

# **SMALL CHARITABLE DONATIONS BILL**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Small Charitable Donations Bill as introduced in the House of Commons on 21 June 2012. They have been prepared by HM Revenue and Customs (HMRC) in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

### **SUMMARY AND BACKGROUND**

3. The Small Charitable Donations Bill introduces the Gift Aid Small Donations Scheme (GASDS) which was announced at Budget 2011. The purpose of the scheme is to enable charities and Community Amateur Sports Clubs (CASCs) to claim a Gift Aid style payment on small cash donations up to £20 where it is often difficult to obtain a Gift Aid declaration. In general, eligible charities and CASCs will be able to claim top-up payments on up to £5,000 small donations each year.
4. The new scheme does not require individual donors to complete a Gift Aid Declaration or the charity or CASC to provide the donor's details with their repayment claim as required under Gift Aid.
5. The top-up payment 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.

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as introduced in the House of Commons on 21 June 2012[Bill 28]*

6. In order to be eligible to make claims under the GASDS 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. 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.
8. 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.
9. 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.
10. 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.
11. Most of the legislative machinery for administering the scheme will be provided for in regulations. The regulations are intended to mirror the administrative provisions in the Taxes Acts that are used to administer Gift Aid exemption claims.

#### **TERRITORIAL EXTENT AND APPLICATION**

12. The Small Charitable Donations Bill extends to the whole of the UK.
13. At introduction, the Bill’s provisions 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. The consent of the Northern Ireland Assembly is being sought for the UK Parliament to proceed with the Bill and also to amend Schedule 2 to the Northern

Ireland Act 1998 to make the scheme an excepted matter.

14. This Bill does not contain any provisions falling within the terms of the Sewel Convention. Because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament, if there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will be sought for them.
15. In relation to Wales, the Bill does not relate to devolved matters or confer functions on the Welsh Ministers.

## **COMMENTARY ON CLAUSES**

### **Clause 1: Top-up payments in respect of small donations made to eligible charities**

16. *Clause 1* provides when a top-up payment is payable and how to calculate the amount due.
17. *Subsection (1)* of clause 1 stipulates the conditions for when a charity or CASC is entitled to a top-up payment from HMRC. *Clause 17(1)* provides that a “charity” includes CASCs and certain other bodies. In particular the charity or CASC must be an eligible charity or CASC for a tax year and make a successful Gift Aid exemption claim in respect of gifts made to it in the tax year and it must make a claim in respect of small donations made to it in the same tax year.
18. *Subsection (2)* of clause 1 provides a formula for calculating the amount of a top-up payment. The amount payable is based on the basic rate of income tax so, for example, a small donation of £1 attracts a top-up payment of 25p where the basic rate of income tax is 20%.
19. *Subsections (3) to (5)* of clause 1 restrict the amount of top-up payments a charity or CASC may claim by reference to a “maximum donations limit”. The maximum donations limit on top-up payments is normally £5,000 of small donations collected in each year, subject to certain conditions for charities and CASCs set out in *clauses 4, 6 and 9*. The amount of small donations on which a top-up payment may be claimed is restricted to twice the amount of donations on which the charity or CASC claims Gift Aid for the same tax year. The effect of this provision is to require Gift Aid donations to be matched to small donations at a rate of 50%. So a charity or CASC making a top-up payment claim in respect of £5,000 of small donations must make a claim for Gift Aid on at least £2,500 of other donations received in the same tax year.

### **Clause 2: Meaning of “eligible charity”**

20. *Clause 2* defines the eligibility conditions for a charity or CASC to be entitled to a top-up payment under clause 1. *Subsections (1) and (2)* state the two main conditions

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to be met:

- the charity or CASC must have made a successful Gift Aid exemption claim in at least three of the previous seven tax years, and there must not have been a period between claims of more than two complete tax years, and
  - the charity or CASC must have been in existence for at least three complete tax years.
21. The first condition at subsection (1) of clause 2 considers a charity's or CASC's Gift Aid exemption claim activity over a seven year period, and requires three successful claims during this period. Subsection (2) requires that, when considering the number of Gift Aid exemption claims made over a seven year period, there must not have been a period between claims of three or more consecutive tax years if the earlier claim is to be taken into consideration. So a successful Gift Aid exemption claim made in the 2008/09 tax year can not be considered as one of the three successful claims, if the next claim was not made until the tax year 2012/13.
  22. The effect of these provisions is to ensure that the charity or CASC has a good, recent, track record of making Gift Aid exemption claims in order to be eligible to make claims under GASDS. The conditions allow a charity or CASC to demonstrate their compliance even if they do not make Gift Aid exemption claims every year.
  23. For example, Charity A is a long established charity and has made successful Gift Aid exemption claims in each of the tax years 2010-11, 2011-12 and 2012-13. Charity A will be eligible to make a claim under the GASDS on small donations collected from 6 April 2013 (the tax year 2013/14).
  24. Charity B has made successful Gift Aid exemption claims in each of the tax years 2010-11, 2011-12 and 2015-16. There have been three consecutive years, 2012-13 to 2014-15 in which Charity B has not made a Gift Aid exemption claim. Therefore Charity B is not eligible to make a GASDS claim until it has made at least two more successful Gift Aid exemption claims in the years 2016-17 onwards, so long as the gap between making a claim is not three tax years or more. Claims made before the three year gap do not qualify.
  25. For the purposes of the eligibility conditions in clause 2, Gift Aid exemption claims made in a tax year do not need to be made in respect of donations received in that tax year. However, for the purposes of matching Gift Aid donations to GASDS donations in clause 1, the matched Gift Aid donations must be received in the same tax year as the GASDS donations.
  26. A "successful" Gift Aid exemption claim is defined in *clause 17* and is a claim made by the charity or CASC which has resulted in an amount falling to be exempt from income tax or corporation tax as a result of the claim. Under *subsection (3)* of clause 2, any penalty incurred in respect of a Gift Aid exemption claim or top-up claim will

disqualify the organisation from entitlement to a top-up payment for the tax year in which the claim was made, and the following two tax years. A penalty is defined in *subsection (4)* as a penalty under Schedule 24 to Finance Act (FA) 2007 for Gift Aid exemption claims or a penalty under the regulations that will be made under *clause 11* in respect of claims to top-up payments. It is intended that the penalty provisions under clause 11 will mirror those in Schedule 24 FA 2007 that apply to Gift Aid exemption claims.

**Clause 3: Meaning of “small donation”**

27. *Clause 3* defines what is meant by a “small donation” and explicitly excludes membership fees from being small donations for the purposes of the scheme. *Subsection (2)*, read together with clause 17(1) and (2), requires charities to apply small donations for charitable purposes and CASCs to apply small donations for qualifying purposes if the donations are to qualify under the scheme. It follows that any part of a small donation which is applied for non-charitable purposes (for charities) or non-qualifying purposes (for CASCs) does not qualify as an eligible small donation on which a top-up payment claim can be made. This approach, to deny a claim (or part of a claim) for a top-up payment where the underlying donations are not used for charitable or qualifying purposes, is in line with the Gift Aid rules where donations applied for non-charitable or non-qualifying purposes do not qualify for tax relief. This provision does not apply to the bodies listed at *subsection (3)* of this clause in order to maintain consistency with the Gift Aid rules.

**Clauses 4 to 9: General**

28. *Clauses 4 to 9* provide for the maximum amount of small donations on which a charity may claim a top-up payment for a tax year (referred to as the “specified amount”) to be increased or reduced in certain circumstances (in relation to CASCs the relevant clauses are 4, 5 and 9).
29. *Clauses 4 and 9* reduce the specified amount where a charity or CASC is connected with one or more charities or CASCs within the definition of a connected charity at *clause 5*. The purpose of the connected charity rule is to ensure, as far as possible, that charities or CASCs which operate in a broadly similar way, but are structured differently, receive the same entitlement under the scheme. The rule ensures that charities or CASCs that are already fragmented into smaller charities or CASCs, but are largely structured as one charity or CASC, do not receive too much of an entitlement, and those charities or CASCs that are not fragmented have no incentive to do so.

**Clause 4: Connected charities**

30. *Clause 4* deals with the case where none of the connected charities or CASCs is running charitable activities in a community building. It applies only to connected charities or CASCs that are eligible charities or CASCs for the purposes of the scheme in that tax year: connected charities or CASCs that are not eligible for the scheme are disregarded. For example, if three charities are connected under the provisions of clause 5 but only one of them is eligible to make a claim under the

scheme in that tax year then the charity does not fall within clause 4.

31. *Subsection (2)* of clause 4 determines that the small donations received by each of the connected charities or CASCs are essentially pooled. The specified amount of £5,000 is divided by the number of connected charities or CASCs that make a claim under the scheme in respect of small donations received in the tax year. So if the connected charities or CASCs decide that only one of them is to make a claim, that one is entitled to make a claim in respect of up to £5,000 of small donations received by any of the connected charities or CASCs. The one charity or CASC that makes a claim does not need to have received £5,000 of small donations in its own right, the small donations have been pooled. It follows that if two connected charities decide to make a claim under the scheme in the same tax year, the specified amount of £5,000 is divided into two, and each of the charities is entitled to make a claim in respect of up to £2,500 small donations, again from the pool of small donations received by connected charities.
32. It is up to the connected charities or CASCs to decide how many of them are to make a claim. However, each charity's or CASC's claim must be matched with Gift Aid donations received by the charity or CASC itself at a rate of 50% of Gift Aid donations to small donations; the Gift Aid donations matched under clause 1(4)(a) are not pooled between the eligible charities and CASCs.

**Clause 5: Meaning of “connected”**

33. *Clause 5* defines the meaning of a connected charity or CASC for the purposes of clauses 4 and 9. The connected charity rule is largely based on the connected persons rule used more widely for tax purposes, and found at section 993 of the Income Tax Act 2007. Essentially charities or CASCs are connected to each other at any time during a tax year where the same person (or connected persons) has control over another charity or CASC. *Subsection (4)* of clause 5 determines that references to “company” in section 993 of the Income Tax Act 2007 are to be read as including references to a trust for the purposes of the scheme. As a result, the application of section 993 of the Income Tax Act 2007 to determine whether parties are connected is applied in broadly the same way to a charitable trust as it is applied to a charitable company.
34. *Subsections (4)(a) to (c)* of clause 5 provide a definition of “control” to be applied to trusts for the purposes of the scheme. This definition is designed to cater for those situations where a trust is effectively controlled by a person, for example where a person has the power to appoint trustees or power to control the way in which the trustees carry out any of their functions.
35. No special provision is made for the definition of “control” as it applies to companies. Therefore section 994 of the Income Tax Act 2007 provides that “control” is to be read in accordance with section 450 (and section 451) of the Corporation Tax Act 2010.

36. Importantly, *subsection (5)* of clause 5 determines that where the purposes and activities of two connected charities or CASCs are not the same, or substantially similar, they will not be treated as connected for the purposes of this clause.

**Clause 6: Charities running charitable activities in community buildings**

37. *Clause 6* increases the “specified amount” for charities that run charitable activities in community buildings. *Clause 7* defines what is meant by the term “running charitable activities”. The purpose of these provisions is to increase the entitlement of charities that deliver their charitable activities through community groups. *Clause 6* provides a similar specified amount for charities carrying out similar activities in the local community but where the charities are structured differently. So, for example, without this provision or the connected charity provision, a charity that is centralised and operates through local community groups would be limited to a maximum donations limit of just £5,000 (there is just one parent charity). This position would contrast with the situation of a charity carrying out similar activities that operates in the local community through a number of local charities under its control which, without this provision, would be entitled to a specified amount of £5,000 for each of the local charities as well as the £5,000 specified amount for the parent charity.
38. *Subsection (2)* of clause 6 provides that the specified amount of a charity which undertakes charitable activities in a community building is made up of two parts.
- The first part consists of the small donations made to it in a community building while it is running its charitable activities. *Subsection (3)* determines that this amount is capped by the total amount of small donations received in the community building, or at £5,000, whichever is the lower amount.
  - The second part of the specified amount consists of the “remaining amount” which *subsections (4) and (5)* together define as the balance of other small donations not received in a community building while it is running charitable activities or £5,000, whichever is the lower amount.
39. For example, a medical charity established to support people who suffer from a specific condition undertakes monthly meetings in two community buildings and receives small donations from attendees during the meetings. In addition, the charity undertakes a street collection twice a year to help raise funds to support its work. The charity would be entitled to make a claim in respect of up to £5,000 of small donations received in each of the two community buildings, plus up to a further £5,000 in respect of the street collections. So the charity would, in total, be eligible to make a claim in respect of up to £15,000 small donations.
40. If, in one of the community buildings, the group collects £6,000 of small donations in a year and in the other community building the group collects £1,000 in small donations in the same year then the maximum limit of the charity will be up to £5,000 (the “remaining amount”) in respect of street collections plus £5,000 collected in one community building (£6,000 received, capped at £5,000) plus £1,000 received in the

other community building, that is, a total of up to £11,000.

**Clause 7: Meaning of “running charitable activities in a community building” etc**

41. *Clause 7* explains what is meant by a charity “running charitable activities in a community building” for the purposes of clauses 6 and 9. This does not include CASCs so a CASC does not benefit from an increased entitlement on account of community buildings. Each CASC is entitled to a specified amount under clause 1 of £5,000 only.
42. In essence, “running charitable activities in a community building” means the charity must carry out charitable activities for a local group of beneficiaries of the charity in the same building on at least six occasions each year. *Subsection (1)* sets out the basic conditions that must be met, including a requirement that meetings are held on a minimum of six occasions each year when the charitable activities take place in a community building and a minimum of 10 people must attend on each occasion. The purpose of the conditions is to define the characteristics that would apply to a local group of a charity that had its own local identity and was recognised publicly as a discrete group of the charity.
43. The minimum number of 10 people who attend the activities must not be staff of the charity, which includes volunteers, employees, officers and trustees of the charity. *Subsection (3)(a)* relaxes this position to the extent that volunteers who attend a meeting and who are benefitting from the charitable activities as a beneficiary, can be counted as a member of the group. In effect, because the activities must be charitable activities, the people who make up a group must be beneficiaries of the charity. It is not necessary for the same people to attend each of the group activities throughout the year. The requirements of the group listed here are designed to ensure that the meetings held by the charity in running its charitable activities are more than just, say, planning meetings in which the administrative affairs of the charity are discussed and also to deter the organisation of meetings just to benefit the charity with an increased entitlement under clause 6.
44. *Subsection (4)* of clause 7 gives HMRC the power to vary the minimum number of people who must attend meetings and the minimum number of occasions during the year that the meetings must take place. The Bill currently specifies that meetings must be of a group of 10 or more people, and meetings must be held on 6 or more occasions during the year.
45. *Subsection (5)* of clause 7 states that for the purposes of the scheme, reference to “charitable activities” is a reference to those activities carried out by a charity under its charitable objective but excludes activities that are carried out primarily for the purpose of fund raising. This means charities only receive an increased entitlement in respect of community buildings where the activity undertaken in those buildings is in fact part of the charity delivering its charitable objectives for the benefit of the charity’s beneficiaries, rather than raising funds.



**Clause 8: Meaning of “community building”**

46. *Clause 8* defines a “community building” for the purpose of the scheme. *Subsection (1)(a)* gives some examples of the types of community building that are likely to qualify under the scheme but this list is not intended to be definitive. The public or a section of the public must have access to the building, or those parts of it, in which the charitable activities are taking place. *Subsection (1)(b)* specifically excludes a building, or those parts of it used wholly or mainly for commercial or residential purposes. As a result, charity shops and residential care homes, for example, are not community buildings for the purpose of this clause.
47. *Subsection (2)* of clause 8 treats as a single building two or more buildings on the same or adjacent land where the same person holds a freehold or leasehold interest in the land. *Subsection (5)* applies this principle to interest in land held in Scotland. *Subsections (3) and (4)* of clause 8 give HMRC the power to make an order providing that in specified circumstances a building is, or is not, to be treated as a community building, and to specify circumstances when two or more buildings in the same vicinity are to be treated as a single building.
48. The purpose of subsections (2) and (3) is to prevent charities seeking to increase their entitlement to the specified amount by appearing to run several different local groups in different community buildings on the same site where, in fact, there is just one group. For example a school may have six buildings on the school site but can only claim for one single community building, not six. The power contained in subsection (3) provides the flexibility for HMRC to widen or narrow the definition of a community building in clause 8 should evidence come to light that certain buildings ought, or ought not, to be treated as a community building.

**Clause 9: Connected charities and community buildings**

49. *Clause 9* sets out the rules for determining the specified amount for a charity or CASC that is connected with one or more other charities or CASCs in a tax year, and where at least one of the connected charities runs charitable activities in a community building.
50. *Clause 9* applies only to connected charities or CASCs that are eligible charities or CASCs for the purposes of the scheme in that tax year: connected charities or CASCs that are not eligible for the scheme are disregarded. For example, if three charities are connected under the provisions of clause 5 but only one of them is eligible to make a claim under the scheme in that tax year and it runs charitable activities in a community building, then the charity does not fall within clause 9.
51. Where two or more eligible charities or CASCs are connected in a tax year and at least one of the charities runs charitable activities in a community building, *subsection (2)* of clause 9 pools the remaining donations of the eligible charities and CASCs, that is, the small donations made to all the charities and CASCs, but excluding any donations made in community buildings while the charity (or charities) was running

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charitable activities in the buildings.

52. *Subsections (3) and (4)* state how the specified amount of a connected charity or CASC within clause 9 that does not itself run charitable activities in a community building is computed.
53. First, identify the “capped total of remaining donations”: this is the amount of the pooled donations of the eligible charities and CASCs that are not collected in a community building while charitable activities are being run, or £5,000 if less. Next, identify the number of eligible charities and CASCs that make a top-up claim in respect of small donations made in the tax year. The specified amount is the capped total of remaining donations divided by the number of eligible charities and CASCs that make a top-up claim in the tax year. The result is similar in effect to clause 4, which pools the small donations of the connected charities and CASCs, where none of the charities runs charitable activities in a community building.
54. Under the provisions of *subsections (5) and (6)* a charity that runs charitable activities in a community building makes a top-up claim for the purposes of clause 9(3) only if the charity claims a top-up payment on more than the small donations that are made in its community buildings while it is running charitable activities in the building. In effect a top-up claim for the purposes of clause 9(3) relates only to the making of a claim in respect of the “capped total of remaining donations”. If a charity claims a top-up payment (in effect) only in respect of the small donations made in its community buildings it has not made a top-up claim for the purposes of clause 9(3) and the charity does not count towards the number of eligible charities that have made a top-up claim for the purposes of subsection (3).
55. The effect of *subsections (3) to (6)* is that the £5,000 specified amount in clause 1(6) is replaced with a limit equal to the “capped total of remaining donations” divided equally between all the connected charities and CASCs that make a top-up claim for the tax year in respect of those donations. All the remaining small donations, of the eligible charities and CASCs - that is the donations not collected in a community building while running charitable activities -, are pooled. However, each charity’s or CASC’s claim must be matched to Gift Aid donations received by the charity or CASC itself; the Gift Aid donations matched under clause 1(4)(a) are not pooled.
56. For example, three eligible charities, A, B and C are connected in a tax year. B and C both run charitable activities in a community building. The charities receive donations as follows:

	<b>Small donations collected in community buildings</b>	<b>Remaining small donations</b>	<b>Gift Aid donations</b>
<b>Charity A</b>	NIL	£2,000	£2,500

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<b>Charity B</b>	£2,000	£2,500	£1,500
<b>Charity C</b>	£3,000	£2,000	£5,000
<b>Total</b>		£6,500	

57. If all three charities make a claim in respect of the ‘remaining small donations’ received (of which there is a pool of £6,500) then the specified amount of £5,000 is split three ways and Charity A is entitled to a specified amount of only £1,666.67. If the charities decide between themselves that just Charity A should make a claim in respect of the remaining small donations, in other words Charity B and Charity C will only claim in relation to their community building amount of small donations, then Charity A can claim the full £5,000 specified amount based on the remaining small donations of all three charities. Charity A also has enough Gift Aid donations to match the £5,000 specified amount at a 50% matching rate. It is up to the charities to agree how the top-up payment received by A is then divided between Charities A, B and C.
58. Subsection (3) determines how to compute the specified amount for the charities and CASCs that do not run charitable activities in a community building. For the connected eligible charities that do run charitable activities in a community building clause 6 applies but *subsection (7)* of clause 9 provides that the “remaining amount” in clause 6 for this purpose is the “specified amount” given by subsection (3) of clause 9.
59. Taking the charities in the example above, if all three make a top-up claim for the purposes of clause 9(3) then the specified amount under clause 6 of:
- Charity B is  $£2,000 + £1,666.67 = £3,666.67$  and
  - Charity C is  $£3,000 + £1,666.67 = £4,666.67$ .
60. Charity B can claim on only £3,000 of small donations because it did not receive enough Gift Aid donations to match the specified amount. Charity C can claim on small donations up to the full specified amount.
61. If, instead, the three charities had agreed that Charity A should take the lead and make the claim under clause 9 on behalf of all three charities then its specified amount under clause 9(3) would be £5,000 and the specified amount under clause 6 of:
- Charity B is  $£2,000 + £5,000 = £7,000$  and

- Charity C is £3,000 + £5,000 = £8,000.

62. At first glance it would seem that each charity would be able to claim more than it ought to because each appears to have a remaining amount of £5,000 instead of one allocation of £5,000 between them. However, by claiming on more than the small donations received in a community building while running charitable activities, a charity is immediately treated as having made a top-up claim under subsection (5) for the purposes of subsection (3). So if Charity A had claimed a top-up payment on the £5,000 pooled donations of all three charities and Charity B later claimed a top-up payment on £7,000 of small donations, the specified amount in subsection(3) would need to be recalculated: two eligible charities would have made a claim so the specified amount is reduced under subsection (3) to £2,500. If Charity A had already claimed on the specified amount of £5,000 it would need to amend its claim and repay the amount overpaid.
63. If Charity C were to claim on behalf of the three charities then it would be able to claim on the full specified amount of £8,000 because it has enough Gift Aid donations to match the small donations. As with clause 4, connected charities and CASCs can decide between themselves how best to maximise the top-up payment.
64. The intention of the community building and connected charities rules is that they work together to ensure broadly equal treatment for organisations that carry out broadly similar functions but just happen to be structured differently. For example, some religious organisations such as the Church of England have set up each church as a separate charity. However, the Catholic Church has only one charity at the level of the diocese and that diocesan charity is responsible for a number of separate churches. The consequence of this is that if the rules allowed one grant per charity, the Catholic Church would receive considerably less in payments under the scheme than other religions, such as the Church of England. As a result of these rules the Catholic Church can qualify for up to £5,000 for each church that qualifies as a community building. Similarly, individual parish charities of the Church of England can each qualify for one £5,000 if they are community buildings. As the individual parish charities are connected to other Church of England charities they will not receive an additional £5,000 allowance for each charity. Instead, those connected charities will share one £5,000. As a result the two different arrangements achieve a similar outcome as each local parish church, be it Catholic or Church of England, can qualify for up to £5,000 under the community building provisions and the various charities will share an additional £5,000 under the connected charities rule.

#### **Clause 10: Overpayments**

65. *Clause 10* provides for overpayments of top-up payments to be repaid to HMRC.

#### **Clause 11: Management of top-up payments**

66. *Clause 11* specifies that the scheme will be administered by HMRC and provides a power for HMRC to make regulations to administer payments under the scheme and for the purposes of implementing the Act. *Subsections (3) to (6)* set out the scope of

the power. It is intended that the provisions made under the power will mirror as closely as possible the provisions that apply to the administration of Gift Aid exemption claims in the Taxes Acts. The Bill provides for regulations to include an appeals process. The power to make regulations under clause 11 includes a power to make provision in connection with *clause 12*: change of charity's legal form.

67. *Subsection (9)* of clause 11 provides for any amount of money to be taken into account for the purposes of the scheme to be rounded to the nearest whole penny, rounding up from 0.5p to 1p. For example, the specified amount in clause 9(3) is rounded up to £1666.67 where three connected charities make a successful top-up claim.

**Clause 12: Change of charity's legal form**

68. *Clause 12* provides for charities or CASCs that change their legal form. It enables the new charity or CASC to benefit from its predecessor's Gift Aid compliance history when deciding the eligibility of the charity or CASC in its new legal form under clause 2. The new charity or CASC must apply to HMRC for the provision to apply. So, for example, a charitable trust successfully operating Gift Aid for four years may decide to incorporate, and become a charitable company in year five. This clause allows HMRC to consider the activity of the charitable trust in determining the eligibility of the charitable company. Where the application is accepted, the new organisation would not need to wait for three complete tax years before satisfying the eligibility criteria and can rely on any good compliance history attributable to the old organisation.

**Clause 13: Power to alter specified amount etc**

69. *Clause 13* gives the Treasury the power to vary the monetary amounts specified in the Bill. These are the "specified amount" for a tax year which is currently set at £5,000 and the amount of a "small donation" in the Schedule which is currently set at £20.

**Clause 14: Top-up payments not taxable**

70. *Clause 14* states that the top-up payment received under the scheme is not taxable in the hands of the charity or CASC.

**Clause 15: Northern Ireland**

71. *Clause 15* amends Schedule 2 of the Northern Ireland Act 1998 to make the scheme an excepted matter for the purposes of the Northern Ireland settlement. The amendment will ensure that the scheme will be applied consistently across the UK.

**Clause 16: Regulations and orders**

72. *Clause 16* provides that regulations and orders are to be made by statutory instrument. All statutory instruments, except for those made in connection with transitional provisions under *clause 20(6)*, are to be made under the draft affirmative procedure in the House of Commons.

**Clause 17: General interpretation**

*These notes refer to the Small Charitable Donations Bill  
as introduced in the House of Commons on 21 June 2012[Bill 28]*

73. *Clause 17* provides interpretation of certain terms used in the Bill. *Subsection (1)* defines “charity” for the purposes of the Bill as including a CASC although, because CASCs do not carry out charitable activities, they are excluded from the provisions relating to a charity running charitable activities in clauses 6 to 8.
74. *Subsection (3)* of clause 17 defines what is meant by a “successful Gift Aid exemption claim” and a “successful top-up claim” in the context of the new scheme. Where a charity or CASC makes a Gift Aid exemption claim, the gift or the grossed-up donation – that is the money given by the donor plus the basic rate income tax on that donation which is repaid by HMRC – is exempt from tax to the extent that the gift or grossed up donation is used for charitable purposes (for charities) or qualifying purposes (for CASCs). If any part of the grossed up donation is used for non-charitable or non-qualifying purposes the charity or CASC becomes chargeable to tax on that part of the grossed-up donation, subject to certain rules.
75. Paragraph (a) of clause 17(3) defines what is meant by a “successful Gift Aid exemption claim” for the purposes of the eligibility conditions in clause 1(1) and clause 2. A Gift Aid exemption claim is “successful” where an amount of donation income falls to be exempt from income tax or corporation tax as a result of the claim. This paragraph recognises that in some instances not all of a charity’s or CASC’s Gift Aid exemption claim may fall to be exempt - a claim for exemption is sometimes subject to change, perhaps because part of the exemption is withdrawn as a result of a charity or CASC applying the donation income for non-charitable or non-qualifying purposes.
76. Paragraph (b) of clause 17(3) further refines the concept of a successful Gift Aid exemption claim for the purpose of the matching rule in clause 1(5). Only the amount of donations in a Gift Aid exemption claim that are used for wholly charitable, or wholly qualifying, purposes are to be taken into account for matching purposes. This prevents a charity or CASC from using, for example, £100 of Gift Aid donation income to match against £200 of GASDS income, where perhaps £50 of the Gift Aid donation income is applied for non-charitable or non-qualifying purposes.
77. Paragraph (c) defines a “successful top-up” claim for the purposes of determining the specified amount for a connected charity or CASC.

**Clause 18: Financial provisions**

78. The top-up payments will be paid out of money provided by Parliament. This is because the scheme is a public spending measure.

**Clause 19: Extent**

79. *Clause 19* provides that the Bill extends to England and Wales, Scotland and Northern Ireland.

**Clause 20: Commencement and transitional provision**

*These notes refer to the Small Charitable Donations Bill  
as introduced in the House of Commons on 21 June 2012[Bill 28]*

80. *Clause 20* provides for commencement and transitional provisions.
81. *Subsection (1)* provides that the provisions of the Bill come into effect from 6 April 2013, except the following provisions which will commence on the date of Royal Assent:
- provisions that allow regulations or an order to be made under *subsection (2)*. Early commencement will allow regulations to be made in time for the start of the scheme on 6 April 2013;
  - the general provisions in clauses 15 to 21 of the Bill, under *subsection (3)*.
82. *Subsections (4) and (5)* ensure that Gift Aid exemption claims made before 6 April 2013, and penalties imposed in relation to Gift Aid exemption claims before that date, will be taken into account for the purposes of determining whether a charity or CASC is eligible for the scheme under clause 2 from 6 April 2013. For this purpose, references in the Bill to currently applicable legislation include references to the legislation replaced by it.
83. *Subsection (6)* makes provision for the Treasury to make other transitional provisions by order.

**Schedule – Meaning of “small donation”: conditions**

84. *The Schedule* sets out the conditions that must be met in order for a donation to be a small donation on which a top-up payment may be claimed under the scheme. In particular a donation must be a cash donation of £20 or less, and collected and banked in the UK. A small donation is not eligible for tax relief either in the hands of the donor or in the hands of the charity or CASC (note that the donation is not taxable income in the hands of the charity or CASC). So a donation on which Gift Aid relief has been claimed cannot come within this scheme.

**FINANCIAL EFFECTS**

85. Payments under the scheme will be funded through HMRC’s Supply Estimate as part of its Voted Annual Managed Expenditure.
86. Costs for the scheme were published at Budget 2011 and Budget 2012 and have been certified by the Office for Budget Responsibility (OBR).

	2012/13	2013/14	2014/15	2015/16	2016/17
Exchequer Impact	-	-£50m	-£85m	-£105m	-£115m

*These notes refer to the Small Charitable Donations Bill  
as introduced in the House of Commons on 21 June 2012[Bill 28]*

87. These costs will be revised to accommodate changes to policy detail since the Budget 2011 announcement, including the rules around community buildings, the rise in the maximum amount per donation from £10 to £20 and the 50% matching required. The total costs of the scheme are expected to increase by approximately £10 million each year. The final costs will be subject to OBR scrutiny.

**PUBLIC SECTOR MANPOWER**

88. No significant change in the workload of any Government department or agency is anticipated on implementation of this Bill.
89. Claims under the new scheme will be made using the same form and IT system as for Gift Aid so, in most cases, the new scheme will be administered using the same processes as Gift Aid. The additional work will be absorbed by existing HMRC staff.

**SUMMARY OF IMPACT ASSESSMENT**

90. An Impact Assessment has been completed and is published on the HMRC website (<http://www.hmrc.gov.uk/>). The costs to charities and CASCs of using the scheme are expected to be negligible, as any administration and record-keeping to support claims under GASDS fall within current best practice. The cost savings to charities and CASCs will also be negligible, as there may be some substitution from Gift Aid exemption claims to GASDS, where the administration requirements are less.
91. An equality impact assessment initial screening has also been completed and concluded that there will not be any significant equality impacts as a result of these measures.

**COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

92. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions in the Bill with the Convention rights (as defined by section 1 of that Act).
93. The Rt Hon George Osborne MP, Chancellor of the Exchequer, has made the following statement: “In my view the provisions of the Small Charitable Donations Bill are compatible with the Convention rights.”
94. There are several aspects of the Convention which are relevant to provisions in this Bill in particular Article 1 of Protocol 1 (“A1P1”) taken alone or with Article 14 and Article 6.



### **Article 1 Protocol 1**

95. A1P1 protects the right to peaceful enjoyment of possessions. The top-up payments are akin to a tax relief but are not a repayment of tax. It is a grant and perhaps similarities as to what amounts to a possession may be looked for in the non-contributory benefit cases<sup>1</sup>. Even if A1P1 is engaged, States have what is described by the Court as a ‘wide margin of appreciation’ when framing and implementing policies when it comes to general measures of economic or social strategy.<sup>2</sup> This means that the Court will leave a wide discretion to the State in how they design their taxation, social or economic systems, and only interfere where an individual’s rights are clearly breached. In ascertaining whether there has been such a breach, the Court will look at the aim of the measure, and then consider whether the measure is a proportionate way to achieve that aim. In doing so the Court will seek to discover whether a fair balance has been struck between interests of the community and protection of individual rights, and whether the measure imposes an excessive or individual burden.<sup>3</sup> This Convention right is relevant to the following clauses:
96. Clause 2(3) provides that a charity or CASC is not an eligible charity or CASC where a penalty is incurred in respect of a Gift Aid exemption claim or a top-up claim. It is the Government’s view that A1P1 is not engaged as the non-compliant charity or CASC cannot have a legitimate expectation of acquiring an effective enjoyment of a property right. If a charity or CASC receives a penalty for non-compliance with Gift Aid formalities it is difficult to see how it can then argue that it had a legitimate expectation of benefiting from a scheme that waives these formalities. If a charity or CASC does not comply with the correct requirements of Gift Aid then it cannot

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<sup>1</sup> In R(Reynolds) v Secretary of State for Work and Pensions [2003] 3 All ER 57 at para 47 the Court of Appeal concluded that jobseeker’s and income support were not “possessions” for the purpose of A1P1. This was followed in Campbell v South Northamptonshire DC [2004] 3 All ER 387, paras 31-39 and 61. This appears to conflict with the Grand Chamber in Stec v United Kingdom (2005) 41EHRR SE18 para 54 in that it held that non-contributory benefits were possessions. However, Stec was considered in R (RJM) v Secretary of State for Work and Pension [2008] 3 WLR 1023, para 28-34 where the HL held that a disability premium was a possession for the purposes of A1P1.

<sup>2</sup>See for example James and Others v. the United Kingdom, judgment of 21 February 1986, Series A no. 98, § 46; National and Provincial Building Society and Others v. the United Kingdom, judgment of 23 October 1997, Reports 1997-VII, § 80; as referred to in paragraph 52 of the merits decision in Stec and others v. the United Kingdom (Applications nos. 65731/01 and 65900/01), dated 12 April 2006. This is because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature’s policy choice unless it is “manifestly without reasonable foundation” Runkee and White v UK Applications nos. 42949/98 and 53134/99.

<sup>3</sup> For a summary of the Court’s position see paragraphs 62 and 63 of Bulges AD v Bulgaria. Application no 3991/03.

expect to partake in a scheme which removes those safeguards. In addition, a right under A1P1 only arises where the conditions to entitlement for a payment under the scheme are met. If a charity or CASC no longer fulfils the conditions of entitlement they do not have a right to that payment. Even if A1P1 is engaged, any interference is justified as this provision is the most proportionate way to achieve the desired result which is a waiver of Gift Aid formalities for compliant charities and CASCs thereby allowing for a Gift Aid style payment to be given in respect of small cash donations received by them. It is right for the State to determine eligibility criteria for the scheme so as to ensure the scheme is operated properly and is not open to abuse. This does not affect a charity's or CASC's entitlement to claim for Gift Aid instead provided the formalities are complied with. The non-eligibility is also for a limited time (3 tax years) provided the charity or CASC is compliant for those years.

97. Clause 4 and the connected charity rule - the Government's view is that the provisions of clause 4 do not engage A1P1 of the Convention as charities or CASCs cannot have a legitimate expectation of being able to fragment into smaller charities or CASCs in order to gain extra entitlement. Even if there is a possession falling within A1P1 so that A1P1 is engaged, any interference is justified. There is only a finite amount of money available under this Scheme and the State enjoys a wide margin of appreciation when framing and implementing policies when it comes to general measures of economic or social strategy. This is a proportionate response to counteract abuse and to level the playing fields between those charities and CASCs able to organise themselves into smaller charities or CASCs and those who do not have that resource.
98. Clause 6 - it is the Government's view that increasing support for charities that operate through local branches or undertake regular meetings in the local community does not engage A1P1 rights as there is no possession here to interfere with. Even if A1P1 is engaged then any interference can be justified and falls within the wide margin of appreciation enjoyed by the state in matters of economic and social strategy.
99. Clause 9 - connected charities and community buildings. The Government's view is that the provisions of clause 9 do not engage A1P1 of the Convention as there is no possession here to interfere with. A charity or CASC cannot have a legitimate expectation of remaining eligible for the £5,000 entitlement if it becomes connected with another charity or CASC. The charity will still be entitled to the £5000 limit if it runs charitable activities in a community building, but the standard allocation is to be shared between the connected charities or CASCs that submit a claim in relation to non-community building donations. Even if there is a possession falling within A1P1 so that A1P1 is engaged, any interference is justified. There is only a finite amount of money available under this Scheme and the State enjoys a wide margin of appreciation when framing and implementing policies when it comes to general measures of economic or social strategy. This is a proportionate response to counteract abuse otherwise there would be an incentive for charities or CASCs to fragment to increase their entitlement. Restricting entitlement in this way also ensures

a level of consistency between charities or CASCs that are structured in different ways.

**Article 14 taken with Article 1 Protocol 1**

100. Consideration was also given as to whether A1P1 was engaged when taken with article 14 - whether any charity or CASC has been denied a benefit which has been extended to others on discriminatory grounds. In particular, different treatment was considered between charities or CASCs with a good compliance record and those subject to a penalty, charities or CASCs who are connected with each other and those who are not, and charities with community buildings and those with no community buildings. These characteristics are not specifically listed in Article 14. The Government does not consider that the courts would accept that “other status” includes any of these characteristics while noting that it has been accepted in a number of cases that “other status” should be widely construed.<sup>4</sup> It is the Government’s view that A1P1 taken with article 14 only prohibits differences in treatment based on personal characteristics and that such characteristics must be independent of the treatment complained of<sup>5</sup>.

101. Even if “status” does include such differential treatment the argument would then move to objective justification and the Government’s view is that the aims of the Scheme can be objectively justified and are proportionate<sup>6</sup> for the reasons already given in relation to A1P1. Provided that a coherent and legitimate policy rationale is offered for the difference in treatment in relation to the enjoyment of an ECHR right, the courts are less likely to find discrimination on the basis of a status that is not based on one of the suspect categories specially referred to in Article 14 than it is in relation to a status within one of those suspect categories: States have a broader margin of appreciation in relation to the former than the latter.

**Article 6**

102. Clause 11 - Article 6 of the ECHR (right to a fair trial) only applies in the determination of civil or criminal rights and obligations and not public law obligations. Direct tax involves the relationship of state and citizen to which Article 6

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<sup>4</sup> Michalak [2003] 1 WLR 617, par 34.

<sup>5</sup> Clift v UK (Application No. 7205/07). Also in. R(Clift) v Secretary of State for the Home department [2007] 1 AC 484 the House of Lords confined the scope of article 14 to discriminatory treatment having as its legal basis or reason a personal characteristic by which persons or groups of persons are distinguishable from each other, rejecting a challenge of differential treatment on the basis of length of sentence.

<sup>6</sup> Lord Nichols in R (on the application of Carson) v Secretary of State for Work and Pensions [2006] AC 173, para 3.

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does not apply (*Ferrazzini v Italy* [2002] 34 EHRR 1068. Whether the provision of a grant in circumstances akin to Gift Aid relief is still invoking public law obligations need not be debated as it is likely the penalty provisions will be classed as criminal in nature for Convention purposes and there is also a power to create a criminal offence. In so far as Article 6 is in issue there is provision in the Bill for an appeals process which will be Article 6 compliant. The clause also provides safeguards so that the regulation making power does not include a power to increase the maximum amount of penalty or level of punishment from that found in the corresponding provision of the relevant enactment which is being applied to top-up claims.

### **COMMENCEMENT DATE**

103. The commencement date for the scheme is 6 April 2013 although certain provisions will take effect from the date of Royal Assent.

# SMALL CHARITABLE DONATIONS BILL

## EXPLANATORY NOTES

*These notes refer to the Small Charitable Donations Bill as introduced in the House of Commons on 21 June 2012 [Bill 28]*

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