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### Barclay Review of Business Rates

In advance of the Scottish Government forming its response to the recent Review of Business Rates, the schools and staff in the independent sector are very concerned that the Report contains some fundamental misunderstandings and discrepancies. We would welcome the opportunity to address these with you and your staff at the first opportunity, as they form the premise for proposals which would – through unintended consequences - have a significant detrimental effect on the sector and the educational profile of Scotland as a whole. On this issue, as in all others facing Scotland's schools, teachers and young people, the independent sector is determined to work together to be part of any solution, alongside partners in government, parliament, education bodies, regulators and beyond.

Ours is a sector that has sought to compete nationally and globally throughout a period of recession, the pressures on public and private sector employment, curriculum and qualification reform, and still faces the uncertainties of the UK's departure from the European Union. We are well aware that the Review contains mixed news for a range of sectors. SCIS had the opportunity to give evidence in person to the Review Group, on 6 March and provide additional written detail in support, but it does appear that independent schools have been singled out with no supporting justification (schools constitute 0.7% of the bodies awarded rates relief in Scotland.).

### **Review findings**

In his introduction to the Report, Mr Barclay states that the proposals “...are not about penalising particular sectors. They are about removing anomalies, creating a level playing field and reducing avoidance.” However, the Report goes on to treat one group of educational registered charities differently from all others, create a new anomaly in charity law interpretation, and to tilt the playing field away from Scotland's schools. Further still, they will have the opposite effect for our world-leading sector from that stated as providing “*competitive advantage in growing existing businesses and attracting new business*”.

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### Charitable status and public benefit

Section 4.120 states that independent schools will *“still retain charitable status and other benefits will continue to flow to them from that status.”* Any of our schools would emphasise that the importance of charitable status is that it reflects the historic ethos and purpose of the institutions and, in some cases, the legacy of their founder. However, as mandatory non-domestic rates relief constitutes the most significant impact on school costs, the integrity of that status would be questioned – especially when the stringent public benefit test is considered.

Relief to charities is currently based on registration with the independent Office of the Scottish Charity Regulator (OSCR), under the terms of the Charities and Trustee Investment (Scotland) Act 2005. All schools registered as charities and in membership of SCIS have undertaken the rigorous charity test required by OSCR which ensures schools match the sole purpose of *“the advancement of education”* and provide public benefit in achieving those purposes. That test was a specific requirement of the 2005 Act, placed upon independent schools by the Scottish Parliament, and there is no equivalent test in statute for independent schools elsewhere in the United Kingdom or further afield. The test has been applied rigorously and has seen means-tested fee assistance, primarily in 60-100% bursaries, more than triple in value since its introduction.

Out of 24,230 registered charities in Scotland, independent schools in membership of SCIS number fewer than 60, or c.0.3% of the charity sector in Scotland. No other group has been subject to such intense scrutiny by OSCR. On this basis, recognising that relief is offered to the private, public or third sector and given the substantial range of other fee-charging charities in Scotland, schools see no reason for them to be treated separately from any of the other charities registered with OSCR. The Report recognises in 4.126 that *“the vast majority of OSCR registered charities will see no change from this reform”* and yet creates a clear anomaly both within Scotland, and in the competitive world of independent education, including boarding, beyond.

**We would be grateful for the Scottish Government’s view on that change, in light of the repeated view, most recently to the Scottish Parliaments Petitions Committee in 2015, that:**

*“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.”<sup>1</sup>*

### Independent schools and other educational charities

As the papers of the Review itself make clear, schools are by no means the major recipient of mandatory non-domestic rates relief among registered charities, even those whose charitable purpose is to *“advance education”*. Unlike the independent sector, which operates at no cost to

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<sup>1</sup> <http://www.parliament.scot/GettingInvolved/Petitions/charitablestatus>

the taxpayer, colleges and universities receive the majority or entirety of their funding from government. Section 4.121 states that *“The core functions of universities including education and research and development should continue to be eligible for charitable relief to reflect their key role in supporting economic growth through education of the workforce and supporting innovation”*. As Universities are fee-charging, limited access charitable bodies advancing education, by comparison our schools would be grateful to know **if it is the view of the Scottish Government that independent schools and their staff do not have the core function of education nor support economic growth through education of the workforce?**

#### “State” school and independent schools

The anomaly that only state schools do not qualify for some form of charitable status, to assist with fundraising and other activities, is for others to make and is not pursued in the Report. However, the most troubling basis for the Review’s findings on independent schools comes in 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.”*

This is a curious interpretation of the reality of local and central government funding for local authority schools. It would be informative and timely for the Government to demonstrate that for the very wide range of bodies which receive partial rates relief, in the case of the private and third sectors the remaining rates obligation is met from other sources.

This is clearly distinct from bodies that do not receive relief, including state-maintained schools, where the entirety of the funding – including rates payments - is derived from national and local taxation levied upon the whole population irrespective of their individual use or demand. Unlike the independent sector, no state-maintained school would be required to alter its staffing levels, or expenditure on equipment, based upon a variation of their notional and entirely paper-based, rates valuation. When asked about extending charitable status to state-maintained schools, it should be noted that The Scottish Government stated in writing to the Scottish Parliament’s Petitions Committee on 4 August 2015 that:

*“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.”<sup>2</sup>*

Independent schools paying 20% of rates as a result of a mandatory relief demonstrates that schools do pay rates and in the case of independent schools, this can only come from parental fee income. The percentage of parents paying full fees has reduced, rightly, as the means-testing aspects of the charity test have taken effect. Schools are, by definition not-for-profit, and budgeting is done many years in advance, given the fixed and rising costs of staff salaries, utilities and school estate management. The Report’s recommendation would increase the non-domestic rates bill within three years by 80%.

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<sup>2</sup> <http://www.parliament.scot/GettingInvolved/Petitions/charitablestatus>

## **Is it the Scottish Government's view that state schools "pay rates" in reality, and that it is anomalous that independent schools, along with other education bodies such as universities, receive partial, mandatory rates relief?**

### Complex additional support needs schools

In Scotland, there has been a growth in independent centres of excellence that meet a range of behavioural, emotional, social and/or physical support needs. Those schools, along with mainstream schools which play a substantial role in integrating pupils with support needs, are an important aspect in provision Scotland-wide and the sector has recently been attracting interest from overseas investors and educators. The Review makes only a passing comment relating to disability relief about these schools, many of which are, or are part of, a registered charity. The margins on which the schools operate are extremely narrow, and in many places take pressure off local government provision. A lack of clarity over their financial status is extremely unwelcome.

### **Public debate**

It would be naïve of the independent school sector not to recognise an ever-present debate suggesting that the removal of rates relief from independent schools would in some way both help fund aspects of school education elsewhere, and satisfy those who are not supportive of the existence of independent school education. That is an argument for the political arena, as it has been in the Scottish Parliament and elsewhere on several occasions, but not best suited to a review of business rates. It is not, in our view, accurate, appropriate or impartial for the Review to state that relief to independent schools is "*unfair*" and an "*inequality*".

The removal of mandatory rates relief would impact schools' ability to provide means-tested bursaries and other forms of financial or non-charged-for assistance. This includes extensive provision of facilities and resources as well as public-sector partnership with bodies such as Education Scotland and the Scottish Qualifications Authority. A further implication of any resulting rise in school fees that the end of rates relief would bring about would be, in part, to place added burden on the Government to provide additional places in local authority maintained schools.

### **Economic contribution**

The previous Scottish Government's Council of Economic Advisors recognised the economic value of independent schools, including boarding schools, to Scotland. In what is a highly, and increasingly, competitive global market, it would be extremely counter-productive to add any barrier to Scotland's ability to attract school-age students from the rest of the United Kingdom, the European Union or beyond. This would apply to the boarding sector which is estimated to

generate £29.8 million in export earnings, as well as to families attracted by day school education choices as part of individual relocation plans.

Given the Report's stated aim of seeking revenue for the Scottish economy, it should be noted that an independent economic impact report<sup>3</sup> (enclosed) found that that independent schools:

- generated £455.7 million Gross Value Added for the Scottish economy
- made a direct contribution to the Scottish economy of £ 301 million
- supported around 10,600 jobs in 2015
- generated £246.6 million for the public exchequer – equivalent to £102 per household in Scotland.

A common misconception is that the independent sector in some way costs the state money or receives financial support – neither of which is accurate. The same study noted that by applying government cost estimates to the number of pupils who would otherwise be educated in state schools, it was possible to estimate that in 2015 SCIS members generated a total cost saving to the Scottish education system of £156 million.

In the case of independent schools in Scotland, the advancement of education is palpably and demonstrably being delivered, while they are rightly tested for their public benefit provisions. The Review singles the schools out for differential treatment on questionable grounds, open to legal interpretation and contrary to the promotion of growth in Scotland. The independent sector is willing to work with the Government, state-maintained schools and public bodies to advance Scottish education as a whole – and we look forward to hearing from you.

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cc: John Swinney MSP, Deputy First Minister and Cabinet Secretary for Education & Skills

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<sup>3</sup> <http://www.scis.org.uk/facts-and-figures/economic-impact-report/>