

EXECUTIVE NOTE

THE FURTHER AND HIGHER EDUCATION (SCOTLAND) ACT 1992 MODIFICATION ORDER 2009 SSI 2009/28

The above instrument is proposed to be made by the Scottish Ministers in exercise of the powers conferred by section 102(a) of the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”) and all other powers enabling them to do so. The instrument is subject to the affirmative resolution procedure.

Policy Objectives

The purpose of the instrument is to amend the power of the Scottish Ministers under section 18(5) of the Further and Higher Education (Scotland) Act 1992 (“the 1992 Act”). That power enables Ministers to require the board of management of a college of further education to pay to Ministers such portion of the proceeds of a disposal of property as Ministers may determine after consultation with the board. It is considered that the existence of this power may prevent colleges of further education from fulfilling the condition contained in section 7(4)(a) of the 2005 Act. That section provides that a body does not meet the charity test if its constitution allows it to distribute or otherwise apply any of its property for a purpose which is not a charitable purpose. The amendment which the instrument makes to section 18(5) of the 1992 Act will now require the portion of the proceeds determined by Ministers in such circumstances to be paid to an educational charity. The instrument has been made in accordance with the policy of Ministers that colleges should not lose their charitable status on account of any inability to meet the requirements of section 7(4)(a) of the 2005 Act.

Consultation

In considering steps to safeguard the charitable status of colleges of further education, the Scottish Government has consulted with the Association of Scotland’s Colleges, the Scottish Funding Council, the Scottish Trades Union Congress, the Scottish Council for Voluntary Organisations and the National Union of Students Scotland. The Office of the Scottish Charity Regulator has been informed of Ministers’ decision to make the instrument.

Financial Effects

A Regulatory Impact Assessment has not been prepared as this instrument has no financial effects on the Scottish Government, local government or on business. Scottish

Government, Lifelong Learning Directorate
December 2008