form college corporations were created by the ASCL Act. 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 (which were colloquially referred to as sixth form colleges). The delay in conferring exempt status and appointing a principal regulator was due to the public bodies review.

8.4 The Secretary of State for Education is appointed as principal regulator of both of these categories of institution because he has the existing roles of funding and regulating academies and sixth form college corporations. In practice, his role would be expected to extend to charities connected to academies and sixth form college corporations because connected charities are broadly considered to be subsidiary charities of their parent institution, and their accounts are consolidated into the parent charity's accounts.

8.5 The Department for Education, Commission, and Young People's Learning Agency support this instrument.

9. Guidance

9.1 The Commission is already working with the Department for Education 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. This includes consideration of how the principal regulator can promote charity law compliance of connected exempt charities.

10. Impact

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

10.2 Impact assessments have been prepared relating to each of the groups of charities affected by the Charities Act 2006 (Changes in Exempt Charities) Order 2011, and the Charities Act 2006 (Principal Regulators of Exempt Charities) Regulations 2011. They are available at: www.legislation.gov.uk

10.3 A separate impact assessment has not been prepared for this instrument as connected charities are, for all practical purposes, regarded as subsidiaries of their "parent" academy or sixth form college corporation, so are by implication covered by the impact assessments referred to above.

11. Regulating small business

11.1 The Regulations do not apply to small business.

12. Monitoring & review

12.1 There is a policy commitment to review the impact of all the changes made by the Charities Act 2006 (Changes in Exempt Charities) Order 2011, the Charities Act 2006 (Principal Regulators of Exempt Charities) Regulations 2011, and this instrument within three years of their commencement.

13. Contact

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