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30 August 2012

Your Ref: CSD/017/2011/CMC
Our Ref: SUB/902/2012

Dear Kevin

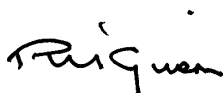
LCM – Small Charitable Donations Bill

I write in reply to the Committee's request for a briefing from Departmental officials on the Legislative Consent Memorandum on the Small Charitable Donations Bill.

I attach a detailed briefing paper (Annex A) and a summary paper (Annex B) outlining the key issues on this subject. The Legislative Consent Memorandum is attached at Annex C.

I can confirm that I will attend the oral briefing at the Committee meeting of **6 September 2012** at 10am in Room 29 and will be accompanied by Andrea Watson, a DP in the Voluntary and Community Unit.

Yours sincerely



Roy McGivern
G7
Head of Policy, Innovation & Charities



From: Roy McGivern

Date: 30 August 2012

To: Social Development Committee

**LEGISLATIVE CONSENT MEMORANDUM
SMALL CHARITABLE DONATIONS BILL**

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. On 14 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 (**Annex C**). The next stage is for the Committee to make a report to the Assembly. Subject to the outcome of consideration by the

Social Development Committee, an appropriate Legislative Consent Motion will be tabled in due course.

Policy context and summary of the GASDS

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.
5. 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, where the basic rate of income tax is 20%, small donation income of £5,000 will entitle the charity or CASC to a top-up payment of £1,250 each year.
6. 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.
7. The new scheme does not require individual donors to complete a Gift Aid Declaration nor does it require the charity or CASC to provide the donor's details with their repayment claim as required under Gift Aid.
8. 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.

9. Charities and CASCs that incur a penalty under Gift Aid or the GASDS will be excluded from making claims under the GASDS for the tax year in which the claim giving rise to the penalty was made, and the following two tax years, but Gift Aid exemption claims made in those tax years will still count in determining eligibility in subsequent years.
10. A charity or CASC must make Gift Aid exemption claims on donations received in the same tax year in order to make a claim to a top-up payment under the GASDS. The total Gift Aid donations must be at least 50% of the amount of the small donations on which top-up payments are claimed.
11. 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. The “community building” provisions do not apply to CASCs.
12. Charities and CASCs that are connected with one another will share between them the maximum £5,000 limit on which small donations may be claimed. However the additional allowance due to a connected charity that runs charitable activities in a community building will not be affected.
13. Most of the legislative machinery for administering the scheme will be provided for in regulations.

Territorial extent and application

14. 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.

15. 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.

Consultation

16. UK Government officials have been working with key charity representatives to develop the proposals, on a confidential basis, since August 2011.
17. HMRC launched a UK-wide 9 week public consultation on the proposals leading to the Bill on 27 March 2012. Both the Charity Commission for Northern Ireland and NICVA publicised details of the consultation through their respective networks. NICVA prepared a response on behalf of Northern Ireland charities.
18. Bill papers, the Bill at introduction, the Explanatory Notes to the Bill and an Impact Assessment can be found at the following web link:

<http://services.parliament.uk/bills/2012-13/smallcharitable donations/documents.html>

Timing

19. Normally an Assembly Committee will aim to report on the provisions of a Legislative Consent Memorandum within 15 working days. In this case the 15 day period ends on 14 September 2012. A motion will be tabled in the Assembly following publication of the Committee report.
20. The Assembly debate and agreement on the Legislative Consent Motion must be reached by Report Stage in the House of Commons. The Second Reading of the Bill is scheduled for 4 September 2012. It will then move to Committee Stage. Report Stage follows Committee Stage. Therefore the requirement of attaining

Northern Ireland Assembly agreement to the Legislative Consent Motion by Report Stage is on target.

**LEGISLATIVE CONSENT MEMORANDUM
SMALL CHARITABLE DONATIONS BILL**

PRESENTATION TO SOCIAL DEVELOPMENT COMMITTEE

6 SEPTEMBER 2012

SUMMARY PAPER

Background

The Small Charitable Donations Bill was 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. 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.

There will be an annual limit of £5,000 per organisation on donations eligible for the top-up payment. Where the basic rate of income tax is 20%, small donation income of £5,000 will entitle the charity or CASC to a top-up payment of £1,250 each year.

In order to be eligible to make claims under the scheme in respect of small donations made in a particular tax year a charity or a CASC must have made at least three Gift Aid exemption claims in the previous seven tax years.

On 14 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.

Social Development Committee report

The Legislative Consent Memorandum was laid before the Northern Ireland Assembly on 29 June 2012. The Memorandum has been referred to the Committee for Social Development for a report to the Northern Ireland Assembly. The Assembly debate and agreement on the Legislative Consent Motion must be reached by Report Stage of the Bill in the House of Commons and therefore the Committee report is required in advance of this. The normal 15 day period for the Committee report ends on 14 September 2012.

Conclusion

Approval of the Legislative Consent Motion will ensure that eligible local charities and CASCs can make claims and avail of the new top-up payment from HMRC in the same way as other charities across the UK.

LEGISLATIVE CONSENT MEMORANDUM

SMALL CHARITABLE DONATIONS BILL

Draft legislative Consent Motion

1. The draft motion, which will be tabled by the Minister for Social Development, is:

“That this Assembly endorses the principle of the extension to Northern Ireland of the Small Charitable Donations Bill and that its operation be made an excepted matter under the Northern Ireland Act 1998.”

Background

2. This memorandum has been laid before the Assembly by the Minister for Social Development under Standing Order 42A(2). The Small Charitable Donations Bill was introduced in the House of Commons on 21 June 2012. The latest version of the Bill can be found at:

<http://services.parliament.uk/bills/2012-13/smallcharitabledonations.html>

Summary of the Bill and its policy objectives

3. The Bill makes provision for the Gift Aid Small Donations Scheme (GASDS) which was announced by the Chancellor in the 2011 Budget. It is part of a package of measures designed to encourage charitable giving, reduce the administrative burden on charities and build a more socially conscious society. From April 2013, eligible charities and Community Amateur Sports Clubs (CASCs) will be able to claim a Gift Aid-style top-up payment in respect of individual donations of £20 or less without the extra administrative burden of having to obtain a declaration from donors as is required for Gift Aid.
4. Gift Aid increases the value of donations to charities and CASCs by allowing charities to reclaim basic rate tax on the gross equivalent of the donation. However, it is administratively linked to donations made by individuals who pay UK tax and for whom tax records are held. GASDS is designed to catch small donations received in circumstances where it is difficult or not possible to collect the donor's details e.g. bucket/plate, thus making it either impossible for

the charity to claim Gift Aid, or administratively disproportionately burdensome.

5. Clause 15 amends Schedule 2 (excepted matters) to the Northern Ireland Act 1998 (“the 1998 Act”) to include the “operation of the Small Charitable Donations Act 2012”. Clause 19 extends the provisions of the Bill to Northern Ireland.

Provisions which deal with a Devolution Matter

6. In general, matters dealt with by HMRC apply on a UK-wide basis and are excepted matters under the 1998 Act. GASDS is an exception in that while the eligibility criteria are closely aligned to the Gift Aid system of tax relief, the top-up payment is a grant to charities and CASCs and, as such, is a transferred matter. However, given that GASDS will be administered by HMRC and financed centrally by the UK Government, it is appropriate that the scheme should operate on a UK-wide basis and its operation made an excepted matter. The scheme will apply uniformly across all UK jurisdictions and the power to change for instance, the eligibility criteria or the monetary amounts involved, will rest solely with the UK Parliament.

Reasons for making the Provisions

7. The Bill makes provision for a scheme intended to benefit all eligible UK charities and CASCs. If the Bill did not extend to Northern Ireland potentially eligible charities and CASCs here would be disadvantaged by not being able to avail of the benefit GASDS provides for the rest of the UK .

Reasons for utilizing the Bill rather than an Act of the Assembly

8. The Northern Ireland administration does not have the financial resources to fund a separate and similar scheme to GASDS. Northern Ireland charities and CASCs will only enjoy the benefits of the scheme if the Bill is extended to Northern Ireland.
9. Clause 15 amends Schedule 2 to the NI Act 1998 to make the operation of the Bill an excepted matter. Amendment of the 1998 Act falls outside the legislative competence of the Assembly and can only be amended by a Westminster Bill/Act.

Consultation

10. HMRC launched a UK-wide public consultation on 27 March 2012. Both the Charity Commission for Northern Ireland and NICVA publicised the Consultation Document on their respective websites. NICVA prepared a response on behalf of Northern Ireland charities –

<http://www.nicva.org/sites/default/files/Gift%20Aid%20Small%20Donations%20Scheme%20response.pdf>

11. While NICVA welcomes GASDS as a measure that will bring financial gain to eligible charities and CASCs, it feels that a Bill to simplify and extend the Gift Aid Scheme, would be more beneficial.
12. UK Government officials have also been working with key charity representatives to develop the proposals, on a confidential basis, since August 2011.

Human Rights and Equality

13. The eligibility criteria for GASDS apply to all charities and CASCs regardless of charitable purpose or legal form. The scheme has no differential impact on any of the section 75 categories under the 1998 Act and is compatible with the Human Rights Convention.

Financial Implications

14. GASDS has no financial implications for the Northern Ireland administration. The cost will be met by the UK Government centrally.

Summary of Regulatory Impact

15. 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. GASDS will have no impact on employment, and will incur no cost to business, social enterprises or the voluntary sector but will provide financial gain to eligible charities and CASCs.

Engagement to date with the Committee for Social Development

16. The Minister wrote to the Social Development Committee on 31 May 2012 outlining the proposals of the Bill and the legislative implications for the

Assembly. The Committee was also advised that officials would be available should further briefing be required. The Committee noted the correspondence at its meeting on 14 June 2012.

Conclusion

17. The Minister for Social Development is of the view that while the Bill deals with a devolution matter, in the interests of good government, it should be considered by the UK Parliament and extend to Northern Ireland.
18. The Minister is also of the view that as GASDS is to be administered, and the costs met, by HMRC and to ensure uniform application throughout the UK, Schedule 2 to the Northern Ireland Act 1998 Act should be amended to include the operation of the Small Charitable Donations Bill as an excepted matter.

Department for Social Development
29 June 2012