

EXECUTIVE COMMITTEE
22 April 2016

IMPLICATIONS OF CHARITABLE STATUS FOR SCHOOLS

1. Introduction

1.1 The following resolution was approved by the EIS AGM in June 2015:

“That this AGM resolve that Council should investigate and report on the implications, both positive and negative, of all schools having charitable status.”

2. Charitable Status in Scotland

- 2.1 The majority of independent schools in Scotland (approximately 80%) currently have charitable status which either date back to the original legacies which established the school or which result from more recent applications for charitable status to the Office of the Scottish Charity Regulator (OSCR).
- 2.2 The Office of the Scottish Charity Regulator requires all organisations applying for or seeking to retain charitable status to comply with two distinct charity tests as follows:
- (a) The organisation in question must have charitable purposes set out as part of its aims, purposes or objectives within its Constitution etc.;
 - (b) In delivering these charitable purposes the organisation must provide public benefit, in other words, OSCR must be satisfied that the organisation will make a positive difference for the public in the manner outlined in its Constitution i.e. that it is actually carrying out its charitable objectives.
- 2.3 Charitable status is shared by 23,745 organisations across Scotland and, in addition to the Scottish independent school sector, is enjoyed by Universities, Further Education Colleges, Professional Colleges, Trades Unions (including the EIS), and Private Care Homes etc.
- 2.4 State sector schools in Scotland are funded and managed by Local Authorities and any decision to apply for charitable status would be an issue for local, political decision making.

3. Benefits of Charitable Status to Independent Sector

- 3.1 Charitable Status brings with it a number of financial benefits which include:
 - (a) Tax breaks (including income from investments, estates, land and property) usually through relief from corporation tax and capital gains tax.
 - (b) Business rates relief in a mandatory form is provided to organisations using property for charitable purposes.
 - (c) Income from fund raising through charitable donations can also be tax free (through schemes such as "gift aid") but any fees paid for services provided receive no such tax exemption.
- 3.2 For schools in the Scottish independent sector the removal of charitable status could result in a loss of around £5m, in tax breaks, to this sector's income in any given year.
- 3.3 Clearly the financial benefit gained by the private sector through charitable status gives rise to concerns around equitable treatment when public sector schools do not enjoy the same advantage.

4. Benefits of Charitable Status to Local Authorities

- 4.1 Whilst there may be an obvious attraction, and sense of justice, in advocating that state schools should benefit from charitable status also, there are certain practical considerations which might suggest that this is not a route to be pursued.
- 4.2 A change in the law to facilitate such an approach is not as straightforward as might be imagined as essentially it would require the status of public sector schools to be changed – it would not be simply a nominal change in status as this would have implications for all public services.

In this sense the financial gain achieved by schools through charitable status may be considered to be outweighed by the disadvantages of becoming at least arm's length from local authority control

A number of Local Authorities have already moved to establishing charitable trusts to administer services, ALEOs, most commonly services related to Arts and Leisure. Such changes have been reported to bring financial benefits and have been argued for in terms of "best value".

- 4.3 Changes to charitable trust arrangements have also meant that employees have had contracts changed and have become employed by the new legal entity. The union which has most members

affected by this change, Unison, has expressed concerns over the move to such arrangements and has questioned the impact this has had on provision of service.

In England we have seen the introduction of the academy programme used to destroy local authority control over secondary schools, in particular, as “public sector” schools are increasingly driven towards a “private sector” approach.

5. Issues and Concerns

- 5.1 There are issues around the statutory nature of Education Authority that would make the establishment of Local Authority Education Trusts more problematic than such arrangements for non-statutory services provided by Local Authorities.
- 5.2 Would charitable status increase funding available to state education?
- 5.3 Would the savings made by Local Authorities be invested into service provision or used for other services?
- 5.4 How would such changes impact on the block grant funding from Scottish Government?
- 5.5 Would the move to charitable status by local authorities be possible on a school by school basis? If such was proposed the employment of teachers could well be at school level. Such an arrangement would not be seen as a benefit to our members in such establishments.
- 5.6 The potential impact on national bargaining and conditions of service would need to be assessed.
- 5.7 Local moves to discuss this option have been met with opposition from EIS locally and there are many uncertainties for schools and teachers if such proposals were progressed.

6. Conclusion

- 6.1 The independent sector has embraced and values its charitable status as it delivers financial benefit to their organisations.
- 6.2 To consider fully the positive and negative impact of charitable status on state funded education, however, one would need to be clear of the model of governance and legislation that underpins and allows for such a change. As this is largely speculative in nature the full implications of such a change are beyond the immediate scope of this paper but it would appear that any financial gain may well be at the expense of the comprehensive system we currently enjoy.

- 6.3 An argument might be that if all schools had charitable status this would create a more level playing field but in reality a change in funding and tax arrangements may not bring a positive change in the level of funding of schools.
- 6.4 Any move away from Local Authority direct financial control should be carefully considered and the pros and cons of specific proposals would require close scrutiny by the EIS.
- 6.5 The issues for members regarding their employment would require specific legal advice if proposals for changes to charitable trusts are made.
- 6.6 The EIS extant policy position in relation to the governance of Scottish state schools had been broadly in support of Local Education Authority control. Any suggested changes to the current arrangements would require detailed consideration.

The existence of charitable status clearly creates a financial advantage for the independent sector but given the potential complications around potential charitable status in the public sector, calls for increased investment in state schools may be a better approach to the question of ensuring equity.

Committee is asked to note the report.