

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

CALL FOR VIEWS ON THE NON-DOMESTIC RATES (SCOTLAND) BILL

SUBMISSION FROM

The Scottish Charity Regulator

1. Background

The Scottish Charity Regulator (OSCR) is established under the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act) as a Non-Ministerial Department forming part of the Scottish Administration. We are independent of Scottish Government and report directly to the Scottish Parliament every year.

We are the independent regulator and registrar for over 24,000 Scottish charities including community groups, religious charities, schools, universities, grant-giving charities and major care providers. Our work as Regulator ultimately supports public trust and confidence in charities.

2. OSCR's response

Our response focuses on sections 10 and 11 of the Bill:

- Section 10, which removes eligibility to claim charitable relief from non-domestic rates from mainstream independent schools, and
- section 11 which gives the Scottish Ministers the power to issue guidance to local authorities on the appropriate way to use their powers to grant sports club relief.

2.1 Independent schools

Our ultimate aim is to underpin public trust and confidence in charities. With this in mind, OSCR has a long held general concern that treating any group of charities in a differentiated way for tax or other purposes, as proposed by the Barclay Review and now the Bill, introduces the potential for confusion in the minds of the public as to what it means to be a charity. There is a long-standing public understanding that all charities will enjoy similar treatment in relation to taxation and in other respects, on the basis that they are all subject to the same statutory test of charitable status. Removal of charitable relief from non-domestic rates from the majority of independent schools has potential to undermine this understanding.

We have concerns about treating any group of charities in a differentiated way for tax or other purposes. Charity regulation in Scotland is comprehensive, all charities enjoy equal status under charity law, which does not place more or less value on different groups of charities. Where it appears that any government policy or new legislation has the potential to have a clear, adverse impact on charities, or a group of charities, and ultimately their beneficiaries we will highlight this. Removal of mandatory and discretionary charitable tax relief from any charity has the potential to impact on financial viability. These changes may have implications for the charities' beneficiaries and their local communities.

Whilst the consequences for the individual charities in this case of removing charitable tax relief are unknown, we think it prudent to highlight two possible outcomes that are likely to affect beneficiaries:

1. As can be seen in the publicly available annual reports and accounts of the independent schools, and in recent wind-ups and mergers in the sector a number of independent schools are in marginal financial positions. Changes to charitable tax relief to this group of charities has the potential to impact on financial viability, which in turn may affect the funds available for bursary or other assistance payments and have implications for the charities' beneficiaries and their local communities.
2. There is the possibility that some schools may wish to request removal from the Scottish Charity Register under section 18 of the 2005 Act, in effect a voluntary de-registration as a charity.

When a charity is removed from the Register for any reason, it must still prepare and submit accounts to OSCR for any outstanding charitable assets (including property) held at the time of removal. This is because the assets still need to be used for charitable purposes (but not public benefit) and we use the accounts to check that is the case.

During our comprehensive review of all the fee-charging schools on the register we identified 10 charities that failed the charity test. OSCR took action to enforce compliance with the requirements of charity law, using our powers to give directions to the charities.

The actions the charities took included increases in the support they provided for those unable to pay the fees and increasing the amount of educational benefit provided without charge. As part of the provision of public benefit the charities also provide activities that benefit their local communities, for example:

- Provision of facilities, such as classrooms, sports facilities, halls and theatres, to a number of external users on a regular and scheduled basis. Users include state schools, sports clubs and community groups
- The provision of secondary education to state school pupils where the subject was not offered by their own school
- Lectures, seminars and other events open to pupils from other schools

- The use of halls or sports facilities by community bodies or local sports clubs.

There is a clear risk that should the charities decide to de-register these benefits to the wider community will not continue.

2.2 Sports clubs

We welcome the decision to produce statutory guidance in relation to relief for sports clubs.

All the sports clubs that OSCR have registered as charities have already been assessed on the basis that they meet the charity test. In assessing whether an organisation meets the charity test, we consider whether they provide public benefit, whether access to activities is unduly restrictive, and if the membership criteria is open and transparent. Further details are set out in our [Meeting the Charity Test guidance](#).

Where access to the benefits a club provides is unduly restrictive or if it appears that the club has been set up wholly or mostly for the private benefit of its members, it is unlikely that it will pass the charity test and be registered as a charity.

We highlighted in our response the Scottish Government's consultation on the implementation of the Barclay review that consideration also needs to be given to [Community Amateur Sports Clubs \(CASC\)](#) as recognised by HMRC, where membership and fees are key to CASC status. It is desirable that the rules around Sports Club relief and those for CASCs are not in conflict. CASC status is a long established alternative to charitable status for many amateur sports clubs to enjoy various tax reliefs without being a charity. In many cases these clubs may not be eligible for charitable status.

We also highlighted the interaction between changes to sports club relief and Ministers' policy agenda of encouraging community empowerment and transfer of assets to community bodies. Much of the interest we have seen in community-based charities taking over local authority assets relates to sports facilities. Changes or uncertainty to rates relief for sports facilities could affect the take up of community asset transfers.

We hope that these factors will be considered when drafting this guidance and welcome OSCR's inclusion on the working group being established by Scottish Government.

3. Conclusion

We welcome the engagement from Scottish Government so far on these aspects of the Bill and others. While the Barclay Review and Scottish Government assert that the charitable status of any organisation is not in question, there is a sense in which the proposals might result in a devaluing of the charity status of certain groups of charities. Allowing the creation

of a 'two-tier' charity sector within a 'single-tier' regulatory regime could be damaging to the public's trust and confidence in both the sector and charity law.

Should Parliament consider that treating groups of charities differently or a change to the criteria for charitable status is necessary or desirable, then we suggest a review of Scottish Charity law is the most appropriate route. The Scottish Government's recent **Consultation on Scottish Charity Law** focused on proposals to make technical changes to the 2005 Act.

Given the potential impact on groups of charities and the various consequences the Bill could have on individual charities and ultimately their beneficiaries, it is important that OSCR continues to be involved as the legislation progresses.

We are content for the information provided to be released in full, including contact details. Should you wish to discuss any aspect of the response please contact:

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