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## 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.