LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

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

SUBMISSION FROM JOHN LEYSHON WS

Clause 10 of the Bill tabled in the Scottish Parliament on 26 March 2019 would remove eligibility of mainstream private schools in Scotland from claiming charitable relief on non-domestic rates. If this clause is enacted in legislation in its present form – this would represent a highly discriminatory measure on the part of the Scottish Government and Scottish Parliament for the following reasons:

1. The Clause singles out 58 Scottish private schools out of 24,000 registered Scottish charities for particular treatment of non-domestic rates without a clear and rational basis for such distinction. Many of these other 24,000 charities are fee-charging bodies and the clause 10 proposal puts at risk the existing uniform system of charity regulation in Scotland for 12,500 charities which aim at “the advancement of education”.

2. The Barclay Review – on which the draft legislation is based – recommended that nurseries and early years’ facilities should have 100% non-domestic rates relief extended to them and Scottish Government is inclined to accept this proposal – but there is no clear and rational distinction to be made between a fees-charging nursery school and a fees-charging primary/preparatory school and/or secondary school.

3. The same point can be made as at numbered paragraph 2 above in relation to special needs schools.

4. The Barclay Review and the Scottish Government response have argued that Scottish State Schools do not benefit from non-domestic rates relief and that the contrast with the current level of relief for Scottish private schools needs to be addressed to increase fairness and a level playing field. This argument lacks substance, in practice, as State Schools in Scotland do not pay non-domestic rates out of school budgets and in fact no money in that regard changes hands between local authorities and their own school and tertiary education communities.

5. It is a generally recognised legal principle in the human rights jurisprudence of the English-speaking world that a proposed discriminatory measure on the part of government or a legislature is only deemed lawful (by courts of law) if it is rationally related to a legitimate government objective. The Barclay Review proposal and the draft Bill before the Scottish Parliament – each in relation to the intended abolition of non-domestic rates relief for mainstream private schools in Scotland – fails to meet that test of rationality and legitimacy.

Submitted by John Leyshon WS