

**PE1531/P**

**Local Government and Communities Directorate**

Equality, Human Rights and Third Sector Division

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Mr Ned Sharratt  
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Public Petitions Committee  
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Our ref: A11801423  
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Dear Mr Sharratt

**CONSIDERATION OF PETITION PE1531**

Thank you for your letter of 27 May 2015 seeking the Government's view on the Scottish Parliament Petition PE1531, which calls for the removal of charitable status from independent schools.

We understand that the petitioner is seeking to remove the charitable status of independent schools as the fees which they charge unduly restrict the access of potential pupils to the educational benefit the charity provides.

In order for a body to have charitable status in Scotland it must pass the 'charity test' set out in the Charities and Trustee Investment (Scotland) Act 2005 ('the 2005 Act'). The test includes whether the body has a charitable purpose, advancement of education being one such purpose in terms of the Act, and whether it provides public benefit. Independent schools (both mainstream and special needs schools) and grant aided schools such as Donaldson's require to meet this two part test. As referred to in our letter of 8 December 2014 to this committee, the 2005 Act established the independent office of the Scottish Charity Regulator (OSCR), whose functions include determining whether bodies meet the criteria to obtain charitable status and whether this should be retained. In reaching such decisions OSCR operates independently of government and under the legal framework laid down in the 2005 Act. It is therefore for OSCR to determine the manner in which they apply the charities test to different organisations and is not a matter on which the Scottish Government can offer comment.

You have asked if the Scottish Government would consider a review of the 2005 Act to distinguish between the work of independent schools. The 2005 Act is the

legislative framework for Scotland's 23,885 registered charities and has been operational for 8 years.

The Act is reviewed regularly as part of the Scottish Government's formal and informal engagement with the Office of the Scottish Charities Regulator ("OSCR"). OSCR submits an annual report to Scottish Ministers and the report is simultaneously laid in the Scottish Parliament. The recommendations highlighted in the annual report have consistently been of a minor technical nature and in the main were addressed in the Public Services Reform (Scotland) Act 2010 (part 9). Where necessary, secondary legislation has been enacted to address other matters and update the legislation.

The Scottish Government does not believe there is robust evidence seeking a formal review of the terms of the 2005 Act though we will keep this under review. The charity test, in particular the public interest test, sets a relatively high threshold that charities must meet. In particular, regard must be to the benefit or dis-benefit incurred or likely to be incurred by the public and whether any condition on obtaining that benefit (including any charge or fee) is unduly restrictive. As long as this test commands public confidence, qualifying independent schools will maintain charitable status. Whether individual schools meet the test is, as noted above, a matter for OSCR.

For the reasons explained above, and in previous correspondence, the Scottish Government has no plans to undertake a review of the Act at this time

You have also asked what the Scottish Government's view is of the suggestion that local authority schools be restructured to obtain charitable status. For local authority schools to qualify for charitable status, we understand that the school governance and management arrangements would have to be transferred from local authorities and placed under the independent control of a board or boards of charitable trustees. This would represent a significant shift in our current approach to school governance and would have wide-ranging policy and practical implications at both local and national level. Such a scenario may render schools eligible for non-domestic rates relief based on charitable status, but this would not necessarily confer an overall financial benefit under local government finance arrangements.

I would also caveat our views above on the basis that, it is for OSCR to determine whether a body meets the charities test, and therefore in taking such steps this would not necessarily guarantee charitable status being obtained

Ministers remain committed to driving improvement throughout our education system and tackling inequality lies at the heart of their approach. In February the First Minister launched the Scottish Attainment Challenge, backed by the £100 million Attainment Scotland Fund, to bring a greater sense of urgency and priority for everyone involved in Scottish education and to relentlessly focus efforts on narrowing the attainment gap between our most and least disadvantaged learners.

**LAURA SEXTON**

**Team Leader**

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