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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for the administration of top-up claims, top-up payments and overpayments under the Small Charitable Donations Act 2012 (“the 2012 Act”). They also apply and incorporate, for the purposes of such administration, provisions of the Tax Acts and the Taxes Management Act 1970 (“TMA 1970”) which apply for the purposes of gift aid relief from income tax and corporation tax.

Regulation 1 and 2 provide for citation, commencement and interpretation.

Regulation 3 applies, with modifications, the provisions of Schedule 1A to the TMA 1970 for the purposes of making and giving effect to top-up claims and amendments, enquiring into top-up claims, completing enquiries and amending claims by closure notice and appealing against any such amendments. The provisions of Schedule 1A will have effect in relation to top-up claims in the same way as they apply to claims for discharge or repayment of tax. Where provisions of the Schedule are not relevant for top-up claims, they are omitted.

Regulations 4 and 5 apply, for the purposes of top-up claims, provisions dealing with obtaining information and documents in relation to tax. Where an offence involving serious fraud in relation to a top-up claim is suspected, sections 20BA and 20BB of TMA 1970 apply, providing for an order for delivery of documents and for the offence of falsifying, concealing or destroying documents. The main information provisions relating to tax in Schedule 36 to the Finance Act 2008 also apply. These enable Her Majesty’s Revenue and Customs (“HMRC”) to obtain information and documents in order to check that a charity has complied with the 2012 Act in relation to a top-up claim and in order to establish whether there has been an overpayment under section 10 of that Act.

Regulation 6 applies for the purposes of top-up claims the information and penalty provisions in Schedule 38 to the Finance Act 2012. This Schedule provides that tax agents who engage in dishonest conduct can be subject to penalties and that officers of Revenue and Customs can obtain relevant documents from such agents. The regulation applies these provisions, with modifications, in relation to an individual who in the course of business assists a charity in connection with a top-up claim.

Regulations 7 to 11 make provision in relation to overpayments under section 10 of the 2012 Act. Regulations 7 to 9 provide for notice of an assessment of an overpayment to be given to a charity by an officer of Revenue and Customs. The notice must state the overpayment amount and the time for payment. Time limits apply to the making of an assessment and, once served on the charity, the notice of assessment cannot be altered except on appeal. Regulations 10 and 11, which provide for an appeal against an assessment, incorporate and apply to overpayments the main tax appeal provisions in Part 5 of TMA 1970. Regulation 12 applies the relevant collection and recovery provisions in Part 6 of TMA 1970 for the purposes of collecting and recovering an overpayment which is due and payable.

Regulation 13 applies for the same purposes the provisions in Part 7 of TMA 1970 in relation to persons chargeable in a representative capacity. Regulation 14 provides for interest to be charged on unpaid overpayments, applying and incorporating for these purposes the interest charging provisions on late payment of amounts payable to HMRC in sections 101 and 103 of, and Schedule 53 to, the Finance Act 2009.

Regulation 15 applies, for the purposes of a charity making a top-up claim, the tax penalty provisions in Schedule 24 to the Finance Act 2007. This Schedule provides that penalties may be imposed for errors in documents given to HMRC, with the penalty varying according to the degree of culpability

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in making the error. The Schedule is modified in its application to top-up claims and provisions which are not relevant for these purposes are omitted.

Regulation 16 applies section 94 of the Finance Act 2009 to a charity making a top-up claim. Section 94 allows HMRC to publish details of deliberate tax defaulters, where an inaccuracy in a document leads to one or more penalties being imposed on that individual. Regulation 16 provides for publication of the details of a charity, its managers or trustees, who have incurred one or more penalties under Schedule 24 to the Finance Act 2007 in relation to a top-up claim.

Regulations 17 to 19 make provision in relation to applications under sections 12(1) and 13(1) of the 2012 Act. Those sections allow a new charity taking over the activities of one or more old charities to benefit from the predecessors' gift aid claim history for the purposes of eligibility to make top-up claims under section 2. To do so, HMRC must have certified on an application that the new charity was created to take over the old charity's activities and has done so, that the purposes of the old and new charities are substantially similar, and that more than half the new charity managers were old charity managers. Regulation 17 sets out the requirements of an application by the new charity for HMRC to so certify. Regulation 18 provides for an election as to which is the relevant old charity for the purposes of an application, where there is more than one old charity which has been taken over and at least two of them have equal gift aid claim histories. Regulation 19 provides for notification by HMRC of its decision on the application and for appeals to the tribunal in the case of a refusal by HMRC to certify.

Regulation 20 provides that the administrative provisions for tax in sections 108(1) and 113 to 115A of, and Schedule 3A to, TMA 1970 in relation to the form of documents, their delivery, service and electronic lodgement, apply for the purposes of a top-up claim, a top-up payment and an overpayment.

A full impact assessment of the effect that the Small Charitable Donations scheme, including this instrument, will have on the costs of business and the voluntary sector was published on 26th November 2012 alongside draft legislation and is available on the HMRC website at <http://www.hmrc.gov.uk/ria/ia-final-giftaid-don.pdf>. It remains an accurate summary of the impacts that apply to this instrument.