EXPLANATORY MEMORANDUM TO

THE CHARITIES ACT 2006 (CHANGES IN EXEMPT CHARITIES) ORDER 2011

2011 No. XXX

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 classes of educational charity to be made exempt charities, and makes amendments to existing legislation in connection with that change.

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. 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 Charities Act 2006 ("the 2006 Act") makes changes to the way in which exempt charities are regulated as charities. Section 11 enables the Minister for the Cabinet Office ("the Minister") to, by order, make amendments to Schedule 2 to the 1993 Act so that charities, or descriptions of charities, become or cease to be exempt charities (section 11(11) of the 2006 Act).

4.3 The Minister may only make such an order if he is satisfied that it is desirable in the interests of ensuring appropriate or effective regulation of the charity or charities concerned in connection with their charity trustees' compliance with their charity law obligations (section 11(12) of the 2006 Act).

4.4 An order made under section 11 of the 2006 Act may also make amendments or other appropriate modifications to any enactment (section 11(13) of the 2006 Act). In addition, section 74(2) of the 2006 Act allows the Minister to make consequential amendments.

4.5 The Charities Act 2006 (Commencement No.5, Transitional and Transitory Provisions and Savings) Order 2008 (S.I. 2008/3267) ("CO5") commenced provisions of section 9 of the 2006 Act which replaced section 3 of the 1993 Act with new sections 3, 3A and 3B (relating to the register of charities, the registration of charities, and duties of trustees in connection with registration). These provisions came into force on 31 January 2009. From that date, foundation, voluntary and foundation special schools[1] ceased to be exempt. Pending a final decision as to their status, CO5 made provision to ensure that none of these charities would have to register with the Commission before 1st October 2009 and that they would continue until then to be treated, for the purposes of the 1993 Act, as if they continued to be exempt charities. This meant, for example, that they did not have to prepare charity accounts in respect of financial years beginning before 1st October 2009, and were not subject to the general regulatory jurisdiction of the Commission before that date.

4.6 These transitional provisions have since been extended twice pending finalisation of arrangements for the appointment of principal regulators for this group of charities:

4.6.1 The Charities Act 2006 (Commencement No.6 and Commencement No.5, Transitional and Transitory Provisions and Savings (Amendment)) Order 2009 (S.I. 2009/2648) extended the provisions to 1st October 2010;

4.6.2 The Charities Act 2006 (Commencement No.5, Transitional and Transitory Provisions and Savings) (Amendment) Order 2010 (S.I. 2010/1942) extended the provisions to 1st September 2011.

4.7 This instrument re-confers exempt status on foundation, voluntary and foundation special schools relieving them of the registration requirement and of the accounting and reporting requirements that flow from registration.

4.8 Sixth form college corporations[2] were previously exempt charities. The Apprenticeships, Skills, Children and Learning Act 2009 ("the ASCL Act") made amendments to the Further and Higher Education Act 1992 relating to sixth form college corporations, including confirming their continued charity status but removing their exempt status. It is not clear why the ASCL Act made this change; indeed it may have been unintentional. The effect is that the 94 sixth form college corporations in England (there are none in Wales) are required to register with the Commission and meet the accounting and

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[1] References in this Explanatory Memorandum to foundation, voluntary and foundation special 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] That is, sixth form college corporations within the meaning of the Further and Higher Education Act 1992.

reporting requirements that flow from registration, although these requirements have not been enforced to date.

4.9 This instrument re-confers exempt status on sixth form college corporations, relieving them of the requirement to register and of the accounting and reporting requirements that flow from registration.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales. It should be noted that there are no sixth form college corporations in Wales.

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 the Order:

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

7. Policy background

7.1 Exempt charities are those institutions which do not register with the Commission and, although required to comply with 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 1993 Act are, in so far as they are charities, exempt charities.

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 As a result of the 2006 Act the regulation of charities that were formerly exempt is being improved:

- 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" to promote charity law compliance. These 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.

- Where it is not possible to identify a suitable person or body to become "principal regulator", the charities lose their exempt status and become "excepted charities". This means that they come under the Commission's full regulatory jurisdiction and are required, if their income exceeds a

financial threshold specified in the 2006 Act (currently £100,000), to register with the Commission and to comply with the other regulatory requirements flowing from registration (including the preparation and external scrutiny of charity accounts, the submission of accounts, a trustees' annual report, and an annual return).

7.4 The 2006 Act changes are being implemented in several tranches. 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 on 1 June 2010. This instrument relates to the second tranche of changes, affecting (a) foundation, voluntary and foundation special schools, and (b) sixth form college corporations.

7.5 The proposal to re-confer exempt charity status on foundation, voluntary and foundation special schools, and sixth form college corporations, and to appoint suitable principal regulators was announced in a Written Ministerial Statement on 30th March 2011. The statement is available here:

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

7.6 Principal regulators are appointed by the Minister by regulations made under section 13 of the 2006 Act. The Charities Act 2006 (Principal Regulators of Exempt Charities) Regulations 2011 will, subject to Parliamentary approval, prescribe the principal regulators of the governing bodies of foundation, voluntary and foundation special schools, and sixth form college corporations (and academies[3]). Principal regulators are under a duty to promote charity law compliance by the charities they oversee.

7.7 Re-conferring exempt charity status and appointing a suitable principal regulator will achieve appropriate and effective regulation of these charities as charities, whilst minimising the burden of regulation.

7.8 Article 2 makes additions to the list of exempt charities in Schedule 2 of the 1993 Act, and article 3 gives effect to the Schedule which makes consequential amendments to primary legislation (Part 1) and secondary legislation (Part 2). The Schedule includes provision to bring to an end the transitional arrangements put in place by CO5 (paragraph 6).

8. Consultation outcome

8.1 The Cabinet Office consulted on the proposal to re-confer exempt charity status on foundation, voluntary and foundation special schools in 2010. Responses strongly supported the proposal to re-confer exempt charity status, although respondents differed over which person or body should be appointed as principal regulator.

[3] That is, qualifying academy proprietors under section 12 of the Academies Act 2010

8.2 Consultation has not taken place in relation to re-conferring exempt charity status on sixth form college corporations. It is believed that sixth form college corporations have been unaware of the loss of their exempt status as a result of the ASCL Act, and this instrument simply seeks to restore the position.

9. Guidance

9.1 The Department for Education has communicated these forthcoming changes to the groups of affected charities or their representative bodies, and publishes details on its website.

10. Impact

10.1 The impact of these Regulations is limited to foundation, voluntary and foundation special schools, and sixth form college corporations. These provisions will restore the position for these charities to that prior to the Charities Act 2006 and the Apprenticeships, Skills, Children and Learning Act 2009and will avoid the requirement for those charities to register and report to the Commission.

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

10.3 Impact Assessments have also been prepared, and are annexed to this Memorandum, for the impact of these changes (and the appointment of principal regulators under a separate instrument) on:

10.3.1 foundation, voluntary and foundation special schools, and

10.3.2 sixth form college corporations.

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 later this year, will include evaluating the impact of changes made to the regulation of exempt and excepted charities.

12.2 However, as the 2006 Act review is expected to follow shortly after the changes are introduced by these Regulations, it is unlikely that a meaningful

assessment of the changes 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 7276 6028 or email: lindsey.bromwell@cabinet-office.x.gsi.gov.uk can answer any queries regarding this instrument.

Title:	Impact Assessment (IA)
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	**IA No:** **Date:** 24/02/2011 **Stage:** Enactment **Source of intervention:** Domestic **Type of measure:** Secondary legislation **Contact for enquiries:** Ben Harrison 0207 276 6029 Lindsey Bromwell 020 7276 6028

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 prinicpal 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 prinicpal 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 x 8000) + (1,269.5 x 8000) = £11.5m. Annual cost = (123.5 x 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
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?			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 duties[1] 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 then 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.

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]; 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
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?] To ensure effective regulation of the charitable sector whilst minimising regulatory burden.
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] We will work with the principal regulator on establishing the data available for the review.
Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured] The baseline is registration and regulation by the Charity Commission.
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] Appropriate regulation to ensure compliance whilst minimising the burden of regulation.
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] We will have annual contact with the principal regulator and the Charity Commission.
Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here] N/A

Add annexes here.