Title: Exempt Charities - Further Education Corporations in England and Wales and Saint David's Catholic College **IA No:** CO1017 **Lead department or agency:** Office for Civil Society, Cabinet Office **Other departments or agencies:** Charity Commission for England and Wales Department for Business, Innovation and Skills Welsh Government	**Impact Assessment (IA)** **Date:** 12/08/2013 **Stage:** Enactment **Source of intervention:** Domestic **Type of measure:** Secondary legislation **Contact for enquiries:** David Hale 020 7271 6280

Summary: Intervention and Options

RPC Opinion: GREEN

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, One-Out?**	**Measure qualifies as**
£0m	£0m	£0m	Yes	Zero Net Cost

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

The Charities Act 2006 requires exempt charities to either have a 'principal regulator', (an existing regulator that will also promote charity law compliance), or lose their exempt status and register with (and therefore be regualted by) the Commission. Further education corporations (FECs) and Saint David's Catholic College (the College) are exempt charities, but currently have no regulator to oversee charity law complicance. This change appoints the Secretary of State for Business, Innovation and Skills (SoS) as principal regulator of FECs in England and the Welsh Government (WG) as principal regulator of FECs in Wales and the College.

What are the policy objectives and the intended effects?

The policy objective is to ensure that there is effective regulation of exempt charities whilst avoiding duplication of regulatory requirements. Appointing principal regulators that already have regulatory responsibility for FECs and the College (referred to together as the Colleges) and who will also monitor them for compliance with charity law and be able to invite the Commission to use its regulatory powers if a charity law concern arises, will achieve this. This will create a clear hierarchy, supported by memoranda of understanding between the respective regulators, for the regulation of the Colleges, which is favoured by the SoS, WG, the Commission and the charities themsleves.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1 (preferred) is to continue exempt charity status and appoint SoS and WG as principal regulators. This option minimises regulatory burdens on the Colleges whilst providing charity law oversight by their existing regulators. If a charity law concern arises, the principal regulator will be able to invite the Commission to use its regulatory powers. Secondary legislation is required.

Option 2 is to end exempt status and require the Colleges to register with the Commission, which also requires secondary legislation. However, under this option, the Colleges would have additional costs from registering and complying with the Commission. This option would also introduce dual-regulation by the Commission and either the SoS or the WG, which could lead to confusion in the hierarchy between the different regulators.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** No	**< 20** No	**Small** No	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	

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) that the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: .... Date: ....

Summary: Analysis & Evidence

Policy Option 1

Description: Appoint principal regulators for Further Education Colleges in England and Wales and Saint David's Catholic College, referred to as "the Colleges" throughout.

FULL ECONOMIC ASSESSMENT

Price Base Year 2013	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	**High:** Optional	**Best Estimate:** 0.002

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate	0		0	**0.002**

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

The Colleges should not notice any change in their regulation, and therefore there should be no business impact or additional costs placed on them. There will be a small impact on principal regulators' existing staff, who will, for example, have to learn to identify charity law issues. It is envisaged that existing staff will incorporate this function into their current monitoring role and that no extra staff will be needed.This amounts to an annual cost of £240 (over 10 years a NPV of £0.002m).

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

There are no identified non-monetised costs for the Colleges.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	.Optional		Optional	**Optional**
High	Optional		Optional	**Optional**
Best Estimate				

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

There are no identified monetised benefits for the Colleges.

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

Appointing a princiapl regulator will ensure compliance with the Charities Act 2006. This will also ensure a clear hierarchy for the regulation of the Colleges, with the principal regulators able to identify a charity law issue and able to invite the Commission to use its regulatory powers to address the matter.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

We have assumed the likelihood of non-compliance with charity law is low: there is no evidence to suggest that Colleges are non-compliant with charity law requirements. Since the first principal regulators were appointed in June 2010 there have been no instances of the Commission having to intervene by using its regulatory powers in the case of an exempt charity.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: N/A	**Benefits:** N/A	**Net:** N/A	Yes	Zero net cost

Evidence Base (for summary sheets)

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 Charities Act 2011 (a consolidation of existing charity legislation)
2	Regulatory Impact Assessment for the Charities Act 2006
3	Further and Higher Education Act 1992
4	Teaching and Higher Education Act 1998
5	Trusted and Independent: Giving charity back to charities The report of the statutory five year review of the Charities Act 2006

+ Add another row

Evidence Base

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	N/A	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

Note – the annual cost to Government is estimated to be £240 per year, i.e. £0m

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

Evidence Base (for summary sheets)

Background

Problem under consideration

Further education corporations (FECs) and Saint David's Catholic College (referred to together as the Colleges) are exempt charities, which means that they are not registered with the Charity Commission (the Commission) and are not subject to its regulation. The Colleges still have to comply with charity law, but because they are exempt from the Commission's regulation, there is no regulator to promote compliance and, if necessary, enforce that compliance.

It is important that the Colleges are aware of, and comply with, their responsibilities under charity law. Without suitable oversight it is difficult to promote this compliance. This could lead to instances of non-compliance which might damage public trust and confidence in the charities or the wider charitable sector.

In recognition of the concern that exempt charities may not be adequately regulated for charity law purposes, a change of approach was required, so the policy behind the Charities Act 2006 (now the Charities Act 2011 (the 2011 Act)) is that exempt charities should either have a 'principal regulator' (a regulator to monitor charity law compliance who can ask the Charity Commission to investigate possible wrongdoing), or lose their exempt status and register with and be fully regulated by the Commission. Currently the Colleges have neither and so need to either have a principal regulator appointed or lose their exempt status and register with the Commission. Both options require secondary legislation.

The Minister for the Cabinet Office has the power under section 25 of the 2011 Act to appoint a principal regulator for the different groups of, and individual, exempt charities that exist.

Rationale for intervention

Most charities in England and Wales are regulated by the Commission and over 162,000 are also registered with that department. There are three main exceptions to the full regulatory requirements:

1) Very small charities, with a gross annual income below £5,000, which are not required to register with the Commission but are otherwise subject to its regulation.
2) "Excepted charities" with a gross annual income of not more than £100,000, which, like very small charities, are not required to register with the Commission but are otherwise subject to its regulation. These are particular groups of charities including scouts and guides, armed forces service non-public funds, and certain Christian religious charities.
3) "Exempt charities", which are institutions that are not registered with the Commission and are currently not subject to its regulation, ie the Commission cannot investigate them, act to protect their property, or even require them to send in a copy of their accounts. They are exempt because, at the time the register of charities was first established under the Charities Act 1960 they were considered to be adequately supervised by another regulator. Most exempt charities are listed in Schedule 3 of the 2011 Act and include many educational charities, including most universities in England, sixth form college corporations, academies and the governing bodies of foundation and voluntary schools.

The policy behind the 2011 Act is that exempt charities should either have a 'principal regulator' (a regulator to monitor charity law compliance who can ask the Commission to investigate possible wrongdoing), or lose their exempt status and register with and be fully regulated by the Commission.

Because the Colleges are exempt charities, they cannot register with, and are not regulated by, the Commission. This means that they are not subject to many aspects of charity law, including the Commission's powers to investigate possible wrongdoing and to act to protect charity property in cases where charities may be affected by fraud or other dishonest acts.

The Colleges also do not have a principal regulator. This means that there is no regulator monitoring charity law compliance, and means that in the event of possible wrong doing no regulator has the powers to investigate and protect charity property. Currently, the Secretary of State for Business, Innovation and Skills (SoS) and the Welsh Government (WG) have oversight of the Colleges but do not have the remit to monitor charity law compliance.

The rationale for intervention is therefore to provide the Colleges with charity regulation at minimal cost.

The fact that the Commission is unable to use its regulatory powers to investigate abuses and protect the property of exempt charities means that there is a gap in charity regulation that needs to be closed.

The proposed change appoints the SoS as principal regulator of FECs in England and Welsh Ministers as principal regulators of FECs in Wales and Saint David's Catholic College. This will provide charity regulatory oversight and close the current gap in charity regulation of the Colleges.

The changes to the regulation of exempt charities are being implemented in several tranches. This is the third. The first two tranches of changes have affected higher education institutions (mostly universities), student unions, national museums and galleries, the Royal Botanic Gardens, Kew, the Church Commissioners, Eton and Winchester Colleges, foundation schools, voluntary and foundation special schools, academies and sixth form college corporations.

The appointment of principal regulators for FECs has been delayed by changes in the legislative landscape and its effect on public bodies, particularly in England, over the last few years. Consequently it is only comparatively recently that it has been possible to proceed with the appointment of the SoS as principal regulator for FECs in England.

Description of options considered (including do nothing)

Do nothing – **Continue exempt status with no appointed principal regulator.**

The policy behind the 2006 Act was that all exempt charities should be subject to charity regulation. That view was supported in the report of the Review of the 2006 Act, *Trusted and Independent: Giving charity back to charities*, published in July 2012, which stated:

> "Maintaining the principal regulator system for the current list of charities therefore seems rational.... However, there is a need to accelerate the implementation of the legislation for those exempt charities for which a decision has not yet been made either to appoint a principal regulator or to remove exempt status and so require registration with the Charity Commission".

The "do nothing" option would not bring FECs within this regulation, and deprives them of this protection, which Parliament, has decided they should benefit from.

In these circumstances, "do nothing", is contradictory to what has been set out by Parliament in the Charities Act 2006 and is therefore considered here as not a viable option.

Option 1 – **Continue exempt charity status with the SoS and Welsh Ministers appointed as principal regulators.** This ensures that the Colleges remain exempt from direct regulation by the Commission whilst ensuring that they can be effectively regulated under charity law. It provides a cohesive regulatory structure for the Colleges as they will not have to be separately regulated by two regulators. This option is strongly supported by the Colleges themselves and their representative bodies, the Association of Colleges, in England, and Colegau Cymru, in Wales, as well as by the proposed principal regulators.

Option 2 – **End exempt status and require the Colleges to register with the Commission.** This option involves the costs of each College registering, keeping its entry on the register up to date and complying with requirements to send annual reports and accounts to the Commission as well as complying with its existing regulatory requirements. The dual regulation could lead to a College having to address concerns raised with different regulators separately, instead of having a clear hierarchy for dealing with such issues.

Monetised and non-monetised costs and benefits of each option (including administrative burden)

Option 1

Costs

There are no additional costs for the Colleges under this option. The Colleges will simply continue to do what they are already doing. The appointment of a principal regulator does not require them to make any change to their behaviour.

If a College was found to be non-compliant with charity law, the Commission would be able to investigate the College and there would be associated costs to provide the necessary information. However, the likelihood of non-compliance is low: we have no evidence to suggest that the Colleges are non-compliant with charity law requirements - since the first principal regulators were appointed on 1 June 2010 there has not been any instance of the Commission having to intervene by using its regulatory powers in the case of an exempt charity.

There will be a marginal impact on the principal regulators' existing staff, who will have to learn to identify charity law issues. The Commission estimates this to be a couple of hours training for one or two staff. No extra staff will be required. The Commission will provide guidance to the principal regulators and develop and publish a memorandum of understanding (MoU) with them (as it has already done for principal regulators that have already been appointed).

Other additional activities undertaken by the principal regulators could include:

- Meeting with the Commission as required (at least once annually);
- Providing annual updates (for boards/ministers) on how the role is working in practice;
- Minor additional content (possibly a paragraph) to the principal regulator's annual report;
- Highlighting (and only if necessary, drafting) guidance on charity law issues to the Colleges as required;
- Discussing cases with the Commission as they arise (only charity law elements will be additional);
- Possible ongoing training needs.

Taking the above activities together, and applying the average civil servant salary at the relevant grade, these activities could cost the principal regulators around £240 a year.

Benefits

This option will ensure compliance with the Charities Act 2006. It will also provide a clear hierarchy for the regulation of the Colleges, with the principal regulators able to identify a charity law issue and able to invite the Commission to use its regulatory powers to address the matter.

Option 2

Costs

If Charities lose their exempt status they will be required to register with the Commission. The costs of each College registering with the Commission, keeping its entry on the register up to date and complying with requirements to send annual reports and accounts to the Commission, will therefore be incurred.

- The cost of registration for a charity includes the cost of preparing and submitting the application and other relevant documents, and is estimated by the Commission as being £169.
- The cost of producing an annual return for a charity with an income of over £1 million is estimated at £124.

Taken together, the total cost is £76,180. ie a transition cost of £43,940 (260 Colleges x £169), and an annual cost of £32,240 (260 Colleges x £124).

In addition to the cost to the Colleges, the Commission itself will incur costs from registering a charity. The Commission estimate the cost at between £169 and £2,370 (average £1,270) depending on the complexity. This amounts to a cost of £330,200 (260 Colleges x £1,270).

Currently, the SoS and the WG have oversight of the Colleges. Under option 2, this function will continue alongside regulation by the Commission. This could potentially lead to confusion in the hierarchy between the different regulators for addressing concerns arising out of charity law.

Benefits

This option will ensure compliance with the Charities Act 2006. Additionally, this option does have the benefit of bringing the Colleges within the full scope of charity regulation. This will ensure effective monitoring of the Colleges' activities, in terms of charity law, and consequently help to ensure public confidence in charities as a whole.

It will also provide them with a charity registration number, which can be helpful when fundraising, as some funders do discriminate against unregistered charities.

Rationale and evidence that justify the level of analysis used in the IA and risks and assumptions.

Where possible we have identified and monetised the costs and benefits under the two options. Both options considered in this impact assessment involve a relatively small number of charities (around 260) with incomes ranging from £5m to £80m.

We have assumed that the risk of a significant charity law concern arising in one of the Colleges is minimal:

- The Colleges have a very close relationship with their funders, the Skills Funding Agency (SFA), an executive agency of the Department for Business, Innovation and Skills in England that has a close working relationship with it, and the Welsh Government in Wales, who scrutinise the Colleges'activities and finances very closely.
- Since the first principal regulators were appointed on 1 June 2010 there have not been any instances of the Commission having to intervene by using its regulatory powers in the case of an exempt charity.

Direct costs and benefits to business calculations (following OITO methodology).

This measure is within the scope of OITO, but the preferred option has an Estimated Annual Net Cost to business of zero.

Implementation and post implementation review.

It is planned that the change will take effect from 1 September 2013, the start of the Colleges' academic year. This again is the preference of the Colleges and the principal regulators. No changes to their accounting and reporting practices will be needed. The Commission will work with the principal regulators to identify and implement staff training needs.

The principal regulator arrangements that are already in place were reviewed as part of the Statutory Review of the 2006 Act, which reported in July 2012. The report concluded that maintaining the principal regulator system seems rational and that an acceleration of implementation was needed.

A commitment to a regular review of how the respective relationships between the Commission and the Department for Business, Innovation and Skills and the Welsh Government are working will be included in the memoranda of understanding between those organisations. Those memoranda will be published on the Commission's website.