

SMALL CHARITABLE DONATIONS AND CHILDCARE PAYMENTS ACT 2017

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Small Charitable Donations and Childcare Payments Act 2017 which received Royal Assent on 16 January 2017 (c.1).

- These Explanatory Notes have been prepared by HM Revenue and Customs in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act. So where a provision of the Act does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

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Overview of the Act

- 1 The Small Charitable Donations and Childcare Payments Act 2017 makes a number of amendments to the Small Charitable Donations Act 2012. The changes seek to ensure that the Gift Aid Small Donations Scheme operates effectively and flexibly for the greatest number of charities and Community Amateur Sports Clubs (CASCs). The Act also makes minor and technical changes to the Tax-Free Childcare scheme with the aim of improving parents' experience.
- 2 The reforms to the Gift Aid Small Donations Scheme are intended to simplify and increase access to the scheme, particularly for smaller and newer charities. This is achieved by:
 - removing a number of eligibility criteria to allow more smaller and newer charities to benefit sooner;
 - reforming the community buildings rules to allow more charities to benefit from the important work they carry out in their local communities;
 - simplifying the rules specifying the total top-up payment charities and CASCs are entitled to claim - ensuring fairness and parity of treatment between charities that carry out similar activities but are structured in different ways;
 - ensuring the scheme continues to reflect the realities of modern fundraising by allowing contactless donations to be eligible.

Policy background

Gift Aid Small Donations Scheme

- 3 The Gift Aid Small Donations Scheme was announced in the 2011 Budget and introduced by the Small Charitable Donations Act 2012 from 6 April 2013. The purpose of the scheme is to enable charities and CASCs to claim a Gift Aid style top-up payment on small donations up to £20 in circumstances where it is not practical or feasible to obtain a Gift Aid declaration.
- 4 Unlike Gift Aid, which is a tax relief, the Gift Aid Small Donations Scheme does not require individual donors to complete Gift Aid declarations. However, the scheme is designed to broadly mirror Gift Aid and charities and CASCs submit claims in a similar way.
- 5 Currently charities and CASCs must meet certain eligibility criteria in order to claim a top-up payment in respect of small donations they receive in a tax year. A charity must have been in existence, and a CASC must have been registered as a CASC, for at least the two previous complete tax years. Charities and CASCs must also have made successful 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 the scheme is currently therefore two years. This Act removes both of these criteria so that newly formed charities can access the scheme.
- 6 Charities and CASCs must also make Gift Aid exemption claims on donations received in the same tax year in order to make a claim under the Gift Aid Small Donations Scheme. The total Gift Aid donations must be at least 10% of the amount of the small donations on which top-up payments are claimed for that tax year. This requirement is unchanged by this Act.
- 7 There are special rules in certain circumstances that increase the maximum amount of small donations on which top-up payments can be claimed. If a charity runs charitable activities in a community building, the maximum limit is increased from £8,000 of small donations by up to a

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further £8,000 for small donations collected in each community building. The “community building” provisions do not apply to CASCs. This Act simplifies and clarifies the operation of these rules for charities.

- 8 The GASDS rules were designed to ensure, as far as possible, that charities operating in a similar way but structured differently have the same entitlement to top-up payments. For example, a charity may have several branches but registered as one charity or, alternatively, another charity may have the same structure but each branch may be registered as a separate charity.
- 9 The connected charity rules ensure that where two or more charities are connected they share one £8,000 top-up limit between them (so they are in the same position as a single charity with several branches which are not separately registered). However, where a charity - or 'group' of connected charities - carry out charitable activities in one or more community buildings they are entitled to claim in respect of further donations up to a maximum of £8,000 made in each community building as described in paragraph 7.
- 10 Broadly, charities or CASCs are connected with each other at any time during a tax year where the same person or persons controls them and the charities or CASCs have the same or very similar purposes.
- 11 In certain circumstances the current rules result in some charities being entitled to more allowances than others despite carrying out similar activities in a similar way. Changes made by this Act seek to ensure that the scheme operates more fairly. From 6 April 2017 a charity - or group of charities - will be able to claim in respect of either (i) the total of the community building amounts: up to £8,000 small donations made in the local authority area in which each community building is located (see paragraph 14 below) or (ii) a total of up to £8,000 small donations made anywhere in the UK. The charity will be entitled to claim whichever is more beneficial.
- 12 Where a 'group' of connected charities carries out activities in community buildings it will generally be more beneficial to claim community building amounts so this is the default position. However, if this is not the case, connected charities may opt to claim in respect of £8,000 small donations made anywhere in the UK instead by writing to HMRC.
- 13 The effect of the changes is that a charity - or group of connected charities - will only be able to claim in respect of small donations totalling more than £8,000 where they have more than one community building. A charity with one community building will be able to claim a top-up payment on a maximum of £8,000 donations.
- 14 This Act amends the definition of a 'community building amount' so that donations no longer have to be made in the community building itself while charitable activities are being carried out. From 6 April 2017 small donations made in the local authority area in which the community building is located may qualify as part of the community building amount.
- 15 Small donations made by contactless payment may, from 6 April 2017, qualify as small donations.

Tax Free Childcare

- 16 Tax free childcare was legislated through the Childcare Payments Act 2014, which introduces a new scheme which provides financial support to working families with the costs of childcare. The purpose of the scheme is to enable those with responsibility for children to take up paid work, or to work for longer, where they are currently deterred from doing so because of the need to meet childcare costs.
- 17 Once the scheme is implemented, for every £8 which a person pays towards childcare costs, the Government will make a top-up payment of £2. The value of Government support will be capped at a maximum of £2,000 per child each year (or £4,000 for disabled children), although there will

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be no restriction on the number of children for whom support would be available. The scheme will be managed by HMRC and the Government intends to introduce it in early 2017.

- 18 The introduction of the scheme was announced by the Chancellor of the Exchequer at Budget 2013 when it was described as 'tax-free childcare'. The use of that term reflected the fact that the 20% Government top-up payments in effect represent the basic rate tax element which would apply to the income used by the individual to fund their childcare costs. Government top-up at a rate which parallels standard rate Income tax is a feature it shares with the Gift Aid Small Donations Scheme.

Legal background

- 19 The Gift Aid Small Donations Scheme was introduced in the Small Charitable Donations Act 2012. Provisions for the administration of top-up claims, payments and overpayments are set out in The Small Charitable Donations Regulations 2013 (SI 2013/938).
- 20 With effect from 6 April 2016, the Small Charitable Donations Act (Amendment) Order 2015 (SI 2015/2027) increased the maximum amount of small cash donations (the "specified amount") that a charity can claim a top-up payment on in any tax year under the scheme from £5,000 to £8,000.
- 21 Access to the Gift Aid Small Donations Scheme is restricted to charities within the meaning of Part 1 of Schedule 6 Finance Act 2010 and registered Community Amateur Sports Clubs within the meaning of Chapter 9 of Part 13 Corporation Tax Act 2010.
- 22 Since the Childcare Payments Act 2014 was passed further details on the eligibility rules and the day-to-day running of the scheme have been set out in the Childcare Payments (Eligibility) Regulations 2015 (SI 2015/448) and the Childcare Payments Regulations 2015 (SI 2015/522). These regulations were amended by the Childcare Payments (Eligibility) (Amendment) Regulations 2016 (SI 2016/793) and the Childcare Payments (Amendment) Regulations 2016 (SI 2016/796).
- 23 The Childcare Payments Act 2014 (Amendment) Regulations 2015 (SI 2015/537) amended section 19(3) of the Childcare Payments Act 2014 to increase the maximum top-up per year for disabled children from £2,000 to £4,000.

Territorial extent and application

- 24 The Small Charitable Donations and Childcare Payments Act 2017 extends to the whole of the UK.

Commentary on provisions of Act

Section 1: Meaning of “eligible charity”

- 25 This section amends the meaning of “eligible charity” within the Small Charitable Donations Act 2012 (“the 2012 Act”).
- 26 Subsection (2) amends section 2 of the 2012 Act to remove the requirement that:
- a charity or CASC must have made a successful Gift Aid exemption claim in at least two out 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 before the tax year of the claim.
- 27 Subsection (3) removes sections 12 and 13 of the 2012 Act. Sections 12 and 13 provide that a charity or CASC created to take over the activities of one or more predecessor charities or CASCs can benefit from its predecessors’ Gift Aid compliance history. These provisions will no longer be required following the changes made by subsection (2).
- 28 Subsection (4) removes section 14(5) of the 2012 Act, which limits the Treasury’s regulation making powers in relation to amending the meaning of “eligible charity”. This provision is no longer necessary following the changes made by subsection (2).
- 29 Subsection (5) omits regulations 17 to 19 of the Small Charitable Donations Regulations 2013 (SI 2013/938). These regulations apply to applications under sections 12 and 13 of the 2012 Act, which are repealed by subsection (3).

Section 2: Meaning of “small donation”

- 30 Section 2 makes changes to the meaning of “small donation” in the Schedule to the 2012 Act. 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.
- 31 Subsection (2) amends the definition of “small donation” to bring contactless donations within scope of the Gift Aid Small Donations Scheme. A small donation must be a cash donation or made by a contactless payment and it must be £20 or less.
- 32 Subsection (2)(d) defines “contactless payment” as “a payment made at a contactless payment terminal using the contactless payment facility of a card, mobile telephone or other device”. This definition includes contactless donations made using Apple Pay, Android Pay or similar services but does not extend to donations made via SMS or other mobile donation services. The definition also excludes credit or debit card donations made online, over the phone, or using the chip and PIN payment facility.
- 33 Subsection (3) amends paragraph 2 of the Schedule to the 2012 Act to provide that the donation must be made in the United Kingdom. This maintains the current treatment for cash donations and ensures that any contactless terminal used to collect charitable donations from donors must be in the UK at the time the donation is made.
- 34 Subsection (4) amends paragraph 3 of the Schedule to the 2012 Act to specify that the requirement to deposit eligible donations in a UK bank account only applies to cash donations.

Section 3: Charities running charitable activities in community buildings

- 35 This section makes amendments to sections 6, 7 and 8 of the 2012 Act.

- 36 Subsections (2) and (3) make changes to the heading of section 6 and subsection (1) of that section to clarify that the scheme rules contained in section 6 apply to charities with more than one community building.
- 37 Subsection (4) omits subsections (2) and (3) of section 6 of the 2012 Act and inserts new subsections (2) to (3D).
- 38 New subsection (2) of section 6 provides that the specified amount (the maximum amount of small donations that a charity may claim a top -up payment on in a tax year) for a charity with more than one community building is the greater of £8,000 or the total of the community buildings amounts for each community building.
- 39 A charity with more than one community building may therefore be able to claim top-up payments in respect of small donations of more than £8,000 in a tax year. If a charity makes a claim for a top-up payment in respect of up to £8,000 only, the small donations can be collected anywhere. If the charity with more than one community building wishes to claim in respect of more than £8,000 small donations, the donations must all qualify as part of a community building amount in accordance with section 6 of the 2012 Act as amended by section 3.
- 40 New subsection (3) of section 6 of the 2012 Act explains that the community building amount in relation to a community building for a tax year is the total sum of the small donations made to the charity in that tax year in the local authority area in which the community building is situated. The donations must be made in person. The community building amount in relation to a community building cannot exceed £8,000.
- 41 New subsection (3A) of section 6 of the 2012 Act provides that a small donation cannot form part of the community building amount for more than one community building. A charity may have two or more community buildings in a local authority area and a small donation can only be counted towards the community building amount for one of them.
- 42 New subsection (3B) of section 6 of the 2012 Act provides that where a small donation could be included in the community building amount for more than one community building the charity may choose which one it forms part of. However, where a donation is actually made inside a community building, it can only count towards the community building amount for that particular building.
- 43 New subsections (3C) and (3D) of section 6 of the 2012 Act defines "local authority area" for the purposes of the Act and is self-explanatory.
- 44 Subsection (5) repeals subsections (4) to (6) of section 6 of the 2012 Act which are no longer relevant in calculating the specified amount in respect of which a charity may claim.
- 45 Subsection (6) amends section 7 subsection (1) of the 2012 Act as small donations no longer have to be made while a charity is running charitable activities in a community building in order to qualify as part of the community building amount.
- 46 Subsection (7) amends section 8 of the 2012 Act which defines a 'community building' in order to reflect that small donations forming part of a community building amount no longer have to be made while a charity is carrying on charitable activities in a community building. Subsections (3) and new subsection (3A) provide that where a part of a building is used, wholly or mainly, for commercial purposes (other than the sale or supply of goods) that part cannot be a community building unless a charity carries out charitable activities in that part and when it does so the charity has exclusive use of that part.
- 47 Subsection (8) provides a consequential amendment to section 14 of the 2012 Act (power to alter specified amount etc) as a result of amendments made to section 6 of the 2012 Act.

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Section 4: Connected charities running charitable activities in community buildings

- 48 Section 4 amends the rules for determining the specified amount for a charity that is connected with one or more charities in a tax year, and where at least one of the connected charities runs charitable activities in community buildings.
- 49 They apply only where one or more of the connected charities runs charitable activities in a community building. If none of the connected charities runs charitable activities in a community building then the specified amount for the group is calculated in accordance with section 4 (connected charities) of the 2012 Act.
- 50 Subsection (2) amends section 4(4) to make it clear that section 4 will not apply if section 9 applies.
- 51 Subsection (3) inserts new subsections (2) to (6) into section 9 of the 2012 Act and omits old sections (2) to (8).
- 52 New subsection (2) provides that section 9 does not apply if the conditions in the new section 9A are met.
- 53 New subsection (3) provides that where section 9 applies, the specified amount (the amount in respect of which the charity may claim a top-up payment) for a connected eligible charity is determined by the new subsections (4) or (6) below.
- 54 New subsection (4) provides that where any of the connected charities run charitable activities in a community building the specified amount is the total of the small donations made to the charity in that tax year in the local authority area in which each community building is situated. The donations must be made in person. The community building amount for a particular building cannot exceed £8,000.
- 55 New subsection (5) provides that the community building amount is to be calculated in accordance with section 6(3) to (3B) of the 2012 Act.
- 56 New subsection (6) specifies that where a connected charity does not run charitable activities in a community building in the tax year, the specified amount for that charity is nil.
- 57 Subsection (4) inserts new section 9A into the 2012 Act, which allows a group of connected eligible charities to opt out of section 9 for the tax year, so that section 4 of the 2012 Act applies instead. Section 4 allows the group to share one specified amount of £8,000 between each eligible connected charity.
- 58 New section 9A (1) provides that election under the new section 9A can only take effect when all of the connected charities gives notice to HMRC that they do not wish to claim under the community building element of the scheme but instead wishes, as a group to claim under section 4 of the 2012 Act.
- 59 New section 9A(3) provides that a notice under section 9A can be withdrawn at any time by any of the connected charities but may not be withdrawn once all the connected charities within the group has given notice.
- 60 For example, 2 eligible charities, A and B are connected in a tax year and A has a community building. Charity A gives notice before charity B. At this point the condition in section 9A (1) is not met because HMRC only has received a notice from charity A. Charity A withdraws the notice and subsequently charity B gives notice. The condition is still not met, because HMRC does not have notice from charity A (it has been withdrawn). However, if charity B had given notice before charity A decides that it wants to withdraw its notice, at that point HMRC would have had notice from both charities and the condition would have been met. At this point charity A and B would not be in a position to withdraw either of the notices.

- 61 New section 9A (4) provides for regulations under section 11 to be made in connection with the new section 9A notice requirement, in particular the time limit for giving a notice, about the form and contents of the notice and any accompanying information.
- 62 Subsection (5) provides a consequential amendment to section 14 of the 2012 Act (power to alter specified amount etc) as a result of amendments made to section 9 of the 2012 Act. .
- 63 Subsection (6) inserts a new regulation 3A into the Small Charitable Donations Regulations 2013. New regulation 3A(1) allows HMRC to specify the form and contents of the notice under section 9A, and any accompanying information required in connection with the notice.
- 64 New regulation 3A(2) allows HMRC to require the notice under section 9A to be given by each connected charity separately or by all of the connected charities jointly.
- 65 New regulation 3A (3) specifies the time limits for section 9A notices.
- 66 The effect of this is that where no top-up claims have been submitted for the tax year by any of the connected charities in the group, the time limit for giving notice to HMRC under section 9A is two years after the end of the tax year to which the claim relates. However, where any of connected eligible charities in the group have made a top-up claim for the tax year the time limit is 12 months from the date of that first claim. There are no separate 12 month time limits for each of the connected charities.
- 67 Subsection (7) ensures that new regulation 3A (notices under section 9A(1) of the 2012 Act)) may be amended or revoked as if it had been inserted by regulations under section 11 of the 2012 Act.

Section 5: Childcare payments

- 68 Section 5 will make three minor, technical amendments to the Childcare Payments Act 2014.
- 69 Sub-section 5(2) will amend section 5(4) of the Childcare Payments Act 2014 which provides for the amount by which entitlement periods may be varied. The standard length of an entitlement period is three months, but in certain cases this may be increased or decreased by one month. This amendment will allow the variation to be increased from one to two months. This will enable alignment of eligibility periods for additional children when parents already have another child in the scheme.
- 70 Sub-section 5(3) and 5(4) will amend sections 57 and 58 of the Childcare Payments Act 2014, which set out the process for a person to follow when they wish to apply for a review of a decision made by HMRC, or wish to do so outside the normal time limits. The amendment will provide for regulations to be made which specify the form and manner of applications made for these purposes. This will enable these requests to be required to be made digitally, except where the person is unable to do so, which will ensure consistency with the rest of the scheme.

Section 6: Extent

- 71 Detailed analysis of the extent of the Act is set out in the "Territorial Extent" section of these notes. This section is otherwise self-explanatory.

Section 7: Commencement

- 72 This section is self-explanatory.

Section 8: Savings and transitional provision

- 73 Subsection (1) explains that, while subsection (3) of section 1 repeals sections 12 and 13 of the 2012 Act in consequence of the amendment to the meaning of an eligible charity, these sections will continue to apply in the case of charity mergers in the tax year 2016-2017 and earlier years. The effect of this is that a charity taking over the activities of one or more charities before 2017-18 may

continue to make an application under section 12 or section 13 of the 2012 Act for the purposes of establishing eligibility for top-up payments and the effect of those sections is unchanged.

74 Subsection (2) provides that where a charity has taken over the activities of more than one charity before the tax year 2017-18 and makes an application under section 13 of the 2012 Act, the relevant old charity is determined using the same test - in subsection 13(4) - that would have been used had section 13 not been omitted.

75 Subsection (3) provides definitions for the purposes of section 8 and is self-explanatory.

Section 9: Short title

76 This section is self-explanatory.

Commencement

77 Sections 1 to 4 have effect for the tax year 2017-18 and subsequent tax years.

78 Section 5 will come into force two months after Royal Assent of this Act.

Related documents

86. The following documents are related to the Act and can be read at the stated locations:

- Gift Aid Small Donations Scheme - A Call for Evidence
<https://www.gov.uk/government/consultations/gift-aid-small-donations-scheme-a-call-for-evidence>
- Gift Aid Small Donations Scheme – Consultation and Summary of Responses
<https://www.gov.uk/government/consultations/gift-aid-small-donations-scheme>
- Claiming Gift Aid as a charity or CASC: Small Donations Scheme
<https://www.gov.uk/claim-gift-aid/small-donations-scheme>
- Charities: detailed guidance notes: Chapter 8: The Gift Aid Small Donations Scheme
<https://www.gov.uk/government/publications/charities-detailed-guidance-notes/chapter-8-the-gift-aid-small-donations-scheme>
- Gift Aid Small Donations Scheme: A research report by the House of Commons Library
<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06330#fullreport>
- Small Charitable Donations and Childcare Payments Bill 2016-17: A briefing paper by the House of Commons Library
<http://researchbriefings.files.parliament.uk/documents/CBP-7711/CBP-7711.pdf>

Annex A – Hansard References

87. The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	14 September 2016	Vol. 614 Col. 918
Second Reading	11 October 2016	Vol. 615 Cols. 213-253
Public Bill Committee	18 October 2016	Public Bill Committee on Small Charitable Donations and Childcare Payments Bill
Report and Third Reading	15 November 2016	Vol. 617 Cols. 174-207
<i>House of Lords</i>		
Introduction	16 November 2016	Vol. 776
Second Reading	12 December 2016	Vol. 777 Cols. 1108-1120
Third Reading	12 December 2016	Vol. 777 Col. 1120
Royal Assent	16 January 2017	House of Commons Vol. 619
		House of Lords Vol. 778

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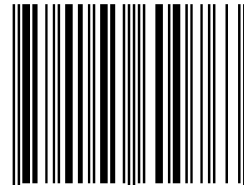
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