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Small Charitable Donations and Childcare Payments Act 2017

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Summary

The *Small Charitable Donations and Childcare Payments Act 2017* makes a number of amendments to the legislation which underpins the Gift Aid Small Donations Scheme (GASDS), introduced in April 2013. The purpose of these changes is to simplify the scheme and extend access to smaller and newer charities. The Act also makes a few technical amendments to the legislation which establishes Tax-Free Childcare, the Government's scheme to support parents' childcare costs, scheduled to be rolled out from early 2017.

Under Gift Aid charities are entitled to claim 25p tax on each £1 they receive from individual donations. This represents repayment of the basic rate tax that donors have paid on this part of their income. Individuals who are higher or additional rate taxpayers claim the extra tax they will have paid from HM Revenue & Customs (HMRC). To support any Gift Aid claim, charities must have a Gift Aid declaration from the donor, confirming they have paid the same amount or more in tax in that year.¹ If a donation has not been made out of taxed income, tax has to be paid by the donor to HMRC. Clearly those donors who are not earning enough to be paying income tax will not want to use Gift Aid. There will also be circumstances where charities may find it difficult to get a declaration from donors – say, when collecting small cash gifts in a collecting tin. The GASDS allows charities to claim a top-up payment on donations equivalent to Gift Aid in these situations.

In the 2011 Budget the then Chancellor George Osborne announced “a new scheme where Gift Aid can be claimed on small donations, up to a total of £5,000 a year per charity, without the need for donors to fill in any forms at all. This means Gift Aid on the contents of the collecting tin and the street bucket, and 100,000 charities will benefit to the tune of £240m.”² Statutory provision for the GASDS was made by the [Small Charitable Donations Act 2012](#). As there is no link to the tax paid by the donor, the GASDS is not tax relief but is treated as public expenditure; this is why the legislation to establish the scheme was not included in the annual Finance Bill.³

The Act sets a number of rules for eligible charities and qualifying payments, to minimise the risk of fraud and to provide a link with Gift Aid: setting standards for a charity's compliance behaviour, and, capping the size of a charity's annual claim under GASDS by reference to its annual claim under Gift Aid (the 'matching rule'). In addition, a charity that is connected with one or more other charities has to share the annual £5,000 main allowance. Finally, the scheme allows a charity to make an additional claim in respect of donations it has raised as part of its charitable activities in a community building – such as a village hall, town hall or place of worship. The aim of these rules is to allow 'groups' of charities to claim equivalent amounts if they are structured in different ways. As a consequence national organisations, like dominations of churches, may claim similar amounts whether they are structured as a single charity nationally, or as a 'group' structure made up of individual charities.

¹ Donors need to confirm that they had paid, or will have paid, income tax and/or capital gains tax of at least the amount of Gift Aid that the organisation will claim on their donation in any given tax year. For details see, HMRC, [Gift Aid declarations: claiming tax back on donations](#), January 2016.

² [HC Deb 23 March 2011 c962](#)

³ For more background on the development of GASDS see, [Library Briefing paper 12/45, 14 August 2012](#).

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Only cash donations of up to £20 may qualify for a top-up payment. This limit remains in force, although the annual 'main allowance' for donations was increased to £8,000 from April 2016.⁴

At the time of its launch in 2013 the Government said that it would review the operation of GASDS after three years. Following a call for evidence from stakeholders, in April 2016 the Government published proposals for reforming the scheme.⁵ In August the Government confirmed that responses had been 'generally positive', and it would legislate to simplify the compliance criteria, and to relax the community building rules, though in future charities would be entitled to a top-up payment for donations raised in eligible community buildings or for donations under the single main allowance, not for both. Finally, GASDS would be extended to include donations made by 'contactless payments'.⁶ These changes would take effect from 6 April 2017.

HMRC has published an impact assessment on these reforms: this estimates that the measures to simplify GASDS "could benefit up to 71,000 charities that currently claim Gift Aid." Restricting charities' claims to either the main allowance or community buildings allowance is estimated to impact "up to 3,000 charities." Overall the changes are anticipated to "decrease receipts by approximately £15m per annum."⁷

In the Queen's Speech on 18 May 2016 the Government confirmed that it would introduce legislation in the 2016-17 Session to reform GASDS "to ensure it supports the maximum number of charities and donations possible."⁸

The *Small Charitable Donations and Childcare Payments Bill* (Bill 68 of 2016-17) was published on 14 September. The Bill is short, with 9 clauses. It extends to the whole of the UK. The text of the Bill, explanatory notes on its provisions, and details of its Parliamentary scrutiny are collated [on its Parliament page](#).

The Bill was given a [Second Reading on 11 October](#), and was considered in Public Bill Committee over a single sitting [on 18 October](#). The Government did not table any amendments to the Bill, and the Bill was agreed without amendment. The Bill was not amended on Report, and has completed its scrutiny in the Lords, again without amendment. It received Royal Assent on 16 January 2017.

⁴ For more guidance see, HMRC, [Claiming a top-up payment on small charitable donations](#), March 2016.

⁵ [Gift Aid Small Donations Scheme consultation](#), 20 April 2016. Responses were invited by 1 July 2016.

⁶ HMRC, [Gift Aid Small Donations Scheme – summary of responses](#), 10 August 2016

⁷ HMRC, [Small Charitable Donations and Childcare Payments Bill: Impact Assessment](#), September 2016 p2, p6. The Autumn Statement estimates this measure will cost £10m in 2018/19, rising to £20m by 2021/22 ([Autumn Statement](#), Cm 9362, November 2016 [Table 2.1 – item 40](#)).

⁸ Cabinet Office, [Queen's Speech 2016: background briefing notes](#), 18 May 2016 p46

1. Background

1.1 The Gift Aid Small Donations Scheme

In the 2011 Budget the then Chancellor George Osborne announced a number of changes to encourage the take-up of Gift Aid, and a new scheme for top-up payments on small donations that were made outside Gift Aid.⁹ It was estimated that the new Gift Aid Small Donations Scheme (GASDS) would cost £50m in its first year, rising to £85m by 2014/15.¹⁰ In the Budget the following year the Government confirmed its plans to introduce the scheme from April 2013. Charities would be entitled to claim a top-up payment on donations of £20 or less, up to a maximum limit of £5,000 of small donations.¹¹

Subsequently HM Revenue & Customs (HMRC) launched a consultation on the detailed design of GASDS. It was anticipated that some features of GASDS would be similar to Gift Aid:

- The amount payable in respect of a donation will be computed in the same way as for a repayment under Gift Aid. So, for example, the top-up payment on £5,000 of small donations will be £1,250.
- The donations for which a top-up payment is claimed under the GASDS must be used for charitable purposes (for charities) or qualifying purposes (for Community Amateur Sports Clubs, CASCs, [which may also receive donations through Gift Aid]).
- Charities and CASCs will make claims under the GASDS in the same way as for Gift Aid. A new online claims system is being introduced for making Gift Aid claims and GASDS claims.
- HMRC will administer claims in the same way as for Gift Aid claims, including similar powers to enquire into GASDS claims.¹²

However, there would be some important differences: notably charities and community amateur sports clubs (CASCs) would not be allowed to provide any benefit to donors in recognition of their gift. Donations would have to be 'pure' gifts, though tokens like lapel stickers given in return for gifts would be allowed. In addition, as GASDS would not be tax relief, higher and additional rate taxpayers would not be entitled to claim tax relief on their donations.

Charities and CASCs would not have to collect any personal information on donors, as there would be no documented link between the donor and the payment on which the GASDS top-up payment was made. Given the possible risk of fraud, the Government proposed that charities

⁹ [HC Deb 23 March 2011 c962](#)

¹⁰ [Budget 2011, HC 836, March 2011](#) p43 (Table 2.1 : item 51). For more detail on this costing see, HM Treasury, [Budget 2011 Policy Costings](#), March 2011 p58.

¹¹ Estimates of the cost of the scheme were unchanged from the Budget the year before: [Budget 2012, HC 1853, March 2012](#) p52 (Table 2.2 – item ae).

¹² [The Gift Aid Small Donations Scheme](#), 27 March 2012 p10

and CASCs would have to meet certain conditions to make a claim: first, having a well-established record of complying with Gift Aid claims in the past:

The basic rule will be that:

- a charity must have been a charity for UK tax purposes, and a CASC must have been registered with HMRC as a CASC, for at least three consecutive tax years; and
- the charity or CASC must have made a successful Gift Aid claim in at least three out of the previous seven tax years; and
- there must be no more than two consecutive tax years in which no Gift Aid claim was made; and
- the charity or CASC must not have incurred a penalty in respect of a Gift Aid claim or a GASDS claim made in the tax year in which the donations are received or in the 2 previous years.¹³

Second, charities would have to match donation income under GASDS with income received under Gift Aid to some extent (the 'matching rule'). Initially it was suggested the ratio would be 1 to 1: charities would have to raise at least as much through Gift Aid as donations under GASDS.¹⁴

The Government also sought views on how to ensure GASDS did not reward charities on the basis of their operational structure. Some charities have a single centralised organisation whereas others are in a federation of smaller charities, focused on a single charitable objective. If all charities were entitled to the same £5,000 main allowance, GASDS would be highly biased in favour of the second type of structure. To avoid this, it was proposed that a local branch of a charity run in a 'community building' would be allowed to claim top-up payments on an extra £5,000 of qualifying donations:

[Under this rule] the maximum limit of the parent charity [would be increased] by adding to the "core" maximum limit of up to £5,000 an extra maximum limit of up to £5,000 in respect of small donations made in community premises in which the charity carries out its charitable activities. The maximum limit of up to £5,000 for each premises is limited to the amount of small donations actually collected by the group in the community building.

The small donations collected by each local group must be collected in the course of its charitable activities carried out in the community building. Donations made at local group activities held for non-charitable purposes, including fund raising, or outside the community premises are not eligible for a top-up payment under the GASDS under this rule. By contrast, the small donations relating to the parent charity's "core" limit of up to £5,000 may

¹³ *op.cit.* p13

¹⁴ *op.cit.* pp25-6

be collected anywhere, for example through local street collections or in collection boxes or at fund raising events.¹⁵

In addition, any charity connected with one or more other charities would have to share the £5,000 main allowance:

Where several charities or CASCs are connected with one another, and at least one of the charities runs charitable activities in a community building then, instead of each charity or CASC being entitled to the “core” maximum limit of up to £5,000 in its own right, the charities or CASCs will share equally between them just one “core” limit of up to £5,000 ... Note that it is only the “core” maximum limit of up to £5,000 that will be reduced.

Where a connected charity runs charitable activities in a community building, the increase in the charity’s maximum limit that derives from the groups carrying out those charitable activities is not affected by the fact that the charity is connected with other charities.¹⁶

In June 2012 the Government published the outcome of this consultation and the legislation to introduce GASDS.¹⁷ In the light of the responses received, the Government announced several amendments to the matching rule, to the test for determining if charities were ‘connected’ or not, and for the arrangements for connected charities to share the main allowance:

The requirement to match the amount of small donations on which top-up payments are claimed with the amount of donations on which Gift Aid is claimed will be reduced from 1:1 to 2:1. Therefore every £2 on which a top-up payment is claimed, a Gift Aid claim must be made on donations amounting to at least £1.

The definition of a connected charity rule will be amended to reflect a connection between charities where the same people have control over another charity and where the charitable activities of the charities are broadly similar. Shared administration will not be an indicator of two charities being connected.

Where charities are connected and share the main £5,000 allowance, the allowance will be shared between only those charities that are eligible and make a claim under the GASDS rather than allocating part of the allowance to connected charities that don’t make a claim. This will allow one charity in a group of connected charities to make a single claim on behalf of all the charities.

There will be flexibility for a group of connected charities to decide which charity should make a claim to the main £5,000 allowance on behalf of the others in order to maximise the amount that may be claimed on the pooled small donations of the charities, whether or not any of the charities is entitled to an extra allowance in respect of a community building.¹⁸

The [*Small Charitable Donations Bill*](#) received a Second Reading on 4 September 2012 with all-party support – though the Opposition raised a

¹⁵ *op.cit.* pp18-19

¹⁶ *op.cit.* pp22-23

¹⁷ HC Deb 21 June 2012 c62WS

¹⁸ HMRC, [Summary of Responses: The GASDS](#), June 2012 para 2.4. It was estimated that these changes would increase the cost of GASDS by about £10m a year (HMRC, [GASDS: Impact Assessment](#), 13 June 2012 p7).

number of specific concerns voiced by charities, over the matching requirements, the eligibility criteria and the community buildings rules. In Committee a number of Government amendments were agreed, without a vote, though the main parameters of the scheme were unchanged.¹⁹

At Report Stage the then Economic Secretary, Sajid Javid, announced changes to the rules on charities' compliance records, and to the matching rule: first, charities would only have to show a Gift Aid compliance record of two years, rather than three; and, second, the annual minimum ratio of Gift Aid claims to those made through GASDS would be cut substantially from 2:1 to 10:1. In his speech the Minister set out the change to the eligibility test:

I have looked again at where the balance lies between accessing the scheme and protecting it from people who would try to exploit and abuse it, and I have concluded that we can reduce the eligibility period to two years without undermining the integrity of the scheme ...

Four factors will determine the eligibility of a charity or community amateur sports club for the scheme ... The first is the start-up period—the number of complete tax years for which a charity must have been established before it becomes eligible for the scheme. We are reducing that period from three years to two years, so a charity or CASC will now be able to access the scheme a year earlier than was originally set out. The second and third elements are that a charity has to have made claims in two of the previous four years, and that there is a gap of no more than two complete tax years between the claims. The amendments will ensure that HMRC is guaranteed to see a minimum level of claiming activity by the charity or CASC in question, so that it can get to know that organisation and understand its ability to claim gift aid correctly.

The fourth element is the impact of a penalty on eligibility. If a charity receives a penalty, it will be excluded from the scheme for the tax year in which it makes the claim and the following tax year. Originally, the charity would have been excluded for the following two years, but [another Government amendment] means that the exclusion will be for only one year following the year of the claim.

That all adds up to a significantly more accessible scheme for new charities that have not claimed gift aid before, but we do not know exactly how the scheme will operate in practice. As I have said, we will review it after three years, when we might find that fraud rates are much higher or much lower than expected.²⁰

At a later stage in the debate the Minister explained why the Government had decided to amend the matching rule:

A 10% rate is much more generous than what was offered when the Bill was first introduced ... Unfortunately, there are unscrupulous individuals who want to misuse charitable tax reliefs. They defraud the taxpayer and undermine the good name of the charitable sector, so we must be in a position to protect the taxpayer and the charitable sector. The lack of records also means

¹⁹ For a detailed summary of these proceedings see, *Small Charitable Donations Bill: Committee Stage Report*, [Library Research paper 12/70](#), 20 November 2012.

²⁰ HC Deb 26 November 2012 cc91-2

that HMRC would have less evidence when a charity is claiming correctly under the scheme if there was no kind of matching principle. Gift aid is the closest proxy we can use to help ensure compliance under the new scheme, and the matching requirements will significantly increase protection against fraud and abuse.

Government amendment 30 introduces a wide-ranging power that will allow us to reduce or increase the matching rate. It will allow us to remove the matching provision entirely or reinstate it at a later date if it is removed. Removing the matching provisions altogether would remove the need for charities to claim a set proportion of their small donations claim in gift aid in that year. Even so, charities would always need to claim some gift aid in each year to ensure that they can claim under the scheme. That is because of the provision in clause 1(1)(b). That helps to retain the important link between this scheme and Gift Aid ...

We have no intention of using the power in the near future, but it will be there if we need it. It is something that many charities have asked us to introduce, so I am pleased that we have been able to do so.²¹

These final changes attracted cross-party support, and were strongly welcomed by charities.²² The Bill received Royal Assent on 19 December 2012 and came into effect on 6 April 2013.²³

1.2 Consultation on amending the GASDS

Since its introduction the GASDS has not been raised very often in the House. In 2013 the Coalition Government ruled out any extension to the scheme so that it could include donations of food or toiletries, such as those made to food banks,²⁴ and in 2014 it underlined its intention to review the GASDS in 2016, after its first three years.²⁵

The cost of the scheme rose from £6m in 2013/14 to £26m in 2015/16.²⁶ In the March 2015 Budget the Coalition Government announced that the annual limit for donations made under the scheme would be increased to £8,000 from April 2016.²⁷ Secondary legislation to effect this change was approved in December.²⁸

When debated there was cross-party support for the increase in the annual limit though, speaking for the Opposition, Rebecca Long Bailey noted that “a number of charities and organisations have reported that the scheme is complicated, thus rendering it inaccessible for smaller organisations that may find the administrative burden difficult to

²¹ *op.cit.* cc98-99. On 28 November HMRC published an updated [Impact Assessment](#) of GASDS, taking these changes into account.

²² National Council for Voluntary Organisations press notice, *Sector leaders welcome amendments to Small Donations Bill, after months of campaigning*, 27 November 2012. See also, “Charitable simplification”, *Taxation*, 6 June 2013.

²³ Secondary legislation to provide for the administration of GASDS was debated and agreed in March 2013 ([Sixth Delegated Legislation Committee, 25 March 2013](#)).

²⁴ [HC Deb 26 February 2013 c378W](#)

²⁵ [HC Deb 18 March 2014 c517W](#)

²⁶ HMRC Statistics, [Table 10.2: Charities: cost of tax relief](#), June 2016

²⁷ [Budget 2015, HC 1093, March 2015 para 2.104](#)

²⁸ [SI 2015/2027](#)

navigate.”²⁹ On this occasion the then Exchequer Secretary, Damian Hinds, gave figures for the numbers of charities that had used the scheme to date, and gave details of HMRC’s efforts to improve uptake:

In the first year, 2013-14, 8,100 charities claimed a total of £6 million through the scheme. Take-up increased last year; in 2014-15, 19,300 charities claimed a total of £21 million ... The Government expect the increase in the limit particularly to benefit the 7,200 charities that currently claim on the full £5,000 ...

We want to raise awareness of the scheme and have more charities and donors taking part in it. Through the HMRC outreach team, which was established in 2014, the Government have delivered face-to-face presentations to more than 650 charities to spread awareness, increase take-up and help charities receive support through the scheme and available tax reliefs. Furthermore, through the introduction of Charities Online in 2013, we have made it faster and simpler for charities to claim reliefs. Some 95% of charities submit claims online rather than through paper applications, and the majority of claims are processed within five working days, which is down from about 15 working days.³⁰

The Minister confirmed that the Government would publish a call for evidence, as the first stage in reviewing the scheme, that month:

There have been number of suggestions, questions and comments on various aspects of the scheme, and they are all germane, but they are all also subject matter for the review of the scheme. I was asked about the timing of the review, and the call for evidence should come out before Christmas. It remains to be seen how many organisations and individuals respond to that call, but we hope to have very good material and a good opportunity for feedback, critique and suggestions on how to make the scheme even more successful.³¹

Following the publication of the call for evidence,³² in April 2016 the Government launched [a consultation](#) on specific proposals “for simplifying the scheme rules to help ensure as many eligible charities as possible can benefit.” Almost 200 submissions to the call for evidence were received from a variety of charities and representative bodies, the majority of which came from churches. Most respondents said that GASDS was reasonably well understood, and they had not encountered any barriers to making claims, though, as the paper noted, “the responses received mainly reflect the experiences of charities that are already successfully claiming and may not be representative of the charity sector as a whole.”³³

In addition there was some evidence that smaller charities had difficulties with the rules on compliance, and on community buildings:

²⁹ [First Delegated Legislation Committee, 7 December 2015](#) c4

³⁰ *op.cit.* cc3-4, cc8-9. During the debate the Minister noted that in the UK there were 165,000 charities in total (c8).

³¹ *op.cit.* cc9-10. See also, [Spending Review and Autumn Statement, Cm 9162, November 2015 para 3.38.](#)

³² [Gift Aid Small Donations Scheme – a call for evidence](#), December 2015. Responses were invited by 2 March 2016

³³ [Gift Aid Small Donations Scheme consultation](#), 20 April 2016 para 2.2, 3.3, 3.21

Individual responses from representative bodies replying on behalf of a number of small charities reported that the current eligibility criteria is a significant barrier to using GASDS, with a large proportion of smaller charities unable to meet the requirement of having claimed Gift Aid in two out of the previous four tax years, or the requirement to have been registered for at least two full tax years ...

A small minority reported issues with meeting the requirement that at least ten beneficiaries must be present for a collection to be eligible under the community buildings rules ... 40 respondents suggested that although they operated in a community building, they did not claim for a variety of reasons. These reasons included not knowing they were able to do so, considering the rules to be too complicated, or because most of their collections take place outside of the community building itself.³⁴

The paper proposed changes to the eligibility criteria, in terms of charities' compliance behaviour, and to the rules regarding connected charities and community buildings. The paper also asked if the GASDS should include donations made by contactless credit and debit cards.

In August the Government published the outcome of the consultation. Overall responses were "generally positive with the majority of stakeholders welcoming the Government's desire to simplify the scheme and increase take up amongst smaller and newer charities. However, a number of respondents raised important points about the need for any new changes to be explained clearly and to be supported by clear guidance."³⁵

Further details of this exchange of views and the Government's response, are given in the next section of this paper.

³⁴ *op.cit.* para 3.34, para 3.26, 3.39. Responses were invited by 1 July 2016.

³⁵ HMRC, [Gift Aid Small Donations Scheme – summary of responses](#), 10 August 2016 para 1.22

2. The Bill

On 14 September the Government published the [Small Charitable Donations and Childcare Payments Bill 2016/17](#). The Bill would make a number of amendments to the *Small Charitable Donations Act 2012* (the 2012 Act) to simplify and increase access to the GASDS, particularly for smaller and newer charities. The Bill would also make some minor, technical amendments to the *Childcare Payments Act 2014* which establishes Tax Free Childcare.³⁶

2.1 Summary of the Bill

Small charitable donations: clauses 1-4

Clause 1 would amend the eligibility criteria that charities must satisfy to make a claim under GASDS. Under section 2 of the 2012 Act, charities must have been registered for at least two full tax years before making a GASDS claim (the ‘two year rule’). In addition charities must have made successful Gift Aid claims in at least two out of the four previous tax years, with no more than a two year gap between claims (the ‘two-in-four rule’). The Government’s consultation asked what the impact would be for removing the ‘two year rule’, and replacing the ‘two-in-four rule’ with the requirement that charities must have made a successful Gift Aid claim in the previous tax year.

In responses there was a “wide recognition” that scrapping the first of these rules “would represent simplification for newly registered charities”; some respondents suggested that this would be particularly welcome for those volunteers working for charities, who had little administrative experience. Respondents were divided over the second suggestion: although the intention was welcomed, some argued that this might have “a detrimental effect on long established charities which do not claim Gift Aid in the previous tax year for a variety of reasons, but are currently eligible under the existing rule.”³⁷ Given this, the Government announced it would remove both rules entirely. **Clause 1(2)** would remove these two rules; **clause 1(3)-(5)** would make consequential amendments to the 2012 Act, and the secondary legislation which provides for the administration of the scheme ([SI 2013/938](#)).

Clause 2 would amend the definition of ‘small payment’, as determined by Schedule 1 of the 2012 Act, to include gifts of £20 or less made by “a contactless payment”. **Clause 2(2)** defines this as “a payment made at a contactless payment terminal using the contactless payment facility of a card, mobile telephone or other device.” Donations of this type would have to be made in the UK.

Responses to the consultation reported that only a “small minority” of respondents are collecting donations this way, and some expressed

³⁶ [Explanatory Notes, Bill 68-EN, September 2016](#) paras 1-2

³⁷ [Gift Aid Small Donations Scheme – summary of responses](#), 10 August 2016 para 2.3, 2.8

concern about the cost of using this technology. However, “one large charity that is already accepting contactless donations expressed the view that while the technology was in its infancy, it is scalable and in the future small and medium sized charities could well benefit.”³⁸ In the response document the Government stated that it believed contactless donations could be included “without imposing significant extra burdens”, although it opposed bringing other donation methods into GASDS – text donations, cheques, credit & debit cards: “the Government’s position remains that GASDS should only be available for small donations in which obtaining a full Gift Aid declaration is not practical or feasible.”³⁹

The explanatory notes to the Bill state that the definition used in the Bill would include “contactless donations made using Apple Pay, Android Pay or similar services” but would not extend to donations made “via SMS or other mobile donation services ... credit or debit card donations made online, over the phone, or using the chip and PIN payment facility.”⁴⁰

Clauses 3 and 4 would amend the community building rules, and their application to connected charities. In its consultation the Government asked what impact it might have to allow charities to make claims either by using the main allowance, or the community buildings allowance, but not both. The majority of responses were “broadly supportive”; several respondents expressed concern that some charities had done this in the past, while others took the view that “the clarity of the proposed new rule would be welcome.”⁴¹ Charities were asked if they would be negatively hit themselves, and “almost two-thirds” of those who answered said not:

One respondent, representing a large, religious organisation welcomed the simpler record-keeping, claiming and auditing processes, along with corresponding reductions in errors made which would result from the change. Another large religious organisation reported that although a number of charities within its connected structure would no longer be able to claim a ‘main’ allowance, this was of minimal importance compared to the significant community building entitlement it would retain.⁴²

Charities were also asked about the option of allowing claims for donations collected *outside* a community building, and how best to ensure that this only benefited funds received in a specific local community. A majority “welcomed any proposal to increase the uptake of GASDS”, though there were concerns that this would make the rules more complex. There were a variety of views on how, precisely, eligible donations should be defined. Several respondents said that changing the rules this way would actually have no effect on them.⁴³

³⁸ *op.cit.* para 2.13, 2.18

³⁹ *op.cit.* p9

⁴⁰ Bill 68-EN, September 2016 para 36

⁴¹ [Gift Aid Small Donations Scheme – summary of responses](#), 10 August 2016 para 2.22, 2.26

⁴² *op.cit.* para 2.34-5

⁴³ *op.cit.* para 2.40

The Government stated that allowing charities to claim both allowances was “contrary to the original policy intention” of GASDS, and that this should be stopped. However, to help charities doing valuable work in their community, the rules would be amended to a claim on donations collected within the same local authority area as the relevant community building. It noted that “careful monitoring” would be required to prevent the new rules being abused and that HMRC would “therefore set out record keeping requirements in guidance.”⁴⁴

Charities were also asked if any other reforms should be made. Many argued the £20 cap on donations should be raised or that other methods of donation should be allowed. When a charity collects donations in carrying out a charitable activity in a community building, it has to ensure that at least 10 beneficiaries are present. Many charities argued that this test should be relaxed. A minority of respondents also felt that the matching rule should be removed. However, the Government opposed each of these suggestions:

[The Government’s] position remains that £20 represents a fair amount, broadly in line with what most people would reasonably consider to be a ‘small donation’.

The rationale of GASDS is that it enables charities to benefit from a Gift Aid style top up in circumstances where it is not practical or feasible to obtain a Gift Aid declaration ... [The Government] does not believe it to be the case for cheques, SMS donations, direct debits or other electronic payments. Wider reforms to the community buildings rules may address some of the concerns [raised by churches wishing to include donations from] ... collections in wall boxes and safes ... [In addition, these reforms] will make the rules substantially more generous and it is therefore important that the existing qualifying conditions for community buildings are retained to limit the scope for abuse

[Finally, GASDS] is not intended to be an alternative to Gift Aid and where charities can obtain a Gift Aid declaration, they should do so ... retaining a matching requirement is important, both by providing a link with the full Gift Aid scheme and by incentivising charities to claim more Gift Aid.⁴⁵

Clause 3 would make a series of changes to sections 6-8 of the 2012 Act, which set out the community building rules. In particular, **clause 3(4)** would amend section 6 so that a charity could claim up to £8,000 from small donations raised anywhere, or up to £8,000 from donations collected from each community building it has. In the latter case donations would include those made in person “in the local authority area in which the community building is situated.”

Clause 4 would make a series of amendments to sections 4, 9 and 14 of the Act, and the secondary legislation underpinning GASDS, with regard to the rules for connected charities making claims, where one or more of the charities run charitable activities in a community building. A group of charities would be entitled to make a claim of up to £8,000 in small donations made in the local authority area in which each community building is located. Alternatively it would be able to make

⁴⁴ *op.cit.* pp13-14

⁴⁵ *op.cit.* p15

claim of up to £8,000 in small donations made anywhere in the UK. As the first will generally be more beneficial, this will be the default option. If charities wish to choose the second option, they will be required to make an election to HMRC to this effect.

Childcare payments: clause 5

In March 2013 the Coalition Government announced it would phase in a new scheme to complement the financial support for childcare costs provided through tax relief on employer-provided childcare.⁴⁶ Following consultation the Government introduced the [Childcare Payments Act 2014](#) (the 2014 Act) to underpin the new scheme: in brief, parents would be entitled to receive 20 per cent support on costs up to £10,000 per year for each child via an online account.⁴⁷

The use of the term 'tax-free childcare' reflects the fact that the 20% Government top-up payment in effect represents the basic rate tax element which would apply to the income used by the individual to fund their childcare costs.⁴⁸ The introduction of Tax-Free Childcare has been subject to considerable delay as a consequence of an unsuccessful legal challenge which was ultimately rejected by the Supreme Court in July 2015.⁴⁹ In the 2016 Budget the Government confirmed that its phased rollout would begin in early 2017.⁵⁰ Details of its anticipated take-up were given in answer to PQ in July:

Once Tax-Free Childcare is fully open, we estimate that around 2 million families will be eligible and that up to 1 million families may take up the scheme in 'steady state', including self-employed parents. Tax-Free Childcare will be launched from early 2017. To roll out the scheme in a safe and managed way, we will be gradually opening up the scheme to all eligible parents by the end of 2017.

Parents of the youngest children, including self-employed parents, will be able to enter the scheme first - as childcare costs for this group are often the highest. Families with multiple children will be able to join the scheme when their youngest child becomes eligible, and at that point they will be able to receive support for all their qualifying children.⁵¹

On 15 September the Chief Secretary to the Treasury, David Gauke, announced that HMRC would trial a trial a new, digital, joint childcare service later in 2016:

Delivering the new childcare offer: trial of the joint childcare service

Ahead of the introduction of Tax-Free Childcare in early 2017 and the 30 hours extended entitlement for three and four year olds in

⁴⁶ HMT press notice, [New scheme to bring tax-free childcare for 2.5 million working families](#), 19 March 2013

⁴⁷ For further background see the Library paper produced when this legislation was introduced: [Research Paper 14/35, 26 June 2014](#).

⁴⁸ [Bill 68-EN, September 2016](#) para 18

⁴⁹ HMT press notice, [Childcare launch date as it welcomes judgment from Supreme Court](#), 1 July 2015

⁵⁰ [Budget 2016, HC 901, March 2016](#) para 1.138, para 2.77. see also, HMRC press notice, [Tax-Free Childcare: 10 things parents should know](#), 18 March 2016 & [PQ58655, 9 January 2017](#).

⁵¹ [PQ42805, 19 July 2016](#)

September 2017, HM Revenue and Customs (HMRC) will trial a new, digital, joint childcare service later this year. The trial will involve around 1500 parents, including some who are eligible for both schemes. It will enable HMRC to extensively test the system and ensure it provides a smooth experience and quality service for parents. Tax-Free Childcare and the extended free entitlement are a key part of the Government's overall childcare offer which will provide over £6 billion per annum to working families and those on low incomes by the end of this Parliament.

The Government announced in November 2015 that parents will be able to apply online for both Tax-Free Childcare and the extended free entitlement through a new joint childcare service being developed by HMRC, with their delivery partner National Savings & Investments (NS&I). The joint childcare service will provide a simple and straightforward way for working parents to access both schemes, avoiding the need to provide the same information twice, and saving them valuable time.

In March 2016, the Government announced that Tax-Free Childcare will be introduced and gradually rolled out during 2017. The service will be made available to all eligible families by the end of that year.⁵²

Clause 5 would make three minor, technical amendments to the 2014 Act.

Generally parents will receive top-up payments quarterly, and will have to reconfirm at the end of each quarter that they still meet the eligibility criteria. Section 5 of the 2014 Act provides that the standard length of this 'entitlement period' is three months, though other provisions regarding entitlement periods may be made by regulations. Under section 5(3)(b) & 5(4), these regulations may make provision for HMRC to "vary the length of an entitlement period in particular cases", but not by "more than a month". **Clause 5(2)** changes this to two months, "to enable alignment of eligibility periods for additional children when parents already have another child in the scheme."⁵³

Section 57 of the 2014 Act sets out the process for someone to follow if they wish to apply for a review of a decision made by HMRC that has affected them. Normally this must be made within 30 days of being notified of the decision, though section 58 allows HMRC to extend this time limit, if requested by the applicant. **Clause 5(3)-(4)** would amend sections 57 & 58, so that regulations may be made to specify the form and manner of these applications. "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."⁵⁴

Final provisions: clauses 6-9

These clauses provide for the Bill's territorial extent (**clause 6**), its commencement (**clause 7**), saving and transitional provisions (**clause 8**), and the legislation's short title (**clause 9**).

⁵² [HCWS160, 15 September 2016](#)

⁵³ Bill 68 – EN, September 2016 para 71

⁵⁴ Bill 68 – EN, September 2016 para 72

2.2 The Bill's scrutiny

The Bill was given a [Second Reading on 11 October](#), without a division.

Introducing the Bill the Financial Secretary Jane Ellison said, “although the Bill proposes relatively minor changes, they are really important none the less, because they can further the practical support that we give to our outstanding charities sector in this country, and the childcare payments provisions will help families with childcare.” The Minister noted that these changes had been “the result of months of consultation and constructive discussion with the charity sector.”⁵⁵ In her speech Ms Ellison underlined that although the Bill would remove two eligibility criteria, charities and CASCs who wished to make claims would still have to meet the Gift Aid matching requirement:

There are two reasons why we feel it is necessary to retain this rule. The first is to incentivise charities to engage with the full gift aid scheme, which will provide them with even greater income over the longer term. The second is to protect from fraud the small donations scheme, which has substantially fewer record-keeping requirements than gift aid—an important factor that was looked at when the scheme was first designed back in 2012.

It is by retaining the rule that donations under the scheme must be matched with gift aid donations that we can best do that. We are simplifying the rules on eligibility as far as possible to allow as many charities as we can to benefit, while protecting the integrity of the scheme.⁵⁶

In her speech Rebecca Long Bailey said that “the Opposition are broadly supportive of the specific measures in this nine-clause Bill.” Ms Long Bailey noted that some charities had made representation that the matching requirement presented a significant barrier, particularly for small charities, even though the Opposition had “several concerns about how loosening the eligibility criteria could have an impact” on the risk of fraud. In this context she asked if the Minister could give more details as to why the Government were opposed to changing this rule. In her speech Kristy Blackman said the SNP were “largely supportive of the specific proposals in the Bill”, but asked if the Government would not reconsider the impact of the matching rule on small charities that “do not do gift aid because the paperwork is far too cumbersome.”⁵⁷

Other Members who spoke during the debate were generally supportive, though, as acknowledged by Rob Wilson, Minister for Civil Society, when he concluded the debate, Members had concerns “about poor-take up and a lack of awareness of the small donations scheme”:

21,300 charities took advantage of the scheme last year, claiming a total of £26 million of Government support. We recognise that that is less than was forecast, but we want as many charities as possible to benefit from the scheme. That is why we are removing a number of the eligibility requirements and relaxing the

⁵⁵ HC Deb 11 October 2016 c213, c215

⁵⁶ *op.cit.* c215

⁵⁷ *op.cit.* c225, c224

community building rules, which will make it much simpler and easier for smaller charities to claim.⁵⁸

Mr Wilson went on to explain why the Government took the view that the 10:1 matching requirement was fair:

It is important to be clear that the gift aid matching requirement is not intended to disadvantage smaller charities. That is why the rule is progressive and is set at a modest ratio of 10:1. This means that a charity needs only to claim gift aid on donations of £10 to gain a small donations scheme allowance of £100. To benefit from the maximum small donations allowance, a charity must collect gift aid donations of just £800. Most would see that as a reasonable position to take. Requiring charities to match a proportion of their small donations with a small amount of gift aid donations incentivises charities to maximise their gift aid claims.

Unlike the small donations scheme, gift aid relief is not capped, relief can be claimed on donations of any size and it is not limited to small cash donations. Furthermore, the process of obtaining a gift aid declaration allows charities to develop ongoing relationships with their donors and can lead to a more resilient funding stream in the longer term.⁵⁹

The Bill was considered in Public Bill Committee over a single sitting [on 18 October](#). The Government did not table any amendments to the Bill, and the Bill was agreed without amendment.

Several issues were raised during the Committee's consideration of the Bill: principally, the case for extending GASDS to other forms of donation; the question of amending or removing the matching rule; and, the possibility of allowing selected charities (scout & guide groups, as well as Army, Navy & Air Force cadet branches) to make individual claims.

Clause 2 provides for donations to be made by contactless payment. Speaking for the Opposition Rebecca Long Bailey introduced an amendment to allow donations by text, cheque or via the internet:

A survey carried out by the Charity Finance Group for the National Council for Voluntary Organisations, the Institute of Fundraising and the Small Charities Coalition found that only 36% of the 340 charities surveyed wanted contactless payments to be included in the scheme. It also found that cheques were the method favoured for inclusion: more than 75% of respondents wanted them to be included. Half wanted text donations and two thirds wanted one-off online donations to be eligible ...

Most people send a donation via text in a spur-of-the-moment decision. A follow-up text is then required to ascertain whether the donation is eligible for gift aid, and most people are not as responsive as we would like, so it makes sense to include donations via text in the scheme. As for cheques, I understand that someone who is able to sign a cheque is probably able to sign a gift aid declaration at the same time, but 75% of charities surveyed said that including cheques would increase the efficacy

⁵⁸ *op.cit.* c249

⁵⁹ *op.cit.* c251

of the scheme for them, so I would be interested to hear the Minister's reasons for not doing so.⁶⁰

In response the Minister, Ms Ellison, underlined the Government's view that GASDS "is not simply a lighter-touch alternative to gift aid":

The scheme exists to provide a similar outcome in situations where charities cannot realistically obtain a gift aid declaration, but the Government are clear that, if a charity can get a gift aid declaration and claim gift aid, it should do so.⁶¹

The Minister went on to argue that charities could easily obtain Gift Aid declarations when donations were made by text, cheque or online ...

[GASDS] was never intended to cover methods of donations for which well-established and well-used processes for claiming gift aid already exist ...

There is a simple and well-established process that allows charities to solicit gift aid declarations from donors who make SMS donations ... The donor sends a short code word to a six-digit number—for example, "Dog" to 606060—to donate a set amount through their phone bill. A reply is then sent to the donor thanking them for their donation and asking them for their name, house number and postcode and confirmation that they are a UK taxpayer. Once the donor provides that information, the charity can claim gift aid ...

Online donations require donors to take the time to enter their name and payment details. The only additional information needed for a gift aid declaration is an address. Donors are then encouraged to tick a simple box to add gift aid at the point of donation. Most of us would agree that in those circumstances it is entirely practical for a charity to ask a donor to complete a gift aid declaration ...

As for cheques, I understand that they remain a popular method of payment, particularly among older people, but writing a cheque is not an instant process. The payer needs to write the date, the payee's name and the payment value, both in words and numerals, and then sign it. Our contention is that, if a donor has the time to stop and write a cheque, it is not unreasonable to suggest that he or she also complete a gift aid declaration ... Moreover, by writing a cheque the donor is already providing some of their details to the charity, so the additional information needed for a declaration is relatively small. We believe that it is entirely feasible to obtain a gift aid declaration in those circumstances.⁶²

... but that contactless donations posed the same practical difficulties for charities using Gift Aid as cash donations:

As for contactless donations, Members may ask how they differ from other forms of electronic donation. The difference is, quite simply, speed. On Second Reading, the Minister for Civil Society used the example of commuters passing through the ticket barriers of a tube station to demonstrate just how quick contactless technology is—we are all familiar with the Oyster scheme, for example. That speed of transaction means that

⁶⁰ Public Bill Committee (*Small Charitable Donations and Childcare Payments Bill*), 18 October 2016 cc6-7

⁶¹ *op.cit.* c10

⁶² *op.cit.* c11, c12, c13

donations collected using dedicated contactless collection terminals have a lot of the same practical issues as bucket collections. Individuals can donate as they pass by a fundraiser without having to stop and talk—it is almost instantaneous. Fundraisers therefore do not have the opportunity to engage donors and solicit gift aid declarations.⁶³

In turn Ms Long Bailey withdrew the Opposition's amendment.

Speaking for the SNP Kirsty Blackman introduced **new clause 1**, to require the Government to assess the impact of removing the matching rule, suggesting that the 10:1 ratio was "fairly arbitrary":

I am not suggesting that we get rid of the requirement to claim gift aid in general. It is reasonable, given the Government's desire to prevent fraud that they have charities make at least one claim and fill in the full version of the forms. It is not, however, reasonable for the Government to expect the smallest of charities to go through that cumbersome process to claim the full amount of £800 in gift aid on small donations

I understand that the Government might not want to accept [the new clause] today, but I would very much appreciate it if they would seriously consider before Report the fact that a 10:1 ratio is possibly not the right arbitrary level. If they will not consider abolishing the matching requirement, will they consider making the ratio 20:1 or 50:1? That would be hugely beneficial to the smallest of charities, which benefit most from the gift aid small donations scheme and do not have the people power to fill in many of the relevant forms.⁶⁴

Supporting the new clause Rebecca Long Bailey noted that the Government had argued the matching rule was the best way to prevent fraud, but it had not presented any evidence to this effect:

Given the Government's reasons for not proposing any amendments to the requirement, the Opposition think that we should simply have a chance to see the evidence that the requirement works.⁶⁵

In response the Minister noted that there was little evidence that the matching rule was a barrier for most charities who wished to use GASDS ...

A few hon. Members ... cited a survey by the National Council for Voluntary Organisations and others that suggested that the matching rule acts as a barrier to claiming from the gift aid small donations scheme, with 50% of respondents with an income under £10,000 wanting the matching rule to be removed or reduced.

However, it is worth drawing the Committee's attention to the fact that the same survey also found that only 5% of respondents claimed no gift aid at all, and just 10% felt that they did not claim enough gift aid to make claiming top-up payments worthwhile. Similarly, the Government's own assessment found that 92% of charities claiming gift aid for the tax year 2014-15 claimed on donations of £500 or more, entitling them to the maximum small

⁶³ PBC, 18 October 2016 cc12-13. In response to a question from Nigel Mills, the Minister confirmed that the definition of contactless payments in **clause 2** would include donations made using Oyster cards (c14).

⁶⁴ *op.cit.* c27, c28

⁶⁵ *op.cit.* c28

donations allowance, which at that time was £5,000. That is interesting evidence that for the vast bulk of charities, the matching rule is not a barrier.⁶⁶

... while removing it would pose a serious risk of fraud:

First, I would argue that the matching rule has become more relevant because of the provisions in the Bill to simplify the scheme, for example the end of the two-in-four rule. Secondly, I have been sat here musing as I have listened to Members making their points about the need for me to prove that the rules are necessary. I cannot see how that can be done without first relaxing them and then having to report to the House that there had been large amounts of fraud, public money had been wasted and so on.⁶⁷

The new clause was put to the vote but rejected by 9 votes to 7.

Finally, speaking for the Opposition Rebecca Long Bailey introduced a new clause to allow local scout groups and guide groups as well as Army, Navy and Air Force cadet branches to make individual claims under GASDS:

We have received representations on behalf of those groups arguing that the current treatment under the scheme is unfair. Under the connected charities rules, those organisations are considered to be one charity. However, local organisations fund-raise independently and are independent from one another financially ... I appreciate that there are probably many other organisations with comparable structures that would benefit from similar changes. New clause 3 is more of a probing amendment to try and tease out from the Government why they do not want to reform the scheme in such a way.⁶⁸

In response the Minister argued that the new clause was unnecessary:

Without the connected charities rules, large charities would have a perverse incentive to splinter into groups of smaller charities to increase their entitlement to small donations allowances ...

During the review of the scheme, we listened and HMRC became aware that the current rules did not deliver the desired outcome in certain circumstances. We received representations from local scout and cadet groups explaining that, while they welcomed the scheme and were entitled to a £8,000 small donations allowance under the community buildings rules, they were unable to take full advantage of it because most of their collections take place out in the local community—packing bags at local supermarkets, for example.

We listened and took this seriously, which is why the Bill will relax substantially the community buildings rules to allow charities to benefit from donations received outside their community building.⁶⁹

Ms Long Bailey withdrew the new clause, and the Committee concluded its proceedings, leaving the Bill unamended.

⁶⁶ PBC, 18 October 2016 c30

⁶⁷ *ibid.*

⁶⁸ PBC, 18 October 2016 c34

⁶⁹ *op.cit.* c35

The Bill's Report stage and Third Reading were completed on 15 November, again without any amendments being made. The House debated four new clauses and two amendments tabled by the Opposition and the SNP, raising the same issues as considered in Committee: the risk of fraud; the case for relaxing or withdrawing the matching condition or for relaxing the rules regarding connected buildings to extend the scope of the scheme for selected charities; and, finally, the case for widening the methods for charities to receive donations. As in Committee the Government opposed any changes to the eligibility criteria for donations or the way in which they were made, and none of these proposed changes were accepted.

Subsequently the Lords considered the Bill in a single day on 12 December.⁷⁰ As a money Bill the Lords had no powers to amend this legislation, so that after a short Second Reading, the remaining stages of the Bill were completed formally. In turn the Bill received Royal Assent on 16 January 2017.

⁷⁰ See, [*Small Charitable Donations and Childcare Payments Bill: Briefing for Lords Stages*](#), House of Lords Library Briefing LLN2016-62, 24 November 2016.

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