

Public Reading Stage: Small Charitable Donations Bill

Public Responses

The following comments were received from members of the public during the operation of the Public Reading Stage for the Small Charitable Donations Bill, which closed on 23 August.

A total 21 organisations and individuals made a total of 85 comments on the Bill. These are organised by clause and subsection and separated into questions, drafting comments and policy comments as assigned by the user. The comments received are presented uncorrected for any errors made by users of the site.

A full report is also being provided to the Public Bill Committee, containing a summary of the comments received and the response from the Government.

Introduction

Intr.: A BILL TO

Provide for the making of payments to certain charities and clubs in respect of certain gifts made to them by individuals; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Comments:

Drafting

Policy Team, Institute of Fundraising:

The Institute of Fundraising welcomed the Chancellor's 2011 Budget announcement of the Gift Aid Small Donations Scheme and supports initiatives such as this that aim to increase giving and income to the sector, especially for small charities. However, the implementation of the scheme through this bill, does not appear to be fit for purpose for the original aims. The proposals seem overly complex and controls seem disproportionate to the amount of money that might be claimed by charities – up to a maximum of £1,250. In particular we are concerned that the requirement to have successfully claimed Gift Aid for three years and to limit the amount claimed based on eligible Gift Aid with declarations will exclude those organisations that would have benefited most from the scheme. We believe this seriously undermines the potential success of the scheme. Unless the criteria are changed, the target 100,000 organisations benefiting from the scheme is unlikely to be reached. There are likely to be benefits to a range of charities from the scheme, however, the proposed policy design suggests that those who would benefit most are least eligible – i.e. those small charities who do not currently benefit from Gift Aid income.

Cath Lee, CEO, Small Charities Coalitino:

Small Charities Coalition recognises that this Bill will benefit some charities and result in increased income to the sector. We welcome this. However, our concern is that the reach and impact of the scheme will be significantly reduced by the restrictions arising from the eligibility criteria, the maximum donations limit, the complexity around connected charities and community buildings and the overall vulnerability of the scheme arising from the potential for cuts in public expenditure. We recognise the efforts made to consult with the sector. However, we know that many small charities did not and do not generally have the capacity to respond effectively. As such the views of those who could potentially have benefited from the scheme to a greater degree have not been aired proportionately compared to those larger organisations with greater resources who will be better placed to manage the complexity of the scheme.

Hospital Broadcasting Association:

The Hospital Broadcasting Association (HBA) welcomes the opportunity to comment on the Small Charitable Donations Bill during this new Public Reading stage. HBA is a membership organisation, registered as a charity with the Charity Commission. It supports and promotes hospital broadcasting within the UK. Our members are independent hospital broadcasting organisations providing services to patients in their local hospitals and old people's homes. Most of our members are registered charities, although some are unregistered. We currently have 225 members. The majority of our members have an annual income below £10,000 per annum. Many

Introduction

have an income well below that figure. To the best of our knowledge, all of our members are reliant entirely on volunteers, with no paid staff. In general, HBA welcomes the Bill. Being small, local charities, the members of HBA would appear to be typical of the sort of charity that the Bill is intended to benefit. The Bill should, if implemented correctly, provide a welcome boost to our members' fundraising efforts during these difficult times. Fundraising events such as "tin shakes", bucket collections, etc., resulting in many relatively small donations, are popular funding streams for our members, but the collection of donors' details to support a Gift Aid claim at such events is impractical or inappropriate. HBA is concerned, however, that the counter-fraud measures that HMRC is proposing are disproportionate, and will result in only a minority of our members (and, by analogy, other small, local charities) from being eligible to make claims under the scheme. Analysis of the results of a survey of our members indicates that over 40% are not currently registered for Gift Aid and, of those that are, almost half did not make a Gift Aid claim in the last financial year. In summary, if this new Small Donations Scheme had been running last year, 70% of our members would not have been eligible to submit a claim. Add in the restriction that claims made under the scheme are limited to twice the amount claimed under Gift Aid and only 27% of small charitable donations to our members last year would have been eligible for a claim under this Bill. Whilst the respondents to the survey make up only a very small proportion of the overall charity sector, they represent a good cross-section of our membership. If these figures are in any way representative of the situation across the wider small charity sector, a huge amount of small donations to such charities would fall foul of the restrictions currently in this Bill.

Policy

Ian Graham, Mnarani Aid:

Being a very small charity relying on small private donations and monies collected in tins positioned in shops etc I welcome this Bill. It will certainly make a difference to the very needy children in Kenya that Mnarani Aid supports.

Imogen Ward, Trustee - EIA Trust:

As a Trustee of a small charity - The Environmental Investigation Agency Trust - I really welcomed the Chancellor's 2011 Budget announcement of the Gift Aid Small Donations Scheme and supports initiatives such as this that aim to increase giving and income to the sector, especially for small charities. However, I agree with the Institute of Fundraising that the implementation of this scheme through this bill seems very complex with many smaller charities being unable to benefit from this scheme. As a Trustee of a small charity I know only too well how every little really does help & it's a great shame that those charities arguably in the greatest need are unable to to benefit.

Clause 1

1: *Top-up payments*

Top-up payments in respect of small donations made to eligible charities

Comments:

No comments.

Clause 1

1 (1): A charity is entitled to a payment from HMRC (a "top-up payment") if—
(a) the charity is an eligible charity for a tax year **(b)**the charity has made a successful gift aid exemption claim in respect of gifts made to it in the tax year, **(c)** small donations are made to the charity in the tax year, and **(d)** the charity makes a claim in respect of small donations made to it in the tax year.

Comments:

Policy

Simon Jackson, Trustee of two charities:

I am trustee of two small charities and think the Government and HMRC should be congratulated on this legislation. It will provide significant support to small charities and is particularly welcome in these times of austerity. The way the legislation caters for different charities to ensure fair access to the scheme seems particularly ingenious. For example the community buildings rule seems to be a particularly elegant way of dealing with what was clearly a difficult problem. The way the scheme works with the Gift Aid scheme is also to be welcomed. They seem to compliment each other well and using the same definitions etc. will make it easy to deal with.

Clause 1

1(2): The amount of the top-up payment is—

$$SD \times \frac{R}{100 - R}$$

where—

SD is the amount of the small donations to which the claim relates, and R is the percentage rate of the basic rate of income tax for the tax year in question.

Comments:

No comments.

Clause 1

1 (3): A charity is not entitled to top-up payments in respect of small donations made to it in a tax year in excess of the maximum donations limit for the charity for the tax year.

Comments:

No comments.

Clause 1

1 (4): The "maximum donations limit" for a charity for a tax year is— (a) an amount equal to double the gift aid donations amount for the charity for the tax year, or (b) if less, the specified amount for the charity for the tax year.

Comments:

Drafting

CFG policy team, CFG policy team:

CFG strongly recommend removing this clause from the Bill. 'Matching' the maximum amount that can be claimed with a proportion (proposed as 2:1) of the amount claimed in Gift Aid in a given year, is seen as a way of mitigating fraud. This is because the link with Gift Aid provides a greater degree of administrative record-keeping and is seen as indicating a recent track record of compliance. However, the amount claimed in Gift Aid is fairly arbitrary as an indicator of this and presents a significant burden on top of other eligibility criteria that have been designed for this purpose (see section 2 of the Bill). This is a further complication that will stop some charities from being able to claim on a yearly basis for reasons dependent on the number of Gift Aid donations they have received. This represents an unfair disadvantage for small organisations that receive very few donations suitable for Gift Aid by limiting when and how much they can claim under this scheme. Not only will charities be required to assess their eligibility and to ensure that they keep within the maximum limit of £5000 in donations; they will also need to look at the amount of Gift Aid they have claimed and double this. We believe that this will be highly complex for many small organisations and there could be a high risk of over or under-claiming.

Policy Team, Institute of Fundraising:

This clause limits the amount on which a top-up payment may be claimed to twice the amount the charity claims in standard Gift Aid for the same tax year. For example, a charity that has received over £5,000 in donations from public collections but may only have received £100 in standard Gift Aid income with a declaration will only be eligible to make a claim on £200 instead of £5,000. This clause may exclude a large number of small charities who do not have eligible standard Gift Aid donations from participating in the scheme – for example, charities who receive the majority of their income from trust and foundation sources and from public collections. They will be unable to claim the top-up on their relevant public collections as they have no or limited eligible standard Gift Aid donations in order to match their public collections income with. Even if they could potentially have some eligible donations (eg a couple of trustees making donations of £20 each with a declaration) the level of Gift Aid that they would receive from these donations and the top-up would not be enough of an incentive to justify the administration and participate in the scheme – despite the fact that they may have significant income in small donations which would otherwise be eligible for the scheme. We believe this matching requirement should be removed as it limits the potential of the scheme. Requiring a level of declarations is not in the spirit of the policy intentions which were to allow a Gift Aid style payment in circumstances where it is difficult to obtain a Gift Aid declaration.

Cath Lee, CEO, Small Charities Coalition:

Small Charities Coalition is against the 'matching' of the maximum donations limit at any level and recommend that this clause is removed. This will adversely affect three categories of small charity: - Start up charities – many charities start with cash forms of fundraising that are not eligible for gift aid. They therefore are unlikely to be able to 'match' donations to a degree to make

Clause 1

participation attractive and yet they are the type and size of charity that would particularly benefit from the top up payment. A small increase in income makes a big difference if you are a charity with a few thousand pounds income. - Charities that rely on other forms of non gift aidable income such as grants. - Charities that feel unable to take advantage of the gift aid system due to the administrative requirements. Perceptions that Gift Aid is complex to understand and administer still remain along with a 'fear' of getting it wrong. The need to monitor more closely the level of gift aid and link it with the amount claimed within a particular tax year for small donations is likely to exacerbate these perceptions.

John Turner, Charity Chair and Fundraiser:

The clause about having to already be claiming Gift Aid will preclude most small organisations from claiming. The whole point of this legislation should be to help small organisations who fall outside of the current Gift Aid scheme, however if this clause stays in then, because they fall outside the Gift Aid scheme, they will not be able to claim on the new one (catch 22 eat your heart out!)

Hospital Broadcasting Association:

HBA objects to the "matching" requirement in the Bill, which restricts eligible claims to a maximum of twice that claimed in the same financial year under the Gift Aid scheme. HBA is concerned that this will severely reduce the number of our members (and other small charities) that are eligible to claim. Many of our members do not receive sufficient donations that are eligible for Gift Aid to justify the administrative burden of registering under the Gift Aid scheme and making claims on a regular basis – these are small charities that, in many cases, rely almost entirely on fundraising events such as "tin shakes" in the town centre or at the local supermarket for the funding of their day-to-day activities. Under the proposed eligibility rules, these charities will be discriminated against simply because they do not conform to what HMRC considers to be "the norm" when it comes to charity fundraising. In the survey of our members, of those that are registered for Gift Aid, or have considered registering, the reason stated most often (by a long way) for not claiming (or not registering to claim) is that the administrative burden of doing so far outweighs the monetary value of any Gift Aid reclaim that they would receive. Those that do make Gift Aid reclaims on average claim only around £160 per year. Our survey suggests that our members would claim, on average, less than £500 under the Small Donations Scheme even if there was no matching requirement. Given the relatively small amounts of money involved, HBA feels that the restrictions imposed for counter-fraud reasons are disproportionate and will simply rule ineligible the vast majority of our members. As stated above, our survey suggests 70% of our members would be ineligible to claim, and only 27% of small charitable donations to our members would be eligible under the scheme as set out in the Bill today. HMRC make Gift Aid repayments totalling approximately £1bn per annum, and detect around £10m per annum of fraudulent claims (figure from answer to FOI request submitted by HBA July 2012) – a rate of fraud of around 1%. HMRC estimate that £60m will be paid to charities under the Small Donations Scheme in 2013/14, raising to £125m in 2016/17 (figures from Impact Assessment). HMRC are concerned that the level of fraud against the Small Donations Scheme will be significantly higher than that against Gift Aid. Even if the level of fraud was five times as high as is the case of Gift Aid (5%), the amount fraudulently obtained would only be £3m (2013/14) to £6m (2016/17). Whilst any level of fraud must be taken seriously, the figures need to be compared against the amount of tax lost elsewhere, and against the amount of legitimate claims that are ruled ineligible by these counter-fraud rules. HMRC's own statistics on the "tax gap" ("Measuring Tax Gaps 2011") provide an interesting comparison. Overall, in 2009/10 (the last year for which figures are available), the estimated difference between tax due and that collected was £35bn, or 8% of total tax revenue.

Clause 1

For small and medium enterprises, in 2006 the estimated shortfall in corporation tax payments was £1.4bn, or 10% of estimated liabilities. Overall therefore, the charity sector, as one might expect, does not appear to be a high-risk area when it comes to tax fraud or evasion. If HBA's survey results are in any way representative, 73% of small charitable donations would be ineligible for a claim under the proposed scheme. When you take into account the absolute monetary amounts that we are talking about here, and the impact those amounts of money would have respectively on HM Government and on small charities, the impact of the imposition of these counter-fraud measures seems grossly disproportionate.

The Scout Association:

TSA agree with the comments made by the Institute of Fundraising above. Due to the nature of fundraising undertaken by our 7,000 Scout Groups, many may have low year-on-year standard Gift Aid claims but then in some years will have total small donations that may dwarf this sum. Groups often rely on small donations and collections for a one-off activities or larger projects that do not form part of their weekly Scout activities such as renovating community facilities, buying new equipment to support or fundraising for an expedition abroad. Including this clause will be detrimental to many of our local Scout Groups and will limit their ability to claim Gift Aid on much needed funds for specific activities.

Policy

CAF Policy Team, Charities Aid Foundation:

CAF views the inclusion of a Gift Aid matching requirement as a real problem. We appreciate the desire of HMRC to minimise the risk of abuse of the system, but feel that this stipulation will disproportionately penalise precisely those small organisations that the new Small Donations Scheme should be of most benefit to. The stated policy aim of the Gift Aid Small Donations Scheme is to enable Gift Aid-style payments on donations where it is currently not practical to collect Gift Aid declarations. However, if there is a matching requirement, this means that a small charity will only be able to benefit from the scheme if they also get sufficient donations of a sort that can be Gift Aided in the usual way. For very small charities that rely on cash collections this may not be practical. It is also unclear why a matching requirement is needed above and beyond the requirement for an organisation to have a 3 year record of making Gift Aid claims, as we feel that this (although arguably problematic itself) should offer sufficient protection against abuse.

Natasha Parker, Consultant and charity trustee:

I agree with the comments above from the Institute of Fundraising. It is not clear why there is a requirement to have non-collections income in order to be able to claim a grant that is linked to collections. This doesn't seem to fit the policy intention and should be removed.

David J Israel, Member of Institute of Fundraising, long time fundraiser:

The difficulties with this clause link closely to those in clause 2(1). My hope is that the Government is seeking to put more money in the hands of charities to help them do their exceptional work. Aside from the good Keynesian economics this presents, it will also help a great deal in times of public and third sector austerity. Helping more charities claim more Gift Aid will, of

Clause 1

course, 'cost' the Government more. However, I believe it will also help Government better deliver on its services through charities by increasing their cashflow.

Alan Gosschalk, charity fundraiser:

I completely agree with what the Institute of Fundraising say above

Louise Wright, Charity CEO:

I agree with the comments from the Institute of Fundraising above

Clause 1

1 (5): The "gift aid donations amount" for a charity for a tax year is the amount of the gifts made to the charity in the tax year and in respect of which it has made successful gift aid exemption claims.

Comments:

No comments.

Clause 1

1 (6): The "specified amount" for a charity for a tax year is £5,000.

Comments:

No comments.

Clause 1

1 (7): This section is subject to sections 4, 6 and 9 (connected charities and charities running charitable activities in community buildings).

Comments:

Policy

Lindsay Peach, The Cyrenians :

Based in Newcastle-upon-Tyne, and with a national reach, The Cyrenians is one of the country's leading and most progressive homelessness charities. Our work ranges from emergency intervention to training and employment, supporting over 1200 clients at any point in time. As a charitable organisation with a turnover £6.7m we welcome this opportunity to respond to the policy context surrounding the Small Charitable Donations Bill. We operate a diverse portfolio of funding, of which direct fundraising is a growing and important area of our work. The proposals as they currently stand would have significant benefits for this area of our activity. To take a common example, a full-day shopping centre bucket collection could generate approximately £500 in donations. We would potentially be touching anywhere between 300 to 1500 people. However data collection at this scale would be administratively impossible and unnecessary. Consequently the additional £140 secured through the proposed change in legislation would add significant value to our overall collection and help us help more of those in need. However, as a medium sized charity, and yet one which does not ourselves have a 3 year track record of gift aid registration, we are concerned about this particular requirement to qualify for the scheme. Small voluntary groups, which will benefit most from the change, are conversely least likely to be gift aid registered which is a significant barrier to the scheme achieving its desired effect. Similarly, the size of a charity does not necessarily equate to likely use of gift aid. We are a medium charity but one which has been primarily funded through statutory and grant funding sources; consequently our direct fundraising experience is relatively new, hence our recent registration for gift aid. Whilst we recognise the need to protect against fraud in this arena, as per Hodgson Review, we would suggest that this is an area in which the Charity Commission could play a greater monitoring and assurance role instead.

Clause 2

[2: Meaning of "eligible charity"](#)

Comments:

No comments.

Clause 2

2 (1): A charity is an eligible charity for a tax year if—

(a) it has made a successful gift aid exemption claim in at least 3 of the previous 7 tax years, and

(b) the charity's start-up period expired before that year.

Comments:

Drafting

CFG policy team, CFG:

It is important that this scheme is not seen as an easy target for fraud and we accept that compliance with Gift Aid is a clear way of highlighting risk. However, many charities that would greatly benefit from the scheme, many of which have been in existence for some time, are not registered with HMRC. We know that a large number of the approximate 100,000 charities registered with HMRC are excepted charities that don't have to register with the Charity Commission. There are therefore a huge number of charities between £5,000 and £100,000 in income registered with the Charity Commission (approx 120,000) many of which are unlikely to be registered with HMRC (even more under £5000 in income). These organisations will not be incentivised by this scheme to register with HMRC and will see these criteria as a huge barrier. Start-up organisations will also be unable to access the scheme; this would be a missed opportunity to encourage start-ups to register with HMRC. It is important that these concerns are taken on board and that some way is found for organisations to access the scheme at an earlier stage such as being able to claim a lower amount for the first three years. This would have the added impact of introducing more charities to the Gift Aid scheme.

Policy Team, Institute of Fundraising:

This clause limits the scheme to organisations that have successfully claimed Gift Aid for at least three years. This will exclude many small charities from participating in the scheme as they may not have eligible standard Gift Aid declarations in order to have made claims in the last three years, or were put off registering due to the perceived complexity of the scheme. In addition, it excludes new charities from participating in the scheme for at least three years after start-up. This condition is a significant barrier to participation for the thousands of charities who have not previously registered for Gift Aid. This will exclude those organisations that had the potential to benefit most from the scheme where an additional £1,250 would make a significant difference to their income. We recommend that this requirement should be removed and alternative anti-fraud measures considered. We endorse the suggestions above from NCVO and CFG of a potential probationary period where a lower amount can be claimed to reduce potential incentive to fraud.

Natasha Parker, Consultant and charity trustee:

I agree with the comments above from the Institute of Fundraising and others. Requiring 3 years of normal Gift Aid will be a big barrier to small charities. I know a number who were expecting to benefit from this when it was announced in the budget and now find that they are not able to. They either don't have Gift Aid income or are volunteer run and put off by the 60+ pages of instructions on how Gift Aid operates. This is going to exclude the small charities for which £1250 is a lot of money and it will just benefit the larger ones who won't even notice the additional £1250. This should be amended as it doesn't seem to meet the policy intention of the scheme.

Clause 2

David Tyler, Chief Executive of Community Matters, the National Federation of Community Organisations:

The process proposed seems highly complex and one that many small organisations may be put-off from using, potentially making the initiative the exclusive preserve of larger charities. In addition, the restriction on eligible organisations (ie those with a good track record of claiming gift aid), in our view unfairly excludes new organisations or those that are considering gift aid for the first time

Cath Lee, CEO, Small Charities Coalition:

Small Charities Coalition thinks the eligibility criteria are a disproportionate response to risk management. We think a reasonable level of control was introduced by the fit and proper persons test and the normal auditing and regulation of Gift Aid, but recognise the additional concerns around this scheme. The requirements as they are laid out significantly disadvantage small charities, in particular new charities, those without dedicated or knowledgeable people for the administration of gift aid, those who would not have enough eligible donations to make a claim in each tax year. The eligibility criteria could act as a disincentive to those charities reluctant to participate in the Gift Aid system. There is generally low awareness of the Gift Aid scheme and small charities tend to be slower to become aware of and adopt any new initiative. These eligibility criteria will exacerbate the length of time it will take for small charities in the sector to benefit from the what appeared, when announced in 2011 to be a very positive initiative. The effect is likely to be fewer numbers of small charities participating in the scheme than intended. These clauses, in particular appear to run counter to the original policy objectives of increasing income into the sector, particularly for small charities and particularly for those types of donations for which it is not practical to apply gift aid. We support exploration of the ideas put forward by others around a 'probationary' period.

Kirsten Hogg, Camphill Scotland:

Camphill Scotland believes that the requirement to have claimed Gift Aid for 3 of the last 7 years is unduly restrictive. While it is clear that charities will need to be registered for Gift Aid to be eligible for this scheme, it seems unfair to exclude charities who have only registered for the scheme within three years. This is particularly the case for small charities, who may not have previously registered for Gift Aid as they mainly received small donations, and would have to wait three years to benefit from the scheme.

John Turner, Charity Chair and Fundraiser:

Once again a scheme designed to help charities who cannot normally benefit from Gift Aid requires them to have claimed Gift Aid! Surely registration with the Charity Commission, and compliance with charity law and accounting practices, should be enough.

Hospital Broadcasting Association:

HBA objects to the eligibility criteria that require a charity to have made a Gift Aid claim in the last three years, and at least 3 claims in the last 7 years. HBA believes that these criteria unfairly penalise both newly-formed charities and those which, because of the nature of donations that are eligible for Gift Aid, have been unable to make Gift Aid claims. HMRC states that the Small Donations Scheme being introduced by this Bill is supposed to be seen as distinct from "traditional" Gift Aid, but then goes on to seemingly link the two schemes as if they form a

Clause 2

continuum of reclaim mechanisms. Furthermore, in the Impact Assessment, the success criteria are based on the percentage uptake of the scheme by charities already claiming Gift Aid, rather than on the percentage of all charities. Just because a small charity does not make Gift Aid claims does not mean that its claims under the Small Donations Scheme should be considered illegitimate. HMRC's approach of doing just this is discriminatory and disproportionate; see HBA's comments about Clause 1(4) above for detailed statistics. Even if the additional amount claimable under the Small Donations Scheme now makes it worth the administrative burden on our members to register with HMRC, and if there were no matching criteria as proposed in Clause 1(4), they would not be able to claim for 3 more years, despite being in existence for decades and complying fully with all the applicable requirements of charity law. Most of HBA's member charities are registered with the Charity Commission for England and Wales, or OSCR, and thus are already subject to a degree of external scrutiny. In the case of all Scottish charities, and those English and Welsh charities with an income in excess of £25,000, annual accounts must be prepared, independently examined and submitted to the regulator. In fact the governing documents of most of our members in England and Wales require external examination of the accounts irrespective of the level of income, as this is seen as best practice. If there were appropriate joined-up working between the charity regulators and HMRC, as proposed by Lord Hodgson in his recent review of the Charities Act 2006, it would be possible for HMRC to use the compliance record of charities with the reporting requirements of charity law, perhaps together with a random sampling of annual accounts to assess the legitimacy of claims under the Small Donations Scheme. HBA suggests that the linking of eligibility to claim under the Small Donations Scheme to claims under the Gift Aid scheme be replaced by a requirement based on compliance with existing charity reporting and accounting requirements. Where accounts are already submitted to the charity regulator, HMRC should be able to obtain copies from that regulator to enable any necessary counter-fraud checks to be performed without further burdening the charities. Where the accounts are not submitted to the charity regulator, the accounts could simply be submitted to HMRC along with the claim; as all charities are legally obliged to produce accounts irrespective of any requirement to submit them to the regulator, the burden this would impose on the charities would be minimal. Of course, the accounts would need to include details of the fundraising events at which donations subject to a claim under the Small Donations Scheme were received but, again, HBA would expect the annual reports and accounts and small local charities to include such information as a matter of course, so this would not create any significant additional burden on the charity. Not only would the above measures create little or no additional burden on charities, they would provide HMRC with a more robust means to detect fraudulent claims and enable more charities to benefit from the Small Donations Scheme to the maximum extent.

The Scout Association:

TSA agrees with the Institute of Fundraising, Charities Aid Foundation and NCVO. Some Scout Groups have been put off claiming Gift Aid (and as such will not have built up the requisite three years) due to the difficulties and administrative burden that has been in place. They would therefore be excluded from using this scheme as a result of the exact problems and burdens that this Bill is seeking to reduce. Scouting is growing year on year. This clause would also affect any new Group setting up, where additional funds from Gift Aid on small donations and collections would be incredibly useful in the early years of a new Group running activities in its local area for young people. This clause should be removed so new Groups and small charities are not prevented from claiming Gift Aid on these donations in their first three years.

Clause 2

Policy

CAF Policy Team, Charities Aid Foundation:

CAF appreciates that HMRC are keen to minimise the risk of fraud through the small donations scheme. However, stipulating that charities must have a three year track record of using Gift Aid will act as a barrier to entry for many small organisations and potentially make it difficult to get momentum behind take-up of the new scheme. Charities that may have been excited about the opportunity afforded by the small donations scheme will be discouraged if they find that there is a three year lag time before they can take advantage of it. CAF would welcome consideration of alternative methods of minimising fraud that will allow charities to participate in the scheme from day one. This could be through reduced allowances for organisations without sufficient Gift Aid track record, that increase to the full amount over a set period of time (say 3 years).

David J Israel, Member of Institute of Fundraising, long time fundraiser:

My colleagues above have clearly articulated the challenge in this clause. I would support the staged introduction of Gift Aid for charities which have previously not claimed. This will cause extra work for charities but the return could make a real difference. It would also bring these charities into closer contact with HMRC allowing a better, and more productive relationship, to grow between them.

Alan Gosschalk, charity fundraiser:

Again I agree with the IoF line

Louise Wright, Charity CEO:

Again I agree with the comments from the Institute of Fundraising

Clause 2

2 (2): If a charity did not make any successful gift aid exemption claims in a period of 3 consecutive tax years, any claim made in an earlier tax year is to be disregarded for the purposes of subsection (1)(a).

Comments:

Policy

Simon Jackson, Trustee of two charities:

It is a shame fraudsters stoop so low as to abuse charities but given they do it seems fair enough to put in place some anti-fraud measures. On balance the measures seem proportionate and fair in the circumstances.

Question

David Bacon, Treasurer & Trustee of Age Concern North Dorset:

ACND is an independent Charity No. 1002030 but about to become a Friend of AgeUK. Can we apply indentedly of AgeUK? It stipulates that the Charity must have been a "Gift Aid" user for 3 years. Many Years ago we were "Gift Aid" users but it lapped & HMR&C had no record. We are now once again users & have had one claim honoured. When would be qualified to use the new scheme?

Clause 2

2(3): A charity on which a penalty has been imposed in connection with a gift aid exemption claim or top-up claim made by the charity is not an eligible charity—
(a) for the tax year in which the claim was made, or
(b) for the next 2 tax years,
(even if the penalty was imposed after the tax year in which the claim was made).

Comments:

No comments.

Clause 2

2 (4): For the purposes of this section—

(a) a charity's start-up period" is the first period of 3 consecutive tax years during which it is, at all times, a charity (as defined by section 17(1)); (b) "penalty" means a penalty under— (i) Schedule 24 to the Finance Act 2007, or (ii) regulations under section 11.

Comments:

No comments.

Clause 3

3: Meaning of "small donation"

Comments:

No comments.

Clause 3

3 (1): In this Act "small donation" means a gift made to a charity by an individual in relation to which each of the conditions in the Schedule is met (but does not include a membership fee).

Comments:

No comments.

Clause 3

3 (2): But if a small donation made to a charity is applied to purposes other than charitable purposes, or any part of the donation is applied to purposes other than charitable purposes, the donation or part is to be treated as if it were not a small donation.

Comments:

No comments.

Clause 3

3 (3): Subsection (2) does not apply to -

- (a) the Trustees of the National Heritage Memorial Fund;**
- (b) the Historic Buildings and Monuments Commission for England;**
- (c) the Trustees of the British Museum;**
- (d) the Trustees of the Natural History Museum.**

Comments:

No comments.

Clause 4

4: *Connected charities and community buildings*

Connected charities

Comments:

No comments.

Clause 4

4 (1): This section applies if two or more charities—
(a) are connected with one another in a tax year, and
(b) are eligible charities for the tax year.

Comments:

No comments.

Clause 4

4 (2): Section 1 applies to each of the charities in relation to the tax year as if references to small donations made to a charity included small donations made to any of the charities.

Comments:

No comments.

Clause 4

4 (3): The specified amount for the purposes of section 1(4) for each of the charities for the tax year is an amount equal to—

(a) £5,000, divided by

(b) the number of the charities which make a top-up claim in respect of small donations made in the tax year.

Comments:

No comments.

Clause 4

4 (4): This section does not apply if any of the charities runs charitable activities in a community building in the tax year (as to which see section 9).

Comments:

No comments.

Clause 5

[5: Meaning of "connected"](#)

Comments:

No comments.

Clause 5

5 (1): For the purposes of this Act a charity is connected with another charity in a tax year if it is connected with that other charity at any time in the tax year (as to which see subsections (3) to (5)).

Comments:

No comments.

Clause 5

5 (2): If—

(a) a charity ("charity A") is connected with another charity ("charity B") (including by virtue of this subsection) in a tax year, and (b) charity B is connected with a further charity ("charity C") in the tax year, charity A and charity C are also connected with each other in the tax year for the purposes of this Act.

Comments:

No comments.

Clause 5

5 (3): Section 993 of the Income Tax Act 2007 applies for determining whether a charity is connected with another charity at any time for the purposes of this section.

Comments:

No comments.

Clause 5

5 (4): In the application of section 993 for this purpose, "company" includes a charity that is a trust and a person has "control" of such a charity if— (a) the person is a trustee of the charity, (b) the person has power to appoint or remove a trustee of the charity, or (c) the person has any power of approval or direction in relation to the carrying out by the trustees of any of their functions.

Comments:

No comments.

Clause 5

5 (5): But a charity is not to be regarded as connected with another charity at a time for the purposes of subsection (1) unless, at that time, the purposes and activities of the charities are the same or substantially similar.

Comments:

No comments.

Clause 6

6: Charities running charitable activities in community buildings

Comments:

Drafting

Policy Team, Institute of Fundraising:

The concepts around community buildings and connected organisations are overly complex and may dissuade charities from participating in the scheme as some are already put off by the complexity of standard Gift Aid. The community buildings concepts appear to have been designed to meet the needs of specific charities (mainly those known as excepted charities, such as churches and Scout groups, and those with unusual structures) and these exceptions could be managed in simpler ways. In trying to create "fairness" in some areas it has not just created complexity but it has also created unfairness between different charitable causes. The clauses are ambiguous and it is possible that branches or offices of some large charities could be classed as community buildings and therefore eligible for additional top-ups which may not be in the intended spirit of the policy.

Clause 6

6 (1): This section determines the specified amount for the purposes of section 1(4) for a charity that runs charitable activities in one or more community buildings in a tax year (see sections 7 and 8 for the meaning of certain terms used in this section).

Comments:

No comments.

Clause 6

6 (2): The specified amount for the charity for the tax year is an amount equal to— (a) the sum of the amounts which, for each community building in which the charitable activities are run, is the community building amount, plus (b) the remaining amount.

Comments:

No comments.

Clause 6

6 (3): The "community building amount", in relation to a community building, means— (a) the sum of the small donations that are made to the charity in the community building in the tax year while it is running charitable activities in the building, or (b) if less, £5,000.

Comments:

Drafting

CFG policy team, CFG:

See comment on 7.1

David Tyler, Chief Executive of Community Matters, the National Federation of Community Organisations:

In many communities, different community groups find it more efficient to share a single building, legal structure (often a community association) and charity number. They may also retain their individual identities for operating purposes and donations can be targeted to the individual groups. As it stands, the Bill may restrict the amounts available to groups that operate in this way.

Clause 6

6 (4): The "remaining amount" means— (a) the sum of the remaining donations made to the charity in the tax year, or (b) if less, £5,000.

Comments:

No comments.

Clause 6

6 (5): "Remaining donations", in relation to a charity and a tax year, means the small donations made to the charity in the tax year other than any made to it in community buildings in the tax year while it is running charitable activities in the buildings.

Comments:

No comments.

Clause 6

6 (6): Section 9 modifies this section as it applies to a charity that is connected with another eligible charity.

Comments:

No comments.

Clause 7

[7](#): Meaning of "running charitable activities in a community building" etc

Comments:

No comments.

Clause 7

7(1): For the purposes of this Act a charity "runs" charitable activities in a community building in a tax year if it carries out charitable activities with a group of 10 or more people in the building on 6 or more occasions in the tax year (and references to donations made to a charity "while" it is running charitable activities in a community building are to be construed accordingly).

Comments:

Drafting

Anne Wilson, Tax Director Crowe Clark Whitehill:

A church can be open for a number of different reasons, eg for a service, for priests to hear confessions, for private prayer, for visitors to look round, for use by another community organisation. Which of these would be regarded as the charity running charitable activities?

CAF Policy Team, Charities Aid Foundation:

A stipulation that a charity must be running charitable activities within a community building in the relevant tax year in order to be able to claim the additional allowance seems fair. However if, as seems to be implied, the requirement is in fact the stricter one that donations are only eligible for the scheme if they are actually collected during the specified charitable activity, then that is a problem. For many organisations it would be entirely inappropriate to fundraise at the same time as performing their charitable activities or to seek donations from the beneficiaries of their services. The most obvious case in which it would be possible to satisfy the proposed rule is church collections. However, the scheme should not materially disadvantage charities delivering vital services in local communities through the introduction of a requirement aimed at one specific type of organisation.

CFG policy team, CFG:

Clauses 7.1 – 7.4 outline specific details as to when charities running out of ‘community buildings’ for a tax year would be entitled to the specified amount outlined in section 6. This is an additional provision in order to reduce the existence of circumstances where organisations will be significantly disadvantaged by their structure because they are part of wider groups. However, we believe that the rules which are proposed here will continue to limit organisations that should be entitled to access the scheme with their own independent limit. Some organisations that are independent and work locally, but that are part of wider community networks or national networks will find it difficult to assess whether they are able to use the scheme. This is unfair and discourages those relationships and examples of collaboration that can often support good practice and efficiency often without imparting a great degree of control. The stipulation that a community building must have 10 or more people present on 6 or more occasions during the year will only be applicable in certain scenarios. Services delivered to smaller groups or individuals, such as counselling or in home support, are at a clear disadvantage. The stipulation in 6.3(a) and defined in 7.5 that the money must be raised ‘while’ the organisation is running charitable activities is highly limiting. While we understand that the funds must be directed to the activities of the group that is carrying out charitable activity and not a group existing solely for the purpose of fundraising for a larger charity, a restriction on where funds are raised is inappropriate. There are very few circumstances where a donor and beneficiary constituency would overlap for a charity and this should not be a discriminating factor as to whether they can access the scheme. We

Clause 7

would like this to be amended to reflect this. A concession should be made within 7.3 regarding circumstances where work with volunteers comes within the charitable activity of the organisation.

Policy Team, Institute of Fundraising:

This is a narrow definition of the way that charities might deliver their services and it may unintentionally exclude some organisations such as those that deliver services in smaller groups or individually such as counselling and advice services, or delivered remotely like helplines or online support. The proposed terms favour some types of charities over others. It is unclear what it meant by “while it is running charitable activities”. Many charity beneficiaries are not in a position to make donations and it would be inappropriate to ask them to do so. In addition, if charities are only fundraising from their beneficiaries during delivery of the charitable activities then there are potential questions about private benefits. Consideration should be given to removing this requirement. We agree with the comments made by NCVO and CFG.

Natasha Parker, Consultant and charity trustee:

The implementation of this scheme has totally been set up to meet the needs of churches and needs and set-up of other charities have been ignored. Who else fundraises while running charitable activity? And has charitable activity that is mainly focused around groups meeting? It is not just this clause, but throughout that the scheme seems to have been set up for church collections with limited understanding or care as to how other charities operate. This could be much simpler if there were separate requirements for excepted charities rather than making it complicated for all and in the process perhaps disadvantaging some organisations.

David Tyler, Chief Executive of Community Matters, the National Federation of Community Organisations:

The restriction to activities with 10 or more participants on 6 or more occasions may exclude much legitimate and otherwise eligible activity in community buildings, particularly those in rural areas or smaller communities.

Cath Lee, CEO, Small Charities Coalition:

Small Charities Coalition is in agreement with concerns and recommendations expressed around clauses 7 and 8 in relation to community buildings. The implementation of these clauses will restrict the number and type of organisation benefiting from the scheme and introduces a level of complexity and therefore potential confusion that is likely to act as a disincentive.

Policy

David J Israel, Member of Institute of Fundraising, long time fundraiser:

Again this clause seems to restrict the range of charities that could benefit from GASDS. If, for example, the charity in question were to raise its funds at one event and deliver its activities at another, this would prevent the funds raised from benefiting from GASDS. And this is without the added complication of where the activity happens. By way of example, the voluntary work my wife

Clause 7

does as a telephone support counsellor is no less charitable done from our home as it would be if done from the charity's own office.

Alan Gosschalk, charity fundraiser:

I agree with the comments made by NCVO, CFG and IoF

Louise Wright, Charity CEO:

I agree with comments from the Institute of Fundraising above

Clause 7

7 (2): For this purpose—

- (a) the reference to a group of 10 or more people does not include staff of the charity;**
- (b) the people forming the group need not be the same on any two of the occasions.**

Comments:

Drafting

CFG policy team, CFG:

See comment on 7.1

Clause 7

7(3): "Staff" in relation to a charity, means— (a) a volunteer working for the charity who is not in the class of persons for whose benefit the charitable activities are being carried out, (b) persons employed by or otherwise working for the charity (other than volunteers), and (c) any officers or trustees of the charity.

Comments:

Drafting

CFG policy team, CFG:

See comment on 7.1

David Tyler, Chief Executive of Community Matters, the National Federation of Community Organisations:

In community organisations, the activity is often more mutual than assumed by this clause, with trustees and volunteers of the charity also being participants and beneficiaries. This is central to the notion of collective action. This clause is therefore too restrictive as it stands to be meaningful for many/most community buildings

Clause 7

7 (4): HMRC may by order amend the numbers for the time being specified in subsections (1) and (2)(a).

Comments:

No comments.

Clause 7

7 (5): In this Act "charitable activity" means an activity carried out for a charitable purpose, other than primarily for the purpose of fund-raising.

Comments:

Drafting

CFG policy team, CFG:

See comment on 7.1

David Tyler, Chief Executive of Community Matters, the National Federation of Community Organisations:

In practice the distinction between charitable activity and fundraising activity may be very slight with many community activities based in or around community buildings. The Bill should not seek to penalise organisations who inadvertently fall foul of this clause.

Clause 7

7(6): In this Act a reference to a "charity" that runs charitable activities does not include a registered club within the meaning of Chapter 9 of Part 13 of the Corporation Tax Act 2010 that runs such activities.

Comments:

No comments.

Clause 8

8: Meaning of "community building"

Comments:

No comments.

Clause 8

8 (1): In this Act community building"—

(a) means a building (such as a village hall, town hall or place of worship), or those parts of it, to which the public or a section of the public have access at some or all times, but (b) does not include a building, or any parts of it, used wholly or mainly for commercial or residential purposes.

Comments:

Drafting

Anne Wilson, Tax Director Crowe Clark Whitehill:

Does the public access have to be free of charge, or can the charity charge for admission?

CFG policy team, CFG:

CFG is concerned that the definition of a community building in the Bill is not appropriate for a modern view of community and charitable spaces and the types of accommodation used. The restriction on buildings used for residential purposes could potentially be an issue for residential care homes and other similar services where a charity may act as an umbrella for a number of largely independent members of the group. Restricting buildings for commercial use also poses issues for charities that charge for services; either in terms of entry to the building, or in contract delivery through the charity. Primary purpose commercial activities should be excluded from this. There may also be circumstances where charities are operating out of commercial space that they have hired, or that has been offered to them in kind or at reduced rate. We understand that the restriction has been put in place to ensure that charity shops are not regarded as independent groups entitled to a 'community building' limit; however, if it is made clear that funds raised must be directed to charitable activity specifically within the independent group operating out of a community building this would not be a problem. This should be amended accordingly.

Policy Team, Institute of Fundraising:

The Institute of Fundraising shares the concerns of NCVO and CFG above - particularly that care homes and hospices risk being treated less favourably under the definitions used.

David Tyler, Chief Executive of Community Matters, the National Federation of Community Organisations:

The definition of community building used here seems out of step with the Government's agenda on asset transfer which has seen a wide variety of public buildings and spaces transferred to the ownership or management of community organisations for charitable purposes. Furthermore, it seems out of step with the modern use of many community buildings and the Government's recommendation on the sustainability of those spaces, where all or part of the space may be used interchangeably for both charitable activity and fundraising or trading

Policy

NCVO Policy team, NCVO:

Clause 8

This clause restricts the definition of 'community building' to exclude residential and commercial premises. It removes the possibility of claiming for individual charity shops, for groups held in or operated out of people's homes, or for local groups existing for the sole purpose of fundraising. These are understandable restrictions considered in the context of discouraging fraud and ensuring that the individual groups are operating charitable activities. However, we are concerned regarding: - Many charities operate services which are in their nature residential. For example, residential social care, respite homes or hospices. These often fundraise specifically for their local group and could quite legitimately be classed as independent organisations. - The definition of commercial purposes. For example, many charities deliver contracted services or charge for their services. This would be classed as primary-purpose trading and should be omitted from the restriction.

Clause 8

8 (2): Where a person holds a freehold or leasehold interest in land, any two or more buildings on the land, or on any adjoining land in which the person holds such an interest, are to be treated as a single building for the purposes of this Act.

Comments:

Drafting

David Tyler, Chief Executive of Community Matters, the National Federation of Community Organisations:

It should be noted that there are still many charities occupying or managing land and buildings for charitable activity without the benefit of freehold or leasehold ownership

Clause 8

8 (3): HMRC may by order—

(a) provide for cases in which a building, or part of it, is or is not to be treated as a community building or as part of a community building for the purposes of this Act;

(b) provide for cases in which 2 or more buildings in the same vicinity are to be treated as a single building for the purposes of this Act.

Comments:

No comments.

Clause 8

8 (4): Provision under subsection (3) may be framed by reference to a description of building, the use to which it is put or any other circumstances; and the provision may be framed so as to apply at all times or at certain times only.

Comments:

No comments.

Clause 8

8 (5): In the application of this section to Scotland—

(a) a reference to a freehold interest in land is to the interest of the owner, and

(b) a reference to a leasehold interest in land is to a tenant's right over or interest in a property subject to a lease.

Comments:

No comments.

Clause 9

9: Connected charities and community buildings

Comments:

No comments.

Clause 9

9 (1): This section applies if—

(a) two or more charities (connected eligible charities") are connected with one another in a tax year and are eligible charities for the tax year, and (b) one or more of them runs charitable activities in a community building in the tax year.

Comments:

No comments.

Clause 9

9 (2): Section 1 applies to each of the charities in relation to the tax year as if references to small donations made to a charity included remaining donations made to any of the charities.

Comments:

No comments.

Clause 9

9 (3): In relation to any of the charities that does not run charitable activities in a community building in the tax year, the specified amount for the purposes of section 1(4) for the charity for the tax year is an amount equal to—
(a) the capped total of remaining donations, divided by
(b) the number of the connected eligible charities which make a top-up claim in respect of small donations made in the tax year.

Comments:

No comments.

Clause 9

9 (4): In subsection (3) "the capped total of remaining donations" means—
(a) the sum of the remaining donations made to each of the connected eligible charities in the tax year, or (b) if less, £5,000.

Comments:

No comments.

Clause 9

9 (5): But for the purposes of subsection (3), a charity that runs charitable activities in a community building in the tax year is to be treated as not having made a top-up claim in respect of small donations made in the tax year unless—

- (a) its total claimed amount for the year, exceeds
- (b) its community buildings amount for the year.

Comments:

No comments.

Clause 9

9 (6): In subsection (5)— "total claimed amount for the year" means the sum of the small donations made to the charity in the tax year and in respect of which it has made successful top-up claims; "community buildings amount for the year" means the amount that would be the specified amount for the charity for the tax year under section 6 if the charity's remaining amount for that year were nil.

Comments:

No comments.

Clause 9

9 (7): In relation to any of the charities that runs charitable activities in a community building in the tax year, section 6 applies as if the charity's remaining amount were the specified amount given by subsection (3).

Comments:

No comments.

Clause 9

9 (8): Remaining donations has the meaning given by section 6(5).

Comments:

No comments.

Clause 10

10: Overpayments and administration

Overpayments

If—

(a) an amount is paid to a charity under section 1, and

(b) the charity was not, or has ceased to be, entitled to it (because of section 2(3), 3(2), 4 or 9, or otherwise),

the amount must be repaid to HMRC.

Comments:

No comments.

Clause 11

[11: Management of top-up payments](#)

Comments:

No comments.

Clause 11

11 (1): Matters relating to top-up payments are to be under the management of HMRC.

Comments:

No comments.

Clause 11

11 (2): HMRC may by regulations make provision—
(a) about the administration of top-up payments;
(b) otherwise for the purposes of fully implementing this Act.

Comments:

No comments.

Clause 11

11 (3): Regulations under subsection (2) may in particular—

(a) make provision in relation to top-up claims applying or incorporating, with or without modifications, any enactment that applies in relation to gift aid exemption claims;

(b) make provision in relation to top-up payments applying or incorporating, with or without modifications, any enactment that applies in relation to repayments of income tax treated as having been paid;

(c) make provision in relation to overpayments applying or incorporating, with or without modifications, any enactment that applies in relation to amounts of income tax or corporation tax which are due and payable;

(d) make other provision applying or incorporating, with or without modifications, any enactment relating to the collection or management of income tax or corporation tax;

(e) make provision postponing the determination of a top-up claim in prescribed circumstances.

Comments:

No comments.

Clause 11

11 (4): The enactments mentioned in subsection (3) include, in particular, enactments—

- (a)** providing for the payment of interest;
- (b)** requiring the provision of information;
- (c)** conferring a power of entry onto land;
- (d)** providing for the imposition of a civil penalty;
- (e)** creating a criminal offence (including, in particular, offences relating to the provision of false or misleading information or failure to provide information);
- (f)** providing for enforcement of sums owed (whether by action on a debt, 15 by distraint against goods or in any other way);
- (g)** providing for appeals.

Comments:

No comments.

Clause 11

11 (5): A power conferred by subsection (3) to apply or incorporate a provision creating an offence does not include power to increase the level of any punishment for which a person may be liable on conviction for the offence.

Comments:

No comments.

Clause 11

11 (6): A power conferred by subsection (3) to apply or incorporate a provision imposing a civil penalty does not include power to increase the maximum amount of the penalty.

Comments:

No comments.

Clause 11

11 (7): In subsection (3) "enactment" includes— (a) a provision of an Act passed after the day on which this Act is passed, and (b) a provision made, or that may be made, under an enactment.

Comments:

No comments.

Clause 11

11 (8): In subsection (3)(c) "overpayment" means an amount to which section 10 applies.

Comments:

No comments.

Clause 11

11 (9): An amount calculated for the purposes of any provision of this Act is to be rounded to the nearest whole penny, taking 0.5p as nearest to the next whole penny.

Comments:

No comments.

Clause 12

12: Miscellaneous

Change of charity's legal form

Comments:

No comments.

Clause 12

12 (1): Subsection (2) applies if— (a) a charity (the old charity") is dissolved and another charity ("the new charity") is created, (b) the new charity takes a different legal form to the old charity, and (c) on an application made by the new charity, HMRC certify that, in their opinion, the new charity is otherwise substantially the same charity as the old charity.

Comments:

Drafting

Hospital Broadcasting Association:

HBA welcomes the inclusion of this clause, which addresses a potential problem caused by a change in legal form of a charity (e.g. from an unincorporated association to a corporate form) as it develops. However, HBA is concerned that the change of status is restricted to a change in legal form. HBA would like to see the facility extended to allow HMRC to certify that a new form of the charity is substantially the same as an old charity, even if the legal form remains the same. For example, as part of a merger, two charities might become a single new entity, legally distinct from either of the original charities, but possibly of the same legal form. It would be unfortunate if the new charity were ineligible to make claims under the Small Donations Scheme for three years after the merger, and might result in the merger not taking place because of the loss over three years of up to £3,750. Such a figure might not sound much, but to a small charity it is very significant.

Policy

Simon Jackson, Trustee of two charities:

This is an unexpected but welcome part of the legislation. It will ensure fairness when charities change form which may not happen often but when it does could otherwise lose out.

Clause 12

12 (2): This Act and any relevant provisions apply as if—

(a) things done (or treated, by virtue of this section, as having been done) by or in relation to the old charity had been done by or in relation to the new charity;

(b) the new charity had been created when the old charity was created (or is treated, by virtue of this section, as having been created).

Comments:

No comments.

Clause 12

12 (3): In subsection (2) "relevant provision" means a provision of regulations under section 11 designated by regulations under that section as a relevant provision for the purposes of this section.

Comments:

No comments.

Clause 12

12 (4): In deciding whether to issue a certificate, HMRC must have regard in particular to—
(a) the purposes of each of the charities,
(b) the control and management of each of the charities, and
(c) the extent to which the property of the old charity has been transferred to the new charity.

Comments:

No comments.

Clause 12

12 (5): HMRC must issue such guidance as they consider appropriate about the exercise of their functions under this section.

Comments:

No comments.

Clause 12

12 (6): Regulations under section 11 may in particular make provision—
(a) about the form and contents of applications under this section;
(b) requiring an application to be made no later than a prescribed period after the dissolution of the old charity;
(c) for appeals against a refusal to issue a certificate under this section.

Comments:

No comments.

Clause 13

13: Power to alter specified amount etc

Comments:

No comments.

Clause 13

13 (1): The Treasury may by order amend—

(a) section 1(6) (the specified amount),

(b) section 4(3)(a),

(c) section 6(3)(b) and (4)(b), and

(d) section 9(4)(b),

by substituting a different sum for the sum for the time being specified in each of those provisions.

Comments:

Drafting

CAF Policy Team, Charities Aid Foundation:

HMRC and Treasury's desire to retain the flexibility to be able to amend details of the amounts involved in the Small Donations Scheme is understandable. If the power is used to iron out teething problems that become apparent in the early days of the new scheme, then that will be a positive thing. Our only concern is that by introducing these powers, it leaves open the possibility that the amounts available through the scheme will be reduced in the future. As public spending rather than tax relief (unlike Gift Aid), the Small Donations Scheme will be subject to the spending decisions of future governments. As long as it is made absolutely clear that there is a fundamental difference between the Small Donations Scheme and the Gift Aid system, there should not really be a problem. The concern would be if charities (particularly small ones) were not clear on this distinction and came to rely on money claimed through the Small Donations Scheme, unaware that its future status is not guaranteed.

CFG policy team, CFG:

The flexibility this clause allows is to be welcomed. However, there is a concern that these figures could be amended at any point with little or no consultation. The specified amount, how this is calculated and the defining characteristics of some of the provisions will have significant impact on the accessibility and use of the scheme. It is important that a degree of accountability is brought into 13.1 and 13.2 to ensure that changes are put in place in order to improve the value of the scheme to the sector, are put to consultation and are transparent.

Policy

NCVO Policy team, NCVO:

We note that clauses 13.1 and 13.2 provide for HMT to amend certain provisions in the Bill. In general, this flexibility is welcome as it enables certain technical rules to be reviewed as time goes on. However, as the Small Donations Scheme is public expenditure, rather than a tax relief, we are concerned that it could be amended without notice. Charities will have limited resources to track such policy changes, and we would not want them to be placed at a disadvantage by any significant unanticipated changes (particularly at 13.2 - regarding the sums available).

Clause 13

13 (2): The Treasury may by order amend paragraph 1(1) and (2) of the Schedule (limit on value of individual donations) by substituting a different sum for the sum for the time being specified in each of those provisions.

Comments:

Policy

NCVO Policy team, NCVO:

Please also see NCVO comment at clause 13.1.

Clause 14

14: Top-up payments not taxable

A top-up payment is not to be treated as income for any purpose of the Tax Acts.

Comments:

No comments.

Clause 15

**15: General/ Northern Ireland In Schedule 2 to the Northern Ireland Act 1998 (excepted matters), before paragraph 10 insert—
"9C The operation of the Small Charitable Donations Act 2012."**

Comments:

No comments.

Clause 16

16: Regulations and orders

Comments:

No comments.

Clause 16

16 (1): Regulations and orders under this Act are to be made by statutory instrument.

Comments:

No comments.

Clause 16

16 (2): A statutory instrument containing regulations or an order under the preceding provisions of this Act may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.

Comments:

No comments.

Clause 16

16 (3): Regulations and orders under this Act—

- (a) may apply generally or only in specified cases or circumstances;**
- (b) may make different provision for different cases or circumstances;**
- (c) may make consequential, supplementary, incidental, transitional or saving provision.**

Comments:

No comments.

Clause 17

[17: General interpretation](#)

Comments:

No comments.

Clause 17

17 (1): In this Act "charity" means—

- (a) a charity within the meaning of Part 1 of Schedule 6 to the Finance Act 2010;
- (b) the Trustees of the National Heritage Memorial Fund;
- (c) the Historic Buildings and Monuments Commission for England;
- (d) a registered club within the meaning of Chapter 9 of Part 13 of the Corporation Tax Act 2010 (community amateur sports clubs).

Comments:

No comments.

Clause 17

17 (2): In this Act—

"charitable activity" has the meaning given by section 7; "charitable purpose"—

(a) in the case of a charity within subsection (1)(a) to (c), has the meaning given by section 2(1) of the Charities Act 2011 (reading the reference in section 2(1) to the law of England and Wales as including a reference to the law of Scotland and the law of Northern Ireland);

(b) in the case of a charity within subsection (1)(d), means qualifying purpose within the meaning given by section 661(3) of the Corporation Tax Act 2010; "community building" is to be read in accordance with section 8; "connected charities": references to a charity being connected with another charity in a tax year are to be read in accordance with section 5; "eligible charity" is to be read in accordance with section 2; "gift aid exemption claim" means a claim for amounts to be exempt from income tax or corporation tax by virtue of— (a) section 521(4) of the Income Tax Act 2007, or (b) section 472, 475 or 664 of the Corporation Tax Act 2010, (and for related expressions see subsection (3) below); "HMRC" means the Commissioners for Her Majesty's Revenue and Customs; "running charitable activities in a community building": references to a charity running charitable activities in a community building in a tax year are to be read in accordance with section 7; "small donation" is to be read in accordance with section 3; "tax year" means a year beginning on 6 April and ending on the following 5 April; "top-up claim" means a claim under section 1 (and for related expressions see subsection (3) below); "top-up payment" has the meaning given by section 1.

Comments:

No comments.

Clause 17

17 (3): For the purposes of this Act—(a) a gift aid exemption claim is "successful" if an amount falls to be exempt from income tax or corporation tax as a result of the claim; (b) a successful gift aid exemption claim is made in respect of a gift to the extent that the gift, or the grossed up amount of the gift, falls to be exempt from income tax or corporation tax as a result of the claim; (c) a successful top-up claim is made in respect of small donations if, and 10 to the extent that, a top-up payment falls to be made because of the claim (and does not fall to be repaid under section 10); (d) in determining whether a successful claim has been made in a tax year, it does not matter when the claim is determined.

Comments:

No comments.

Clause 17

17 (4): In this Act a reference to the making of a claim by a charity includes a reference to the making of a claim on behalf of the charity.

Comments:

No comments.

Clause 18

18: Financial provisions

There is to be paid out of money provided by Parliament any increase attributable to this Act in the sums payable under any other Act out of money so provided.

Comments:

No comments.

Clause 19

19: Extent

This Act extends to—
(a) England and Wales,
(b) Scotland, and
(c) Northern Ireland.

Comments:

No comments.

Clause 20

20: Commencement and transitional provision

Comments:

No comments.

Clause 20

20 (1): This Act comes into force on 6 April 2013, subject to subsections (2) and (3).

Comments:

No comments.

Clause 20

20 (2): Any provision of this Act that confers a power to make regulations or an order comes into force, for the purposes of the use of the power, on the day on which this Act is passed.

Comments:

No comments.

Clause 20

20 (3): The following provisions of this Act come into force on that day—

(a) sections 15 to 19;

(b) this section;

(c) section 21.

Comments:

No comments.

Clause 20

20 (4): In section 2 the references to claims having been made, or penalties having been imposed, include claims made, or penalties imposed, before the date on which that section comes into force.

Comments:

No comments.

Clause 20

20 (5): In applying section 2 by virtue of subsection (4)—
(a) the reference in section 2(4)(b) to Schedule 24 to the Finance Act 2007 includes a reference to any enactment omitted by paragraph 29 of that Schedule;
(b) any reference in the definition of "gift aid exemption claim" in section 17(2) to a provision of the Income Tax Act 2007 or the Corporation Tax Act 2010 includes a reference to any corresponding earlier enactment rewritten in that provision.

Comments:

No comments.

Clause 20

20 (6): The Treasury may by order make other transitional provision in connection with the coming into force of any provision of this Act.

Comments:

No comments.

Clause 21

21: Short title

This Act may be cited as the **Small Charitable Donations Act 2012**.

Comments:

No comments.

Schedule

[Sch. p1](#): SCHEDULE (Section 3)

MEANING OF "SMALL DONATION": CONDITIONS

Comments:

Policy

Lesley Russell, Cuerden Valley Park Trust:

I think this section gives clarity to what can be claimed for and how to manage the system, as a small charity collecting many small donations it will be a much needed boost to our income.

Schedule

Sch. p1 (1): Small cash payment

The gift must be £20 or less in cash.

Comments:

Drafting

Ronald G Wicks, Church Treasurer (Retired):

I am currently a member of the Hereford Diocesan Board of Finance and of the Diocesan Synod of the Church of England, situated in Hereford. I have until recently been responsible for the collection of charitable donations made to my local Parish Church. Based on my 16 years of experience as Treasurer of Cusop Parochial Church Council, I would like to draw the attention of the Standing Committee for the Bill to where I think a small clarification is required to the SCHEDULE (Section 3) . which I have set out below: SCHEDULE - Meaning of " Small Donations"- Small cash payment- 1. (3) In this paragraph -" Cash" means coins and notes in any currency. While I have rarely ever seen a cheque in a collection at a normal Sunday Church service, they frequently are received after a funeral from those connected with the deceased who have, for some reason, been unable to attend the funeral. The amount is usually £10 or £20. I do not think cheques should be excluded. I think this section needs clarification. To leave it as it is could perhaps cause confusion if those involved assumed, as I expect most would, that a cheque was really 'Cash' and HMRC said it was not.

Policy Team, Institute of Fundraising:

Specifying that donations must be in cash is not consistent with the current Gift Aid scheme which allows for all donation mechanisms. This is out-dated in the current fundraising environment where there are a range of fundraising mechanisms for micro-donations where it can be difficult to gain a Gift Aid Declaration. For example, some mechanisms for text donations are anonymous and with data unavailable to the charity so it is not possible to gain Gift Aid Declarations. Furthermore, other forms of cashless technologies such as electronic payments, pre-pay cards or other contactless technology could potentially be affected. New agencies are making these methods accessible to small charities. Limiting the scheme to cash may exclude charities that are actively fundraising using a wider variety of methods, which does not seem to be in the spirit of the policy. The Institute of Fundraising believes that non-cash donations should not be excluded from the scheme.

Natasha Parker, Consultant and charity trustee:

I agree with the comments from the Institute of Fundraising and don't understand why we are having different definitions of donations than that used for normal Gift Aid. We should be encouraging charities to do their "collections" by the mechanism that works best for them - and it won't always be cash that they can't get declarations for.

Kirsten Hogg, Camphill Scotland:

Camphill Scotland believes that the principles of the Bill should not be restricted to cash donations. Camphill communities are starting to explore the possibility of new ways of enabling donations, such as by text message, and the Bill as drafted would either 1) discriminate against those choosing to use this technology or 2) discourage charities from making use of this

Schedule

technology, which could be used to target new donors. In addition, Camphill communities still receive some donations by cheque. While this should enable donors to be traced and a Gift Aid declaration to be put in place, it is worth noting that the administration required to arrange this for, for example, a donation of £10, would cost more than the Gift Aid reclaimed. We believe that the Bill should not restrict the Small Charitable Donations Scheme to cash donations.

Hospital Broadcasting Association:

HBA objects to the restriction of the Small Donations Scheme to cash donations. With modern technology, it is already possible for (effectively) anonymous donations to be received electronically, and the use of such systems is only going to increase. However, there is also the very real case of beneficiaries of small local charities (or family members of beneficiaries), such as hospital radio stations, wishing to make small donations after they have benefitted from the charity. Unsolicited cheques for small amounts will often arrive in the post along with an appreciative letter, and the combination of the administrative burden of asking the donor for a Gift Aid donation, and the wish not to trouble the donor further means that, often, Gift Aid is not reclaimed on these small donations. Neither charities nor the Government would wish to encourage the sending of cash donations through the post, yet it would seem that the Bill is encouraging just this – the donation being worth 25% more if provided in cash. There is, of course, another aspect to this – how is HMRC going to know the form in which specific donations are made, unless they see the actual banking records?

Policy

David J Israel, Member of Institute of Fundraising, long time fundraiser:

I would echo the comments of all my colleagues above. However the payment is received, it should be eligible for GASDS.

Alan Gosschalk, charity fundraiser:

Non cash donations should clearly not be excluded from the scheme

Louise Wright, Charity CEO:

It makes no sense to exclude non-cash donations from the scheme.

Schedule

Sch. p1 (2): Where a gift of cash is made to the charity and its managers do not know whether the gift is £20 or less, the condition in sub-paragraph (1) is to be treated as met if the managers have taken reasonable steps to find out.

Comments:

No comments.

Schedule

Sch. p1 (3): In this paragraph—

"cash" means coins and notes in any currency;

"managers", in relation to a charity, means the persons having the general control and management of the administration of the charity.

Comments:

No comments.

Schedule

Sch. p2: *Collected in the United Kingdom*

The gift must be received in the United Kingdom by or on behalf of the charity.

Comments:

No comments.

Schedule

[Sch. p3](#): *Deposited in United Kingdom in a bank account*

Comments:

No comments.

Schedule

Sch. p3 (1): The cash given to the charity must have been deposited in an account kept by or on behalf of the charity at a relevant institution and the deposit must have been made in the United Kingdom.

Comments:

No comments.

Schedule

[Sch. p3 \(2\)](#): "Relevant institution" has the meaning given by section 109(3) of the Charities Act 2011.

Comments:

No comments.

Schedule

[Sch. p4](#): *Not eligible for gift aid*

Comments:

No comments.

Schedule

[Sch. p4 \(1\)](#): The gift must be one in relation to which no gift aid declaration is given to the charity.

Comments:

No comments.

Schedule

[Sch. p4 \(2\)](#): "Gift aid declaration" means a declaration which is a gift aid declaration for the purposes of Chapter 2 of Part 8 of the Income Tax Act 2007.

Comments:

No comments.

Schedule

Sch. p5: *Not payment under payroll deduction scheme*

The gift must not be a sum falling within section 713(3) of the Income Tax (Earnings and Pensions) Act 2003 (payroll deduction scheme).

Comments:

No comments.

Schedule

Sch. p6: *Not deductible in calculating income*

The gift must not be deductible in calculating the individual's income from any source for the purposes of income tax.

Comments:

No comments.

Schedule

Sch. p7: *Not subject to condition as to repayment*

The gift must not be subject to any condition as to repayment.

Comments:

No comments.

Schedule

[Sch. p8](#): *Not conditional on acquisition of property by charity*

Comments:

No comments.

Schedule

Sch. p8 (1): The gift must not be conditional on, associated with or part of an arrangement involving, the acquisition of property by the charity from the individual or a person connected with the individual.

Comments:

No comments.

Schedule

[Sch. p8 \(2\)](#): An acquisition by way of gift is to be ignored for the purposes of this condition.

Comments:

No comments.

Schedule

[Sch. p9](#): *No, or only negligible, benefits associated with gift*

Comments:

No comments.

Schedule

Sch. p9 (1): There must be no benefits associated with the gift, or any benefits associated with the gift must be of negligible value (for example, a label sticker designed to acknowledge the making of a gift).

Comments:

Policy

Simon Jackson, Trustee of two charities:

Good to see you remembered to exempt such label stickers!

Schedule

Sch. p9 (2): For this purpose a benefit is associated with a gift if it is received by the individual who makes the gift, or a person connected with the individual, in consequence of making the gift.

Comments:

No comments.

Schedule

[Sch. p10: Interpretation](#)

For the purposes of this Schedule whether a person is connected with another person is to be determined in accordance with section 993 of the Income Tax Act 2007.

Comments:

Policy

Simon Jackson, Trustee of two charities:

Some general feedback on the website. I am afraid it is not very easy to use. Every time I enter a comment on a section and hit "Post Comment" I am returned to the start of the legislation and have to scroll down to where I was. This gets rather tedious when you comment more than a couple of times.