

**EXPLANATORY MEMORANDUM TO  
THE CHARITIES ACT 2006 (PRINCIPAL REGULATORS OF EXEMPT  
CHARITIES) REGULATIONS 2010**

**2010 No. 501**

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 principal regulators for a number of exempt charities.

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

3.1 These Regulations were laid in draft before Parliament in substitution for the Regulations of the same title which were laid in draft before Parliament on 8th July 2009. An amendment was made to the original draft before these Regulations were laid before Parliament.

3.2 Regulation 3(2)(b) incorrectly referred to the Church Investment Funds Measure 1958, instead of the Church Funds Investment Measure 1958. This has been corrected.

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 Charities Act 2006 (“2006 Act”) makes several changes to the way in which exempt charities are regulated.

4.2 These changes include provision for the appointment, by the Minister for the Cabinet Office (“the Minister”), of a body or Minister of the Crown as principal regulator for each exempt charity. The power of appointment is in section 13 of the 2006 Act.

4.3 The duty of the principal regulator is set out in section 13(2) of the 2006 Act. In summary, it will be the duty of each principal regulator to do all that it or he reasonably can to promote charity law compliance by the charity trustees of the exempt charities in respect of which it or he is appointed.

4.4 The Cabinet Office proposes to appoint principal regulators in several tranches. These Regulations make the first tranche of appointments.

4.5 A separate commencement order will be made in due course to bring into force the relevant provisions of the 2006 Act in relation to this first tranche of appointments.

## **5. Territorial Extent and Application**

5.1 With the exception of regulation 4, the Regulations apply to England and Wales only. Regulation 4 extends to the whole of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 The Minister of State for the Cabinet Office, Angela Smith has made the following statement regarding Human Rights in respect of these Regulations:

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

## **7. Policy background**

### ***The Charities Act 2006***

7.1 Exempt charities enjoy the status and the fiscal benefits accorded to other charities. Like all charities, they are required to comply with the basic principles of charity law but since 1992, they have not been allowed to register with the Charity Commission (“the Commission”) and they have fallen outside the monitoring and investigative powers of the Commission, though not of their advice giving powers. These exemptions have been granted on the grounds that the charities are adequately supervised by a Government department other than the Commission or another public authority. However, while it is true that exempt charities are regulated in respect of other activities and functions which they undertake, there is no mechanism for promoting or monitoring their compliance with their obligations as a matter of charity law.

7.2 In 2001, the Strategy Unit carried out a review of the legal and regulatory framework for charities and not-for-profit organisations in England and Wales. The aim was to modernise charity law and develop greater accountability and transparency to build public trust and confidence in charities.

7.3 The Strategy Unit published the Review “Private Action, Public Benefit” in September 2002. It made a series of recommendations for the Government to consider. To help it in considering the recommendations, the Government carried out an open public consultation.

7.4 Following the consultation, the Government accepted the Strategy Unit’s recommendation that exempt charities enjoying the advantages of charitable status should, in return for those advantages, comply with some form of charity regulation. At the same time, it accepted that although some exempt charities were outside the jurisdiction of the Charity Commission, they

were subject to adequate – or, in some cases, excessive – regulation from other sources.

7.5 Accordingly provision was made in the 2006 Act to:

(a) enable the Minister to appoint a principal regulator for each exempt charity (section 13);

(b) enable the Minister to make further changes to Schedule 2 to the 1993 Act to confer or remove exempt charity status (section 11(12) of the 2006 Act); and

(c) increase the regulatory jurisdiction of the Commission in respect of exempt charities (sections 12 and 14 and Schedule 5).

7.6 The duty imposed on principal regulators by section 13 of the 2006 Act is forward looking. This means they are only required to promote compliance by the charity trustees with charity law obligations arising on or after, or ongoing on, the date of their appointment. Principal regulators will 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.

7.7 The Office of the Third Sector has published an implementation plan for the 2006 Act. This plan sets out the Cabinet Office's proposals for the implementation of the changes in the regulation of exempt charities. The implementation plan is regularly updated, and published at [www.cabinetoffice.gov.uk/third\\_sector/law\\_and\\_regulation/implementation.aspx](http://www.cabinetoffice.gov.uk/third_sector/law_and_regulation/implementation.aspx)

### ***Appointment of Principal Regulators***

7.8 These Regulations prescribe principal regulators for the following groups of exempt charities:

(a) The Higher Education Funding Council for England (HEFCE) for higher education institutions in England and their connected institutions (regulation 2(1));

(b) The Secretary of State for the Environment, Food and Rural Affairs for the Board of Trustees of the Royal Botanic Gardens, Kew and its connected institutions (regulation 2(2));

(c) The Secretary of State for Culture, Media and Sport for the Boards of Trustees of the museums and galleries and their connected institutions (regulation 2(3)).

The Annex sets out in detail which institutions fall within the three groups above.

### ***Disclosure of information***

7.9 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.

7.10 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.

7.11 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 each of the three principal regulators prescribed by these Regulations.

7.12 Section 10B(5) of the 1993 Act enables the Minister to make amendments or other modifications to existing legislation to ensure that existing provisions regarding the disclosure of information by or to a body or Minister to do not apply to the body or Minister in its or his capacity as principal regulator. Part 1 of the Schedule to the Regulations makes the necessary amendments.

### ***Other provisions***

7.13 Part 2 of the Schedule to the Regulations makes a number of other consequential amendments.

## **8. Consultation outcome**

8.1 The Regulations have not been the subject of formal public consultation. However, The Office of the Third Sector and the Commission have been closely engaged with proposed principal regulators, bodies representing the various groups of exempt charities affected by this instrument and the charities themselves have been aware of these proposals since the passing of the 2006 Act. Officials have shared earlier drafts of the Regulations with the proposed principal regulators.

## **9. Guidance**

9.1 The Commission is already working with the principal regulators to advise them about their new role, and where appropriate will develop joint guidance for the charities affected. An example of such guidance which has already been developed is the Commission’s guidance on *Research by Higher Education Institutions* which can be accessed by following the link below:

[www.charity-commission.gov.uk/supportingcharities/higherres.asp](http://www.charity-commission.gov.uk/supportingcharities/higherres.asp).

Memoranda of understanding will be put in place to formalise the details of the relationship between the principal regulators and the Commission. A

committee of principal regulators will meet regularly to share best practice and ensure consistency in the application of charity law requirements.

## **10. Impact**

10.1 This instrument does not apply to business. 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 is available at the link below:

[http://www.cabinetoffice.gov.uk/media/cabinetoffice/third\\_sector/assets/chapter\\_4\\_exempt\\_charities.pdf](http://www.cabinetoffice.gov.uk/media/cabinetoffice/third_sector/assets/chapter_4_exempt_charities.pdf)

10.2 The intention remains to minimise additional regulatory requirements on exempt charities, whilst ensuring that they come within a regulatory framework that includes promoting compliance with charity law obligations.

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

10.4 The total number of exempt charities in respect of which principal regulators are appointed by these regulations is 125 (110 English HEIs, 14 museums and galleries and Kew Gardens).

10.5 The role of principal regulators is to promote compliance with charity law obligations. How a principal regulator fulfils its duty will vary from one principal regulator to another. But the role can be considered to have two aspects. First, a principal regulator can work with the relevant exempt charities and the Commission to identify particular issues on which tailored charity law guidance is required and disseminate such guidance. Second, where there is a breach of charity law by an exempt charity, the principal regulator will, if considered appropriate, be able to invite the Charity Commission to investigate, and if necessary and appropriate, the Commission could use its regulatory enforcement powers (although not without consulting the principal regulator first).

10.6 The Regulatory Impact Assessment (RIA) estimated that the continuing annual costs to all principal regulators in all tranches could be between £19,820 and £68,360. Since the passing of the 2006 Act, discussions with the proposed principal regulators has indicated that there is likely to be a more significant overlap between the requirements of their existing regulatory regimes and those of charity law, and that the actual costs to principal regulators may therefore be less than originally estimated. The principal regulators proposed in this Instrument anticipate incorporating the duties of principal regulator into their existing work without any significant impact on resources.

**11. Regulating small business**

11.1 The Regulations does not apply to small business.

**12. Monitoring & review**

12.1 Section 73 of the Charities Act 2006 requires the Minister to appoint a person to review the operation of the Act within five years of enactment, and for the report of the review to be laid before Parliament. The review will include evaluating the impact of changes made to exempt charities and the effectiveness of principal regulators in promoting compliance with charity law.

**13. Contact**

Khaled Moyeed at the Office of the Third Sector, Cabinet Office, Tel: 020 7276 6028 or email: [khaled.moyeed@cabinet-office.x.gsi.gov.uk](mailto:khaled.moyeed@cabinet-office.x.gsi.gov.uk) can answer any queries regarding these instruments.

**Charities in respect of which principal regulators are prescribed by the Charities Act 2006 (Principal Regulators of Exempt Charities)**  
**Annex A**  
**Regulations 2009**

<b>Paragraph of Schedule 2 to the Charities Act 1993</b>	<b>Description of institution(s), which in so far as they are charities, are exempt charities</b>	<b>Proposed principal regulator</b>	<b>Provision in Principal Regulator Regulations</b>
(a)	Several universities in England	Higher Education Funding Council for England (HEFCE)	Regulation 2(1)(a)
(b)	Universities of Oxford, Cambridge, London, Durham and Newcastle <sup>i</sup>	HEFCE	Regulation 2(1)(a)
	Queen Mary and Westfield College in the University of London	HEFCE	Regulation 2(1)(a)
	Universities of Manchester and King's College London <sup>ii</sup>	HEFCE	Regulation 2(1)(a)
(c)	Any university in England, university college in England or institution connected with a university or university college in England which Her Majesty declares by Order in Council to be an exempt charity for the purposes of the Charities Act 1993 <sup>iii</sup>	HEFCE	Regulation 2(1)(a)
(h)	An English Higher Education Corporation	HEFCE	Regulation 2(1)(a)

<b>Paragraph of Schedule 2 to the Charities Act 1993</b>	<b>Description of institution(s), which in so far as they are charities, are exempt charities</b>	<b>Proposed principal regulator</b>	<b>Provision in Principal Regulator Regulations</b>
(i)	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 the institution conducted by the company is eligible, by virtue of an order made under that section, to receive support from funds administered by the HEFCE	HEFCE	Regulation 2(1)(a)
(k)	Board of Trustees of the Victoria and Albert Museum	Secretary of State for Culture, Media and Sport (SoSCMS)	Regulation 2(3)(a)
(l)	Board of Trustees of the Science Museum	SoSCMS	Regulation 2(3)(a)
(m)	Board of Trustees of the Armouries	SoSCMS	Regulation 2(3)(a)
(n)	Board of Trustees of the Royal Botanic Gardens, Kew	Secretary of State for Environment, Food and Rural Affairs	Regulation 2(2)(a)
(o)	Board of Trustees of the National Museums and Galleries on Merseyside	SoSCMS	Regulation 2(3)(a)
(p)	Trustees of the British Museum	SoSCMS	Regulation 2(3)(a)

<b>Paragraph of Schedule 2 to the Charities Act 1993</b>	<b>Description of institution(s), which in so far as they are charities, are exempt charities</b>	<b>Proposed principal regulator</b>	<b>Provision in Principal Regulator Regulations</b>
	Trustees of the Natural History Museum	SoSCMS	Regulation 2(3)(a)
(q)	Board of Trustees of the National Gallery	SoSCMS	Regulation 2(3)(a)
(r)	Board of Trustees of the Tate Gallery	SoSCMS	Regulation 2(3)(a)
(s)	Board of Trustees of the National Portrait Gallery	SoSCMS	Regulation 2(3)(a)
(t)	Board of Trustees of the Wallace Collection	SoSCMS	Regulation 2(3)(a)
(u)	Trustees of the Imperial War Museum	SoSCMS	Regulation 2(3)(a)
(v)	Trustees of the National Maritime Museum	SoSCMS	Regulation 2(3)(a)
(w)	Any institution which is a charity and administered by or on behalf of an institution included above and is established for the general purposes of, or for any special purpose of or in connection with, the last named institutions <sup>iv</sup>	As for the parent institution	Regulations 2(1)(b), 2(2)(b) and 2(3)(b)

Paragraph of Schedule 2 to the Charities Act 1993	Description of institution(s), which in so far as they are charities, are exempt charities	Proposed principal regulator	Provision in Principal Regulator Regulations
(za)	British Library Board <b>and</b> institutions which are charities and administered by or on behalf of the Board and established for the general purposes of, or for any special purpose of or in connection with, the Board <sup>v</sup> .	SoSCMS	Regulation 2(3)(a) and (c)

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<sup>i</sup> The references to the colleges and halls in these universities were omitted from paragraph (b) of Schedule 2 to the 1993 Act by the Charities Act 2006 (Changes in Exempt Charities) Order 2009 (S.I. 2009/XXXX) ("Exempt Charities Order").

<sup>ii</sup> These institutions were included in paragraph (b) of Schedule 2 to the 1993 Act by Exempt Charities Order.

<sup>iii</sup> The Exempt Charities Order removed exempt charity status from all Welsh Higher Education Institutions. These include, for example, Welsh Higher Education Corporations and Universities in Wales which were designated as exempt by an Order in Council made by Her Majesty under paragraph (c) of Schedule 2 to the 1993 Act.

<sup>iv</sup> This does not include students' unions which lose their exempt status by virtue of provision made in the Charities Act 2006 (section 11(2) and (9)).

<sup>v</sup> The Exempt Charities Order added certain institutions connected with the British Library Board to Schedule 2 to the Charities Act 1993. These institutions are, in so far as they are charities, also exempt charities.