

Barclay Implementation: A consultation on non-domestic rates reform Response from the Scottish Charity Regulator

1. Background

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 24,000 charities registered in Scotland.

2. Consultation response

Our ultimate aim is to underpin public trust and confidence in charities. With this in mind, OSCR has a general concern that treating any group of charities in a differentiated way for tax or other purposes, as proposed by the Barclay Review, introduces the potential for confusion in the public mind as to what it means to be a charity. There is a long-standing public understanding that all charities will enjoy similar treatment in relation to taxation and in other respects, on the basis that they are all subject to the same statutory test of charitable status.

Our response focuses on recommendations 24 and 27 as the two recommendations with the most obvious impact on sections of the charity sector.

Recommendation 24: Charity relief should be reformed/restricted for a small number of recipients.

The Scottish Government have clarified that this recommendation is only being taken forward in respect of independent schools, with the exception of schools for children and young people with additional support needs and potentially some schools with exceptional circumstances, such as specialist music schools.

The consultation seeks to clarify how schools with exceptional circumstances should be treated – although what constitutes exceptional circumstances is not explained.

As stated above, we have concerns about treating any group of charities in a differentiated way for tax or other purposes. We would also note that independent

schools have been subject to much more scrutiny than many other charities as part of our review work, and ultimately they all passed the charity test.

Those ALEOs (Arms Length External Organisations) who are also registered charities are in a similar position. Whilst not subject to this consultation, the policy decisions announced in response to the Barclay Review mean that any new ALEOs with charitable status will no longer be eligible for charity relief, creating a potentially confusing differentiation with existing ALEOs who will retain the relief.

Recommendation 27: Sports club relief should be reviewed to ensure it supports affordable community-based facilities, rather than members clubs with significant assets which do not require relief.

Initially this recommendation focused on the assets of a sports club. The consultation has shifted more towards membership criteria and fees:

‘Options for reform could include incorporating a requirement for all beneficiaries to have inclusive and transparent membership policies, membership fees below a certain threshold, availability of the facilities to the local community or other criteria.’

It seems the criteria being proposed on membership and fees replicate the policy position that OSCR has taken in our assessment of the Charity Test, as set out in our [Meeting the Charity Test guidance](#):

‘How people join or participate in a sports organisation is an important factor when we consider the organisation’s **public benefit**, and whether access to its activities is **unduly restricted**. Membership should be open and transparent. If people have to be recommended or take part in trials before they can join in, it is unlikely that there is opportunity for public participation.’

Our [guidance on undue restrictions](#) specifically examines fees and charges and our [private benefit guidance](#) addresses membership benefits. Where access to the benefits a club provides is unduly restricted or if it appears that the club has been set up wholly or mostly for the private benefit of its members, it is unlikely that it will pass the charity test and be registered as a charity.

All the sports clubs that OSCR has registered as charities have already been assessed on this basis. In respect of registered charities, it is therefore not clear what the proposals hope to achieve.

Consideration also needs to be given to **Community Amateur Sports Clubs (CASC)** as recognised by HMRC, where membership and fees are key to CASC status. It is desirable that the rules around Sports Club relief and those for CASCs are not in conflict.

Whilst the focus seems to have shifted to membership and fees, the role of a significant asset in assessment of eligibility for reliefs is still not clear. Any criteria based on whether or not a sports club has significant assets still risks conflicting with Ministers' policy agendas in terms of encouraging community empowerment and transfer of assets to community bodies. Much of the interest we have seen in community-based charities taking over local authority assets relates to sports facilities.

It may be easier to define the sports clubs that the recommendation seeks to exclude from NDR, if it is clear what these are, rather than defining the '95% of current recipients of this relief who will be unaffected'. It is not clear how this figure was arrived at.

3. Conclusion

While the Barclay Review and this consultation assert that the charitable status of any of these organisations is not in question, there is a sense in which the proposals might result in a devaluing of the charity status of certain groups of charities. Allowing the creation of a 'two-tier' charity sector within a 'single-tier' regulatory regime could be damaging to the public's trust and confidence in both the sector and charity law.

Engagement with OSCR on these recommendations would be highly desirable given the impact on specific types of charities and overlap with charity regulation. As much of the detail and definitions are still unclear, the potential for unintended consequences is high.

We are content for the information provided to be released in full, including contact details. Should you wish to discuss any aspect of the response please contact:

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