

## EXPLANATORY NOTE

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

Section 7(4)(b) of the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”) provides that a body which falls within paragraphs (a) and (b) of section 7(1) will not meet the charity test (despite section 7(1)) if its constitution expressly permits the Scottish Ministers or a Minister of the Crown to direct or otherwise control its activities.

Consequently, where provisions of the Teaching Council (Scotland) Act 1965 (“the 1965 Act”) provide a power for Scottish Ministers to control the teaching Council it will result in that body failing to meet the charity test.

Section 102(a) of the 2005 Act empowers the Scottish Ministers, by order, to modify any enactment for the purpose of preventing a body which is established by enactment from failing the charity test.

This Order modifies the 1965 Act by repealing the provisions listed in article 2(1).

These are: section 4A which allows Scottish Ministers to confer additional functions on the General Teaching Council for Scotland (“GTC Scotland”); section 5(1)(b) which places the GTC Scotland under a duty to carry out functions imposed on them under section 4A(1); section 6A which allows the Scottish Ministers to make Regulations governing the form and manner in which the Register of Teachers established under the Act is kept; Schedule 1, paragraph 8(2) which requires the consent of the Scottish Ministers if the GTC Scotland wish to borrow money; and Schedule 1, paragraph 16A which allows Scottish Ministers via Regulations to require the GTC Scotland to set up new committees and allows Ministers to set the committee’s membership.

This Order also removes the reference to paragraph 16A in paragraph 17 of Schedule 1 (article 2(2)).