

Title: Exempt Charities - Sixth Form Colleges Lead department or agency: Office for Civil Society, Cabinet Office Other departments or agencies: Department for Education Young Persons Learning Agency (YPLA) Charity Commission	Impact Assessment (IA)
	IA No: CO1006
	Date: 25/02/11
	Stage: Enactment
	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?

Exempt charities cannot be registered with or supervised by the Charity Commission. The policy approach that we have taken regarding exempt charities is for them either to have a 'principal regulator', meaning an existing regulator that will also promote charity law compliance, or to lose their exempt status. Sixth Form College Corporations (of which there are 94) were created by the Apprenticeships, Skills, Learning and Children (ASCL) Act 2009. The organisations that became sixth form college corporations were previously exempt charities, and it was always envisaged that exempt status would be re-conferred on them. These changes confer exempt status on Sixth Form College Corporations and appoint the Secretary of State for Education as their Principal Regulator.

What are the policy objectives and the intended effects?

The policy objective is to ensure that there is effective regulation of charities under charity law whilst avoiding duplication of regulatory requirements. Appointing a principal regulator would achieve this objective. The YPLA already regulates the funding arrangements of sixth form colleges under powers vested in it by the SoS for Education. Due to the Public Bodies Review, YPLA will be abolished and its responsibilities will revert to SoS for Education. SoS for Education has decided to set up an internal executive agency called the EFA to continue to collect data from Sixth Form Colleges that would inform the SoS for Education in his role as principal regulator. SoS for Education has confirmed that his preference is to appoint him as the principal regulator.

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

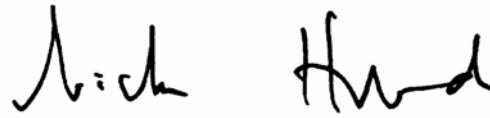
Option 1 - reconfer exempt charity status and appoint SoS for Education as a principal regulator. This would ensure that sixth form colleges can remain exempt charities and is the preferred option. Option 2 - Do nothing. This is less preferable as sixth form colleges would then have to register with the Charity Commission as well as being regulated by SoS for Education. We do not recommend this option. Option 3 - reconfer exempt status but do not appoint principal regulator. This would leave sixth form colleges without any regulation under charity law which could lead to non-compliance and would create an inconsistent approach to charity regulation. If there were instances of misuse of charitable funds by Sixth Form Colleges, this could damage public trust and confidence in the charitable sector.

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

SELECT SIGNATORY 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:

A handwritten signature in black ink, consisting of the first name 'Nick' and the last name 'Hurd' written in a cursive style.

Date: 14 July 2011

Summary: Analysis and Evidence

Policy Option 1

Description:

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0.24

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	£0	£0	£0

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

The Principal regulator would incur some costs in terms of staff time however this would be absorbed into the running costs of the organisation and so would not have any material impact.
The sixth form college charities will not incur any costs as a result of these changes.

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

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NA	NA	NA
High	NA	NA	NA
Best Estimate	0.14	0.01	0.24

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

Reconferring exempt status means the 94 sixth form colleges will save money as they won't have to register with or be directly regulated by the Charity Commission. Indirect cost of registering for the charity= £168.50. Costs to the Charity Commission of registering a charity: between £169 and £2,370 (av. £1,269.5) depending on complexity. Cost of producing annual return for charities over £1m turnover= £123.52. Transition cost: $(168.50 \times 94) + (1269.5 \times 94) = £0.13m$. Annual cost = $(123.5 \times 94) = £0.01m$

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

This will ensure regulation of sixth form colleges as charities without duplicating regulation by multiple bodies.

Key assumptions/sensitivities/risks

Sixth Form College corporations currently have an income of between £2.4m and £15.5m

Discount rate (%)

3.5

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 and Wales				
From what date will the policy be implemented?	01/08/2011				
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	Medium	Large
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

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	Apprenticeships, Skills, Children and Learning Act 2009
4	

+ 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	-	-	-	-	-	-	-	-	-	-
Annual recurring cost	-	-	-	-	-	-	-	-	-	-
Total annual costs	-	-	-	-	-	-	-	-	-	-
Transition benefits	0.14	-	-	-	-	-	-	-	-	-
Annual recurring benefits	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01
Total annual benefits	0.15	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01	0.01

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



Microsoft Office
Excel Worksheet

Evidence Base (for summary sheets)

There is discretion for departments and regulators as to how to set out the evidence base. However, it is desirable that the following points are covered:

Problem under consideration;

Sixth form college corporations were created by the Apprenticeships, Skills, Children and Learning Act 2009 (“the ASCL Act”), which amended the Further and Higher Education Act 1992. Prior to that, institutions providing sixth form education, though referred to colloquially as sixth form colleges, were not legally distinct as a category. It was always intended that sixth form college corporations would be exempt charities as this was the status of the institutions that were already providing sixth form education. It was agreed between the Cabinet Office and the Department for Education that exempt status should be conferred by the Order, rather than through the ASCL Act itself, but the making of the Order has been delayed pending a decision as to who to appoint as principal regulator (the decision had to be delayed pending the review of public bodies). The effect is that the 94 sixth form college corporations in England (there are none in Wales) are currently required to register with the Commission and meet the accounting and reporting requirements that flow from registration, although these requirements have not been enforced to date. As exempt charities still have to comply with charity law we are proposing to appoint a principal regulator that will ensure their compliance with the law.

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”). 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:

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 exempt charities whilst ensuring that they become subject to charity regulation. The Commission is already developing a Memorandum of Understanding with the Department for Education to outline how the Commission and the Principal Regulator will work together, which will be published once agreed.

It is important that sixth form colleges are aware of and comply with charity law. Without suitable oversight of sixth form colleges it would be difficult to promote their compliance with charity law. This could lead to instances of non-compliance which might damage public trust and confidence in academies or the wider charitable sector.

Rationale for intervention;

See above

Policy objective;

To ensure effective and appropriate regulation for exempt charities including sixth form college corporations. We want to achieve appropriate, effective and proportionate charity regulation and feel it is more sensible for the existing regulator to take on the role of charity regulation rather than make all sixth form colleges corporations register with the Charity Commission, thereby creating two regulators for the same organisations. The Charity Commission would retain the ability to enforce charity law compliance at the request of the principal regulator.

Description of options considered (including do nothing);

Option 1 – Re-confer Exempt Status and Appoint Principal Regulator

This would ensure that sixth form colleges remain exempt from regulation by the Charity Commission whilst ensuring that they can be effectively regulated under charity law. This avoids duplicating regulatory function. This saves money for sixth form colleges as they will not have to be regulated by two regulators. A principal regulator will promote compliance with charity law and may ask the Charity Commission to use its enforcement powers where there is suspected mismanagement. This helps ensure that public trust and confidence in charities remains high.

Option 2 – Do Nothing (register with and regulated by the Charity Commission)

Current legislation means that sixth form colleges are required to register and be regulated by the Charity Commission. In practice this has not yet been enforced. Unless we re-confer exempt status, all sixth form colleges will have to register with the Commission and comply with its reporting regime. This will put additional regulatory requirements on sixth form colleges as they already are regulated by the YPLA. We advise against this approach.

Option 3 – Re-Confer Exempt Status but do not appoint Principal Regulator

This would leave sixth form colleges without any regulation under charity law. Sixth Form colleges may be unaware of their duties under charity law. This could lead to non-compliance and damage to the reputation of the charitable sector. Charities gain significant tax advantages and it is important that these can be justified to the public. If a principal regulator is not appointed, we could be criticised for creating an uneven playing field for charities.

Costs and benefits of each option;

See above

Risks and assumptions;

See above

Administrative burden and policy savings calculations;

See above

Wider impacts;

The Minister for the Cabinet Office is responsible for ensuring effective regulation of the charitable sector. It is important that it is as easy as possible to run charities whilst safeguarding against misuse and mismanagement of charitable funds.

Summary and preferred option with description of implementation plan.

Option 1 is the preferred option. This would be implemented through secondary legislation to re-confer exempt status and then appoint a principal regulator. We expect this to take place during the current Parliament.

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 will be an overall review of the Charities Act 2006 in 2011 which will consider the steps taken to improve regulation of exempt charities. We will look at this matter again by 2014</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 effective regulation of the charitable sector whilst minimising regulatory burden.</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>We will work with the principal regulator on establishing the data available for the review.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>The baseline is registration and regulation by the Charity Commission.</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 regulation to ensure compliance whilst minimising the burden of regulation.</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p> <p>We will have annual contact with the principal regulator and the Charity Commission. YPLA will be collating monitoring information in the short term until they are abolished and their function is taken over DfE.</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>

Add annexes here.