Minister for Higher and Further Education; and
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Scottish Government
Riaghaltas na h-Alba

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Dear Christopher,

Following discussions at the Tripartite Alignment Group comprising (Colleges Scotland, The Scottish Funding Council and The Scottish Government) on options to increase college flexibilities this letter sets out a new approach to the college asset disposals process. This letter has been sent to the boards of management of all of the colleges of further education incorporated under the Further and Higher Education (Scotland) Act 1992, and copied to the Scottish Funding Council (SFC).

Disposals of Property under section 18 of the Further and Higher Education (Scotland) Act 1992 by Colleges of Further Education

1. The Scottish Ministers have considered their functions under the Further and Higher Education (Scotland) Act 1992 ("the 1992 Act") in relation to future disposals of property by colleges of further education. This letter sets out a revised approach to Ministerial consent under section 18 and the intended approach for allocation of proceeds of disposals.

Consent

2. This letter gives the Scottish Ministers' consent, under section 18(1) of the 1992 Act, to the disposal of any property to which that provision applies and which is reasonably anticipated to have a net value of £1,000,000 or less. This consent is subject to the terms and conditions set out in this letter.

3. In respect of disposals which are consented to by virtue of paragraph 2, the Scottish Ministers affirm that no direction as to the proceeds or value of consideration of the disposal will be made by the Scottish Ministers under section 18(5) of the 1992 Act. It will be for the board of management of the college to determine the appropriate use of the proceeds or value of consideration of the disposal, in consideration of any relevant guidance issued by the SFC.

Terms and Conditions

4. In all cases where a board of management of a college is intending to make a disposal to which section 18 of the 1992 Act applies, they must notify the SFC.

5. Where it is considered by a board of management of a college that the terms of this consent apply to an intended disposal, before proceeding they must seek confirmation from the SFC that:
   - the disposal is reasonably expected to have a net value of £1,000,000 or less and
   - the terms of this consent are met.

6. All disposals must adhere to such guidance that may be issued by the SFC on disposals of college property, but it must be noted that SFC guidance does not affect the operation of this consent or change the application of the legislation.

7. The SFC will be maintain a record of all college property disposals, including details of how the funds generated are used to improve the colleges capital estate and learning environment, in line with the Strategic Principles set out in the SFC's College Infrastructure strategy. Colleges must supply the SFC with such information as is reasonably required to maintain this record in respect of all disposals to which this consent applies.

Circumstances in which this consent will not apply.

8. This consent does not apply in circumstances where the college intending to dispose of property has received SFC or Scottish Government capital funding support for a project, in addition to capital maintenance allocation, in the last 10 years (not derived from the sale of the college's assets) in the last 10 years.

9. On notification of a disposal which a board of management of a college is intending to make under this consent, if the SFC considers that there are particular relevant circumstances the Scottish Ministers should be made aware of, this consent will not apply until the Scottish Ministers have considered the SFC advice and responded to confirm it may proceed or if other action is required.

10. In all such circumstances where this consent does not apply, an individual application for consent under section 18 of the 1992 Act will be required. The Scottish Ministers will consider the disposal, and the allocation of disposal proceeds individually under the terms of the 1992 Act.

11. Notwithstanding the terms of the consent granted by this letter, at all times the Scottish Ministers retain their discretion under section 18 of the 1992 Act and may revoke or change the terms of the consent granted by this letter at any time.

Disposals of college property having a value of over £1million – allocation of proceeds

12. This part of this letter sets out the Scottish Ministers' intended approach to the allocation of proceeds of disposals, to which section 18 of the Act applies, and which have a reasonably expected net value of over £1,000,000.

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13. The consent granted above in this letter does not apply to such disposals and individual written consent of the Scottish Ministers is required in each case before proceeding. Ministers have consulted with the SFC and the colleges of further education and have determined that it is appropriate to give an indication of how the proceeds of such sales are intended to be treated.

14. There will be a presumption that a college disposing of property under section 18, and which have a reasonably expected net value of over £1,000,000, should receive 70% of the proceeds of the sale (after deductions of the reasonably incurred costs of the sale). The remainder of the proceeds will be directed towards an educational charity under section 18(5) of the 1992 Act.

15. The Scottish Ministers will consider all relevant circumstances and will take the advice of the SFC on each disposal. The presumption in favour of 70% retention of proceeds may not be appropriate in every case. However, the presumption in favour of a 70/30 split of proceeds recognises the essential nature of investment across the whole college estate.

16. Examples of matters where the SFC may advise the Scottish Ministers a different approach to the allocation of proceeds is to be considered:
    - if the college has been in receipt of significant (over £10 million) SFC and Scottish Government capital funding support for a project, in addition to capital maintenance allocation, in the last 10 years;
    - over-riding regional or national college investment priorities;
    - if there is an emerging significant and high priority need impacting the sector.

It is recognised that Scottish Government officials, the SFC and the boards of management of the colleges of further education will continue to work together to refine the process and that the terms of this letter may need reviewed from time to time as that progresses.

Yours sincerely

GRAEME DEY