

EXPLANATORY MEMORANDUM TO
THE FINANCE ACT 2010, SCHEDULE 6, PART 1 (FURTHER
CONSEQUENTIAL AND INCIDENTAL PROVISION ETC) ORDER 2012

2012 No. 735

1. This explanatory memorandum has been prepared by HM Revenue and Customs and is laid before the House of Commons by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The purpose of the instrument is to disapply the definition of “charity” in the Charities Act 2011 for the purposes of value added tax and capital gains tax. The effect of the instrument is to apply a new definition of “charity” for those purposes. The new definition is set out in Part 1 of Schedule 6 to the Finance Act 2010 (“Schedule 6”).
3. **Matters of special interest to the Select Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 Following the decision by the European Court of Justice in Case C-318/07 Hein Persche v. Finanzamt Lüdenscheid [2009] ECR I-359, new definitions of “charity”, “charitable company” and “charitable trust” were introduced in Part 1 of Schedule 6 for certain tax purposes. The new definitions include organisations in other EU member States, and certain other relevant territories, provided that the organisations would be recognised as charitable according to the law of England and Wales.
 - 4.2 The definition of “charity” was applied for the purposes of Chapter 2 of Part 8 of the Income Tax Act 2007 (“ITA 2007”)(Gift Aid) with effect from 1 April 2010. The new definitions are also applied in respect of other charity reliefs and exemptions by the Finance Act 2010, Schedule 6, Part 2 (Commencement) Order 2012. S.I.2012/736 (c.18). The Commencement Order does this by bringing into force the repeal of existing definitions and other consequential amendments set out in Part 2 of Schedule 6. The effect of paragraph 33(2) of Schedule 6 is that the new definitions will apply.
 - 4.3 Before the coming into force of this instrument, legislation relating to capital gains tax and value added tax relied on the definition of “charity” in the Charities Acts and not in tax legislation. (At the time of the coming into force of this instrument, the relevant legislation is section 1 of the Charities Act 2011 which replaced the Charities Act 2006 on 14th March 2012). This instrument disapplies the Charities Act definition. The effect of paragraph 33(2) of Schedule 6 is that the new definition of “charity” will apply for the

purposes of enactments relating to value added tax and capital gains tax. It also amends the entry for “charity” in the index of defined expressions in Schedule 4 to the Corporation Tax Act 2009 to refer to paragraph 1 of Schedule 6.

4.4 The instrument is the first use of the power in paragraph 29 of Schedule 6 under which the instrument is made.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Economic Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Finance Act 2010, Schedule 6, Part 1 (Further Consequential and Incidental Provision etc) Order 2012 are compatible with the Convention rights.

7. Policy background

7.1 The policy objective behind the introduction of the new definitions in Schedule 6 was twofold. First, it makes clear in legislation that UK charity tax reliefs and exemptions administered by HM Revenue and Customs are available to organisations in EU member States, and certain other relevant territories, and their UK taxpayer donors, where the organisation would be recognised as a charity according to the law of England and Wales.

7.2 Second, Schedule 6 provides a single definition of “charity”, “charitable company” and “charitable trust” for UK tax purposes. The new definition of “charity” is more restrictive so it helps to protect the UK Exchequer from non-compliance and fraud. In particular, it introduces a new requirement that managers of the charity must be “fit and proper persons” in order for the charity to remain eligible for UK charity tax reliefs. This requirement enables HM Revenue and Customs to refuse claims from non-compliant organisations or people, without having to wait to show that the organisation did not use its funds for wholly charitable purposes.

7.3 The new definitions are to be applied to the tax reliefs and exemptions relating to the repeals and amendments specified in Part 2 of Schedule 6 by Order with effect from April 2012 (see The Finance Act 2010, Schedule 6, Part 2 (Commencement) Order 2012). S.I.2012/736 (c.18). This instrument, that is, the Finance Act 2010, Schedule 6, Part 1 (Further Consequential and Incidental Provision etc) Order 2012, ensures that the new definition of “charity” will apply to certain reliefs and exemptions that were not specified in Part 2 of Schedule 6 FA 2010, also with effect from April 2012. Taken together, the two Orders will ensure that the new definitions will apply to all the charity tax reliefs and exemptions administered by HM Revenue &

Customs with effect from April 2012. This will ensure that charities will need to meet only one definition of “charity”, “charitable company” and “charitable trust” in order to claim UK charity tax reliefs and exemptions administered by HM Revenue and Customs.

8. Consultation outcome

8.1 An impact assessment for this measure was published on 24 March 2010. There was no consultation on the provision introduced by Schedule 6 to FA 2010 as it was largely an anti-avoidance measure. However there has been extensive consultation on its implementation. The impact assessment can be found at: <http://www.hmrc.gov.uk/budget2010/march/ext-char-tax-rel-ia-3755.pdf>

8.2 This instrument implements previously announced tax policy which would not normally be consulted on before being made. However, to alert the charity sector to the forthcoming change an 8 week consultation was carried out. The consultation period was truncated from the usual 12 weeks in order to give time for the instruments to be amended in the light of consultation responses and laid in time for the provisions to come into effect from April 2012.

9. Guidance

9.1 The publication of the two draft instruments on the HMRC website for consultation was the first notification to most charities that the new definitions would be introduced for all charity tax reliefs and exemptions from April 2012.

9.2 Guidance on the effect of the new definitions on charities, particularly the “fit and proper persons test”, has already been published and can be found at <http://www.hmrc.gov.uk/charities/guidance-notes/chapter2/fp-persons-test.htm>. The guidance will be adapted to reflect the application of the test to charities that do not claim Gift Aid under Chapter 2 of Part 8 of ITA 2007. HMRC will tell charities and their representatives when the instruments are made by contacting charity representatives and publishing an article on the HMRC website shortly afterwards.

10. Impact

10.1 There is no impact on business or non-charitable voluntary bodies. There is an impact on all charities that have not claimed repayments of tax under Gift Aid under Chapter 2 of Part 8 of ITA 2007.

10.2 In order to remain eligible to UK charity tax reliefs and exemptions all charities will need to be registered with the charity regulator in their home country, where that is required by law. All persons who are “managers” of the charity, including volunteers, who have positions of financial responsibility within the charity, must be “fit and proper persons” in order for the charity to remain eligible for UK charity tax reliefs.

10.3 In the vast majority of cases, affected charities will not need to do anything to meet the new requirements because they are already fully compliant with the law of their home country and all persons associated with the charity who act on its behalf are “fit and proper persons”. While not mandatory, some charities may wish to take further action to demonstrate their due diligence in appointing persons to positions of financial responsibility by asking them to sign a declaration that they are a fit and proper person. Charities can devise their own form of declaration or use the model declaration published by HMRC at <http://www.hmrc.gov.uk/charities/guidance-notes/chapter2/model-dec-ff-persons.pdf>.

10.4 There is no impact on the public sector.

10.5 A Tax Information and Impact Note has not been prepared for the Instrument as it gives effect to previously announced policy. A full Impact Assessment of the effect a new definition of charity will have on the costs of business and the voluntary sector was published by HMRC on 24th March 2010 and is available on the HMRC website at <http://www.hmrc.gov.uk/budget2010/march/ext-char-tax-rel-ia-3755.pdf>. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The reforms are being monitored. Compliance costs are routinely reviewed 1-3 years after implementation.

13. Contact

Cathy Wilson at HM Revenue and Customs Tel: 020 7147 2778 or email: cathy.wilson@hmrc.gsi.gov.uk can answer any queries regarding the instrument.