EXPLANATORY MEMORANDUM TO

THE CHARITIES ACT 2011 (EXEMPT CHARITIES) (BRITISH COUNCIL) REGULATIONS 2021

2021 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Foreign, Commonwealth & Development Office ("FCDO") and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations add the British Council to the list of exempt charities in England & Wales, in Schedule 3 of the Charities Act 2011 ("the 2011 Act"), and prescribe the Secretary of State for Foreign, Commonwealth & Development Affairs as its principal regulator.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These Regulations rely on section 105 of the Deregulation Act 2015 which gives the power to combine different forms of subordinate legislation. The power under section 23 of the 2011 Act is exercisable by order and the power under section 25 of the 2011 Act is exercisable by regulations, hence the need to rely on section 105 of the Deregulation Act 2015.

3.2 In reliance on section 349(2) of the 2011 Act, which provides for the draft affirmative procedure for regulations under section 23,whether alone or with other provisions, these regulations have been combined into a single instrument to which the draft affirmative resolution procedure will apply.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, except for regulations 1 and 4 which extend to the whole of the United Kingdom.

4.2 The territorial application of this instrument is England and Wales, except for regulations 1 and 4 which extend to the whole of the United Kingdom.

5. European Convention on Human Rights

5.1 Mr Nigel Adams, Minister for Asia at the FCDO ("Minister Nigel Adams") has made the following statement regarding Human Rights:

"In my view the provisions of the Charities Act 2011 (Exempt Charities) (British Council) Regulations 2021 are compatible with the Convention rights."

6. Legislative Context

6.1 Exempt charities are those institutions which, in so far as they are charities, are listed in Schedule 3 to the 2011 Act. Exempt charities enjoy the legal status and the fiscal benefits accorded to other charities. Unlike registered charities, they do not make an annual return to the Charity Commission to England & Wales, and they report serious incidents to a principal regulator rather than the Charity Commission.

6.2 Section 23 of the 2011 Act enables the Secretary of State to amend Schedule 3 to the 2011 Act so that a particular institution, so far as it is a charity, becomes or ceases to be an exempt charity. The Secretary of State may only make such an order if satisfied that it is desirable in the interests of ensuring appropriate or effective regulation of the charity concerned in connection with the charity trustees' compliance with their legal obligations in exercising control and management of the administration of the charity.

6.3 The Secretary of State for Foreign, Commonwealth & Development Affairs, having consulted various other stakeholders, including the Secretary of State for Digital, Culture, Media & Sport (see paragraph 10 below), is satisfied that these requirements are met (see paragraph 7 below). Therefore, regulation 2 of these Regulations makes the British Council an exempt charity.

6.4 Section 25 of the 2011 Act enables the Secretary of State to prescribe a body or Minister of the Crown as principal regulator for each exempt charity. The duty of the principal regulator is set out in section 26 of the 2011 Act. In summary, it is the duty of the principal regulator to do all that it or they reasonably can to promote charity law compliance by the charity trustees of the exempt charities in respect of which they are appointed. The duty imposed on principal regulators by section 26 of the 2011 Act is forward-looking. Principal regulators will generally not be required to take action in respect of matters which occur before their date of appointment and in connection with which there is no charity law obligation continuing at that date. Regulation 3 of these Regulations prescribes that the Secretary of State for Foreign, Commonwealth & Development Affairs shall be the principal regulator of the British Council.

6.5 Sections 54, 55, 56 and 57 of the 2011 Act, as applied by section 58 of that Act to exempt charities, regulate the disclosure of information obtained by a principal regulator in its capacity as such. Specific rules apply to the disclosure of Revenue and Customs information. Section 58(4) of the 2011 Act requires the Secretary of State to specify the definition of "responsible person" that will apply for the purposes of section 57(8) as it applies to principal regulators. Regulation 4 of these Regulations specifies the definition that is to apply in respect of the Secretary of State for Foreign, Commonwealth & Development Affairs as principal regulator.

6.6 These Regulations also provide that the transitory modification in Schedule 9 to the 2011 Act do not apply to the British Council. This is to ensure that the regulatory regime under the 2011 Act for exempt charities also applies to the British Council.

7. Policy background

What is being done and why?

7.1 The British Council's charitable status is being changed from registered to exempt, so that the Charity Commission will no longer be its principal regulator. This will streamline its administration and mean that it has one main regulator as both a non-departmental public body and as a charity. This change will bring the British Council into line with nearly all other charitable non-departmental public bodies. This change

follows a review of the British Council's structure, purpose and priorities, carried out in 2020 on behalf of the Secretary of State for Foreign, Commonwealth & Development Affairs.

Explanations

7.2 The Charities Act 2006 introduced the principle that exempt charities are overseen by a principal regulator, and this is carried across into the 2011 Act. The principal regulator would normally be a pre-existing, robust regulator of the charity's activity, with regulatory and reporting requirements consistent with and closely equivalent to those of the Charity Commission. Since the first principal regulators were appointed in 2010, this system has successfully provided regulatory oversight without duplication.

7.3 Three of the principal regulators already appointed have been Secretaries of State (the Secretary of State for Digital, Culture, Media and Sport for museums and galleries, the Secretary of State for Environment, Food and Rural Affairs for the Royal Botanic Gardens, Kew and the Secretary of State for Education for foundation schools, voluntary and foundation special schools, academies and sixth form college corporations).

7.4 Similarly, the FCDO is well-placed to provide appropriate regulation of the British Council. The Foreign Office set up the British Council in 1934 and has carried out the duties of sponsor ever since. The Foreign, Commonwealth and Development Office, created in 2020, has a wide remit and extensive institutional expertise in respect of the Council's activities. As set out in the Management Statement between the British Council and the FCDO[1], the latter already carries out many of the responsibilities that would be expected of it to ensure appropriate and effective regulation of the former as a charity. The FCDO's Principal Accounting Officer monitors the British Council's use of charitable assets such as grant-in-aid funds; the FCDO has a role in alerting the British Council to new regulations and guidance; and a range of measures ensure the FCDO can monitor the British Council's accountability, including the option to require assurances and explanations from the British Council's Board of Trustees. The FCDO's new role, in regulating the British Council as a charity, is complementary to these existing duties.

7.5 For these reasons, the Secretary of State for Foreign, Commonwealth & Development Affairs considers that the statutory requirements set out at paragraph 6.2 above are met. He is satisfied that this change is desirable in the interests of ensuring appropriate or effective regulation of the British Council in connection with the Council trustees' compliance with their legal obligations in exercising control and management of its administration. In summary, this is because of the benefits of streamlining the British Council's regulation under a single sponsor and regulator, the FCDO, whose experience and institutional expertise complements the duties of a principal regulator in this case.

7.6 These Regulations will come into force seven days after the day on which they are made. The reason for this is that the only bodies who are substantially affected, namely the British Council and the Charity Commission, are aware of, and have been consulted in relation to, these Regulations (see further below) and because the Secretary of State for Foreign, Commonwealth & Development Affairs considers that

[1] https://www.britishcouncil.org/sites/default/files/2013-07-management-statement.pdf

these Regulations should come into force without delay to ensure appropriate regulation of the British Council.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 No consolidation required. These Regulations amend the 2011 Act but make no further amendments.

10. Consultation outcome

10.1 The Regulations have not been the subject of formal consultation. The FCDO has consulted informally with the British Council; the Charity Commission for England and Wales; the Department for Digital, Culture, Media & Sport; and the devolved administrations and regulators for Scotland and Northern Ireland. No objections to proceeding with this change have been raised. The Secretary of State for Digital, Culture, Media and Sport has confirmed that he is content for the power under section 23 of the 2011 Act to be exercised in making these changes.

11. Guidance

11.1 The FCDO is drawing up a Memorandum of Understanding with the Charity Commission for England and Wales, in line with those the Commission has with other principal regulators. This will bring together in one place the relevant references to the two organisations' authorities and responsibilities with regard to the British Council, and the legal provisions for information sharing between them.

11.2 Additionally, the British Council's Management Statement is being revised to reflect the move to exempt status and all the other changes emanating from the Secretary of State for Foreign, Commonwealth & Development Affairs' review.

12. Impact

12.1 The impact on business, charities or voluntary bodies is limited to the British Council only.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because of its very limited impact on business. However, a De Minimis Impact Assessment has been prepared for this instrument. A full Impact Assessment is not required because the impact on business is assessed as being limited, the only change being a transfer of responsibility to regulate the British Council as a charity. Previous legislation creating exempt charities did have Impact Assessments, but the legislation in those cases affected a greater number of charities.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The Regulations do not include provision for statutory review and in line with the requirements of the Small Business, Enterprise and Employment Act 2015 regarding the inclusion of a review provision in secondary legislation that regulates business, Minister Nigel Adams has made the following statement: "These Regulations have minimal impact on business. Their intention is to amend and streamline the regulation of the British Council, which already exists as a charity and a non-departmental public body of the FCDO. In any case, it is already inherent within the department's role that it will monitor the activity of the British Council, including the effect of change to exempt charitable status. As such, the department has concluded that a review clause would be disproportionate on cost grounds."

15. Contact

15.1 Andrew Holt at the FCDO, Telephone: 07395 361698 or email: Andrew.Holt@fcdo.gov.uk can be contacted with any queries regarding the instrument.

15.2 Owen Bassett, Deputy Director for Communication, at the FCDO can confirm that this Explanatory Memorandum meets the required standard.

15.3 Minister Nigel Adams at the FCDO can confirm that this Explanatory Memorandum meets the required standard.