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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 (“the 1992 Act”) by amending subsection (5) of and inserting a new subsection (6) into section 18. Section 18(5) provides that where a board of management of a college of further education disposes of certain property that a portion of the proceeds or value of the consideration for the disposal should be paid to the Scottish Ministers.

Section 7(4)(a) of the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”) provides that a body will 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.

Consequently, where section 18(5) of the 1992 Act forms part of the constitution of a governing body of a college of further education, it will result in that body failing to meet the charity test.

Section 102(a) of the 2005 Act provides the power to the Scottish Ministers, by order to modify an enactment to prevent a body which is established by enactment from failing the charity test.

The modifications to section 18 of the 1992 Act made by this Order ensure that a college of further education can no longer be required to pay a portion of proceeds from a disposal of certain property to the Scottish Ministers. Any amount paid must now go to an educational charity directed by the Scottish Ministers. This is to ensure that a governing body of a college of further education does not fail the charity test by virtue of section 18(5) forming part of its constitution.