

EXECUTIVE NOTE

DRAFT : The Further and Higher Education (Scotland) Act 1992 Modification Order 2006

1. The above instrument was made in exercise of the powers conferred by section 102 of the Charities and Trustee Investment (Scotland) Act 2005. The instrument is subject to affirmative resolution procedure.

Policy Objectives

2. Ministers wish to remove any barriers which they consider might stand in the way of the retention by colleges of further education of their status as charities, following the enactment of the Charities and Trustee Investment (Scotland) Act 2005. That Act provides that a body will not meet the requirements to remain a charity if its constitution expressly permits the Scottish Ministers to direct or otherwise control its activities. Currently, Ministers have the power to give a direction to the board of management of a college. Ministers consider that this power could be deemed to be inconsistent with the continued charitable status of colleges. Ministers propose therefore to remove their power to give a direction to a board of management of a college.

Consultation

3. Having consulted the Scottish Further and Higher Education Funding Council, Ministers are satisfied that suitable alternative safeguards exist to ensure that colleges operate appropriately. Other bodies with an interest in the further education sector have also been made aware of the background to the Order.

Financial Effects

4. Ministers estimate that the value of charitable status to colleges of further education is around £18-20 million annually.

**Scottish Executive Enterprise, Transport and Lifelong Learning Department
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