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|---|---|
| Title: Exempt Charities - Academies Lead department or agency: Office for Civil Society, Cabinet Office Other departments or agencies: Department for Education Young People's Learning Agency (YPLA) Charity Commission for England and Wales | Impact Assessment (IA) |
| | IA No: CO 1007 |
| | Date: 24/02/11 |
| | Stage: Final |
| | Source of intervention: Domestic |
| | Type of measure: Secondary legislation |
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Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

Under the Academies Act 2010 qualifying Academy proprietors (referred to here as Academies) are charities. The Act also provides for them to be classed as "exempt" from having to register with or be regulated by the Charity Commission (although this is not yet in force). Exempt charities have to comply with charity law and it is important to ensure that there is oversight of these charities. The Charities Act 2006 makes provision for the appointment of a "principal regulator", working with the Charity Commission, to take on the role of promoting charity law compliance for a group of exempt charities where there is a suitable body with existing regulatory oversight. This approach is preferable either to having charities regulated in a way that duplicates regulatory requirements or having no regulatory oversight.

What are the policy objectives and the intended effects?

The policy objective is to ensure that there is effective promotion of charity law compliance by Academies whilst avoiding regulatory duplication. In order to avoid Academies being unregulated as charities it will be necessary to appoint a principal regulator with the duty of promoting charity law compliance. Currently Academies are regulated through their funding agreements with the Secretary of State for Education, although day-to-day oversight is undertaken by the Young People's Learning Agency (YPLA) acting on behalf of the Secretary of State. Having a principal regulator in place will enable existing regulatory oversight mechanisms to be used to help Academies meet their legal obligations as charities.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

Option 1: appoint the Secretary of State for Education as principal regulator. This is the preferred option. Academies would become exempt charities as provided for in the Academies Act 2010. They would cease to 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 after consultation with the principal regulator and would continue to fulfil its existing role with Academies, providing advice and authorisations under charity law when required. The principal regulator role dovetails with the Secretary of State's existing oversight/regulatory responsibilities for Academies.

Option 2: Appoint YPLA as principal regulator. Following the Public Bodies Review 2010, it has been decided that the YPLA will be abolished and it will be replaced by an executive agency of DfE.

Option 3: Implement exempt status without appointing a principal regulator

Option 4 Do nothing (leave regulation and registration with the Charity Commission)

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 additionally three years after commencement.

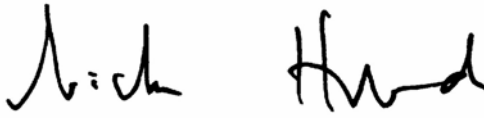
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?

Yes

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 Minister:

Handwritten signature of Nick Hurd in black ink.

Date: 14 July 2011

Summary: Analysis and Evidence

Policy Option 1

Description:

Option 1 - Appoint a principal regulator for Academies

| Price Base Year | PV Base Year | Time Period Years | Net Benefit (Present Value (PV)) (£m) | | |
|-----------------|--------------|-------------------|---------------------------------------|----------------|----------------|
| | | | Low: Optional | High: Optional | Best Estimate: |

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|---|--|----------------------------|
| Low | 0 | 0 | 0 |
| High | 0 | 0 | 0 |
| Best Estimate | Negligible | Negligible | Negligible |

Description and scale of key monetised costs by 'main affected groups'

As charities, Academies are already required to comply with charity law. There are not considered to be any significant additional costs to Academies as a result of these regulations.

Other key non-monetised costs by 'main affected groups'

There will be a small administrative cost for the Charity Commission to deregister existing Academies that are currently on the register of charities, and to train DFE staff on key principles of charity law. There will be some costs to the Principal Regulator in training staff and producing reports.

| BENEFITS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Benefit (Present Value) |
|---------------|---|--|-------------------------------|
| Low | 0 | 0 | 0 |
| High | 0 | 0 | 0 |
| Best Estimate | Negligible | Negligible | Negligible |

Description and scale of key monetised benefits by 'main affected groups'

Academies would no longer have to submit annual accounts and reports to the Charity Commission but would still be required to produce accounts and reports and make them available to the Principal Regulator and the public therefore there is no significant saving in terms of administrative costs.

Other key non-monetised benefits by 'main affected groups'

Appointing a principal regulator will mean that Academies will be regulated as a whole thereby ensuring effective oversight whilst avoiding duplicating regulatory efforts.

Key assumptions/sensitivities/risks

Discount rate (%)

The regulation of Academies under charity law was debated during the Parliamentary scrutiny of the Academies Act 2010 and it was agreed that effective oversight of them as charities would be both desirable and necessary.

| | | | | |
|-----------------------------------|-------------|-------------------------------------|----------------------|----------|
| 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 | | | | |
| From what date will the policy be implemented? | 1/08/2011 | | | | |
| Which organisation(s) will enforce the policy? | DfE/ 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 NA | Medium NA | Large NA |
| Are any of these organisations exempt? | | | | | |

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 duties¹ 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 | Academies Act 2010 |
| 4 | Regulatory Impact Assessment of Academies Act 2010 |

+ 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 | 0 | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| Annual recurring cost | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total annual costs | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Transition benefits | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Annual recurring benefits | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total annual benefits | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

* For non-monetised benefits please see summary pages and main evidence base section



Microsoft Office
Excel Worksheet

Monetised costs and benefits are not considered to be material. Non-monetised benefits are considered to significantly outweigh costs.

Evidence Base (for summary sheets)

Problem under consideration

Qualifying Academy Proprietors, the bodies which run Academies (including city technology colleges and city colleges), are established as charities under section 12 of the Academies Act 2010. Section 12(4) (not yet in force) also deems them to be “exempt” from registration with and direct regulation by the Charity Commission.

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 they 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 were not being sufficiently regulated as charities. Following consultation the government accepted the SU findings. 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 to expose them to increased charity regulation:

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 of regulation 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, which will be published once agreed to outline how the Commission and the Principal; Regulator will work together.

It is important that Academies are aware of and comply with charity law. Without suitable oversight of Academies it would be difficult to promote their compliance with charity law. This could lead to instances

of non-compliance (e.g. misuse of charity assets) which might damage public trust and confidence in Academies or the wider charitable sector. As Academies are already regulated through their funding agreements with the Secretary of State, appointing him as the principal regulator means that he can regulate Academies as a whole.

There are currently approximately 200 Academies, two city technology colleges and one city college for the technology of the arts. The Government's policy is to give all schools in England the opportunity to apply to become an academy.

Rationale for intervention

- a) The Minister for the Cabinet Office has responsibility for ensuring the effective and appropriate regulation of charities (including exempt charities) in England and Wales. These measures will support this aim.
- b) The Secretary of State for Education as a principal regulator of Academies we can ensure that charity law compliance is promoted and overseen whilst avoiding unnecessary burdens associated with dual regulation.
- c) The Secretary of State for Education has confirmed that he wishes to act in the role of Principal Regulator
- d) When the Academies Act 2010 was being debated in the House of Lords several Peers were concerned that Academies should be subject to charity law oversight (official record, House of Lords, 7th July, column 319).
- e) The general policy has been to ensure that there is a principal regulator for all groups of exempt charities, this means that there is not a two tier system for charity law oversight. Also a lack of oversight could heighten the risk of breaches in charity law and reputational damage for the charities concerned and the wider charitable sector.

Policy objective

To ensure appropriate and effective oversight of Academies as charities whilst keeping the burden of regulation to the minimum necessary.

Description of options considered (including do nothing);

Option 1 – Appoint the Secretary of State for Education as Principal Regulator

This is the preferred option.

Under this option the Secretary of State for Education would be appointed as principal regulator. The Secretary of State for Education has stated that this is his preferred option for the regulation of Academies. This approach will ensure that Academies are aware of their responsibilities under charity law whilst minimising the additional regulatory burden placed upon them. The Academies Act 2010 makes provision for Academies to become exempt charities and the Secretary of State for Education has confirmed that it is his wish to commence this provision.

Academies' funding agreements are with the Secretary of State, and he has responsibility for the oversight of their compliance with those arrangements. Much of the routine oversight of Academies is currently carried out by the YPLA acting on behalf of the Secretary of State.

Costs: There are expected to be no material additional costs for Academies under this option.

DfE will have to take on additional responsibility, but the costs are not considered significant although the growing number of schools becoming academies and requiring support relating to charity law issues through the process may represent a significant call on DfE's staff time. SoS for Education would also be principal regulator for any charities administered by Academies, which would also be exempt by virtue of paragraph (w) of Schedule 2 to the Charities Act 1993, which may include endowment funds.

Benefits: ensures effective and proportionate oversight of Academies as charities whilst keeping bureaucracy to a minimum by avoiding dual regulation. The Secretary of State has the existing role of funding and regulating Academies, which dovetails with the Principal Regulator role. . This approach would also be consistent with proposed approach for Voluntary and Foundation schools and Sixth Form Colleges

Option 2 – Appoint the Young People’s Learning Agency (YPLA) as Principal Regulator

Under this option the YPLA would be appointed as principal regulator of Academies. This option was explored in detail, as it was originally the preferred option.

YPLA undertakes much of the day to day oversight of Academies, and their compliance with funding agreements. However it undertakes this work on behalf of the Secretary of State; the various powers, functions and duties relating to Academies in the Academies Act 2010 rest with the Secretary of State, not the YPLA. The Schools White Paper² published in December 2010 announced the Government’s intention that the YPLA be replaced by a new executive agency of the Department for Education, the Education Funding Agency (EFA). Subject to the will of Parliament, this change is expected to take place in 2012. It would be odd (and wasteful of resources) to appoint YPLA as principal regulator of Academies for a period of less than a year, to then be replaced with the Secretary of State as principal regulator once the EFA is established. It is considered more appropriate for the principal regulator to be the person with the responsibilities in statute for existing oversight of Academies.

Costs: As for Option 1. However there would be additional and unnecessary costs in appointing YPLA as principal regulator potentially for a period of less than a year, if it is to be replaced by the EFA.

Benefits: As for option 1 – the YPLA already carries out day-to-day oversight of academies on behalf of the Secretary of State and would be well placed to take on the principal regulator role.

Option 3 – Implement exempt status without appointing a principal regulator

The Academies Act 2010 deems academies as charities, and contains provision (not yet commenced) to make them exempt. If Academies became exempt without a Principal Regulator, they may not be aware of their responsibilities under charity law, and there would be incomplete oversight of them. This could leave Academies open to charity law non-compliance, which in turn could damage the reputation of charities concerned and the wider charity sector. Small problems could escalate into bigger problems, and without a regulator could end up being resolved through the courts – a much more costly process. During the passage of the Academies Act 2010, Ministers stated that a principal regulator would be appointed for Academies – not to do so would be to go against those Parliamentary commitments.

Costs: lack of oversight could lead to non-compliance with charity law (including misuse of charity assets) which could damage the sector’s reputation and be more costly to resolve through the courts, , contrary to statements made during Parliamentary scrutiny of the Academies Act 2010.

Benefits: none apparent

Option 4 - Do nothing (leave regulation and registration with the Charity Commission)

Not implementing exempt status for Academies would be contrary to the position set out in the Academies Act 2010 which has been agreed by Parliament. During the passage of the Academies Act 2010 through Parliament, the issue of Academies’ charitable status was debated and, in passing the Act, Parliament decided that academies should be exempt charities with a principal regulator appointed to promote their compliance with charity law. Under the Academies Act 2010 Academies are deemed to be charities and provision is made for them to become exempt.

If this option was followed, all Academies would be required to register with and be regulated by the Charity Commission. Academies are also regulated currently by YPLA, this function will later revert to the Secretary

² www.education.gov.uk/schools/teachingandlearning/schoolswhitepaper

NO SECURITY LABEL

of State for Education. Regulation by both Charity Commission and DfE would result in elements of duplication (for example, dual submission of accounts).

Costs: contradicts Primary Legislation recently approved by Parliament; some duplication of regulation
Benefits: consistent approach to usual regulatory framework for charities

Risks and assumptions

Assumed compliance

The assessment that there are no material costs for Academies is based on the assumption that Academies are currently compliant with charity law requirements. This assumption is considered reasonable as the Charity Commission reports no serious compliance concerns in relation to 200 approx. existing academies that are currently registered charities and come under its direct regulatory jurisdiction

Role as Funder and Regulator

The principal regulator role can co-exist with a funding role. There is not considered to be any inherent conflict of interest between the role of funder and that of promoting compliance with charity law. The fall-back position would be to call upon the Charity Commission for advice on how to manage any potential conflict. Identifying and managing potential conflicts of interest will be covered in the Memorandum of Understanding between the Secretary of State and the Charity Commission.

Administrative burden and policy savings calculations

There are expected to be no material additional costs or administrative burdens on Academies as a result of appointing a principal regulator. The aim is for the principal regulator role to be incorporated into existing regulatory oversight mechanisms so that on the ground there is a seamless transition for Academies.

Wider impacts

Appointing a principal regulator will ensure that there are safeguards against the misuse or mismanagement of charitable funds. Whilst there is no evidence to suggest any significant risk of this occurring in Academies, oversight is important in maintaining public trust and confidence in the charitable sector as a whole, as well as the academy sector as charities.

Summary and preferred option with description of implementation plan.

The preferred option is to appoint the Secretary of State for Education as principal regulator to promote the charity law compliance of Academies. This will ensure that there is charity law oversight of Academies by an appropriate body, avoiding duplication of regulation.

The implementation of these changes is being co-ordinated by a steering group comprising officials from Cabinet Office, Charity Commission, Department for Education, and YPLA which meets at least every two months to lead the project.

DfE and Charity Commission will agree and will publish a Memorandum of Understanding (MoU) which sets out how they would work together to promote Academies charity law compliance and address any serious cases of non-compliance.

The Minister for the Cabinet Office will appoint the principal regulator through his powers under the 2006 Charities Act and this will be subject to the appropriate Parliamentary scrutiny.

The aim is for the appointment of the principal regulator to take effect, subject to Parliamentary approval, from 1 August 2011.

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.

| |
|---|
| <p>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];</p> <p>There is a statutory commitment in the Charities Act 2006 to review the Act, including provisions relating to exempt charities. This review will take place in 2011. A further review of these specific changes will take place three years after commencement.</p> |
| <p>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?]</p> <p>To ensure that the approach is having the desired effect and that Academies are overseen as charities in a way that minimises bureaucracy for them.</p> |
| <p>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]</p> <p>The review will be based on evidence from DfE and the Charity Commission from monitoring data, and from the experiences of Academies themselves.</p> |
| <p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>The regulation of registered charities, and other groups of exempt charities.</p> |
| <p>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]</p> <p>Appropriate oversight of Academies as charities without additional burden. Trustees of Academies have access to guidance on their charity law responsibilities, resulting in better charity law compliance. Any cases of serious non-compliance dealt with by the principal regulator appropriately.</p> |
| <p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p> <p>Annual contact with DfE and Charity Commission. The YPLA will be collating monitoring information until they are abolished.</p> |
| <p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]</p> <p>N/A</p> |