EXPLANATORY MEMORANDUM TO

THE DONATIONS TO CHARITY (GIFT AID DECLARATIONS) REGULATIONS 2016

2016 No. 1195

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs ("HMRC") and is laid before the House of Commons by Command of Her Majesty.

1.2 This memorandum contains information for the Select Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Regulations will make it easier for donors to give Gift Aided donations to charities through digital channels, such as online, SMS text messages and twitter. These digital channels are often hosted by businesses with expertise in information technology. These businesses are referred to as donor intermediaries and often collect donations and Gift Aid Declaration ("GAD") details from donors on behalf of multiple charities.

2.2 The Regulations will give donor intermediaries the ability, when authorised, to create GADs on the behalf of a donor for the rest of a tax year. Once the authorisation has been given the intermediary will create a GAD for each donation that the donor gives, to any charity, for the rest of the tax year.

2.3 The Regulations will replace the Donations to Charity by Individuals (Appropriate Declarations) Regulations 2000 (S.I. 2000/2074) ("the 2000 Regulations") for gifts made on or after 6th April 2017.

2.4 The Regulations ensure that enduring GADs completed by donors and provided to charities under the 2000 Regulations before 6th April 2017 remain valid.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 First, this is the first time that the expanded vires in section 428 of the Income Tax Act 2007 (c. 3) (expanded by section 20 of the Finance Act 2015 (c. 11) and section 173 of the Finance Act 2016 (c. 24)) have been used.

3.2 Secondly, regulation 4(1)(c) of the 2000 Regulations requires that a GAD given to a charity by a donor must "identify the gift or gifts" to which it relates. The specific use of the plural in regulation 4(1)(c) provides the basis for a donor to give what is referred to as an "enduring GAD" which covers more than one gift. That is a donor has the option to give a single GAD to a charity that, in addition to covering the gift that the donor is making at that time, will also cover gifts that the donor makes to the charity in future months or years. The charity sector is familiar with that terminology and the concept of an enduring GAD.

3.3 Regulation 5(1)(c) of this instrument also requires that a GAD given by a donor must "identify the gift or gifts" to which it relates. It therefore retains the option for a donor to give an enduring GAD to a charity. In contrast, regulation 6(1)(c) requires that a GAD given to a charity by a donor intermediary on behalf of a donor must "identify the gift" to which it relates. The contrast between the wording in regulations 5(1)(c) and 6(1)(c) demonstrates a contrary intention for the purposes of section 6(c) of the Interpretation Act 1978 (c. 30). A donor intermediary does not therefore have the option to give an enduring GAD to a charity on behalf of a donor. The position will be confirmed in the Guidance referred to in paragraph 9.1.

3.4 The difference in approach between regulations 5(1)(c) and 6(1)(c) reflects the fact that a donor intermediary must obtain annual authorisation from a donor to give GADs on their behalf and that a donor can cancel that authorisation during the course of the tax year. The fact that a donor intermediary cannot give an enduring GAD on behalf of a donor will also simplify the interaction between enduring GADs given by donors and GADs given by donor intermediaries.

3.5 Thirdly, Part 3 of this instrument contains penalties for failures on the part of a donor intermediary to comply with specified obligations under the Regulations. Where other sanctions are available, no penalties are imposed by Part 3. In particular no penalties are imposed where a failure to comply with an obligation under this instrument means that a charity would not be entitled to claim Gift Aid relief in respect of a donation.

3.6 Fourthly, regulation 3 of the 2000 Regulations provides for the use of electronic communications in respect of a declaration that may be given in writing or orally. In contrast, regulation 5(4) of the 2000 Regulations does not provide for the use of electronic methods of communication when giving a written notice. This is because the Interpretation Act 1978 contains a broad definition of "writing" that covers electronic forms of written communications, but there is no equivalent definition that covers oral communications. To prevent uncertainty it was therefore necessary to provide for the use of oral methods of electronic communications. The charity sector is familiar with that approach, which has been retained in this instrument. This approach should ensure that this instrument does not have to be amended to accommodate future developments in oral communications technology. Again the position will be confirmed in the Guidance referred to in paragraph 9.1.

Other matters of interest to the House of Commons

3.7 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Chapter 2 of Part 8 of the Income Tax Act 2007 gives relief (Gift Aid relief) for gifts of money to charities by individuals. In order to attract Gift Aid relief the individual must give the charity a GAD relating to the gift. A GAD must comply with HMRC Regulations. The 2000 Regulations set out the requirements for a GAD. Receipt of a valid GAD enables a charity to claim Gift Aid relief in respect of a donation.

4.2 Section 20 of the Finance Act 2015 amended Chapter 2 of Part 8 to enable GADs to be given by an intermediary acting on behalf of a donor and to be received by an intermediary acting on behalf of a charity.

4.3 Section 20 also expanded HMRC's vires to enable the GAD Regulations to impose record-keeping and other requirements on intermediaries. Section 173 of the Finance Act 2016 further expanded those vires to enable HMRC to impose penalties for the breach of a specified requirement imposed by the GAD Regulations.

4.4 This instrument replaces the 2000 Regulations for gifts made on or after 6th April 2017. The provisions covering GADs given by donors and the obligations imposed on charities broadly replicate the provisions in the 2000 Regulations. The provisions relating to donor intermediaries, including the penalty regime in Part 3 of this instrument, are new.

4.5 Where an enduring GAD given under the 2000 Regulations is capable of relating to gifts made on or after 6th April 2017, that will remain the case. Such a GAD will remain subject to regulations 5, 6 and 7 of the 2000 Regulations.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is 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

What is being done and why

7.1 Gift Aid plays an invaluable part in supporting the charity sector by supplementing eligible donations with basic rate tax. The Government has paid over £5 billion in Gift Aid tax relief to the sector since 2010–11. The Government is committed to increasing the number of eligible donations in respect of which Gift Aid tax relief is claimed and is seeking ways to achieve this.

7.2 One way the Government believes it can achieve this objective is through the increased use of digital giving platforms to enable donors to give easily and use Gift Aid at the same time. The Government has been working closely with stakeholders to identify the barriers to claiming Gift Aid while using digital platforms and in developing workable solutions.

7.3 Although a donor intermediary can choose whether or not to use the new 'authorisation' process, the Government expects this process to increase overall Gift Aid claimed on donations made through digital channels because it is much simpler for the donor. Currently donors must make a fairly complex declaration each time they wish to make a Gift Aided donation to a new charity when giving through a digital channel. The Regulations will reduce that declaration requirement to 1 per year when a donor uses the same donor intermediary.

Consolidation

7.4 There are currently no plans to consolidate the 2000 Regulations.

8. Consultation outcome

8.1 HMRC held an eight week technical consultation from 10th August to 5th October 2016. Consultees were broadly content with the intermediaries regime introduced by the Regulations and did not raise any major issues.

8.2 Minor drafting changes have been made since the consultation to provide intermediaries with greater flexibility in respect of the provision of annual statements to donors and to increase the threshold above which those statements must be provided.

9. Guidance

9.1 The Regulations will affect a small number of businesses. HMRC will produce guidance for these businesses, charities and donors, in due course.

10. Impact

10.1 The impact on businesses, charities or voluntary bodies is expected to be positive by way of a reduction in administrative burdens associated with the making of GADs.

10.2 There is no impact on the public sector.

10.3 Tax Information and Impact Notes covering this instrument were published on 10th December 2014 alongside the draft Finance Bill 2015 Measure to allow non-charity intermediaries to have a greater role in processing Gift Aid claims on behalf of charities, on 9th December 2015 alongside the draft Finance Bill 2016 Measure to allow penalties to be imposed on intermediaries and on 5th December 2016 in the context of Autumn Statement 2016. They are available on the government website at https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins and remain an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No action is required to minimise regulatory burdens for small business. The Regulations will reduce the administrative burden on all relevant businesses, both large and small.

12. Monitoring & review

12.1 The impact of this legislation will be kept under review through continuing engagement with donor intermediaries, charities, donors and their representatives.

13. Contact

13.1 Christopher Maudsley at HMRC Telephone: 03000 518 538 or email: christopher.maudsley@hmrc.gsi.gov.uk can answer any queries regarding this instrument.