EXPLANATORY MEMORANDUM TO

THE CHARITIES (EXCEPTION FROM REGISTRATION) REGULATIONS 2010

2010 No. 502

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

This instrument makes provision for certain charities to be excepted from the requirement to register with the Charity Commission for England and Wales ("the Commission").

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

3.1 None.

4. Legislative Context

4.1 The Charities Act 2006 (Commencement No.7, Transitional and Transitory Provisions and Savings) Order 2010 (SI 2010/503) brings into force various provisions of the Charities Act 2006 on 1 June 2010. These include provisions of section 11 of the Charities Act 2006 ("2006 Act") which will remove exempt charity status from certain charities and descriptions of charities. In addition, the Charities Act 2006 (Changes in Exempt Charities) Order 2010 (S.I. 2010/500) ("Changes Order"), made under section 11 of the 2006 Act, will also remove exempt charity status from a number of charities and descriptions of charities.

4.2 The table at Annex A to this memorandum sets out the charities, or descriptions of charities that will cease to be exempt on 1 June 2010 when the relevant provisions of the 2006 Act and the Changes Order come into force. These charities and descriptions of charities are referred to collectively in this Memorandum as "relevant charities".

4.3 Section 3A(4)(b) of the Charities Act 1993 requires the Minister for the Cabinet Office to make regulations to ensure that, subject to compliance with any conditions specified by the Minister and the financial limit, certain charities (including those which cease to be exempt by or under section 11 of the 2006 Act) are excepted from the requirement to be registered in the register of charities. The financial limit that currently applies is gross income of £100,000. Any charity with a gross income exceeding this limit will be required to register with the Commission.

4.4 These regulations have been made in compliance with the duty in section 3A(4)(b) of the 1993 Act as it applies in relation to the relevant charities. The

relevant charities will currently only be required to register with the Commission if their annual gross income exceeds £100,000.

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 Exempt charities are those institutions which historically have not been allowed to register with the Commission and, although required to comply with the general charity law, have been exempt from its regulatory jurisdiction (although they may ask the Commission for advice or for authorisation of actions that are outside the charity's powers). The institutions listed in Schedule 2 to the Charities Act 1993 ("the 1993 Act") are, in so far as they are charities, exempt charities. In addition, exempt charity status has been conferred on some charities by other Acts of Parliament.

7.2 The 2006 Act contains provisions intended to improve the regulation of exempt charities as charities. The key provisions are to be found in sections 11 to 14 of and Schedule 5 to the 2006 Act.

7.3 Under the 2006 Act exempt charities' regulation will be improved in one of two ways:

- Wherever possible existing bodies with regulatory oversight of groups of exempt charities have been identified to take on the role of "principal regulator" of those exempt charities. The principal regulator will have a role in promoting charity law compliance by those charities. These charities will remain exempt and not be registered with the Commission. This approach minimises the regulatory burden for these groups of exempt charities by relying on existing regulatory or oversight relationships.

- Where it has not been possible to identify a suitable public body to become "principal regulator" of a group of exempt charities, the charities will lose their exempt charity status. The charities will become "excepted charities". This means that they will come under the Commission's full regulatory jurisdiction, and be required, if their income exceeds a financial threshold specified in the 2006 Act (currently £100,000), to register with the Commission and be required to comply with the other regulatory requirements flowing from registration with the Commission.

7.4 Principal regulators will be under a new duty to promote charity law compliance by the charities they already oversee. Section 13 of the 2006 Act enables the Minister to appoint the principal regulators.

7.5 The change to the status of charities for which a suitable principal regulator could not be identified will be made by section 11 of the 2006 Act or an order made under that section. Regulations .will be made separately excepting these charities from the requirement to register with the Commission.

7.6 The Cabinet Office proposes to implement the relevant provisions of the 2006 Act and make further changes to Schedule 2 to the 1993 Act in several tranches. These regulations form part of the first of these tranches.

8. Consultation outcome

8.1 These regulations have not been the subject of formal public consultation, as it is a statutory requirement that the Minister make these regulations when the relevant provisions of section 11 of the 2006 Act and the Changes Order come into force.

8.2 The Office of the Third Sector and the Commission have, however, been closely engaged with the relevant charities or bodies representing them. Officials have shared earlier drafts of these regulations with the relevant charities or, where more appropriate, their representative bodies.

9. Guidance

9.1 The Charity Commission publishes detailed guidance on its website about the forthcoming changes in relation to the regulation of exempt charities, including guidance on registration for those charities that will be required to register, and those that will benefit from the exception conferred by this instrument. The guidance can be accessed on the Commission's website; http://www.charitycommission.gov.uk.

10. Impact

10.1 These Regulations do not apply to the public sector, or business. The changes made to the registration regime and exempt charity status of the charities mentioned in paragraphs 4.1 - 4.2 above, and Annex A, are made separately by or under the 2006 Act. Any requirement to register with the Commission however derives from the introduction of the financial limit by the 2006 Act, not this instrument.

10.2 The 2006 Act was the subject of a full regulatory impact assessment (including a specific chapter on the proposals relating to exempt charities). The impact assessment on exempt charities can be read by following the link below:

http://www.cabinetoffice.gov.uk/media/cabinetoffice/third_sector/assets/chapter_4_exempt_charities.pdf

10.3 A separate Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 This instrument does 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 2006 Act within five years of enactment, and for the report of the review to be laid before Parliament. The review, which will commence in 2011, will include evaluating the impact of changes made to the regulation of exempt and excepted charities.

12.2 It is proposed that the £100,000 threshold for the mandatory registration of excepted charities will be reduced over time, but no such change can be made until the report on the review of the 2006 Act has been laid before Parliament. In addition, any proposals to reduce the £100,000 threshold would be subject to full public consultation.

13. Contact

Ben Harrison at the Office of the Third Sector, Cabinet Office, Tel: 020 7276 6029 or email: ben.harrison@cabinet-office.x.gsi.gov.uk can answer any queries regarding this instrument.

Annex A

Changes to exempt charities on 1 June 2010

Institutions which in so far as they are charities will cease to be exempt on 1 June 2010 – and which by virtue of these Regulations will be excepted from the requirement to register with the Charity Commission if annual income does not exceed £100,000

Description of Institutions ceasing to be exempt on 1 June 2010	**Provision removing exempt status**	**Provision in Charities (Exception from Registration) Regulations 2010**
A college in the university of Oxford	Article 2(2) of the Charities Act 2006 (Changes in Exempt Charities) Order 2010	Regulation 3(2)(a)
A college or hall in the university of Cambridge	Article 2(2) of the Charities Act 2006 (Changes in Exempt Charities) Order 2010	Regulation 3(2)(b)
A college or hall in the university of Durham	Article 2(2) of the Charities Act 2006 (Changes in Exempt Charities) Order 2010	Regulation 3(2)(b)
A Welsh Higher Education Corporation	Article 2(4) of the Charities Act 2006 (Changes in Exempt Charities) Order 2010	Regulation 3(2)(d)
Any university in Wales, university college in Wales and institution	Article 2(3) and paragraphs 6 to 8 of	Regulation 3(2)(c)

Description of Institutions ceasing to be exempt on 1 June 2010	**Provision removing exempt status**	**Provision in Charities (Exception from Registration) Regulations 2010**
connected with a university in Wales or university college in Wales which had been declared by Her Majesty by Order in Council to be exempt charities	the Charities Act 2006 (Changes in Exempt Charities) Order 2010	
A successor company to a higher education corporation (within the meaning of section 129(5) of the Education Reform Act 1988) at a time when an institution conducted by the company is eligible, by virtue of an order made under that section, to receive support from funds administered by the Higher Education Funding Council for Wales	Article 2(5) of the Charities Act 2006 (Changes in Exempt Charities) Order 2010	Regulation 3(2)(e)
The Church Commissioners and institutions administered by them	Commencement of s.11(7) of the Charities Act 2006	Regulations 2(2)(a) and 3(2)(g)
The representative body of the Welsh Church and property administered by it	Commencement of s.11(2) and (9) of the Charities Act 2006	Regulation 2(2)(b)
Eton College	Commencement of s.11(3) of the Charities Act 2006	Regulation 2(2)(c)
Winchester College	Commencement of s.11(3) of the Charities Act 2006	Regulation 2(2)(d)
any institution which would be included in paragraph (w) because it is "connected" (within the meaning of that paragraph (w)) with any of	A consequence of article 2(2) to (5) of the Charities Act 2006 (Changes in	Regulation 3(2)(h)

Description of Institutions ceasing to be exempt on 1 June 2010	**Provision removing exempt status**	**Provision in Charities (Exception from Registration) Regulations 2010**
the institutions included above and which is not a students' union	Exempt Charities) Order 2010 or commencement of s.(11)(2), (3),and (9) of the Charities Act 2006	
Board of Governors of the Museum of London	Article 2(6) of the Charities Act 2006 (Changes in Exempt Charities) Order 2010	Regulation 2(2)(e)
Students' Unions included in paragraph (w)	Commencement of s.11(6) and (9) of the Charities Act 2006	Regulation 3(2)(f)