



Department for Business Innovation & Skills

REGULATION OF FURTHER EDUCATION COLLEGE CORPORATIONS IN ENGLAND

Information note to FE colleges -
appointment of the Secretary of
State as Principal Regulator of
FE colleges as exempt charities

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Introduction

1. This information note covers:
 - the background to the appointment of the Principal Regulator for FE College Corporations in England;
 - the duties of the Regulator and of FE corporations as exempt charities;
 - the arrangements through which the Principal Regulator's role will be discharged and the implications for FE corporations;
2. As exempt charities, FE corporations should ensure that they are fully cognisant of their statutory obligations as a charity, including understanding what actions, or inaction, would call into question whether the corporation is complying with charity law.
3. Corporations are expected to secure appropriate information and advice on these matters. This note is not intended to act as a comprehensive guide, but provides an overview and identifies relevant sources of information.

FE Corporations as exempt charities

4. FE corporations are charities and the governors of FE corporations are the charity trustees, responsible for the control and management of the administration of their charity.
5. Exempt charities are institutions that are established as charities but which are exempt from registration with, and oversight by, the Charity Commission. The trustees of an exempt charity have the same general duties and responsibilities as trustees of other charities and, as such, are expected to comply with charity law. Most types of exempt charity (including FE corporations) are listed in Schedule 3 to the Charities Act 2011 (which replaced Schedule 2 to the Charities Act 2006). Other designated FE providers and colleges can be charities but must register with the Charity Commission.
6. Amendments to The Charities Act 2006 Schedule 2 removed the exempt status of certain charities or classes of charity. The charities which remained exempt - including FE colleges in England – were required to have a Principal Regulator or lose their exempt status and register with the Charity Commission

7. Since then, the Cabinet Office has been working through an extensive programme to ensure that all exempt charities have a Principal Regulator; FE colleges were in the third tranche of this work.

8. The Secretary of State for Business, Innovation and Skills has been appointed as the Principal Regulator for all FE Corporations in England and charitable companies wholly owned by FE Corporations. This appointment came into force on 1 September 2013. The Principal Regulator for Sixth Form College Corporations is the Secretary of State for Education.

The overall approach to the role of the Principal Regulator

9. As the Principal Regulator, the Secretary of State has a duty to do all he/she reasonably can to promote compliance by the charity trustees with their legal obligations in exercising control and management of the administration of the charity. In doing this the Principal Regulator will aim to increase public trust and confidence in those charities, promote awareness and understanding of the “public benefit” requirements of those charities, promote effective use of the charities resources and enhance the accountability of those charities to donors, beneficiaries and the general public.

10. In fulfilling his/her role as Principal Regulator, the Secretary of State will follow the five principles of good regulation¹: proportionality, accountability, consistency, transparency and targeting. Wherever possible, established regulatory/monitoring systems will be employed and additional requirements will only be introduced where considered essential.

11. It is anticipated that, on a day to day basis, corporations will not notice any difference in the way they are regulated

The general duties and responsibilities of FE corporations, as charity trustees

12. Charity Commission guidance states that trustees of an exempt charity:
 - must act reasonably and responsibly in all matters relating to the charity;
 - must always act in the best interests of the charity and manage any conflicts of interest;

¹ [Legislation and Regulatory Reform Act 2006](#)

- must apply the income and property of the charity only for the purposes set out in the governing document;
- must protect all the property of the charity;
- must invest the funds of the charity only in accordance with their powers of investment;
- should regularly review the effectiveness of the charity.

13. The Charity Commission guidance [The Essential Trustee: What you need to know \(CC3\)](#) provides more information on this subject

What does this mean for FE college corporations?

14. In accordance with existing legislation, and in line with many of the duties that already exist for FE corporations, corporations will be expected to :

- Adhere to their Instrument and Articles of Government, which must comply with the requirements of Part 2 of Schedule 4, as set out in the Education Act 2011 – see [Education Act 2011](#)
- Have regard to the Charity Commission's guidance on public benefit² and ensure that the corporation is only involved in activities that will further its charitable objects and do not put their charitable status at risk. A statement to this effect should be included in the corporate governance section of the Corporation's Annual Report. The Annual Report should also set out how the Corporation's activities during the year have delivered public benefit.
- Ensure funds and assets of the corporation are only used for the purposes set out in FHEA 1992 and the governing documents of the college.
- Be well informed of the overall condition of the charity's estate, ensuring that it is being properly used and adequately insured.
- Prepare timely accounts and annual reports and make them available to the public. The accounting requirements are as specified by the Skills Funding Agency (see

² <http://www.charitycommission.gov.uk/detailed-guidance/charitable-purposes-and-public-benefit/charities-and-public-benefit/#g>

para 23). In accordance with Charity Commission guidance, colleges are expected to make their Annual Reports and Accounts promptly available on their websites

- Not gain direct or indirect financial benefit from their role - except as permitted by charity law or their governing document. Corporations must adhere to Charity Commission guidance on remuneration for governors, which states that colleges who wish to pay governors will need to apply to the Charity Commission for express permission³. Further guidance on remuneration can also be found in Annex B of the Review of Further Education and Sixth Form College Governance⁴
- Actively prevent the misuse of the governor's position and college funds or assets, making sure they do not allow any personal views or prejudices to affect their conduct as trustees.

15. Corporations are further required to notify the Principal Regulator immediately if any serious breach of charity law is identified – see further details in paragraphs 17 - 19.

Promoting Compliance

16. To raise awareness of his/her role, and help promote compliance with charity law, the Principal Regulator, through the Department of Business and Innovation, is taking the following actions:

- Issuing this guidance note to chairs and clerks of all colleges and including it in the AoC Governance Library
- Setting up a web page on the BIS website which sets out the duties of the Secretary of State as Principal Regulator, explains who is being regulated, outlines the requirements of trustees, and explains the process for raising concerns or complaints about non-compliance ie. whom to contact and what will happen next.
- Including a cross-reference to this note, and to Charity Commission guidance, in the next iteration of the AoC Foundation Code for Governance
- Hosting a workshop for clerks in late 2013 to explain the Principal Regulator / trustee roles and responsibilities
- Maintaining close liaison with the Charity Commission to ensure that colleges are alerted to the Commission's updates and guidance as it is issued

³ <http://www.charitycommission.gov.uk/detailed-guidance/money-and-accounts/trustee-expenses-and-payments-cc11/>

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/211285/bis-13-970-review-of-further-education-and-sixth-form-college-governance.pdf

- Setting up a register of FE colleges, listing contact details for the Chair and Clerk using information already provided to the Skills Funding Agency.

Reporting Serious Incidents

17. Corporations must notify the Principal Regulator immediately if they identify any serious breaches of charity law. The Charity Commission's ⁵ list of serious incidents includes:

- fraud, theft or the charity losing a significant amount of money another way
- a large donation from an unknown source
- links with terrorism
- the charity having no policy to safeguard its vulnerable beneficiaries
- suspicions, allegations and incidents of abuse or mistreatment of vulnerable beneficiaries

18. If corporations are unsure whether an incident is serious or significant, we recommend that it should be reported anyway.

Concerns and complaints

19. Concerns or complaints about possible non-compliance with charity law may also be raised by a student, staff member or a member of the public. These cases should be sent by email to the Principal Regulator at fegovernance@bis.gsi.gov.uk.

20. Further information about reporting serious incidents and complaints, and how these will be investigated, can be found in the attached Annex (i).

How the Principal Regulator will monitor compliance

⁵ <http://www.charitycommission.gov.uk/running-a-charity/your-charitys-work/protecting-your-charity/reporting-serious-incidents/>

21. BIS, acting on behalf of the Principal Regulator and with the support of the Skills Funding Agency, will continue to apply its usual processes for monitoring FE corporations.
22. The Chief Executive of Skills Funding is accountable to Parliament (and subject to legislation, in future will be accountable to the Secretary of State) for the funds granted to her and must ensure that there are effective systems in place to monitor and be satisfied that those organisations the Agency funds operate in an appropriately controlled environment. In order to discharge these duties the Agency has an audit and assurance regime which for Colleges is based on the conditions of funding in the Financial Memorandum ([Parts 1](#) and [2](#)) including the requirements of the Joint Audit Code of Practice ([Part 2](#)) and the [Accounts Direction](#). These documents are regularly reviewed and will be updated as necessary
23. Where there are concerns about the arrangements a corporation has in place to manage the funding the Agency may undertake an [Accountability Review](#). These existing mechanisms for monitoring Colleges' internal controls, regularity and propriety, accounting reporting, and use of funds will be used as far as possible to support the responsibilities of the Principal Regulator.

Further Information

24. The guidance in this note will be reviewed regularly and updated as required to reflect developments in the sector. If you have any questions about the content of this paper please email the BIS Governance Team at fegovernance@bis.gsi.gov.uk
25. The Charity Commission website (www.charitycommission.gov.uk) offers a wide range of easily accessible online services, tools, information and guidance, including an online database of frequently asked questions⁶. Links to useful Charity Commission publications can be found at Annex (ii) to this paper.

⁶ <http://www.charitycommission.gov.uk/frequently-asked-questions/>

Annex (i) – Serious Incidents and Complaints

Process for Reporting Serious Incidents

1. When a corporation identifies a serious incident it should notify the Principal Regulator promptly – see contact details in paragraph 14 below. Emails should be headed up “Principal Regulator – Incident Report” and provide full details of the issue, together with any investigative action already taken by the corporation.
2. Where the incident relates to fraud over the value of £10,000, or £5,000 for 16-19 Bursary Funding, corporations must also notify the Skills Funding Agency, following the guidance in the Joint Audit Code of Practice.
3. When the Principal Regulator receives a serious incident report, his/her main interest is to understand how the corporation has managed the incident, including how it has reviewed systems and controls to minimise the risk of recurrence. In most cases, if the initial report is comprehensive, the expectation is that there will be no requirement to seek more information or take further action.
4. If further action is deemed necessary the Principal Regulator will work with the Skills Funding Agency to open an investigation – see paragraphs 10-12 below

Process for handling Concerns and Complaints

5. Students, corporation staff members and members of the public should raise concerns or complaints about non-compliance with charity law with the Principal Regulator at the email address below. Emails should be headed up “Principal Regulator” and provide full details of the issue. The Principal Regulator will then work with the Skills Funding Agency as appropriate to investigate the incident.
6. Any complaints about a corporation that are raised directly with the Charity Commission will generally be considered by the Commission to be a matter for the Principal Regulator in the first instance, and will therefore be referred to them. The Commission will usually only become involved at the Principal Regulator’s invitation.
7. When the Principal Regulator receives a complaint, the first step in most cases will be to advise the complainant to raise their concern with the trustees of the FE corporation, if

they have not already done so. The corporation should then investigate the complaint and report to the Principal Regulator. He/she will then decide whether the issue is resolved or if further action is needed.

8. FE corporations are required to have published procedures for complaints handling. These procedures should contain a process by which someone can make a complaint, have it investigated, reviewed and resolved. The procedure should also outline the process, timescales and named individuals.

9. Further sources of information on reporting concerns and complaints can be found at:

- Charity Commission guidance on how to complain about a charity - [How to complain - Charity Commission](#)
- Guidance for employees who want to blow the whistle on wrongdoing in a charity eg. concerns about the proper administration of charities or of funds given or held for charitable purposes can also be found at [Guidance for employees - Charity Commission](#),

Investigating concerns about FE colleges' compliance with charity law

10. Most problems in charities can be resolved by the charity trustees themselves.

Others will be examined and resolved by the Principal Regulator and the Skills Funding Agency, using the Agency's standard complaints investigation procedures⁷ without the need to open an investigation. However, in the most serious cases, the Principal Regulator may need to work with the Charity Commission to formally investigate matters further.

11. In these cases BIS, acting on behalf of the Secretary of State, will write to the Chair of the governing body setting out the concern and inviting a response. Further actions will depend both on the nature of that response and on the seriousness of the issue. We would hope to be able to resolve incidents through correspondence but if this is not possible, or in case of a particularly serious incident, we may ask the Charity Commission to assist us in the investigation.

12. Where there are serious concerns of abuse in a charity, the Charity Commission may investigate and open a statutory inquiry under section 46 of the Charities Act 2011.

⁷

<http://www.myerscough.ac.uk/downloads/pdfs/Governance/compliance/Skills%20Funding%20Agency,%20Complaints%20about%20providers%20of%20Education%20and%20Training%20Leaflet.pdf>

The Commission have a range of statutory powers that they can use to stop abuse and protect charitable assets and beneficiaries, including:

- information gathering powers which require the Commission to obtain information or documents or require named individuals to meet them to answer questions
- temporary protective powers which allow the Commission to protect charity property for a temporary period while they continue investigating
- remedial powers which allow the Commission to implement long term solutions to problems often identified by an inquiry

13. The Commission has published guidance on its regulatory approach at:

<http://www.charitycommission.gov.uk/our-regulatory-work/how-we-regulate-charities/how-we-ensure-charities-comply-with-their-legal-requirements/charity-commission-risk-framework>

Contact Details

14. The Principal Regular can be contacted by emailing at

fegovernance@bis.gsi.gov.uk

Annex (ii) - Charity Commission Guidance

The [Charity Commission](#) has a number of documents on general guidance and reporting that trustees will find helpful. Trustees may wish want to familiarise themselves with the [Commission's website](#).

The Charities Act also allows the Charity Commission to give general and specific formal advice to charities. The trustees of a charity, including an exempt charity, can write to the Commission for formal advice about whether they would, by taking a particular course of action, be acting properly as trustees.

Guidance on Exempt Charities

- [Guidance on the responsibilities of charity trustees](#)
- [Guidance on making decisions](#)
- [Guidance on conflicts of interest](#)
- [Payments and expenses for trustees](#)
- [Guidance on Exempt Charities](#)
- [Guidance on internal financial controls for charities](#)
- [Code of governance for the voluntary and community sector](#)
- [Guidance on codes of conduct produced by Charity Trustees Network](#)

Legislation

Principal Regulator appointments are made under the Charities Act 2006 now consolidated into the Charities Act 2011.

- [The Charities Act 2006](#)
- [The Charities Act 2006 \(Changes in Exempt Charities\) Order 2011](#)
- [The Charities Act 2006 \(Principal Regulators of Exempt Charities\) Regulations 2011](#)
- [The Charities Act 2011](#)
- [The Companies Act 2006](#)

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