

PE1531/C

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Ar faidhle/Our ref: Case/48026

8 December 2014

Dear Mr Sharratt

CONSIDERATION OF PETITION PE1531

Thank you for your letter of 29 October seeking the Government's view on the Scottish Parliament Petition PE1531, which calls for the removal of charitable status from independent schools, and on the discussion of the petition which took place at the Public Petitions Committee meeting on 28 October.

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'). That 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. The 2005 Act also established the independent Office of the Scottish Charity Regulator (OSCR), whose functions include determining whether bodies should have charitable status. In reaching such decisions OSCR operates independently of government and under the legal framework laid down by the 2005 Act.

The terms of the 2005 Act offer OSCR wide discretion along with the means of serving a direction on the applicant to provide them with the opportunity to meet the test. To date OSCR has completed reviews of 51 of the current 67 independent schools that are registered charities, and all 51 have retained their charitable status; 9 of them after complying with directions from OSCR to take action to meet the statutory charity test. As with other decisions on charitable status, these decisions were entirely a matter for OSCR as the independent regulator.

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Since the current statutory framework provides for both the independence of OSCR and the rules that OSCR is to apply in reaching its decisions, it follows that the petitioner's desire to remove charitable status from independent schools or the related issue of providing charitable status for local authority schools could only be achieved by changing the current legislation.

At present independent schools, like all charities, have to meet OSCR requirements, including the public benefit test. Therefore, as long as this test commands public confidence, qualifying independent schools will maintain charitable status. Whether individual schools meet the test is, of course, a matter for OSCR.

Yours sincerely

Mrs S Anderson
Scottish Government Policy Officer