

*Draft Order laid before Parliament under section 74(5) of the Charities Act 2006, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2011 No.**

**CHARITIES, ENGLAND AND WALES**

**The Charities Act 2006 (Changes in Exempt Charities) Order  
2011**

*Made* - - - -

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*Coming into force in accordance with article 1*

This Order is made in exercise of the powers conferred by sections 11(11) and (13) and 74(2) of the Charities Act 2006(a).

In so far as this Order makes provision to secure that, in so far as they are charities, institutions of a particular description become exempt charities, the Minister for the Cabinet Office is satisfied, in accordance with section 11(12) of that Act, that this Order is desirable in the interests of ensuring appropriate or effective regulation of those charities in connection with compliance by their charity trustees with their legal obligations in exercising control and management of the administration of those institutions.

A draft of this Order has been laid before Parliament in accordance with section 74(5) of that Act and approved by a resolution of each House of Parliament.

Accordingly, the Minister for the Cabinet Office makes the following Order.

**Citation and commencement**

**1.**—(1) This Order may be cited as the Charities Act 2006 (Changes in Exempt Charities) Order 2011.

(2) This Order comes into force on 1st August 2011.

**Changes in exempt charities**

**2.**—(1) Schedule 2 to the Charities Act 1993(b) (exempt charities) is amended as follows.

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- (a) 2006 c.50. For the definition of “relevant Minister” see section 74(7) and for “the Minister” see section 78(6).  
(b) 1993 c.10. Schedule 2 was amended by the National Lottery Act 1993 (c.39), Schedule 5, paragraph 12; by the Education Act 1996 (c.56), Schedule 38, Part 1; by the Education Act 1997 (c.44), Schedule 7, paragraph 7; by the Teaching and Higher Education Act 1998 (c.30), Schedule 4; by the School Standards and Framework Act 1998 (c.31), Schedule 31; by the National Lottery Act 2006 (c.23), Schedule 3; by the Charities Act 2006, section 11 and Schedule 8, paragraph 177 (the amendments made by section 11(8) and (10) of that Act are not in force; the amendments made by section 11(9) are in force so far as relating to Schedule 2, Note 1, paragraph (c)); by the Apprenticeships, Skills, Children and Learning Act 2009 (c.22), Schedule 12, paragraph 8 and Schedule 16, Part 4; by the Academies Act 2010 (c.32), section 12(4); by S.I. 2005/3239, Schedule 1, paragraph 4; by S.I. 2010/ 500, article 2 and by S.I. 2010/866, Schedule 2, paragraph 78. The

- (2) After paragraph (ca) insert—
- “(cb) the governing body of any foundation, voluntary or foundation special school;
  - (cc) any foundation body established under section 21 of the School Standards and Framework Act 1998(a);
  - (cd) a sixth form college corporation (within the meaning of the Further and Higher Education Act 1992(b));”.
- (3) In paragraph (w) for “above” substitute “in any of paragraphs (a) to (ca), (cd) or (h) to (v) above”.
- (4) After paragraph (w) insert—
- “(wa) any institution which—
  - (i) is administered by or on behalf of a body included in paragraph (cb) or (cc) above, and
  - (ii) is established for the general purposes of, or for any special purpose of or in connection with, that body or any foundation, voluntary or foundation special school or schools.”.

### Consequential amendments

3. The Schedule (which contains consequential amendments) has effect.

|      |  |
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| Date | <i>Name</i><br>Parliamentary Secretary<br>Cabinet Office |
|------|--|

## SCHEDULE Article 3

### CONSEQUENTIAL AMENDMENTS

#### PART 1

#### PRIMARY LEGISLATION

#### Further and Higher Education Act 1992

1. In section 33M of the Further and Higher Education Act 1992(c), at the end insert “(and, as a result of its inclusion in Schedule 2 to the Charities Act 1993, is an exempt charity for the purposes of that Act)”.

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Industrial and Provident Societies Act 1965 (c.12), referred to in Schedule 2, is prospectively re-named by the Co-operative and Community Benefit Societies and Credit Unions Act 2010 (c.7), section 2.

(a) 1998 c.31. Section 21 was amended by the Education and Inspections Act 2006 (c.40), Schedule 3, paragraph 14 and Schedule 18, Part 3.

(b) 1992 c.13. For the definition of “sixth form college corporation” see section 90(1). The definition was inserted by the Apprenticeships, Skills, Children and Learning Act 2009, Schedule 8, paragraphs 1 and 12.

(c) Section 33M was inserted by the Apprenticeships, Skills, Children and Learning Act 2009, Schedule 8, paragraphs 1 and 3.

### **Charities Act 1993**

2. In section 3A(5)(a) of the Charities Act 1993(a), after “3(5B)(a)” insert “(ii)”.

### **School Standards and Framework Act 1998**

3. In section 23 of the School Standards and Framework Act 1998(b)—
  - (a) in subsection (1A) for the words from “is an institution” to the end substitute “is, as a result of its inclusion in Schedule 2 to the Charities Act 1993, an exempt charity for the purposes of that Act.”; and
  - (b) omit subsection (2).

### **Charities Act 2006**

4. In paragraph 194 of Schedule 8 to the Charities Act 2006(c), omit sub-paragraph (4).

## **PART 2**

### **SECONDARY LEGISLATION**

### **School Governance (Federations) (England) Regulations 2007**

5. In regulation 33 of the School Governance (Federations) (England) Regulations 2007(d)—
  - (a) in paragraph (1) omit the words “which is an exempt charity for the purposes of the Charities Act 1993”; and
  - (b) omit paragraphs (2) and (3).

### **The Charities Act 2006 (Commencement No. 5, Transitional and Transitory Provisions and Savings) Order 2008**

6.—(1) The Charities Act 2006 (Commencement No. 5, Transitional and Transitory Provisions and Savings) Order 2008(e) is amended as follows.

(2) In article 1(2) for paragraph (b) of the definition of “formerly specified educational institution” substitute—

“(b) an institution to which subsection (2) of that section of that Act would have applied had it not been repealed by the Charities Act 2006 (Changes in Exempt Charities) Order 2011;”.

- (3) In the following provisions, for “1st September 2011” substitute “1st August 2011”—
  - (a) article 1 in both places it appears,
  - (b) article 11 in both places it appears, and
  - (c) article 19(1).
- (4) In article 6 omit paragraph (2).
- (5) In article 13 for paragraph (3) substitute—

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(a) Sections 3 and 3A were substituted for section 3 as originally enacted by the Charities Act 2006, section 9. The reference in section 3A(5)(a) to section 3(5B) is to that section as in force immediately before the day on which section 3(1) to (5) (as substituted) comes into force. Section 3(5B), which was inserted by the School Standards and Framework Act 1998, Schedule 30, paragraph 48, was repealed by the substitution. There are amendments of section 3A not relevant to this Order.

(b) Section 23 was amended by the Charities Act 2006, Schedule 8, paragraphs 193 and 194.

(c) There are amendments of Schedule 8 not relevant to this Order.

(d) S.I. 2007/960.

(e) S.I. 2008/3267, amended by S.I. 2009/2648 and 2010/1942.

- “(3) Nothing in sections 43, 44 and 44A of the 1993 Act(a) applies to—
- (a) a formerly specified educational institution; or
  - (b) an Education Action Forum which does not fall within section 3A(2)(d) of the 1993 Act(b),
- in respect of any financial year of the charity which is a transitory financial year.”.
- (6) For article 16(3) substitute—
- “(3) In this article “qualifying request” means a request made under section 47(2) of the 1993 Act(c) for the most recent accounts of a relevant educational charity at any time before—
- (a) in the case of an Education Action Forum, the charity trustees of that charity have prepared—
    - (i) a statement of accounts under section 42(1) of that Act(d); or
    - (ii) an account and statement under section 42(3) of that Act(e),
 in respect of the standard financial year;
  - (b) in the case of a formerly specified educational institution, the charity trustees of that charity have prepared a statement of account in respect of the standard financial year (whether under section 46 of that Act or otherwise).”.
- (7) In article 19 omit paragraphs (2) and (3).
- (8) In article 21(2), for “the transitional period end date a relevant educational charity” substitute “the exempt charity appointed day an Education Action Forum”.
- (9) For article 22(1) substitute—
- “(1) For the purposes of section 24 of the 1993 Act(f) (including the purposes of that section as applied by section 25 of that Act(g)), a relevant educational charity is to be treated—
- (a) in the case of a formerly specified institution, as having been an exempt charity during the period starting on 31st January 2009 and ending immediately before the tranche 2 exempt status day;
  - (b) in the case of an Education Action Forum, before the appointed day, as if it were an exempt charity.”.
- (10) In article 23 for “relevant educational charity” substitute “Education Action Forum”.
- (11) In article 24—
- (a) in paragraph (1)(b) omit “or (3)”; and
  - (b) omit paragraph (3).
- (12) For article 25 substitute—
- “25. For the purposes of section 37(10) of the 1993 Act—
- (a) an Education Action Forum is to be treated as ceasing to be an exempt charity on the exempt charity appointed day;

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(a) Section 43 was amended by the Charities Act 2006, section 28 and Schedule 8, paragraphs 96 and 134; by S.I. 2005/1074, article 3; by S.I. 2008/527, article 2; by S.I. 2008/948, article 6 and Schedule 1, paragraphs 17 and 192 and by S.I. 2009/508, articles 7 and 10. Section 44 was amended by the Charities Act 2006, Schedule 8, paragraphs 96 and 137 and Schedule 9; by S.I. 2006/2951, paragraph 4 of Schedule; by S.I. 2008/527, article 3 and by S.I. 2008/948, article 6 and Schedule 1, paragraph 192. Section 44A was inserted by the Charities Act 2006, section 29.

(b) Section 3A(2) was inserted by the Charities Act 2006, section 9, and was amended by S.I. 2006/2951, paragraph 4 of Schedule.

(c) Section 47(2) was amended by the Charities Act 2006, Schedule 8, paragraphs 96 and 140(1) and (3).

(d) Section 42(1) was amended by S.I. 2006/2951, paragraph 4(q) of Schedule.

(e) Section 42(3) was amended by S.I. 2009/508, articles 7 and 9.

(f) Section 24 was amended by the Charities Act 2006, section 23(1) and Schedule 8, paragraphs 96 and 116. It is prospectively amended by section 11(10).

(g) Section 25 was amended by the Charities Act 2006, section 23(2) and (3) and Schedule 8, paragraphs 96 and 117.

- (b) a formerly specified educational institution is to be treated—
  - (i) until the tranche 2 exempt status day as if it were an exempt charity; and
  - (ii) on or after that day as if it had never ceased to be such a charity.”.
- (13) In article 26—
  - (a) in paragraph (1)(b) omit “or (3)”; and
  - (b) omit paragraph (3).
- (14) In article 27(2)(a) for “relevant educational charity” substitute “Education Action Forum”.

#### **The Charities Act 1993 (Exception from Registration) Regulations 2008**

7. In regulation 2(2) of the Charities (Exception from Registration) Regulations 2008(a) omit sub-paragraphs (a) and (c).

#### **The Federation of Maintained Schools and Miscellaneous Amendments (Wales) Regulations 2010**

8. In regulation 46 of the Federation of Maintained Schools and Miscellaneous Amendments (Wales) Regulations 2010(b)—

- (a) in paragraph (1) omit the words “which is an exempt charity for the purposes of the Charities Act 1993”; and
- (b) omit paragraphs (2) and (3).

#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

The Minister for the Cabinet Office has the power, under section 11 of the Charities Act 2006, to amend Schedule 2 to the Charities Act 1993 to confer exempt charity status on a particular charity or class of charities. This Order confers exempt charity status on the governing bodies of foundation, voluntary and foundation special schools, on foundation bodies and on other bodies connected with such schools, and on sixth form college corporations. It makes related consequential amendments to primary and secondary legislation.

A full impact assessment of the effect that this Order will have on each group of exempt charities that is affected is available at [xxxxxx] and is published with the Explanatory Memorandum alongside this Order on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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(a) S.I. 2008/3268.  
(b) S.I. 2010/638.

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