

**EXPLANATORY MEMORANDUM TO**  
**THE CHARITIES ACT 2006 (PRINCIPAL REGULATORS OF EXEMPT**  
**CHARITIES) (AMENDMENT) REGULATIONS 2022**

**2022 No. 1290**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of His Majesty.

**2. Purpose of the instrument**

- 2.1 The purpose of this instrument is to amend the Charities Act 2006 (Principal Regulators of Exempt Charities) Regulations 2011 to make the Secretary of State for Justice the principal regulator of secure 16 to 19 Academies, a new type of custodial provision for children and young people. “Secure 16 to 19 Academy” is the legal designation, but these establishments will primarily be referred to as “secure schools”.
- 2.2 As is the case for mainstream academy trusts, Secure Academy Trusts which provide secure schools will be charities by virtue of s12(1) Academies Act 2010 if they meet the criteria to be qualifying academy proprietors, and will be exempt charities under Schedule 3 to the Charities Act 2011 (“the 2011 Act”). Exempt charities are neither registered nor principally regulated for the purposes of charity law by the Charity Commission (“the Commission”), and are instead overseen by an alternative principal regulator.
- 2.3 The Secretary of State for Education is the principal regulator of all other academy trusts, but to ensure clear lines of accountability to the Ministry of Justice, the Secretary of State for Justice will undertake this role for secure schools.

**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 is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure, no statement is required.

**6. Legislative Context**

- 6.1 Schedule 3 to the 2011 Act sets out the institutions which, so far as they are charities, are “exempt charities”. Exempt charities are not subject to requirements to register with the Charity Commission for England and Wales.

- 6.2 Rather, section 25 of the 2011 Act gives powers in relation to the appointment of a body or Minister of the Crown as principal regulator for an exempt charity to the Secretary of State.
- 6.3 The duty of the principal regulator, as set out in section 26(2) of the 2011 Act, is to do all that it reasonably can to promote compliance by the charity trustees of the exempt charities in respect of which it or he is appointed with their legal obligations in exercising control and management of the administration of the relevant charities.
- 6.4 Under paragraph 8 of Schedule 3 to the Charities Act 2011, a qualifying academy proprietor (as defined in section 12(2) of the Academies Act 2010) is an exempt charity. Under the Charities Act 2006 (Principal Regulators of Exempt Charities) Regulations 2011 (“the 2011 Regulations”), the Secretary of State for Education is the principal regulator for qualifying academy proprietors. These Regulations amend the 2011 Regulations so that the Secretary of State for Education remains the principal regulator for all qualifying academy proprietors of academies except for those which run secure schools (as secure 16 to 19 academies). These Regulations then appoint the Secretary of State for Justice as the principal regulator for qualifying academy proprietors who are setting up, establishing and maintaining a secure school.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Secure schools are a new type of custodial provision for children and young people remanded or sentenced to detention in relation to a criminal offence. The Police, Crime, Sentencing and Courts (PCSC) Act 2022 dual-established secure schools as secure 16 to 19 academies under the Academies Act 2010, and secure children’s homes under the Children’s Homes (England) Regulations 2015.
- 7.2 Secure schools will be run by child-focused providers and create a therapeutic environment within a secure setting, in line with international evidence that this is the most successful approach in reducing reoffending. Charities form a key part of the market for secure school providers. To give confidence to these providers regarding their ability to operate secure schools within their charitable objects, the PCSC Act also allowed for the setting up, establishment and running of secure schools to be treated as a charitable purpose that falls within the meaning of charitable purpose in section 2 of the 2011 Act.
- 7.3 As explained at points 2.2 – 2.3, Secure Academy Trusts will be exempt charities, overseen by a principal regulator. The duty of the principal regulator is to promote charity trustees’ compliance with charity law. If principal regulators identify a concern about a charity – on issues such as governance or financial management – they may choose to consult with the Commission and invite it to use its powers of investigation and intervention where appropriate.
- 7.4 In the absence of this instrument, the Secretary of State for Education would be the principal regulator of secure schools by default. The secure schools programme is overseen by the Ministry of Justice and the Youth Custody Service (within His Majesty's Prison and Probation Service), meaning that in order to ensure clear lines of accountability and timely action on any operational issues, the Secretary of State for Justice is best placed undertake this role.

## **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 of the relevant legislation is planned.

## **10. Consultation outcome**

10.1 No consultation has taken place on this instrument, as this is a technical change only.

## **11. Guidance**

11.1 No guidance will be issued specific to this instrument. The Ministry of Justice and the Charity Commission have entered into a Memorandum of Understanding, detailing the responsibilities of the Secretary of State for Justice as Principal Regulator and how the bodies will work together.

## **12. Impact**

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

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 it does not give rise to a significant financial impact. A full Impact Assessment was also produced for the Police, Crime, Sentencing and Courts Act 2022 as a whole, which introduced secure schools in legislation.

## **13. Regulating small business**

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

## **14. Monitoring & review**

14.1 This legislation will not require active monitoring. In practice, the activities of the principal regulator will fall within the remit of the Youth Custody Service.

## **15. Contact**

15.1 Alex Hewitt at the Ministry of Justice. Telephone: 07976 397394 or email: [alex.hewitt@justice.gov.uk](mailto:alex.hewitt@justice.gov.uk) can be contacted with any queries regarding the instrument.

15.2 Alan Webster, Deputy Director for Youth Justice Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.

15.3 Damian Hinds, Minister of State at the Ministry of Justice, can confirm that this Explanatory Memorandum meets the required standard.