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To: Social Development Committee

SMALL CHARITABLE DONATIONS BILL – LEGISLATIVE CONSENT MOTION

Introduction

1. This paper updates the Social Development Committee on progress of the UK Government's Small Charitable Donations Bill, introduced to the House of Commons on 21 June 2012. The Bill legislates for the introduction of a UK-wide Gift Aid Small Donations Scheme (GASDS), a new scheme to enable charities and Community Amateur Sports Clubs (CASCs) to claim a payment from HM Revenue & Customs (HMRC) against small cash donations up to £20 (where it is often difficult to obtain a Gift Aid declaration).
2. In June 2012 the Northern Ireland Executive agreed the following recommendations:
 - that the Small Charitable Donations Bill and the GASDS should extend to Northern Ireland;
 - that the subject matter of the Bill should be made an excepted matter; and
 - that Assembly agreement should be sought by laying a Legislative Consent Memorandum and moving a motion in due course.
3. The Legislative Consent Memorandum was laid before the Northern Ireland Assembly on 29 June 2012. Officials provided a briefing to the Committee on 6 September and it was agreed that a further briefing would be provided once the Committee Stage at Westminster had been concluded.

Summary of Scheme

4. The policy objective of the Bill is linked to the UK Government's Big Society agenda and is to encourage charitable giving and build a more socially conscious society. The scheme will only apply to small cash donations of £20 or less and will be open to organisations that have a good track record of claiming Gift Aid for at least three tax years. There will be an annual limit of £5,000 per organisation on donations eligible for the top-up payment. It is designed to be administered in the same way as Gift Aid and therefore small donation income of £5,000 will entitle the charity or CASC to a top-up payment of £1,250 each year.
5. Whilst the scheme will be administered by HMRC, it cannot be treated as a tax relief under normal Gift Aid arrangements. This is due to the fact that, for small cash donations of £20 or less, there is normally no recorded link between the charity, the donor and their tax affairs. Any payments made to charities under the scheme will be regarded as grant payments and it is, therefore, regarded as a transferred matter.
6. In order to be eligible to make claims under the scheme in respect of small donations made in a particular tax year, a charity must have been in existence, and a CASC must have been registered as a CASC, for at least three years, and have made at least three Gift Aid exemption claims in the previous seven tax years. The minimum period for a new charity or CASC to qualify for the new scheme is therefore three years, providing the charity or CASC makes a Gift Aid exemption claim in each of the three tax years.
7. There will be special rules in certain circumstances to increase the maximum amount of small donations on which top-up payments can be claimed by some charities. If a charity runs charitable activities in a community building, the maximum limit is increased from £5,000 of small donations by up to a further £5,000 for small donations collected in each community building.

Territorial extent and application

8. The Small Charitable Donations Bill extends to the whole of the UK. It is the intention of the UK Parliament that the scheme is applied in a consistent manner across all administrations by HMRC and that there is no scope to introduce regional variations.

9. The consent of the Northern Ireland Assembly, by way of the Legislative Consent Motion, is being sought for the UK Parliament to proceed with the Bill (as the Bill provisions, at introduction, relate to matters which are within the legislative competence of the Northern Ireland Assembly). The Bill includes a provision to make the scheme an excepted matter for the purposes of the Northern Ireland devolution settlement (by way of amendment Schedule 2 to the Northern Ireland Act 1998). A similar approach was taken with the Child Trust Funds Act 2004 and the Saving Gateway Accounts Act 2009.

Progress at Westminster

10. The Bill has been subject to scrutiny by a Public Bill Committee at Westminster. This stage was completed on 30 October and a number of amendments have been agreed. These amendments address mainly technical matters including:
 - Clause 2 (Meaning of Eligible Charity) – Where a penalty imposed on a charity, in respect of Gift Aid or GASDS claims, but is later suspended, the charity will still be eligible to claim top-up payments.

 - Clause 5 (Meaning of Connected Charities) – This provides a new test for determining when charities are connected. Two charities which share a single Trustee will no longer be regarded as connected for the purposes of claiming top-up payments.

 - Clause 7 (Meaning of running charitable activities in a community building) - This Clause has been refined to alter the definition of charitable activities

in a community building and to include charity staff and Trustees for the purposes of meeting the eligibility criteria.

- Clause 8 (Meaning of Community Building) – This amendment allows commercial buildings to qualify as community buildings in specific circumstances, where the building or part of it is available for exclusive use by a charity at the time it uses it.
 - Clause 12 (Change of Charity’s Legal Form) – This Clause has been amended to allow charities which change legal form to benefit from previous Gift Aid compliance history and to enable charities which merge to benefit from the compliance history of one of the pre-merger charities.
11. During the Committee scrutiny of the Bill, the Treasury Minister advised that the new Scheme must be aligned to Gift Aid in order to ensure that appropriate safeguards are in place and that any potential fraud is minimised. This means that any charity wishing to claim a top-up payment under the Scheme must register with HMRC for tax purposes and submit Gift Aid claims for three successive years. The Minister, however, did agree to review implementation of the Scheme within three years to assess the level of take up, particularly amongst small charities.

Timing

12. Whilst there remain some concerns within the charitable sector in relation to the qualifying conditions attached to this Scheme, it is unlikely that the Westminster Government will make any further concessions at this stage. It is important that the Scheme is applied in a consistent manner across the UK and there is no scope to make regional variations. The Westminster Committee’s Report will be published on 26 November and, in order for NI charities to benefit from this Scheme from April 2013, the Assembly must approve the LCM before this date. It must also agree that the Scheme will be made an excepted matter under Schedule 2 to the NI Act 1998.

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SUMMARY PAPER

Background

1. The Small Charitable Donations Bill was introduced at Westminster on 21 June 2012. The Bill legislates for the introduction of a UK-wide Gift Aid Small Donations Scheme (GASDS), a new scheme to enable charities and Community Amateur Sports Clubs (CASCs) to claim a payment from HM Revenue & Customs (HMRC) against small cash donations up to £20. Whilst the scheme will be administered by HMRC, it cannot be treated as a tax relief under normal Gift Aid arrangements. As no recorded link between the charity, the donor and their tax affairs will be required any payments made to charities under the scheme will be regarded as grant payments.
2. There will be an annual limit of £5,000 per organisation on donations eligible for the top-up payment. Small donation income of £5,000 will entitle the charity or CASC to a maximum top-up payment of £1,250 each year. In order to be eligible to make claims under the scheme, a charity or a CASC must have made at least three Gift Aid exemption claims in the previous seven tax years.
3. In June 2012 the Executive agreed that the Small Charitable Donations Bill and the GASDS should extend to Northern Ireland and that the subject matter of the Bill should be made an excepted matter. Officials briefed the Social Development Committee (SDC) on 6 September and the Committee also heard evidence from NICVA. Whilst there was broad agreement on the principles behind the Bill and the proposed Scheme, some concerns were expressed about the qualifying conditions and the link to the Gift Aid Scheme.

Progress at Westminster

4. The Bill has been subject to scrutiny by a Public Bill Committee at Westminster. This stage was completed on 30 October and a number of amendments have

been agreed. These amendments address mainly technical issues and do not change the fundamental principles of the Scheme. During the Committee scrutiny of the Bill, the Treasury Minister advised that the new Scheme must be aligned to Gift Aid in order to ensure that appropriate safeguards are in place and that any potential fraud is minimised. The Minister, however, did agree to review implementation of the Scheme within three years to assess the level of take up, particularly amongst small charities.

Timing

5. Whilst there remain some concerns within the charitable sector in relation to the qualifying conditions attached to this Scheme, it is unlikely that the Westminster Government will make any further concessions at this stage. It is important that the Scheme is applied in a consistent manner across the UK and there is no scope to make regional variations. The Westminster Committee's Report will be published on 26 November and, in order for NI charities to benefit from this Scheme from April 2013, the Assembly must approve the LCM before this date. It must also agree that the Scheme will be made an excepted matter under Schedule 2 to the NI Act 1998.

Amendments to Small Charitable Donations Bill

Clause 2(4)(c) - penalties “imposed”

Where a penalty is imposed on a charity, but is suspended, then that penalty won't count for the purposes of assessing a charity's eligibility for the top up payment under the Scheme.

New clause 5(4) – Connected charity rule.

The connected charities rule largely relies on the “connected” persons rule contained in the Taxes Acts (section 993 & 994 Income Tax Act 2007 and section 450 et seq of Corporation Tax Act 2010) This is a tried and tested definition and works well for tax purposes. Because the concept of ‘connected’, doesn't really fit well in the charitable trust context, the Bill has been amended to contain new tests to determine where someone is in control of a charitable trust.

The test in clause 5(4) of the Bill as published, connected charitable trusts that shared just one trustee. This would have connected charitable trusts in circumstances that were not intended by the legislation. The new amendment provides a better test for connecting trusts together, importantly, two trusts that share a single trustee will no longer be inadvertently connected.

Clause 6 refined – donations must be from ‘group members’ (community buildings rules)

As part of a package of changes to the rules around charitable activities undertaken in community buildings, this amendment requires small donations to have been made by people who are taking part in the charitable activity (rather than simply collected from members of the public who are not taking part in the charitable activity).

Clause 7 refined – charitable activities must be open to the public, and free to access, and donations from charity staff and trustee can now qualify as small donation

Various amendments have been made to clause 7 which essentially:-

- alter the definition of running charitable activities in a community building so that the activity must be of a kind made available to the public, and
- no-one in the group taking part in the activity should be required to pay to access the part of the building where the charitable activity is taking place
- staff and trustees of the charity can now count for the purposes of reaching the required 10 group members (meeting 6 times a year) as long as they're beneficiaries of the charitable activity

Clause 8 refined – definition of community building has been clarified and extended

The amendment here essentially allows commercial buildings to qualify as community buildings in specific circumstances. The commercial building, or a part of it, must be available for exclusive use by the charity at the time it uses it, and the commercial activity must not be the sale/ supply of goods.

Clause 12 replaced and a new clause inserted – change of legal form and charity mergers

This amendment enables a charity that changes legal form to continue to benefit from its pre-change compliance history. It also provides for charities that merge to continue to benefit from the compliance history of one of the pre-merger charities.