

**EXECUTIVE NOTE TO**  
**THE CHARITY TEST (SPECIFIED BODIES) (SCOTLAND) ORDER 2008**

**(SSI 2008/268)**

1. The above instrument was made in exercise of the powers conferred by section 7(5) of the Charities and Trustee Investment (Scotland) Act 2005. The instrument is subject to affirmative resolution procedure.

**Policy Objectives**

2. The purpose of the instrument is to exempt named bodies from the independence test set out in section 7(4)(b) of the Charities and Trustee Investment (Scotland) Act 2005 (the Act).

3. In terms of section 7(4)(b) of the Act, a body with a constitution which allows direction/control by Ministers (the independence test) does not meet the charity test.

4. Scottish Ministers have decided that the incorporated Further Education colleges should be allowed to retain their charitable status, despite being subject to Ministerial powers of direction, because of their unique governance structure; the distinctive role they play in Scottish society; the significant amount of public funding invested in them; and the importance of Scottish Ministers' retaining control over college powers and constitutions to ensure that they continue to operate within a framework which reflects the policies and priorities of the government of the day. Section 7(5) of the Act allows Scottish Ministers to exempt, by order, bodies from the independence test in section 7(4)(b).

**Consultation**

5. Scottish Government divisions and relevant Scottish Ministers dealing with Further Education Colleges were consulted during the preparation of the instrument.

6. In addition, key stakeholders, including the Association of Scotland's Colleges, the National Union of Students (Scotland), the Scottish Trades Union Congress, the Scottish Council for Voluntary Organisations, the Scottish Funding Council and the Office of the Charity Regulator were consulted in December 2007 on the issue and options available to Scottish Ministers. The Office of the Scottish Charity Regulator has been informed of the decision. Scottish Ministers also wrote to the Scottish Parliament's Justice and Education Committees seeking their views on the proposed exemption and received a positive response from the Education Committee.

**Financial Effects**

7. The instrument has no direct financial impact on the bodies it is exempting, since it is not conferring charitable status on these bodies, but merely exempting them from meeting a certain requirement in the charity test in section 7 of the Charities and Trustee Investment (Scotland) Act 2005. A Regulatory Impact Assessment is not therefore necessary.

