

**EXPLANATORY MEMORANDUM TO
THE DONATIONS TO CHARITY BY INDIVIDUALS (APPROPRIATE
DECLARATIONS)(AMENDMENT) REGULATIONS 2005**

2005 No. 2790

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.
2. **Description**
 - 2.1 This measure is deregulatory. It removes, in certain circumstances, a requirement, contained in the Donations to Charity by Individuals (Appropriate Declarations) Regulations 2000, for charities to provide donors with a written statement, where the donor has made a Gift Aid declaration orally.
3. **Matters of special interest to the Select Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1 These regulations amend the Gift to Charity by Individuals (Appropriate Declarations) Regulations 2000. The 2000 Regulations impose an obligation on a charity in receipt of a Gift Aid declaration given orally (for example over the telephone) to make a record in writing of the declaration and send this to the donor giving the donor 30 days in which to cancel the declaration.
 - 4.2 The requirement to provide a written record to the donor presupposes that there will otherwise be an insufficient audit trail linking the making of a declaration to the donor and gives the charity a means by which to establish a suitable audit trail. It is also intended to ensure that the donor has fully understood the conditions by which the Gift Aid donation was made. There is, however, no evidence to suggest that a person making an oral declaration is any more likely to misunderstand the conditions than a person making a written declaration.
 - 4.3 New technology increasingly makes the distinction between written and oral declarations obsolete. Oral declarations will often be recorded by the charity, providing the necessary evidence of a declaration being given. These regulations will therefore remove the burden to write to the donor in relation to an oral declaration where the charity can provide evidence that the donor has made a declaration. Where the charity does not maintain such records to a standard required by the Commissioners of HM Revenue and Customs, the requirement to write to the donor will remain.
5. **Extent**
 - 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 Section 25 Finance Act 1990 (Gifts to Charity by Individuals) outlines the rules determining when a donation will be a qualifying donation for the purposes of "Gift Aid". Gift Aid is a scheme to encourage giving by individuals to charity.
- 7.2 The Gift Aid scheme enables a charity to reclaim a repayment of an amount equal to the basic rate of tax suffered on the donation.
- 7.3 To claim repayment of tax on a Gift Aid donation, section 25(1)(c) Finance Act 1990 requires a charity to have an appropriate declaration from the donor. Section 25(3) and (3A) of Finance Act 1990 give powers for regulations to be made detailing what should be included in an appropriate declaration and when such a declaration will have effect, cease to have effect, or be treated as never having had effect. The Gift to Charity by Individuals (Appropriate Declarations) Regulations 2000 outline the current requirements.
- 7.4 The specific requirement addressed by these new regulations is the additional requirement imposed on a charity receiving an oral declaration - a telephone declaration for example. In these circumstances a charity must make a written statement of the declaration being made and send this to the donor, giving the donor 30 days to cancel their declaration.
- 7.5 HM Revenue & Customs have consulted a number of charities involved in taking large numbers of oral Gift Aid declarations (Disasters Emergency Committee, Children in Need, Comic Relief) and the Charity Tax Reform Group. There is strong support for removing the burden of sending a written statement to the donor, where the charity otherwise has maintained records to link the donor to the making of the donation.
- 7.6 The revised regulations remove the requirement for the issue of a written statement in cases where an appropriate record is maintained. In those cases where no such record is maintained, the requirement for the written statement will remain.
- 7.7 Recent telephone fundraising appeals have involved in excess of 1 million telephone calls and the cost of writing to all of these donors is significant. We estimate that the charity sector could save around £1 million were the obligation to write to the donor removed where the charity has otherwise maintain audit records to the satisfaction of the Commissioners of HM Revenue & Customs.

8. Impact

- 8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 There will be no additional resource impact on the public sector. HM Revenue & Customs auditors currently audit charities to ensure they have satisfactory records to support their Gift Aid claims. The changes imposed by these regulations will mean that those checks could include reviewing recordings of oral declarations.

9. Contact

Adrian Cooper at Her Majesty's Revenue and Customs Tel: 020 7147 2782 or e-mail: adrian.cooper@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

REGULATORY IMPACT ASSESSMENT (RIA)

1. The Donations to Charity by Individuals (Appropriate Declarations)(Amendment) Regulations 2005

2. Purpose and intended effect of

- The policy objective

The objective of these regulations is to reduce regulatory burdens on charities receiving Gift Aid declarations orally, for example through telephone fundraising appeals, in cases where the charity maintains a suitable audit record that provides evidence of the donor making a declaration.

- **Background**

Gift Aid is a scheme to encourage giving by individuals to charity. It enables a charity to reclaim a repayment of an amount equal to the basic rate of tax suffered on the donation. Higher rate taxpayers can claim higher rate tax relief for their donations against income tax and/or capital gains tax.

To claim repayment of tax on a Gift Aid donation a charity is required to have an appropriate declaration from the donor. The Gift to Charity by Individuals (Appropriate Declarations) Regulations 2000 outline the current requirements.

- **Rationale for government intervention**

The specific requirement in those regulations addressed by this proposal is the additional requirement imposed on a charity receiving an oral declaration - a telephone declaration for example. In these circumstances a charity must make a written record of the declaration being made and must send this to the donor, giving the donor 30 days to cancel their declaration if they wish.

The requirement to provide a written record to the donor presupposes that the audit trail linking the making of a declaration to the payment by the donor will be insufficient. A written record gives the charity a means by which to establish a suitable audit trail. It also seeks to ensure that the donor has fully understood the conditions¹ by which the Gift Aid donation was made. There is though no evidence to suggest that a person making an oral declaration is any more likely to misunderstand the conditions than a person making a written declaration.

New technology increasingly makes the distinction between written and oral declarations obsolete. Oral declarations will often be recorded by the charity, providing the necessary evidence of a declaration being given.

Writing to donors can be costly and burdensome for the charities concerned – particularly where large appeals are involved.

3. Consultation

HM Revenue and Customs has consulted with a number of charities operating large telephone donation operations and the Charity Tax Reform Group.

4. Options

Do Nothing

This would leave the regulations governing declarations in their current form and continuing to differentiate between declarations given in writing and declarations given orally. This would require all

¹ Section 25 Finance Act 1990 (Gifts to Charity by Individuals) outlines the rules determining when a donation will be a qualifying donation for the purposes of "Gift Aid".

oral declarations to be supplemented by a written record from the charity outlining the details of the oral declaration and giving the donor 30 days to cancel the declaration.

The original justification for the written record is two-fold. Firstly it ensures that an audit trail exists linking the donor to the donation. Secondly, it purports to protect the donor against an unexpected tax liability - having to make good a shortfall between tax 'repaid' to the charity and the amount of tax the donor has in fact paid. The assumption is that the donor will better understand this requirement if it is written down. The written record provides an explanation of the terms of the declaration that the donor can consider in their own time and allows a 'cooling off' period.

In practice charities receive very few cancelled declarations as a result of the written record. This suggests that the record provides little, if any, additional protection to the donor. But writing to donors can be costly and burdensome for the charities concerned – particularly where large appeals are involved. Some large telephone appeals involve more than a million callers.

If it is accepted that donors understand what they are signing up to in making an oral declaration, then the justification for using the written record as a means to protect the donor disappears. Instead, what is left is a requirement for the charity to be able to show evidence that an appropriate declaration by a donor has been given in relation to a particular donation, in order for the charity to claim Gift Aid on the donation.

The written record does however, provide a robust audit trail for oral declarations.

Amend Regulations to remove requirement for a written record in certain circumstances

In many cases charities in receipt of oral declarations will have maintained records that will enable HM Revenue & Customs to link individual donors to the making of Gift Aid declarations. To require a charity to send a written record to the donor in these cases is merely an additional burden.

It is therefore proposed to amend the regulations so that the need to provide a written record where the charity maintains suitable records of the declaration being made is removed. But the requirement to send a written record to the donor in circumstances where suitable records are otherwise not maintained is retained. This approach will enable the charity to provide an audit trail, since the retention of copies of the written record by the charity will provide one under those circumstances.

An auditable record should identify individual declarations separately and each declaration should:

- be demonstrably a declaration made by the individual donor (e.g. by being a declaration template filled in by the donor, a printed declaration signed by the donor, a recorded declaration by the donor or a recorded declaration electronically confirmed by the donor);
- demonstrate that the donor has been made aware that they must have paid enough tax to cover the amount reclaimed by the charity;
- contain the name and home address of the donor;
- name or identify the charity;
- identify the gifts to which the declaration relates; and
- confirm that the gifts are to be treated as qualifying donations for the purposes of Gift Aid.

5. Costs and benefits

- Sectors and groups affected

Charities who receive oral Gift Aid declarations and maintain records of those declarations in a form that enables HM Revenue and Customs to satisfy itself that the declaration was made by the donor.

- **Benefits**

We estimate that the removal of the requirement to send a written record to the donor where the charity maintains suitable records will result in savings of up to £1 million per annum. This figure is based upon data provided by 3 of the most affected charities.

- **Costs**

The regulations are relieving and as such do not impose any costs on charities. However, some charities may incur expenditure to bring their systems up to the required standard in order to avoid having to send a written record to donors giving oral declarations. The requirements are not mandatory and charities will only want to incur this expenditure if the savings made from not providing a written record exceed the costs of any system changes.

5. Small Firms Impact Test

This measure is deregulatory and will lift burdens on fundraising charities using oral methods to sign donors up for Gift Aid (i.e. telephone contact etc).

6. Competition assessment

There are no competition issues. The changes relate to removing burdens from fundraising charities that receive Gift Aid declarations orally.

8. Enforcement, sanctions and monitoring

There are no new enforcement issues. Charities are subject to periodical audit of Gift Aid claims to ensure that they have evidence to support the claims for repayment of tax. These procedures will continue.

9. Implementation and delivery plan

HM Revenue & Customs will agree guidance with the charity sector and publish this at the earliest opportunity once the regulations come into force.

10. Post-implementation review

HMRC will review the operation of these changes as part of the departments rolling Post-Implementation Review Programme.

11. Summary and recommendation

We recommend that Regulations be laid to remove the requirement for charities to send a written record to the donor where they otherwise have a suitable audit trail linking the donor to the making of a Gift Aid declaration.

REGULATORY IMPACT ASSESSMENT

Giving to Charity by Individuals

Statement of Ministerial Approval

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed by the responsible Minister:

Ivan Lewis

Economic Secretary to the Treasury

Date: 6 October 2005