
[redacted]

From: [redacted]

Sent: 21 August 2017 13:02

To: Cabinet Secretary for Finance and the Constitution

Cc: First Minister; Deputy First Minister and Cabinet Secretary for Education and Skills; Macdonald R (Roddy); Mitchell E (Elinor); Watson AA (Andrew); Campbell B (Bridget); [redacted]; Cabinet Secretary for Communities, Social Security and Equalities; Cabinet Secretary for Culture, Tourism and External Affairs; Cabinet Secretary for Economy, Jobs and Fair Work; Cabinet Secretary for Health and Sport; Cabinet Secretary for Justice; Cabinet Secretary for the Environment, Climate Change and Land Reform; Cabinet Secretary for the Rural Economy and Connectivity; Minister for Public Health and Sport; Minister for Childcare and Early Years

Subject: Barclay review of rates

BARCLAY REVIEW OF BUSINESS RATES (EMBARGOED UNTIL 9.30am 22 AUG)

Cabinet secretary for Finance and the Constitution

**Copy First Minister
Deputy First Minister
Cabinet Secretaries (all portfolios)**

Please be aware contents are embargoed until 9.30 am on 22 August.

You will be aware that the external Barclay Review Group have been reviewing business (non-domestic) rates in Scotland for the past year.

They did so under the following remit “to make revenue neutral recommendations that seek to enhance and reform the business rates system in Scotland to better support business growth and long term investment and reflect changing marketplaces.”

This email is to alert you that publication of their report will be **at 9.30 am on 22 August** and to give you advance sight of the report under embargo.

<< File: SCT0717566504-1_Barclay_p2.pdf >>

The group make 30 recommendation on rates which cross over onto many policy areas. This is a lengthy report so I've tried to flag areas most relevant, although for context you may also wish to read the Executive Summary (pages 1-14).

Sections relevant to specific policy areas include -

Agriculture - see pages 79-82

Nurseries - see page 45

Independent schools - see page 73

Universities (accommodation outside term time and commercial use) – pages 73-74

Sports facilities- see pages 71-75 (ALEOs) 78 and p82-83

Valuation appeals reform and Tribunals Scotland– see pages 63-65

Role of the Assessors (wrt valuations only)- see pages 55-57

Charities – pages 70- 76

Hotels (tourism)/ licensed trade – 68-69, p116

Renewables – pages 47-48 (mention only)

Listed property (if empty) – pages 76-78

Digital economy – pages 113-4

Handling-

Shortly after publication, Cabinet Secretary for Finance will issue a short statement welcoming the report, noting that the Scottish Government will consider and respond quickly.

Thank you,

[redacted]

Secretary to Barclay Review

3G North, Victoria Quay, EH6 6QQ
Scottish Government
tel: 0131244 [redacted]
[\[redacted\]@gov.scot](mailto:[redacted]@gov.scot)

[redacted]

From: [redacted] on behalf of Cabinet Secretary for Finance and the Constitution 20
Sent: September 2017 14:38
To: [redacted], Cabinet Secretary for Finance and the Constitution
Cc: Deputy First Minister and Cabinet Secretary for Education and Skills; McCaig C (Callum); McAllister C (Colin); [redacted]; [redacted]; MacKinnon D (Donna); [redacted]; [redacted]; [redacted]; [redacted]
Subject: RE: Post-statement action
Attachments: Letter to Liz Smith MSP.pdf

[redacted],

Thanks for this – letter has now issued:

[redacted] | Private Secretary (Depute) | Cabinet Secretary for Finance and Constitution
 Tel. 0131 244 [redacted] / 0300 244 [redacted] Blackberry: [redacted]

Mail: 4N.08 | St Andrews House | Regent Road | Edinburgh | EH1 3DG

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From: [redacted]
Sent: 13 September 2017 17:35
To: Cabinet Secretary for Finance and the Constitution
Cc: Deputy First Minister and Cabinet Secretary for Education and Skills; McCaig C (Callum); McAllister C (Colin); [redacted]; [redacted]; MacKinnon D (Donna); [redacted]; [redacted]; [redacted]; [redacted]
Subject: RE: Post-statement action

You committed to write to Liz Smith MSP during the Barclay statement – draft attached and sign if content.

Also to note advice immediately below.

[redacted]

Please see draft letter to Liz Smith attached, and background brief below.

Thanks.
[redacted]

Barclay recommendation #24:

Charity relief should be reformed/restricted for a small number of recipients.

Barclay extract (paragraph 4.120):

“Independent (private) schools that are charities also benefit from reduced or zero rates bills, whereas council (state) schools do not qualify and generally will pay rates. This is unfair and that inequality should end by removing eligibility for charity relief from all independent schools. They will of course still retain charitable status and other benefits will continue to flow to them from that

status. And Independent special schools will be eligible for disability rates relief where they qualify for this."

Official report, 12 Sep:

Liz Smith: What assessment has the Scottish Government taken in conjunction with local authorities about the likely economic impact on small independent special schools, which look after some of our most vulnerable children? Should those schools no longer be eligible for charitable relief?

Derek Mackay: I want to get the detail absolutely right on that, so I will write to the member. However, from the review's recommendations and the proposals that I made today, it is my understanding that there is no change to the status of those schools. I will confirm that in writing. [...] To return to Liz Smith's question on special schools, she said "independent special schools", if I heard her correctly, and I want to give her clarity on that point. I think that there is no change for schools that provide a service of that specialist nature, but that is different from the overall category of independent schools. I will ensure that the member gets that detail.

[redacted]

[redacted] | Local Government & Analytical Services Division | The Scottish Government | 3G North, Victoria Quay, Edinburgh, EH6 6QQ | 0131 244 [redacted] | [redacted]@gov.scot

From: Cabinet Secretary for Finance and the Constitution

Sent: 12 September 2017 17:30

To: [redacted]; [redacted]; [redacted]; Cabinet Secretary for Finance and the Constitution

Cc: [redacted]; McCaig C (Callum); MacKinnon D (Donna); [redacted]; [redacted]

Subject: Post-statement action

[redacted],

On the back of Cab Sec's commitment in the chamber earlier to write to Liz Smith MSP and give clarity around relief status for independent schools teaching vulnerable children, it'd be good if we could get something away soon. Grateful therefore if we could have a draft letter up for his consideration by COP tomorrow.

Thanks,

[redacted]

Sent from my BlackBerry 10 smartphone.

Cabinet Secretary for Finance and the Constitution
Derek Mackay MSP



Scottish Government
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E: scottish.ministers@gov.scot

Liz Smith MSP
The Scottish Parliament
EDINBURGH
EH99 1SP

20 September 2017

Dear Liz,

I refer to your question in Parliament on 12 September regarding charity relief for small independent special schools, following my statement on non-domestic rates.

The Barclay review's recommendation on charity relief includes "removing eligibility for charity relief from all independent schools", with independent special schools continuing to be eligible for disability relief. As per my statement, the Scottish Government's current position on the charity relief recommendation is to take time to engage and consider further.

Currently, independent special schools variously receive both charity relief and disability relief. The importance of the specific matter you raise is clear, and we will duly continue to engage with stakeholders ahead of responding further in the context of an implementation plan for our response to the review. We have committed to publish this plan by the end of the year.

I trust this clarification is helpful, and would be happy to discuss this matter further should you wish.

DEREK MACKAY

[redacted]

Subject: FW: URGENT - Business Rate Review - Advice re independent schools
Attachments: 2014-12-22 Public petitions committee OSCR written submission.docx; 2015-04-20 Public petitions committee Social good.docx; 2017-09-05 Board Paper Barclay Review.docx; Independent schools with charitable status.xlsx

Importance: High

From: [redacted]@oscr.org.uk [mailto:[redacted]@oscr.org.uk]
Sent: 27 September 2017 08:43
To: [redacted]
Cc: [redacted]; [redacted]@oscr.org.uk; [redacted]; David.Robb@oscr.org.uk
Subject: FW: URGENT - Business Rate Review - Advice re independent schools
Importance: High

Dear [redacted]

Many thanks for your email. Please see below for answers to your points. In addition it's important to highlight that some of these issues (particularly around Independent Schools and ALEOS) have been considered in great depth previously, both during the passage of the 2005 Act, by politicians and the press at regular intervals since then and by OSCR. [redacted]

I understand that David has already approached Donna Mackinnon about our interest in engaging on this, and [redacted] from the Local Government and Analytical Services Division has contacted us directly for data on the turnover for individual independent schools with charitable status in Scotland.

Grateful if you could keep us in the loop as far as possible and always happy to discuss.

Kind regards

[redacted]

[redacted] | Engagement Manager: Policy and Guidance | [redacted] | [redacted]@oscr.org.uk |

Scottish Charity Regulator (OSCR) 2nd Floor, Quadrant House, 9 Riverside Drive, Dundee, DD1 4NY
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From: [redacted]@gov.scot [mailto:[redacted]@gov.scot]
Sent: 26 September 2017 12:51
To: [redacted]; [redacted]
Cc: David Robb; [redacted]@gov.scot; [redacted]@gov.scot
Subject: URGENT - Business Rate Review - Advice re independent schools
Importance: High

Hi [redacted] and [redacted]

Our team has been asked for further advice in terms of the Barclay Review recommendation to remove rates relief from independent schools and we would welcome your input.

It would be really helpful to know the outcome of your Board meeting last week and what OSCR's position is on this recommendation, including any concerns you have about the recommendation being taken forward (i.e. your concerns over a 2 tier charity system, schools that provide ASN support but aren't classified in a way to qualify for the disability relief etc). Please see the attached Board paper – provided in confidence at this time.

More specifically it would be really useful if you could provide us with the following information (if you have it):

The value of business rate relief to each independent school.
OSCR doesn't hold this information. As we understand it that would depend on the value of the land rather than the assets shown in the accounts – as such the local government team may have this information.

Information on the wider benefits of charitable status that independent schools enjoy (i.e. VAT, gift aid etc). Please see the two attached submissions to the Petitions Committee when they were asked to review the charitable status of independent schools – these set out the general position.

How valuable the business rates relief is compared to those other charitable reliefs/benefits. (e.g. does rates relief make up 50%+ of the reliefs schools get?)
Again this is not information that OSCR holds, however, it is likely that rates relief will be the most significant relief to most, if not all, independent schools. Some schools will also benefit from gift aid on donations (not fees) and from corporation tax exemptions to varying degrees.

An up to date list of all the independent schools on the register.
Please see attached list of 75 independent schools (see tab 'Updated list 260917'). There are a number of charities that aren't primarily schools (Church of Scotland being an example), but they are shown on the SG list so we have included them here. For the schools that are run by bigger charities (and it's not obvious which school they operate) the list is marked with the name of the school as a comment in the legal name cell.

There are also some we have identified which aren't on the SG list (the reasons for this aren't clear). If we've been able to find them on the SCIS register we have kept them on the list. These are -

- Governors Of The Oakbank School Trust, SC003596
- Scottish Centre For Children With Motor Impairments, SC008428
- Royal Blind Asylum & School, SC017167
- The Governors of the Donaldson Trust, SC017417
- Harmeny Education Trust Limited, SC024256

[redacted]

A list of those who would qualify for the disability relief.
This isn't information OSCR would hold – however, the Registrar of Independent Schools should be able to provide this information: <http://www.gov.scot/Topics/Education/Schools/Parents/independentschools>

There is a request to provide some sample examples of the impact of removing the relief from schools and to assist with this it would be helpful to be able to see the accounts for the following schools (if you are able to share them with us – the links aren't available on the register):

- Strathallan SC008903
- Gordonstoun – SC037867
- George Watsons – SC009747

These are all available on the register entries – you may need to scroll down to the table of income and expenditure or the first two are also on Companies House.

I am really sorry but the turnaround on this request is really tight and our deadline is Thursday, so if you were able to provide this information by close tomorrow we would be most grateful.

[redacted]

Happy to discuss.

Thanks

Claire
[redacted]
Charity Law and Volunteering Team
Third Sector Unit
0131 244 [redacted]

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Dh'fhaodadh gum bi teachdaireachd sam bith bho Riaghaltas na h-Alba air a chlàradh neo air a sgrùdadh airson dearbhadh gu bheil an siostam ag obair gu h-èifeachdach neo airson adhbhar laghail eile. Dh'fhaodadh nach eil beachdan anns a' phost-d seo co-ionann ri beachdan Riaghaltas na h-Alba.

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Written Evidence – Public Petitions Committee: PE1531 Charitable status of independent schools

1. Introduction

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. OSCR is the registrar and regulator of charities in Scotland. There are currently over 23,500 charities registered in Scotland.

OSCR has been asked to give evidence to the Scottish Parliament Public Petitions Committee on 13 January 2015 on the Petition PE1531. The petition calls on the Parliament to

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

We understand that the Committee is particularly interested in

- exploring the process of OSCR determining the charitable status of independent schools
- seeking to understand the rationale of the OSCR's decisions in this field.
- obtaining OSCR's views on the petition

This evidence outlines the views we intend to discuss at the Committee, and gives more detail on some of the questions which Committee members raised at the meeting of 29 October 2014. It also draws from our recently published summary report *Fee-charging schools, public benefit and charitable status* (copy enclosed for your information).

2. Summary of OSCR's activity on fee-charging schools

Since 2007 OSCR has reviewed the charitable status of 52 schools charities on the Scottish Charity Register. It was clear during the passage of the 2005 Act and early public consultation on OSCR's priorities that there was considerable public interest and concern about the charitable status of fee-charging schools. On this basis and on the evidence of risk found when we started our review programme these charities have been subject to

Charities you can trust and that provide public benefit
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more rigorous and in-depth scrutiny and action than any other group of charities on the Register, involving a significant input of resource from OSCR over a period of seven years.

In our reviews, we found that:

- 40 of the schools met the charity test (see below) on our initial review
- 9 failed the charity test because we found that the fees they charged unduly restricted access to the educational benefits they provide
- one school failed the test because its constitution allowed Scottish Ministers to control its activities.
- two reviews have been suspended because of other issues within the charities.

A list of the reviews and decisions is at Appendix A.

Where schools have failed the charity test, OSCR has taken action to enforce compliance with the requirements of charity law, using its powers to give directions to charities. We directed the nine charities which failed on account of their fees to take steps to meet the charity test within a fixed timescale or face removal of charitable status. We directed the other charity which failed to amend its constitution.

All 10 charities took action to meet the test within the required timescale, are now compliant with the requirements of charity law and continue to have charitable status.

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.

3. The charity test

We make our decisions on fee-charging schools on the basis of the statutory 'charity test' set out in the 2005 Act, which sets out the criteria for how we must decide which organisations can be and remain registered as charities in Scotland and which cannot. Broadly, to be a charity an organisation must

- have only charitable purposes
- provide or intend to provide public benefit

In looking at public benefit we must have regard to how the benefit the public gains from the organisation's activities compares with

- benefit gained by members of the organisation or other persons other than as members of the public ('private benefit')
- disbenefit likely to be incurred by the public from the charity's activities

If a charity provides its benefits only to a section of the public, then we must have regard to whether any condition on accessing that benefit, including any charge or fee, is unduly restrictive. This is the aspect of public benefit which is in question for fee-charging schools.

4. OSCR's decision-making on fee-charging schools

A decision on whether or not a charity meets the charity test must be made on the facts of the individual case. OSCR's regulatory decisions are subject to statutory review and appeal procedures and OSCR must follow the principles of decision-making established in public law. We have set out the general principles on which we consider the public benefit and other aspects of the charity test where OSCR has discretion to exercise (see below). However, it is not legitimate for us to fetter our discretion by setting absolute requirements, ratios or thresholds.

The fee-charging schools reviewed were clearly established for the charitable purpose of the advancement of education, and running a school is clearly a legitimate way of advancing an educational purpose.

The main area we have concentrated on in our decision-making has been whether the fees charged by schools unduly restrict access to the educational benefit they provide. We have done this on the basis of published principles of decision-making which apply to all charities. In looking at the evidence in each case we consider:

- **whether there is help for those who cannot pay** – where a fee is charged which affects access to a benefit, we expect there to be arrangements in place to help people who cannot afford the fees to benefit. In the case of schools this tends to take the form of bursaries to help with fees.
- **proportionality** – higher fees require more help for those who cannot pay them, or more benefit for which no charge is made, than lower fees.
- **transparency** – any fee structure and arrangements for help with fees must be well-publicised and clearly explained.
- **the cost of providing benefit** – some benefits are more expensive to provide than others, and charities including schools need to be able to cover the cost of what they do.
- **the full scope of the benefit provided** – we look at the whole picture of benefit and restriction incoming to our decision. In the case of the schools, we look at whether they provide educational benefits beyond their fee-paying beneficiaries, for instance access to sports facilities or tuition for students from other schools.

5. Fettes College

Committee members expressed a particular interest in the case of Fettes College (The Governors of the Fettes Trust Scottish Charity SC017489), particularly asking why the charity had been allowed to make changes after failing the charity test. Essentially, they made changes because we directed them to do so.

We reviewed this charity on the basis of academic year 2010-2011. Full details are in our published report (copy enclosed for your information). We found that the charity failed the charity test for the following reasons, all of which relate back to the principles set out above:

- it charged very significant fees (higher than the sector average). While the school had a bursary scheme in place, the high fees required a proportionately higher level of assistance if the fees were not to be unduly restrictive.
- it appeared that the bursaries were not necessarily awarded to those most in financial need of assistance (but on academic or sporting criteria). This meant they had less effect in mitigating the effect of the fees than bursaries awarded purely on the basis of financial need.
- there was some wider educational activity for which the school made little or no charge, but we did not consider the level of this was substantial enough to mitigate the restrictive effect of the fees charged.

Taking all these factors into account, we found that the fees charged unduly restricted access to the educational benefit the school provided, and that the charity failed the charity test since it did not provide public benefit.

We therefore used our statutory powers on 10 January 2013 to direct the charity to take action to ensure that the undue restriction was removed. If a charity fails to comply with such a direction within the timescale set we must remove the charity from the Scottish Charity Register.

We reassessed the school in October 2013 and found that the school had made changes in response to the direction we had issued:

- there had been some increase in the spend on means-tested bursaries (from 7% to 8.4% of income) and in the proportion of the roll receiving means-tested help (9.6% to 10.6%). Six pupils (0.8% of the school roll) received full bursary awards, with a further 28 students receiving 81-99% awards.
- the school had also amended its policies on awarding bursaries to target these more clearly on students on lower incomes, with awards now beginning to be made on that basis.
- the charity had expanded its provision of educational benefit for little or no charge, with activities including tuition for external candidates in minority subjects and regular and scheduled use of sports facilities by state school students and other educational events.

Taking all this into account, we found that the charity had sufficiently addressed the issues identified in the initial review, and that it had therefore complied with the direction we issued.

6. Further Action

We have now completed our programme of reviewing fee-charging schools, and have issued our final summary report, setting out lessons learned and our plans for future

regulation of this group of charities, taking into account the level of risk evidenced by the reviews, the requirements of proportionality and other calls on OSCR's resources. To maintain the level of compliance with the charity test requirements now achieved we plan to:

- work with schools to improve the standard of public benefit reporting to allow OSCR and the public to verify the position in each school as part of the annual reporting requirement on charities.
- to prioritise schools where there has been charity test failure or other issues for focussed monitoring under our Targeted Regulation programme, and action where issues are identified.

7. OSCR's views on the petition

OSCR's role as the registrar and regulator of charities in Scotland is to exercise its functions and make decisions in particular cases on the basis of the law as it stands. Our interest in any proposed changes to charity law is in ensuring that any proposals are workable in themselves and compatible with the rest of charity law. The policy decision on what types of organisation should or should not be able to be registered as charities is one for Ministers and the Parliament.

Looking at the terms of the petition, it is worth noting that the description 'private, fee-paying schools' covers a variety of types of school on the Scottish Charity Register which charge fees, from the mainstream boarding and day schools to religious and special ethos schools of different kinds to schools catering for students with additional needs (where the fees charged are generally paid by local authorities).

The petition also refers to taxpayer support. Non-Domestic Rates Relief (NDRR) for schools and other charities falls within the legislative competence of the Parliament, and decisions in individual cases are for local authorities. However, tax reliefs such as gift aid, corporation tax and VAT reliefs are reserved matters, and decisions on awarding reliefs are a matter for HMRC on the basis of reserved finance legislation. The legal position on the charitable status of fee-charging schools in the law of England and Wales has diverged from that in Scots law in recent years.

8. Conclusion

OSCR welcomes the opportunity to give a view on the petition, and hopes the Committee finds this submission useful.

OSCR
22 December 2014

Appendix A: Schools reviewed as part of individual charity review programme

Charity name and number	Date review started	Outcome
1. Corporation of The High School of Dundee (SC011522)	2006	Met charity test
2. George Heriot's Trust (SC011463)	2007	Met charity test
3. Glasgow Steiner School (SC005339)	2007	Met charity test
4. Gordounstoun Schools Limited (SC037867)	2007	Met charity test
5. Governors of Donaldson Trust (SC017417)	2007	Met charity test
6. Regius School (SC022723)	2007	Met charity test
7. St Mary's Music School Trust Ltd (SC014611)	2007	Met charity test
8. Hutchesons Educational Trust (SC002922)	2007	Failed charity test on initial review – direction issued Subsequently complied with direction and met test
9. Lomond School Limited (SC007957)	2007	Failed charity test on initial review – direction issued Subsequently complied with direction and met test
10. Merchiston Castle School (SC016580)	2007	Failed charity test on initial review – direction issued Subsequently complied with direction and met test
11. St Leonards School (SC010904)	2007	Failed charity test on initial review – direction issued Subsequently complied with direction and met test
12. Jordanhill School (SC004463)	2007	Failed charity test on initial review – direction issued Subsequently complied with