

Briefing for the Public Petitions Committee

Petition Number: [PE1531](#)

Main Petitioner: Ashely Husband Powton

Subject: Remove charitable status from private schools

Calls on the Parliament to urge the Scottish Government to remove charitable status, and thus taxpayer support, from private, fee-paying schools.

Background

The petitioner argues that, as charities, independent schools have a range of benefits that are denied publicly funded schools. In particular, the petitioner mentions non-domestic rates.

The Charity Test

The Charities and Trustee Investment (Scotland) Act 2005 provides for a charity test, overseen by the Office of the Scottish Charities Regulator (OSCR). This requires charities to provide a public benefit. Where that benefit is only available to a section of the public, the organisation must show:

“...whether any condition on obtaining that benefit (including any charge or fee) is unduly restrictive. (s8(2)(b), 2005 Act)”.

The OSCR has reviewed a large number of independent schools. The findings are available at: <http://www.oscr.org.uk/publications-and-guidance/decisions-on-charitable-status-reviews/>

The Scottish Council of Independent Schools has said that:

“...the entire mainstream independent school sector has now been reviewed, along with 1 grant-aided school. This has been an in-depth, complex and exhaustive process; describing a considerable learning curve for both sides”.

and noted that:

“OSCR will soon produce a final report detailing the charity test recently completed for all independent schools”. ([Statement issued September 2014](#))

Benefits of charitable status

Charities benefit from a mixture of devolved and reserved tax reliefs including:

- no corporation tax on profits made from trading in the course of delivering their charitable aims (reserved)
- 80% mandatory and 20% discretionary relief from business rates (devolved)
- Gift aid on cash donations from individuals
- Stamp duty land tax relief on acquisitions of freehold property or entering into leases. Charities will benefit from tax relief on the land and buildings transactions tax which replaces Stamp Duty in Scotland from April 2015. (Devolved from April 2015)

Where tax reliefs are devolved, changes accrue directly to the Scottish rather than the UK Government.

Non-Domestic Rates

Non-domestic rates are one source of funding for local authority services, including schools. There are a number of rate reliefs. The most relevant to this petition are:

- 80% mandatory relief for charities (in addition to which, local authorities have discretionary power to increase this to 100%)
- rates relief for rural schools
- discretionary rate relief of up to 100% which local authorities can grant to non-profit making organisations whether or not they are charities (s.23 Valuation and Rating (Scotland) Act 1956)

For further detail on how non-domestic rates work see:

<http://www.scotland.gov.uk/topics/government/local-government/17999/11199/brief-guide/guide/>

Funding of Local Authority Schools

Local authorities' income includes the Scottish Government revenue grant, income from non-domestic rates and council tax receipts. Since 1 April 2011, Local Authorities have been able to retain what it is estimated they can collect in business rates rather than the previous policy where it was redistributed on the basis of population shares¹. Therefore, although local authority schools are liable to pay non-domestic rates, they also benefit from that income. (As noted above, local authorities have discretion to apply rates relief to non-profit making organisations such as schools).

Some local authorities have considered giving schools trust status, which would mean they would become charities and benefit from the tax reliefs mentioned above. See for example the [proposals in 2010](#) in East Lothian for

¹ See Scottish Government (2013) [Supporting Business, Promoting Growth](#).

community based management of schools. One of the options considered was the establishment of educational trusts which, "...would have a further advantage in that it would not be liable for paying non-domestic rates." The proposals were not taken forward. Some local authorities have organised some of their services as trusts – in particular in relation to sports and leisure facilities (For example, [Fife Sport and Leisure Trust](#)). One of the reasons for doing so was to take advantage of savings in VAT and non-domestic rates (see [Fife council report, 2008](#)). These issues were also discussed in a Reform Scotland conference on managing Scotland's schools in 2010. ([Report available here](#)).

Scottish Government Action

In answer to a question from Jackson Carlaw on 8th October, Michael Russell referred to the OSCR public benefit test and said that:

"As long as that test commands public confidence, qualifying independent schools will maintain charitable status."

The Scottish Government has told the Scottish Council of Independent Schools that:

"There are no plans to change the legislation relating to charitable status of independent schools". See [statement from SCIS available here](#).

The Scottish Government undertook a Review of Business Rates in 2013. The [Scottish Government response](#) stated that:

"All rates reliefs will be kept under regular review to ensure that benefit is directed where it is most needed... Although views were mixed, the Scottish Government has on balance decided that all current exemptions provided, including to agriculture, should be retained".

Following discussions about school management in 2010, the Scottish Government asked David Cameron to review devolved school management. His [2011 report](#) did not consider governance arrangements, but did lead to new guidance on Devolved School Management for local authority schools.

Scottish Parliament Action

The issue of the charitable status of independent schools was raised by Jackson Carlaw MSP during education questions in Parliament on 8th October (S4O-03589). He also raised the issue of giving state schools charitable status. In reply Michael Russell said, "If Mr Carlaw wishes to provide some information to us on the virtues of the proposal, I will of course look at it."

Over course of Session 4, questions about the charitable status of independent schools have been raised by Liam McArthur, MSP (S4W-11939, December 2012) and Neil Findlay, MSP (S4W-03756, November 2011).

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9 October 2014

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