EXPLANATORY MEMORANDUM TO

THE RELIGIOUS CHARACTER OF 16 – 19 ACADEMIES (DESIGNATION PROCEDURE) (ENGLAND) REGULATIONS 2022.

2022 No. 1237

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The purpose of these Regulations is to provide for the mechanism by which a 16 to 19 Academy belonging to a qualifying Academy proprietor may be designated as having a religious character by way of an Order made under section 8A of the Academies Act 2010. Where a 16 to 19 Academy is designated as having a religious character it may benefit from the provisions at Schedule 22 of the Equality Act 2010 that relate to the protected characteristics of religion or belief.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England only.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 The Regulations are made under section 8A(4) of the Academies Act 2010 (as inserted by section 31 of the Skills and Post 16 Education Act 2022). Section 8A(4) enables the Secretary of State, by way of statutory instrument, to set out the procedure by which a 16 to 19 Academy may apply to be designated as having a religious character. Such a designation is effected by way of a statutory instrument by the Secretary of State under section 8A(1).

6.2 Section 8B of the Academies Act 2010 makes provision about the way that a 16-19 Academy designated as having religious character must be conducted, and the religious education and collective worship that must be provided by it. By virtue of Schedule 22 to the Equality Act 2010 a person complying with the requirements of an enactment does not contravene the provisions in parts 3 to 7 of the Equality Act 2010. Subsequently, once designated, when 16 to 19 Academies comply with the

requirements under section 8B of the Academies Act 2010, they will not be discriminating on the basis of religion or belief, or contravening any other provision of parts 3 to 7 of the Equality Act 2010, which they otherwise would be.

6.3 Regulation 2(c) of these Regulations provides that an applicant must include any representations made by "any religious body" when making a section 8A application which is deliberately wide to ensure that the applicant includes representations from any religious body in their section 8A application. This reference is distinct from the reference to "relevant religious body" in regulation 5(4) which is an obligation on the Secretary of State to consult at least one relevant religious body when they receive a section 8A application or when they seek to amend or revoke an order made under section 8A(1) to ensure the Secretary of State is only required to consult with that religious body that relates to the religious character of the 16 to 19 Academy for which an application is being made.

6.4 Regulation 3(3) of these Regulations relates to the composition of the board of directors of the 16 to 19 Academy, no conflict is intended in respect of company law or charity law.

6.5 These Regulations expressly refer to "religions or religious denominations" and otherwise pluralise singular nouns. This is done notwithstanding section 6(c) of the Interpretation Act 1978, which provides that the singular connotes the plural in the absence of any contradiction. The Department considers that there might be rare circumstances in which an application for a section 8A(1) designation might be made by an applicant for more than one religion or religious denomination and we think it is justified to provide clarity and set out the position in full and to avoid an interpretation that those circumstances are not possible.

7. Policy background

What is being done and why?

7.1 Sections 8A and 8B of the Academies Act 2010 (as inserted by section 31 of the Skills and Post 16 Education Act 2022) were both designed to address the fact that the legal framework for 16 to 19 Academies did not permit them to apply to be designated as having a religious character.

7.2 This came to light in 2015 when the Department for Education decided as part of the review of further education provision that it wanted to encourage willing Sixth Form Colleges (SFC) to convert to become 16 to 19 Academies. There were, at the time, 14 SFCs that benefited from being designated as having a religious character under section 33J(2) Further and Higher Education Act 1992 – through the Specified Sixth Form College Corporation Order 2010 (SI 2010/625). They could not convert to become 16 to 19 Academies without losing that designation and the Department for Education met with key stakeholders on how to address this. The Department for Education was keen to ensure that SFCs could take advantage of the benefits of becoming a 16 to 19 Academy.

7.3 The Regulations set out the process the applicant needs to take when submitting a section 8A application. Regulation 1(3) provides that a "section 8A application" is an application made to the Secretary of State for designation of a 16 to 19 Academy as having a religious character under section 8A(1) of the Academies Act 2010. The applicant must state the proposed religion or religious denomination and where

possible provide evidence as set out in regulation 3 and include any representations made by any religious body regarding the proposed designation.

7.4 The regulation 3 evidence is that 1) some or all of the premises in respect of the 16 to 19 Academy were provided on trust in connection with the provision of education or the conduct of an educational institution in accordance with the tenets of one or more religions or religious denominations or 2) at least one member of the board of directors of the 16 to 19 Academy is a person appointed as a director in order to represent the interests of one or more religions or religious denominations or 3) that the articles of association of the 16 to 19 Academy provide that the 16 to 19 Academy is conducted, or that education is provided, in accordance with the tenets of one or more religions or religious denominations. Regulation 4 provides that not all education provided at the 16 to 19 Academy needs to be provided in accordance with the tenets of one or more religions or religious denominations and Regulation 5 provides the circumstances the Secretary of State must consult one or more relevant religious bodies in respect of the 16 to 19 Academy.

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 There is no plan to consolidate.

10. Consultation outcome

10.1 There is no statutory requirement for the Department to consult on these Regulations. However, key stakeholders including the Department's Faith School Provider Group (representative of all schools of a religious character), the Catholic Education Service (CES) and the Sixth Form College Association have been consulted.

10.2 All those consulted are supportive of the Regulations and provided feedback.

10.3 It is commonly understood and accepted amongst the sector, and those consulted, that religious character is not acquired or lost by virtue of being designated or not designated under the procedure set out in these Regulations. Designation is the recognition of a religious character which a school (including a 16 to 19 Academy) already has as a question of fact as determined by the relevant religious body or the trust deed for the relevant school site.

10.4 It is also accepted through that consultation that orders made under section 8A of the Academies Act 2010, can be amended by virtue of Section 14 of the Interpretation Act 1978.

11. Guidance

11.1 Guidance for existing SFCs wishing to convert to 16 to 19 Academies is available here.

12. Impact

12.1 There is no significant impact on business, charities or voluntary bodies.

12.2 The very small impact on charities and voluntary bodies is on the charitable trusts associated with SFCs referred to above. These regulations will allow those SFCs to convert to become 16 to 19 Academies as they can now apply to be designated as having a religious character as a 16 to 19 Academy by virtue of The Skills and Post 16 Education Act 2022 and this has been welcomed by the sector.

12.3 An Impact Assessment has not been prepared for this instrument because no significant impact on business, charities or voluntary bodies is foreseen. There is a full impact assessment for The Skills and Post 16 Education Act 2022 here.

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 Department will continue to engage with the sector to monitor the designation procedure for 16 to 19 Academies. The Department already operates designation processes for other schools and these Regulations follow the same procedure so we do not expect any concerns to be raised.

14.2 A statutory review clause is not included in these Regulations.

15. Contact

15.1 Alison Powell at the Department for Education email: alison.powell@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 Lesley Jones, Deputy Director for Intervention, Faith and Accountability Division, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Baroness Barran, Parliamentary Under Secretary of State at the Department for Education, can confirm that this Explanatory Memorandum meets the required standard.