

EXPLANATORY MEMORANDUM TO
THE SMALL CHARITABLE DONATIONS REGULATIONS 2013

2013 No. 938

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ('HMRC') and is laid before the House of Commons by Command of Her Majesty.

2. **Purpose of the instrument**

2.1 This draft instrument contains the administrative framework for the Gift Aid Small Donations Scheme. The new scheme will allow charities and Community Amateur Sports Clubs (CASCs) to claim a gift aid style top-up payment on cash donations of £20 or less received in circumstances where it is difficult to collect donors' details, such as street collections. The administrative framework for the scheme will be broadly the same as already applies to gift aid claims.

3. **Matters of special interest to the Select Committee on Statutory Instruments**

3.1 The instrument uses the power at section 11(2) of the Small Charitable Donations Act 2012 that, at first glance, is drawn widely. Section 11(2) enables the Commissioners of HM Revenue and Customs (HMRC) to make provision about the administration of top-up payments and otherwise for the purposes of fully implementing the Act. To that end, regulations may apply, with or without modifications, any enactment that affects gift aid.

3.2 However the scope of the power in section 11(2) is limited by reference to the enactments that may be applied under section 11(3) and (4). These are, in practice, enactments that form part of the Taxes Acts. They provide for the administration of gift aid claims by charities and CASCs, the repayment of income tax on donations under gift aid, the recovery of overpaid amounts of income tax under gift aid and the administrative framework for carrying out enquiries into gift aid claims, appeal rights and so on.

3.3 So, with a few exceptions, the draft Regulations apply to the administration of top-up payments the tax administration provisions that apply to gift aid. The exceptions are where there is not a precise tax equivalent that can be applied or incorporated in the manner foreseen by section 11(3). In those cases, reliance is placed upon section 11(2)(a), although any such provision is drafted to reflect the form and style of the closest tax equivalent.

3.4 Charities may be charitable trusts or charitable companies. Therefore the different tax rules for trusts and companies apply, involving administrative provisions in enactments for both income tax and corporation tax.

3.5 All the enactments referred to in the instrument were themselves certified as Money Bills under the Parliament Act 1911 and the provisions applied under this draft instrument have been passed into primary legislation by Parliament.

4. Legislative Context

4.1 The Small Charitable Donations Act 2012 provides the main legislative framework for the Gift Aid Small Donations Scheme.

4.2 The draft instrument provides the administrative framework for charities and CASCs to make claims to top-up payments and for HMRC to administer the claims.

4.3 This instrument also makes provision for merged charities to use the compliance history of a predecessor charity for the purposes of establishing eligibility under the new scheme, as provided for under sections 12 and 13 of the Act.

4.4 The effect of the draft instrument is to provide a comprehensive set of rules for administering claims under the Gift Aid Small Donations Scheme. The rules are closely aligned to the rules that apply to claims to repayments on donations made under the gift aid scheme, although they deal entirely with the claimant charity, as there are no conditions required in respect of the donor as there are for gift aid.

5. Territorial Extent and Application

5.1 This draft instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury, Sajid Javid MP, has made the following statement regarding Human Rights:

In my view the provisions of the Draft Small Charitable Donations Regulations 2013 are compatible with the Convention rights.

7. Policy background

- *What is being done and why*

7.1 The aim of the Gift Aid Small Donations Scheme is to allow charities and Community Amateur Sports Clubs (CASCs) to claim a gift aid-style top-up payment on donations received in circumstances where it is difficult to collect donors' details, or where donors may be reluctant to give them. For example, when a charity has a bucket collection to raise funds, or where a religious group passes a plate around for its members to make donations during a service, it may be difficult or disproportionately burdensome to collect a declaration as the gift aid system requires.

7.2 The Gift Aid Small Donations Scheme is designed to complement, and not to replace, gift aid. Charities and CASCs will have to demonstrate a recent good compliance track record of at least two years in claiming under gift aid before they may become eligible to make a claim under the Gift Aid Small Donations Scheme. In addition, charities and CASCs will have to continue to make gift aid claims on donations of at least 10% of the amount of the donations on which top-up payments are claimed.

7.3 The reason for requiring charities and CASCs to maintain a good compliance track record under gift aid is to deter abuse of the Gift Aid Small Donations Scheme through fraud. The scheme is cash-based and so charities and CASCs will have less extensive records than for gift aid. It would be very difficult for HMRC to check a charity's or CASC's compliance if they were making claims only under the Gift Aid Small Donations Scheme.

7.4 Gift aid is the nearest proxy available for HMRC to assure a charity's or CASC's likely compliance with the rules of the Gift Aid Small Donations Scheme. Requiring a charity or CASC to operate gift aid for the given period means the charity or CASC will be subject to HMRC checking and tests on its gift aid records. It is likely that a charity or CASC that is not compliant with the gift aid rules is also not compliant with the Gift Aid Small Donations Scheme rules.

7.5 The Gift Aid Small Donations Scheme has been designed to align as closely as possible to gift aid so that charities and CASCs will see little or no difference in practice between the two. They will use the same claim forms and HMRC will apply the same procedures when it processes and checks claims. The draft Regulations ensure that the same rules apply to claims under the Gift Aid Small Donations Scheme as already apply to gift aid claims.

7.6 The draft Regulations also make specific provision for the administration of applications to HMRC by merged charities and CASCs that wish to use the gift aid compliance history of a predecessor organisation in order to establish early entitlement to make a claim under the Gift Aid Small Donations Scheme.

8. Consultation outcome

8.1 HMRC consulted informally with charity sector representatives from summer 2011. HMRC published a formal consultation document on the Gift Aid Small Donations Scheme from 27 March 2012 to 25 May 2012. The consultation period was truncated in order to accommodate the legislative timetable and the planned start date of the new scheme of 6 April 2013.

8.2 The Small Charitable Donations Bill was published on 21 June 2012 and a summary of responses to the consultation was published on the same day. A Public Reading Stage on the Bill was held from 12 July to 23 August.

8.3 The draft instrument was published for consultation on 13 September 2012 with a closing date for comments on 5 December 2012. Account has

been taken in the draft of any substantive points raised, including the extension of the claim period from one to two tax years after the tax year in which the donation was collected.

9. Guidance

9.1 HMRC will publish guidance on the Gift Aid Small Donations Scheme, including the provisions in this instrument, before the scheme is introduced on 6 April 2013.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil in relation to business and non-charitable voluntary bodies. There may be an impact on charities and CASCs that choose to claim under the Gift Aid Small Donations Scheme, but the impact is expected to be negligible, as the scheme is so closely linked to gift aid claiming processes.

10.2 The impact on the public sector is minor. HMRC will incur some additional costs to develop and run the GASDS-specific elements of a new IT system for processing charities' tax relief claims. Additional work to administer the scheme will be absorbed by existing HMRC staff.

10.3 No specific impact assessment has been prepared for this draft instrument. However, an impact assessment on the Gift Aid Small Donations Scheme as a whole, updated after the passage of the Small Charitable Donations Bill through the House of Commons, is published at:
<http://www.hmrc.gov.uk/ria/ia-final-giftaid-don.pdf>

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 These draft Regulations will be reviewed in line with the planned review of the legislation 3 years after the commencement of the scheme.

13. Contact

Cathy Wilson at HMRC Tel: 020 7147 2778 or e-mail cathy.wilson@hmrc.gsi.gov.uk can answer any queries regarding the instrument.