

SMALL CHARITABLE DONATIONS BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Small Charitable Donations Bill as brought from the House of Commons on 27th November 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 in circumstances 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 paid at the same rate, and administered in the same way, as Gift Aid. 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.
6. In order to be eligible to make claims under the GASDS in respect of small donations received in a particular tax year, a charity or CASC must meet certain eligibility criteria. A charity must have been in existence, and a CASC must have been registered as a CASC, for at least two complete tax years. They must have made Gift Aid exemption claims in at least two of the previous four tax years. The minimum period for a new charity or CASC to qualify for

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

the new scheme is therefore two years, providing the charity or CASC makes a Gift Aid exemption claim in each of the two 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 tax year. But, Gift Aid exemption claims made in those tax years will still count in determining eligibility in subsequent years. However, a charity remains an eligible charity and so may continue to make claims under GASDS if the penalty is suspended or cancelled, unless the suspended penalty subsequently becomes payable.
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 10% of the amount of the small donations on which top-up payments are claimed. That means that if a charity claims on the maximum £5,000 of small donations, they will need to have successfully claimed Gift Aid on at least £500 of donations in the same tax year.
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. Where a new charity or CASC takes on the activities of another charity or CASC, or two or more charities or CASCs merge to form a new charity or CASC, there are special rules that enable the new charity to take account of the Gift Aid history of one of the original charities or CASCs to enable the new charity to qualify for GASDS.
12. 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

13. The Small Charitable Donations Bill extends to the whole of the UK.

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

14. 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. A legislative consent motion was approved by the Northern Ireland Assembly on the 20th November 2012 providing consent 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.
15. 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.
16. 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

17. *Clause 1* provides when a top-up payment is payable and how to calculate the amount due.
18. *Subsection (1)* of clause 1 stipulates the conditions for when a charity or CASC is entitled to a top-up payment from HMRC. *Clause 18(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.
19. *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%.
20. *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 ten times 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 10%. 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 £500 of other donations received in the same tax year.

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

Clause 2: Meaning of “eligible charity”

21. *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 to be met:
- the charity or CASC must have made a successful Gift Aid exemption claim in at least two of the previous four tax years, and there must not have been a period between claims of two or more consecutive tax years, and
 - the charity or CASC must have been in existence for at least two complete tax years.
22. The first condition at subsection (1) of clause 2 considers a charity’s or CASC’s Gift Aid exemption claim activity over a four year period, and requires successful claims in at least two tax years during this period. Subsection (2) requires that, when considering the number of Gift Aid exemption claims made over a four year period, there must not have been a period between claims of two 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 2009/10 tax year can not be considered as one of the two successful claims, if the next claim was not made until the tax year 2012/13.
23. 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.
24. For example, Charity A is a long established charity and has made successful Gift Aid exemption claims in each of the tax years 2011-12 and 2012-13. Charity A will be eligible to make a claim under the GASDS on small donations collected from 6th April 2013 (the tax year 2013/14).
25. Charity B has made successful Gift Aid exemption claims in each of the tax years 2012-13 and 2015-16. There have been two consecutive years, 2013-14 and 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 one more successful Gift Aid exemption claim in the years 2016-17 onwards, so long as the gap between making a claim is not two tax years or more. Claims made before the two year gap do not qualify.
26. 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.
27. A “successful” Gift Aid exemption claim is defined in *clause 18* and is a claim made by the charity or CASC which has resulted in an amount falling to be exempt from income tax or

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

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 tax year. This does not apply if the penalty is suspended or cancelled, but it does apply to a suspended penalty that subsequently becomes payable. 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”

28. *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 18(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

29. *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).
30. *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

31. *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

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

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.

32. *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.
33. 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 10% 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”

34. *Clause 5* defines the meaning of a connected charity or CASC for the purposes of the Bill. Charities and CASCs are not connected with one another unless their purposes and activities are the same, or substantially similar.
35. 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 with each other at any time during a tax year where they are controlled by same person, or connected persons, or where one charity or CASC has control over another charity or CASC.
36. *Subsection (4)* of clause 5 applies the provisions of section 993 of the Income Tax Act 2007 to charitable trusts and provides a definition of “control” to be applied to trusts for the purposes of the scheme.
37. In applying section 993 of the Income Tax Act 2007, a trust is to be treated as if it were a company. As a result, the determination of whether parties are connected is applied in broadly the same way to a charitable trust as it is applied to a charitable company.
38. A charitable trust controls a person if the trustees, or any of them, in their capacity as trustees of the charitable trust controls the person.

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

39. *Paragraph (c)* of subsection (4) specifies the circumstances when a person has control of a charitable trust.
40. *Subsection (5)* of clause 5 provides a further circumstance under which one charitable trust is connected with another charitable trust. Two charitable trusts are connected if at least half of the trustees of one charity are trustees of the other charity or are connected with persons who are trustees of that other charity.
41. For example if Charitable Trust X has four trustees, Mr A, Mr B, Mr C and Mr D and Charitable Trust Y has seven trustees, including Mr A and Mrs B (who is married to Mr B) then Charitable Trust X and Charitable Trust Y are connected.
42. No special provision is made for the definition of “control” as it applies to charities that are companies. Therefore section 994 of the Income Tax Act 2007 provides that “control” is to be read in accordance with sections 450 and 451 of the Corporation Tax Act 2010.

Clause 6: Charities running charitable activities in community buildings

43. *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 specified amount of just £5,000 because there is just one 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 and the connected charity provisions, 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.
44. *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 the charity by group members 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 from group members in a community building while it is running charitable activities or £5,000, whichever is the lower amount.

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

45. 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.
46. If, in one of the community buildings, the group collects £6,000 of small donations from attendees in a year and in the other community building the group collects £1,000 in small donations from attendees 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

47. *Clause 7* specifies 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.
48. 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. These include 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 who are beneficiaries of the charitable activity must attend on each occasion. Group members must not be charged to access the community building or the part of the building in which the activity is carried out. 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.
49. It is not necessary for the same people to attend each of the group activities throughout the year. The conditions applying to the group 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.
50. *Subsection (3)* of clause 7 gives the Treasury 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 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.

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

51. *Subsection (4)* of clause 7 defines “charitable activity” and excludes activities that are carried out primarily for the purpose of fundraising. 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”

52. *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.

53. *Subsection (2)* of clause 8 specifically excludes from the meaning of a community building any parts of a building used wholly or mainly for residential purposes or the sale or supply of goods. As a result, charity shops and residential care homes, for example, are not community buildings for the purpose of this clause.

54. *Subsection (3)* of clause 8 excludes parts of buildings used wholly or mainly for other commercial purposes from the meaning of a community building, except at times when a charity is using that part of the building to carry out a charitable activity and the charity has exclusive use of that part of the building at that time.

55. *Subsection (4)* 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 (7)* applies this principle to interest in land held in Scotland. *Subsections (5) and (6)* of clause 8 give the Treasury 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.

56. The purpose of subsections (4) and (7) 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 (5) provides the flexibility for the Treasury 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

57. *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 (but not CASCs) runs charitable activities in a community building.

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

58. 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.
59. 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 by group members in community buildings while the charity (or charities) was running charitable activities in the buildings.
60. *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.
61. 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 from group members 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.
62. 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 by group members 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 by group members in its community buildings while it is running charitable activities, 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).
63. 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 from group members in a community building

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

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.

64. 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:

	Small donations collected from group members in community buildings	Remaining small donations	Gift Aid donations
Charity A	NIL	£2,000	£2,500
Charity B	£2,000	£2,500	£300
Charity C	£3,000	£2,000	£5,000
Total		£6,500	

65. 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 10% 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.
66. 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.
67. 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 + £1666.67 = £3,666.67 and

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

- Charity C is $\pounds 3,000 + \pounds 1666.67 = \pounds 4,666.67$.
68. Charity B can claim on only $\pounds 3,000$ 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.
69. 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 $\pounds 5,000$ and the specified amount under clause 6 of:
- Charity B is $\pounds 2,000 + \pounds 5,000 = \pounds 7,000$ and
 - Charity C is $\pounds 3,000 + \pounds 5,000 = \pounds 8,000$.
70. 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 $\pounds 5,000$ instead of one allocation of $\pounds 5,000$ between them. However, by claiming on more than the small donations received from group members 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 $\pounds 5,000$ pooled donations of all three charities and Charity B later claimed a top-up payment on $\pounds 7,000$ 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 $\pounds 2,500$. If Charity A had already claimed on the specified amount of $\pounds 5,000$ it would need to amend its claim and repay the amount overpaid.
71. 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 $\pounds 8,000$ 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.
72. 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 allowance 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 $\pounds 5,000$ for each church that qualifies as a community building. Similarly, individual parish charities of the Church of England can each qualify for one $\pounds 5,000$ if they are community buildings. As the individual parish charities are connected to other Church of England charities they will not

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

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

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

Clause 11: Management of top-up payments

74. *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 that regulations may include an appeals process. The power to make regulations under clause 11 enables provision to be made in connection with *clauses 12 and 13*: charity mergers.

75. *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 4(3) is rounded up to £1666.67 where three connected charities make a successful top-up claim.

Clauses 12 and 13: General

76. *Clauses 12 and 13* allow a new charity or CASC that takes on the activities of one or more predecessor charities or CASCs to apply to HMRC to take on the compliance history of one of its predecessors for the purposes of deciding the new charity's eligibility to make claims under the scheme under clause 2. The provisions are not mandatory. New charities may choose not to take advantage of these provisions if they prefer.

Clause 12: Charity mergers: new charity taking over activities of one charity

77. *Clause 12* provides that a charity or CASC created to take over the activities of one predecessor charity or CASC, for example on a change of legal form, can benefit from its predecessor's Gift Aid compliance history. The provision applies only if the new charity or CASC applies to HMRC, and HMRC certifies that the conditions in subsection (1) are met.
78. 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. It can make an application under this clause, and HMRC will consider the activity and the extent of transfer of any property of the charitable trust in determining the eligibility of the charitable company. It is not essential that the old charity or CASC is dissolved when the new charity or CASC applies to HMRC under clause 12. However, the new charity or CASC must have taken over the activities of the old charity or CASC and, as far as possible, the old charity's or CASC's

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

property. The new charity or CASC must also have purposes substantially similar to those of the old charity or CASC.

79. More than half of the managers of the new charity or CASC must have been managers of the old charity or CASC. This provision ensures that the new charity or CASC continues to be controlled and led by the same people who established a good compliance track record for the old charity or CASC. “Managers” is defined in subsection (7) of clause 12 as the persons having the general control and management of the administration of the charity. All trustees and directors of a charity and all directors of a CASC are managers.
80. Where HMRC certifies the four elements of subsection (1) are satisfied, the new organisation would not necessarily need to wait for two complete tax years before satisfying the eligibility criteria. Instead it can rely on the compliance history attributable to the old organisation.
81. Where the change in legal form takes place after 6 April of a tax year then:
- if the old charity or CASC has made a successful top-up claim in respect of small donations made in that tax year, the new charity or CASC cannot make a top-up claim until the following year at the earliest;
 - if the old charity or CASC has not made a successful top-up claim in respect of small donations made in that tax year, the new charity or CASC may make a top-up claim in the tax year when the change of legal form took place, provided that the old charity would have been eligible to make a top-up claim for the year, if the change of legal form had not taken place.
82. For example, Charity A, charitable trust, changes legal form to become Charity B, a charitable incorporated organisation on 1st October 2014. Charity A has successfully claimed top-up payments in 2013-14, but has not made any top-up claims in respect of small donations made since 5th April 2014. Charity B may claim top-up payments for small donations collected by Charity B since 1st October 2014.
83. If Charity A had made a successful top-up claim on 31st July 2014 for small donations collected since 6th April 2014 then Charity B will only be able to make a claim on small donations collected on or after 6th April 2015. It will not be able to claim for small donations collected by it from 1st October 2014 to 5th April 2015.
84. If, instead, Charity A had made a successful top-up claim on 31st July 2014 for small donations collected between 1st October 2013 and 5th April 2014 – that is the previous tax year – and not claimed on any small donations collected after 5th April 2014 then Charity B may claim top-up payments for small donations collected by Charity B since 1st October

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

2014. That is because Charity A had not made a claim in respect of small donations collected since 6th April 2014.

Clause 13: Charity mergers: new charity taking over activities of several charities

85. Clause 13 provides that a new charity or CASC created to take on the activities of two or more charities or CASCs can take on the compliance history of one of the predecessor charities for the purposes of deciding the new charity's eligibility to make claims under the scheme under clause 2. The provision applies only if the new charity or CASC applies to HMRC, and HMRC certifies that the conditions in subsection (1) are met.
86. The new charity or CASC must have taken over the activities of the pre-merger charities or CASCs and have purposes that are substantially similar to the pre-merger charities or CASCs.
87. More than half of the managers of the new charity or CASC must have been managers of the old charities or CASCs. "Managers" is defined at subsection (8) of clause 13 as the persons having the general control and management of the administration of the charity. All trustees and directors of a charity and all directors of a CASC are managers.
88. It is not necessary for the new managers to be drawn from each of the old charities.
89. For example Charity A, with four managers, merges with Charity B, with two managers, to form Charity C. Charity C has three managers. Two of the managers of Charity C were managers of Charity A. The third manager of Charity C is new and was not associated with either Charity A or Charity B. Charity C meets the requirement that over half of its managers were old charity managers.
90. Where HMRC certifies the four elements of subsection (1) are satisfied, the new organisation would not necessarily need to wait for two complete tax years before satisfying the eligibility criteria. Instead it can rely on the compliance history attributable to one of the pre-merger charities or CASCs, known as the "relevant old charity".
91. The relevant old charity is the pre-merger charity or CASC with the least eligibility history under clause 2.
92. If all the pre-merger charities or CASCs would be eligible under clause 2 in the year of merger then to identify the relevant old charity:
- assume that, if the merger had not gone ahead, none of the pre-merger charities makes a successful Gift Aid exemption claim in the year of merger or in future
 - identify which of the charities or CASCs would cease to become eligible under clause 2 first.

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

93. For example Charities A, B and C merge to form Charity D on 7 April 2016. All the conditions are met. The claim history of the Charities A, B and C is as follows.

	2013/14	2014/15	2015/16	2016/17
Charity A	Successful GA exemption claim	Successful GA exemption claim	Successful GA exemption claim	Assume no GA exemption claim
Charity B	Successful GA exemption claim	Successful GA exemption claim	No GA exemption claim made	Assume no GA exemption claim
Charity C	No GA exemption claim	Successful GA exemption claim	Successful GA exemption claim	Assume no GA exemption claim made

94. The relevant old charity is Charity B because it would not be eligible to make a top-up claim in 2017/18. Charities A and C could make claims in 2017/18, but not in 2018/19.

95. If all but one of the pre-merger charities or CASCs would be eligible charities or CASCs under clause 2 in the year of merger then the relevant old charity is the charity or CASC that is not eligible.

96. If more than one of the pre-merger charities or CASCs would not be eligible charities or CASCs under clause 2 in the year of merger then, to identify the relevant old charity:

- assume that, if the merger had not gone ahead, each of the ineligible pre-merger charities makes a successful Gift Aid exemption claim in the year of merger and in future

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

- identify which of those charities or CASCs would be the last to become eligible under clause 2.

97. For example Charities A, B and C merge to form Charity D on 7th April 2017. All the conditions set out in clause 13(1) are met. The claim history of the Charities A, B and C is as follows.

	2013-14	2014-15	2015-16	2016-2017	2017-18
Charity A	Successful Gift Aid exemption claim	Successful Gift Aid exemption claim	Successful Gift Aid exemption claim	No Gift Aid exemption claim	Eligible in year of merger
Charity B	Successful Gift Aid exemption claim	Successful Gift Aid exemption claim	No Gift Aid exemption claim	No Gift Aid exemption claim	Assume successful Gift Aid exemption claim
Charity C Created 2015-16			No Gift Aid exemption claim	Successful Gift Aid exemption claim	Assume successful Gift Aid exemption claim

98. Charity A cannot be the relevant old charity as it is eligible under clause 2 for the year of the merger. The relevant old charity is Charity B because it would not be eligible to make a top-up claim under clause 2 until 2019-20. Charity D therefore takes on the claim history of Charity B..

99. If there is a tie between two or more pre-merger charities or CASCs when determining which of them is the relevant old charity, then the new charity must elect which of the charities or CASCs is to be the relevant old charity.

100. Where the merger takes place after 6th April of a tax year then:

- if any of the old charities or CASCs have made a successful top-up claim in respect of small donations made to it in that tax year, the new charity or CASC cannot take on the compliance history of the relevant old charity to determine its eligibility until the following tax year at the earliest, that is the year after the merger;

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

- if none of the old charities or CASCs has made a successful top-up claim in respect of small donations given to it in that tax year, the new charity or CASC can take on the compliance history of the relevant old charity to determine its eligibility to make claims for the year of the merger.

Clause 14: Power to alter specified amount etc

101. *Clause 14* gives the Treasury the power to alter a range of numbers within the Bill. *Subsections (1) and (6)* give the Treasury the power to vary the monetary amounts specified. 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.
102. *Subsection (2)* gives the Treasury the power to amend, abolish or reinstate the gift aid matching rule. The reinstated rate is not required to be the same as the rate that was removed. *Subsection (3)* defines this rule as that limiting the amount of top-up payments to which a charity is entitled by reference to the amount of gifts made to the charity on which it has made successful gift exemption claims.
103. *Subsection (4)* gives Treasury the power to alter the eligibility rules in clause 2. This enables the criteria in clause 2 to be varied, removed or reinstated, if previously removed. *Subsection (5)* limits this power so that the condition in *clause 2(1)(a)* that a charity or CASC must have a Gift Aid history cannot be removed.

Clause 15: Top-up payments not taxable

104. *Clause 15* states that the top-up payment received under the scheme is not taxable in the hands of the charity or CASC.

Clause 16: Northern Ireland

105. *Clause 16* 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 17: Regulations and orders

106. *Clause 17* 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 21(6)*, are to be made under the draft affirmative procedure in the House of Commons.

Clause 18: General interpretation

107. *Clause 18* 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.

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

108. *Subsection (3)* of clause 18 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 grossed-up amount of the 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.
109. *Paragraph (a)* of clause 18(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.
110. *Paragraph (b)* of clause 18(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 £1000 of GASDS income, where perhaps £50 of the Gift Aid donation income is applied for non-charitable or non-qualifying purposes.
111. *Paragraph (c)* defines a “successful top-up” claim for the purposes of determining the specified amount for a connected charity or CASC.

Clause 19: Financial provisions

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

Clause 20: Extent

113. *Clause 20* provides that the Bill extends to England and Wales, Scotland and Northern Ireland.

Clause 21: Commencement and transitional provision

114. *Clause 21* provides for commencement and transitional provisions.
115. *Subsection (1)* provides that the provisions of the Bill come into effect from 6th April 2013, except the following provisions which will commence on the date of Royal Assent:

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

- 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 6th April 2013;
- the general provisions in clauses 16 to 22 of the Bill, under *subsection (3)*.

116. *Subsections (4) and (5)* ensure that Gift Aid exemption claims made before 6th 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 6th April 2013. For this purpose, references in the Bill to currently applicable legislation include references to the legislation replaced by it.

117. *Subsection (6)* makes provision for the Treasury to make other transitional provisions by order.

Schedule – Meaning of “small donation”: conditions

118. *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

119. Payments under the scheme will be funded through HMRC’s Supply Estimate as part of its Voted Annual Managed Expenditure.

120. 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

121. These costs will be revised to accommodate changes to policy detail since the Budget 2011 announcement, including the rules around community buildings, the reduction of the eligibility period to 2 years and the 10% matching required. They will also reflect updates to Gift Aid National Statistics published since Budget 2011 because charities claiming Gift Aid

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

informs the take-up for the Small Donations scheme. The final costs will be subject to OBR scrutiny and will be published at the Autumn Statement.

PUBLIC SECTOR MANPOWER

122. No significant change in the workload of any Government department or agency is anticipated on implementation of this Bill.
123. 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

124. 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.
125. 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

126. 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).
127. The Treasury Lords Whip, Lord Newby, has made the following statement:

“In my view the provisions of the Small Charitable Donations Bill are compatible with the Convention rights.”
128. 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

129. 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 cases¹. 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.² 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.³ This Convention right is relevant to the following clauses:
130. 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

¹ 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.

²See 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.

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

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

requirements of Gift Aid then it cannot 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 (2 tax years) provided the charity or CASC is compliant for those years.

131. 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.
132. 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.
133. 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 £5,000 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

134. 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.⁴ 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 of⁵.
135. 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 proportionate⁶ 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

136. 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 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

⁴ Michalak [2003] 1 WLR 617, par 34.

⁵ *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.

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

*These notes refer to the Small Charitable Donations Bill
as brought from the House of Commons on 27th November 2012 [HL Bill 58]*

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

137. The commencement date for the scheme is 6th 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 brought from the House of Commons on 27th November 2012
[HL Bill 58]*

*Order to be Printed,
27th November 2012*

© Parliamentary copyright House of Lords and House of Commons 2012

This publication may be reproduced under the terms of the Open Parliament Licence, which is published at www.parliament.uk/site-information/copyright

PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS

LONDON – THE STATIONERY OFFICE LIMITED

Printed in the United Kingdom by
The Stationery Office Limited

£x.00