

Draft Order laid before the Scottish Parliament under section 103(5) of the Charities and Trustee Investment (Scotland) Act 2005 for approval by resolution of the Scottish Parliament. This draft Order replaces the one laid on 1st May 2008 and is being issued free of charge to all known recipients of that draft Scottish Statutory Instrument.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2008 No.

CHARITIES

**The Further and Higher Education (Scotland)
Act 1992 Modification Order 2008**

Made - - - - 2008
Coming into force - - 1st August 2008

The Scottish Ministers make the following Order in exercise of the powers conferred by section 102(a) of the Charities and Trustee Investment (Scotland) Act 2005⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 103(5) of that Act, a draft of the Order has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. This Order may be cited as the Further and Higher Education (Scotland) Act 1992 Modification Order 2008 and comes into force on 1st August 2008.

Modification of the Further and Higher Education (Scotland) Act 1992

2. In section 47 of the Further and Higher Education (Scotland) Act 1992⁽²⁾—

(a) after subsection (1) insert—

“(1ZA) But where this section forms part of the constitution of a designated institution established by enactment an order under subsection (1) may not be made to close that institution and wind-up its governing body unless the governing body of the institution consents to such closure and winding up.”; and

(b) after subsection (10) insert—

⁽¹⁾ 2005 asp 10.

⁽²⁾ 1992 (c. 37). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

“(11) In subsection (1ZA), “constitution” has the meaning given by section 106 of the Charities and Trustee Investment (Scotland) Act 2005.”.

St Andrew’s House,
Edinburgh
2008

A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Order)

This Order modifies the Further and Higher Education (Scotland) Act 1992 by inserting new subsections (1ZA) and (11) into section 47. Section 47(1) gives powers to the Secretary of State, and now to the Scottish Ministers, to close a designated institution and wind up its governing body. The modifications require the Scottish Ministers, in the case of designated institutions for which section 47 forms part of the constitution within the meaning of the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”), to obtain the consent of the governing body prior to exercising those powers.

Section 7 of the 2005 Act states that a body would not meet the charity test if its constitution expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its activities. Section 106 defines the constitution of a body for the purposes of the 2005 Act. In relation to a body established by enactment, its constitution is the enactment which establishes it and states its purpose. Section 102(a) provides the power to make an order to modify an enactment to prevent a body which is established by enactment from failing the charity test. The amendment to the Act is to ensure that where section 47 forms part of the constitution of a designated institution, that institution does not fail the charity test where the Act is part of its constitution.