



HM Revenue
& Customs

Gift Aid and Intermediaries

Technical Consultation

Publication date: 10th August 2016

Closing date for comments: 5th October 2016

Subject of this consultation:	The Government announced at Autumn Statement 2013 that it would give intermediaries, operating within the charity sector, a greater role in administering Gift Aid.
Scope of this consultation:	Since then, the Government has published provisions in Finance Bill 2015 and 2016 to support this aim. The Government has also produced draft secondary legislation which sets out, in detail, the way in which this greater role will work. This consultation sets out those draft Regulations and asks for comments to ensure they achieve the desired outcome.
Who should read this:	These proposed changes will be of interest to the charity sector, intermediaries who collect donations on the behalf of charities and individuals who donate to charities.
Duration:	The consultation will run for 8 weeks commencing on 10 th August 2016
Lead official:	Christopher Maudsley, HM Revenue and Customs
How to respond or enquire about this consultation:	By email please send responses to: Charitypolicy.taxteam@hmrc.gsi.gov.uk By post please send responses to: Intermediaries Consultation Christopher Maudsley Room G45 Charities 100 Parliament Street London SW1A 2BQ Telephone enquiries 03000 518 538
Additional ways to be involved:	The consultation team would be happy to meet with interested parties during the consultation period. Please email the team, where there is enough interest a general meeting will be organised in London.
After the consultation:	The Government's response will be published and draft Regulations will be made later this year with the intention of coming into effect in April 2017. HMRC will also produce guidance to cover intermediaries and their role in administering Gift Aid, this will be published on Gov.uk around the same time as the Regulations come into effect.
Getting to this stage:	Following the announcement in the Autumn Statement HMRC has been working with the charity sector and intermediaries to develop a simpler way of giving through SMS text messaging and online platforms. The aim is to increase the amount of Gift Aided donations.
Previous engagement:	HMRC officials held informal discussions with charities, businesses collecting Gift Aid on the behalf of charities and representative groups to inform the development of the draft Regulations set out in this document.

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1. Introduction

- 1.1 Gift Aid plays an invaluable part in supporting the charity sector by supplementing eligible donations with basic rate tax. The Government has paid over £5bn in Gift Aid tax repayments to the sector since 2010–11. The Government is committed to increasing Gift Aid on eligible donations and sought ways to achieve this aim.
- 1.2 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.
- 1.3 Although it is entirely voluntary, this measure in particular is designed to make it easier for a donor to use digital platforms including text giving to give to multiple charities. Currently, donors must make a written or oral Gift Aid Declaration (GAD) each time they wish to make a Gift Aided donation to a new charity. This measure is designed to reduce that declaration requirement to only 1 per year when a donor uses a new *donor intermediary*.
- 1.4 A donor intermediary is an organisation that collects money for a charity in a similar way to a standard intermediary. The difference is a donor intermediary will be an organisation that chooses to use the new way of giving as well as or instead of the existing process.
- 1.5 The draft Regulations and Explanatory Memorandum found in Annex A and B respectively show how the Government intends to legislate this new measure and defines the donor intermediary's role. We would welcome your views on whether the draft regulations and Explanatory Memorandum achieves the objective in this case.

2. Overview of the existing process

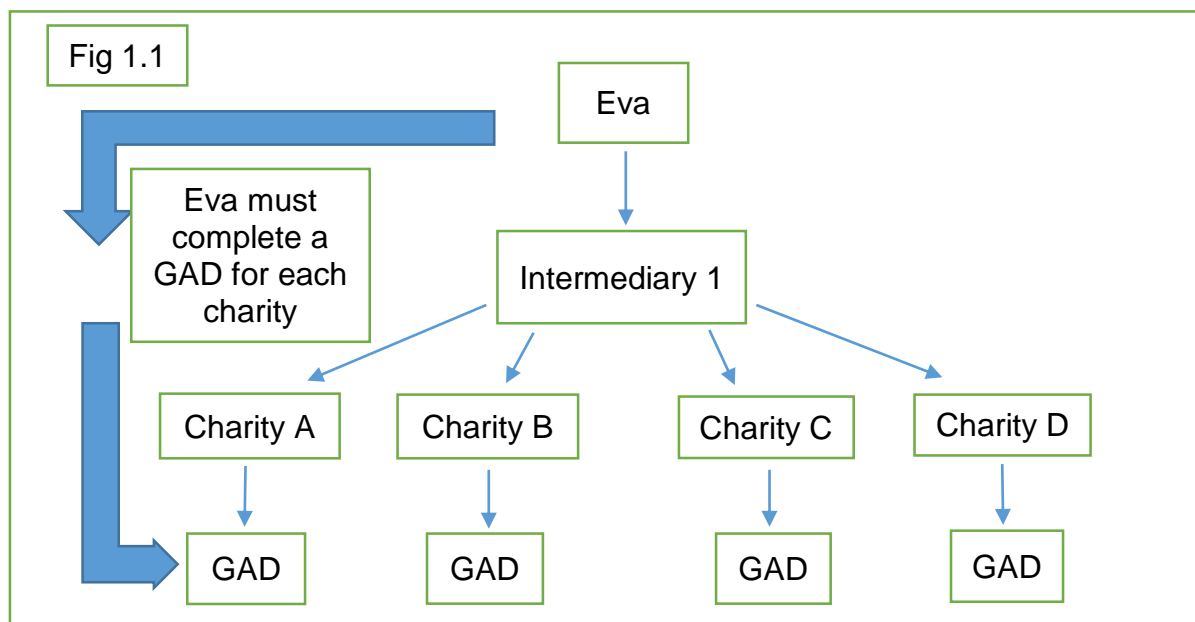
One Gift Aid Declaration per charity

- 2.1 This section of the document covers how the current process works, giving a worked example and illustrating the difficulties with the current process.
- 2.2 Currently when a donor uses an Intermediary, the donor must complete a separate Gift Aid declaration for each of the charities they wish to donate to.
- 2.3 Feedback from external stakeholders to the Government suggests that the need for an individual to complete multiple declarations for donations to different charities acts as a disincentive to use Gift Aid.

Example showing the current process

- 2.4 Intermediary 1 raises money for numerous and a wide variety of charities. Its charities' beneficiaries range from a local cats home to a multinational Aid charity.
- 2.5 Eva donates £10 to Emily who is running a marathon and is raising money for charity A, through the intermediary's website. When using the intermediary to sponsor Emily, Eva notices that she can use the same giving platform to donate to Lucas who is doing a sponsored swim for charity B and she can also donate to charities C and D whose aims she supports.
- 2.6 As Eva is giving to 4 different charities, currently she must give 4 separate declarations including her name, address and the name of each charity she has elected to give to. These declarations are given to the intermediary who then passes them, along with Eva's gifts, to the charities.

2.7 Fig 1.1 shows how this process looks.



Difficulties with the current process

2.8 As mentioned earlier, stakeholder feedback suggests that the need for a donor to complete multiple declarations in this scenario acts as a barrier to using Gift Aid.

2.9 This difficulty is particularly evident when donors use SMS text messaging to donate to charities. Donors often give through SMS text messages, usually on impulse. This can be, for example, because they have seen a charity advertisement in public space (eg on the back of a bus or a television appeal) and they are sympathetic to the cause.

2.10 However for the charity to claim Gift Aid on the donation it needs to get the donor's name, address and confirmation that the donor is a taxpayer so the charity or intermediary needs to reply to the donor's text to ask for this information, and the donor has to respond so that each new charity can benefit from Gift Aid. Sometimes the donor doesn't reply to the SMS text message and in some cases the charity doesn't ask for this information, preferring to instead focus on thanking the donor for their gift.

2.11 This means that the charity sector could be losing out on Gift Aid on otherwise eligible donations.

2.12 HM Revenue and Customs and HM Treasury officials have therefore worked closely with the charity sector to try and introduce a new way

of giving which simplifies the processes and ensures that charities can claim as much Gift Aid as possible.

3. Overview of the new process

- 3.1 This section covers the new process, and uses the same worked example to illustrate how the existing process can be simplified and help meet the Government's key objective of increasing Gift Aid on eligible donations.
- 3.2 However, it is important to say up-front that this new process is entirely voluntary and therefore an alternative, or supplement, to existing Gift Aid fundraising methods.
- 3.3 The new process will mean that a donor will only have to complete a declaration once a year for each intermediary they give through.
- 3.4 This will enable the donor to use an intermediary to give to multiple charities under a single declaration.

One Declaration per intermediary

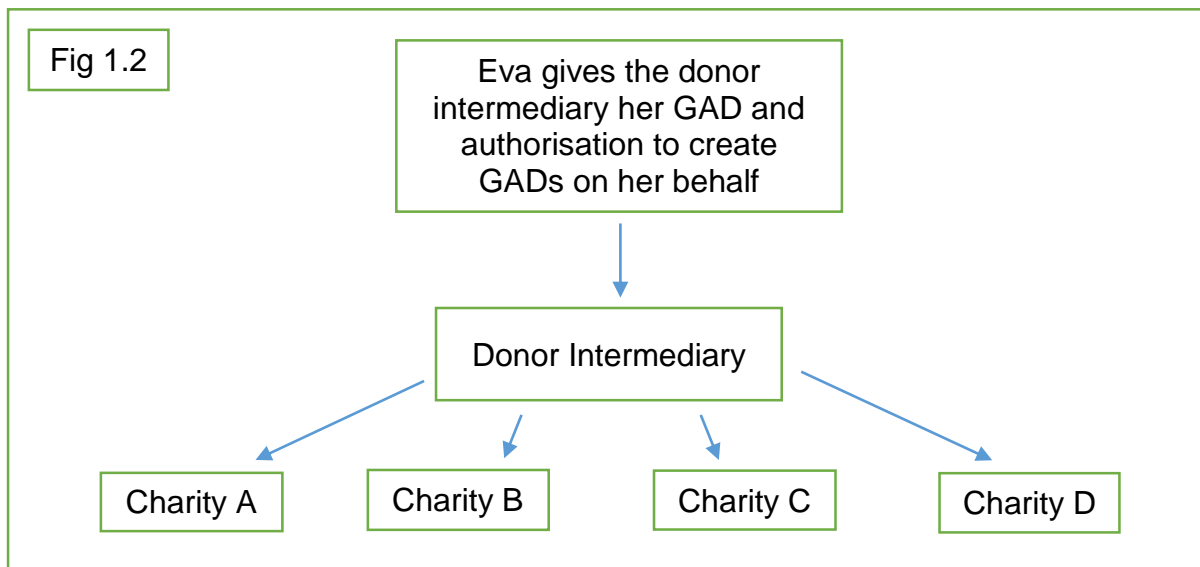
- 3.5 When the donor first completes a declaration the intermediary will ask if they can have authorisation to complete declarations on the donor's behalf for the rest of the tax year. If the donor agrees, the intermediary will automatically create a declaration for all donations that donor makes for the rest of the tax year. The charity or charities will be able to claim Gift Aid on all of the donor's gifts.
- 3.6 The donor will be able to exit this agreement at any time in the year for any reason. Once the donor contacts the intermediary, the intermediary will not be able to automatically create Gift Aid declarations and they will need to request declarations to support any future donations if they wish to claim Gift Aid.

Example showing the new process

- 3.7 Donor Intermediary 1 raises money for a large number of charities.
- 3.8 Eva donates £10 to Emily who is running a marathon and is raising money for charity A, through the donor intermediary's website. When using the donor intermediary to sponsor Emily she notices that she can use the same giving platform to donate to Lucas who is doing a sponsored swim for charity B and she can also donate to charities C and D whose aims she supports.
- 3.9 As Eva is using a donor intermediary she has the option to give them authorisation to create declarations on her behalf for the rest of the tax year.

3.10 Eva finds this much easier than completing four separate declarations and all her donations are automatically Gift Aided.

3.11 Fig 1.2 shows how the new process works



Donor Authorisation

3.12 The donor authorisation will, in most instances, last the length of a tax year. Once the tax year has ended the donor intermediary will need the donor to positively agree to reinstate the authorisation. If the donor does this and they confirm that all their personal information held by the donor intermediary is up to date all future donations in the tax year will automatically be Gift Aided.

3.13 However if the donor does not positively confirm that they want the authorisation to be reinstated, the donor intermediary will have to revert to the existing process of asking for a declaration each time the donor gives to a different charity.

3.14 If the donor has given their authorisation to the donor intermediary after 1st March the authorisation will roll over and will last until the end of the next tax year. For example, if Eva gives her authorisation on 3rd March 2015 the authorisation will lapse on 5th April 2016.

3.15 The donor also has the option, at any time, to cancel the authorisation they have given to the donor intermediary and this can be done via post, phone call or online. Once the donor has cancelled the authorisation the donor intermediary will no longer be able to produce declarations on that donor's behalf.

- 3.16 The way in which the Gift Aid legislation operates means that the donor is ultimately responsible to pay any shortfall if they have paid insufficient tax to cover their donations. It is also the donor's responsibility to update the intermediary (or charity for that matter) if their circumstances change and they are no longer a tax payer or eligible for Gift Aid.

Donor intermediary requirements

- 3.17 There are certain requirements that the donor intermediary must comply with, these are
- To keep a record of the donor's authorisation allowing them to complete declarations on the donor's behalf.
 - To keep a record of the date on which section 424 was explained to the donor.
 - To keep a record of any cancellations of the donor's authorisation.
 - To issue an annual statement to donors who use the new process.
 - To keep a record of an annual statement sent to donors who use the new process.
- 3.18 If the donor intermediary fails to comply with any of these requirements then they may be subject to a penalty.

Annual statement

- 3.19 One of the new requirements for the donor intermediary is to produce an annual statement of donations made during a tax year.
- 3.20 This annual statement will be sent to donors who have donated to more than one charity and the total amount donated exceeds £5. If the donor has donated once in the tax year or the amount doesn't exceed £5 the donor intermediary is under no obligation to issue the annual statement, however they can send the statement to the donor if they wish to.
- 3.21 This statement must be sent to the donor by 31st May immediately following the end of the tax year in which the donor intermediary has given a Gift Aid declaration on behalf of a donor. The annual statement will include:
- The total amount the individual has donated through that intermediary during that year.

- The maximum amount of Gift Aid that could have been claimed on those donations.
- That if the donor paid less income tax and capital gains tax in that tax year than the amount of gift aid claimed by charities on all the donor's donations in that tax year, it is the donor's responsibility to pay any difference.
- An explanation that donations made directly to charities and donations through other intermediaries are not included in the statement.

3.22 The aim of the annual statement is to improve the donor's understanding of Gift Aid including the rules and the consequences of using the scheme and not being eligible to do so.

4. Technical consultation question

4.1 The main aim of this document is to establish whether the Regulations achieve the desired outcome.

4.2 Therefore the question that is asked in this document is

‘Do the Regulations achieve the desired outcome without causing any unintended issues?’

5. Assessment of impacts

Summary of impacts

Exchequer impact (£m)	2015 -16	2016 -17	2017 -18	2018 -19	2019 - 20
	This measure is likely to decrease net receipts due to a higher level of Gift Aid on donations. The final costing will be subject to scrutiny by the Office for Budget Responsibility.				
Economic impact	The measure is not expected to have any significant economic impacts.				
Impact on individuals, households and families	<p>The measure is not expected to have any significant impacts on individuals or households, aside from a possible increase in the proportion of charitable donations upon which Gift Aid is claimed.</p> <p>The measure is not expected to impact on family formation, stability or breakdown.</p>				
Equalities impacts	No impacts are anticipated in respect of groups sharing protected characteristics.				
Impact on businesses and Civil Society Organisations	<p>The measure should ease the ongoing administrative burden on a small number of intermediaries by relieving them of the need to receive a Gift Aid declaration for each individual charity. There are up to 139,000 charities that are registered for Gift Aid (of which around 66,000 claim Gift Aid).</p> <p>It is anticipated that intermediaries will incur one-off costs to familiarise themselves with this policy and to put systems in place to implement the change.</p> <p>Estimates of the impacts on intermediaries and charities will be established once details of the measure have been finalised.</p>				
Impact on HMRC or other public sector delivery organisations	There will be an impact on HM Revenue and Customs from administering and monitoring this scheme, and dealing with enquiries from customers. The degree of impact will depend on the detail of the changes implemented but is not considered to be significant.				
Other impacts	Other impacts have been considered and none have been identified.				

6. The consultation process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 3 of the process. The purpose of the consultation is to seek views on draft legislation in order to confirm, as far as possible, that it will achieve the intended policy effect with no unintended effects.

How to respond

Responses should be sent by 5th October 2016,

By e-mail to

Charitypolicy.taxteam@hmrc.gsi.gov.uk

By post to:

Intermediaries Consultation
Christopher Maudsley
Room G45 Charities
100 Parliament Street
London
SW1A 2BQ

Telephone enquiries 03000 518 538

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk

Please do not send responses to the consultation to this address.

Annex A: Draft secondary legislation

STATUTORY INSTRUMENTS

2016 No. 0000

INCOME TAX

CAPITAL GAINS TAX

The Donations to Charity (Gift Aid Declarations) Regulations 2016

Made - - - - - ***

Laid before the House of Commons ***

Coming into force - - - 6th April 2017

The Commissioners for Her Majesty’s Revenue and Customs make the following Regulations in exercise of the powers conferred by sections 132 and 133 of the Finance Act 1999⁽¹⁾ and now exercisable by them⁽²⁾, and section 428 of the Income Tax Act 2007⁽³⁾.

PART 1

GENERAL AND INTERPRETATION

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Donations to Charity (Gift Aid Declarations) Regulations 2016 and come into force on 6th April 2017.

(2) These Regulations have effect in relation to gifts made on or after 6th April 2017.

Interpretation

2. In these Regulations—

“the 2000 Regulations” means the Donations to Charity by Individuals (Appropriate Declarations) Regulations 2000⁽⁴⁾,

“HMRC” means the Commissioners for Her Majesty’s Revenue and Customs,

(1) 1999 c. 16; section 132 was relevantly amended by paragraph 156 of Schedule 17 to the Communications Act 2003 (c. 21).
(2) The functions of the Commissioners of Inland Revenue and the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50 of that Act provides that in so far as it is appropriate in consequence of section 5 a reference, however expressed, to the Commissioners of Inland Revenue or the Commissioners for Customs and Excise is to be read as a reference to the Commissioners for Her Majesty’s Revenue and Customs.
(3) 2007 c. 3; section 428 was amended by section 20(3) of the Finance Act 2015 (c. 11) and section [161] of the Finance Act 2016 (c. [XX]).
(4) S.I. 2000/2074, amended by S.I. 2003/2155 and 2005/2790.

“donor” means an individual who makes a gift to a charity,

“donor intermediary” means a person authorised by a donor to give a gift aid declaration on behalf of that donor to a charity,

“gift aid declaration” means a declaration given in accordance with these Regulations,

“ITA 2007” means the Income Tax Act 2007, and

“tribunal” means the First-tier Tribunal or, where determined in accordance with the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009(5), the Upper Tribunal.

PART 2

GIFT AID DECLARATION

Amendment of the Donations to Charity by Individuals (Appropriate Declarations) Regulations 2000

3.—(1) In regulation 1(2) of the 2000 Regulations (effect)—

(a) in sub-paragraph (a) after “6th April 2000” insert “and on or before 5th April 2017”, and

(b) in sub-paragraph (b) for “that date” substitute “6th April 2000”.

(2) The amendment made by paragraph (1)(a) shall not prevent an appropriate declaration, given under regulation 4 of the 2000 Regulations on or before 5th April 2017 and which is capable of relating to gifts made after that date, from applying to such gifts.

Manner in which a gift aid declaration may be given

4.—(1) A gift aid declaration may be given—

(a) by a donor to a charity, or

(b) by a donor intermediary to a charity,

(2) A gift aid declaration may be given in writing or orally, including the use of written or oral methods of electronic communications.

Gift aid declaration given by a donor

5.—(1) A gift aid declaration given by a donor under regulation 4(1)(a) must—

(a) contain the name and home address of the donor,

(b) name the charity (or be made in circumstances where the charity is identified),

(c) identify the gift or gifts to which the gift aid declaration relates, and

(d) confirm that the identified gift or gifts are to be qualifying donations for the purposes of section 416 of ITA 2007(6) (meaning of qualifying donation).

(2) An explanation of section 424 of ITA 2007(7) (charge to tax) must be given to the donor at the time the gift aid declaration in paragraph (1) is given in order for the gift aid declaration to have effect (subject to regulations 5(3), 10 and 11).

(3) A donor is entitled to cancel the gift aid declaration referred to in paragraph (1) by giving notice to the charity.

(4) The notification under paragraph (3) may be given in writing or orally, including the use of written or oral methods of electronic communications.

(5) S.I. 2009/273 (L. 1).

(6) Section 416 was amended by paragraph 3 of Schedule 8 to the Finance Act 2010 (c. 13), paragraph 11 of Schedule 11 to the Finance Act 2014 (c. 26) and section 20(2) of the Finance Act 2015.

(7) Section 424 was amended by S.I. 2009/2859 and paragraph 79 of Schedule 8 to the Taxation (International and Other Provisions) Act 2010 (c. 8).

Gift aid declaration given by a donor intermediary

6.—(1) A gift aid declaration given by a donor intermediary on behalf of a donor under regulation 4(1)(b) must—

- (a) contain the name and home address of the donor,
- (b) name the charity (or be made in circumstances where the charity is identified),
- (c) identify the gift to which the gift aid declaration relates, and
- (d) confirm that the identified gift is to be a qualifying donation for the purposes of section 416 of ITA 2007.

(2) Before giving a gift aid declaration a donor intermediary must have—

- (a) been authorised by the donor to give a gift aid declaration on behalf of the donor, and
- (b) given an explanation of section 424 of ITA 2007 to the donor,

in order for the gift aid declaration to have effect (subject to regulations 6(5) and 10).

(3) A donor intermediary must obtain the authorisation referred to in paragraph (2)(a) and provide the explanation referred to in paragraph (2)(b) in every tax year in which it gives a gift aid declaration on behalf of the donor. This is subject to paragraph (4).

(4) Paragraph (3) does not apply in respect of a tax year if the donor intermediary obtained the authorisation referred to in paragraph (2)(a) and gave the explanation referred to in paragraph 2(b) on or after 1st March in the immediately preceding tax year.

(5) A donor is entitled to cancel the authorisation referred to in paragraph (2)(a) by giving notice to the donor intermediary.

(6) The notification under paragraph (5) may be given in writing or orally, including the use of written or oral methods of electronic communications.

(7) Where a donor notifies a donor intermediary under paragraph (5), the authorisation ceases to have effect from the date on which the donor intermediary receives that notification, unless a later date is specified in the notice.

Record keeping by donor intermediaries

7.—(1) For each authorisation given by a donor under regulation 6(2)(a), a donor intermediary must maintain a record of—

- (a) the name and address of the donor, and
- (b) the date on which the authorisation was received,

in a form, and to a standard, which can be inspected and audited by HMRC.

(2) The donor intermediary must preserve that record for six years from the end of the tax year, or where regulation 6(4) is relied upon from the end of the final tax year, to which the authorisation applies.

(3) For each gift aid declaration given on behalf of a donor under regulation 6, a donor intermediary must maintain a record of the date on which the explanation of section 424 of ITA 2007 was given to the donor in accordance with regulation 6(2)(b), in a form, and to a standard, which can be inspected and audited by HMRC.

(4) The donor intermediary must preserve that record for six years from the end of the tax year in which the gift aid declaration is given.

(5) For each notice of cancellation of authorisation received from a donor under regulation 6(5), a donor intermediary must maintain a record of—

- (a) the name and home address of the donor, and
- (b) the date on which notice of cancellation was received,

in a form, and to a standard, which can be inspected and audited by HMRC.

(6) The donor intermediary must preserve that record for six years from the end of the tax year in which the notice of cancellation is received.

(7) An officer of Revenue and Customs may by notice in writing require a donor intermediary to produce a record referred to in paragraph (1), (3) or (5) for inspection.

(8) Where a person is required by a notice under paragraph (7) to produce a record for inspection, the person must do so—

- (a) within such period,
- (b) at such time, by such means and in such form (if any), and
- (c) at such place, other than a place used solely as a dwelling,

as is reasonably specified or described in the notice.

Annual statement to be sent by donor intermediaries

8.—(1) By the 31st May immediately following the end of a tax year during which a donor intermediary has given a gift aid declaration on behalf of a donor under regulation 6, the donor intermediary must send the donor a statement stating—

- (a) the aggregate value of donations made by the donor which have been subject to a gift aid declaration given by the donor intermediary during that tax year (the “gift aided donations”),
- (b) the maximum amount of gift aid which charities may claim on the gift aided donations,
- (c) that the statement does not include any gift aid declarations given by other donor intermediaries on behalf of the donor, or given by the donor directly to a charity, and
- (d) that if the donor paid less income tax and capital gains tax in that tax year than the amount of gift aid claimed by charities on all the donor’s donations in that tax year, it is the donor’s responsibility to pay any difference.

This paragraph is subject to paragraph (2).

(2) Paragraph (1) does not apply to a tax year during which—

- (a) the aggregate value of the gift aided donations is £5 or less, or
- (b) only one gift aided donation is made.

(3) An annual statement sent under paragraph (1) may be sent using written methods of electronic communications.

(4) The donor intermediary must maintain a record of annual statements sent under paragraph (1) in a form, and to a standard, that can be inspected and audited by HMRC.

(5) The donor intermediary must preserve that record for six years from the end of the tax year to which the annual statement relates.

Record keeping by charities

9.—(1) A charity must either—

- (a) maintain an auditable record of the gift aid declarations received from a donor or a donor intermediary in respect of which it submits a claim for gift aid relief, or
- (b) comply with paragraphs (5) to (11) in relation to each such gift aid declaration.

This is subject to paragraph (4).

(2) The charity must preserve the auditable record for six years from the end of the tax year in which a gift aid declaration is given.

(3) An auditable record is a record of evidence—

- (a) of gift aid declarations and the giving of them, and
- (b) that (whether or not separate from the gift aid declarations) statements explaining the effect of section 424 of ITA 2007 were given to donors in accordance with regulation 5(2) or regulation 6(2)(b), as the case may be,

in a form, and to a standard, which can be inspected and audited by HMRC.

(4) If HMRC notify a charity that the record relating to a particular gift aid declaration or class of gift aid declarations, in respect of which it submitted a claim to HMRC, does not satisfy HMRC, the charity must comply with paragraphs (5) to (11) in relation to the gift aid declarations in question.

(5) In each case where paragraph (1)(b) or (4) applies, the charity must send the donor a written statement containing—

- (a) the information required by regulation 5(1)(a) to (d) or 6(1)(a) to (d), as the case may be,
- (b) an explanation of the effect of section 424 of ITA 2007⁽⁸⁾,
- (c) the date on which the charity sends the statement to the donor, and
- (d) a statement that the donor is entitled to cancel the gift aid declaration by giving notice to the charity within 30 days beginning with the date in sub-paragraph (c).

(6) The statement required by paragraph (5) must be sent—

- (a) within 30 days beginning with the day on which the charity receives—
 - (i) the gift aid declaration, in a case falling within paragraph (1)(b), or
 - (ii) the notification from HMRC, in a case falling within paragraph (4), or
- (b) by such other time as may be agreed between an officer of Revenue and Customs and the charity.

(7) A statement required under paragraph (5) may be sent using written methods of electronic communications.

(8) Where paragraph (5) applies, the donor is entitled to cancel the gift aid declaration by giving notice of cancellation (“cancellation notice”) to the charity under paragraph (5)(d).

(9) The cancellation notice may be given in writing or orally, including the use of written or oral methods of electronic communications.

(10) The charity must maintain a record of—

- (a) statements sent under paragraph (5), and
- (b) cancellation notices received under paragraph (7),

in a form, and to a standard, which can be inspected and audited by HMRC.

(11) The charity must preserve the record for six years from the end of the tax year in which the statement is sent or the cancellation notice is received, as the case may be.

Circumstances in which a gift aid declaration is treated as never having had effect

10. A gift aid declaration shall be treated for the purposes of the Tax Acts as never having had effect where—

- (a) in a case where it is required to do so by regulation 9(5), the charity does not send a written statement in respect of the gift aid declaration to the donor by the date specified in regulation 9(6)(a), or the time agreed under regulation 9(6)(b), as the case may be,
- (b) the donor cancels the gift aid declaration by giving a cancellation notice under regulation 9(8), or
- (c) in a case where the charity is required by regulation 9(10) and (11) to maintain a record of statements sent or notices of cancellation received in relation to a gift aid declaration, HMRC notify the charity that the record does not satisfy HMRC.

Circumstances in which a gift aid declaration ceases to have effect

11. Where a donor notifies a charity of the cancellation of a gift aid declaration, other than under regulation 9(8), the gift aid declaration ceases to have effect for the purposes of the Tax Acts from the date on which the charity receives that notification, unless a later date is specified in the notice.

(8) 2007 c. 3; section 424 was amended by S.I. 2009/2859 and paragraph 79 of Schedule 8 to the Taxation (International and Other Provisions) Act 2010 (c. 8).

PART 3

PENALTIES

Penalties for failure to comply with Regulations

- 12.**—(1) A donor intermediary is liable to a penalty of £50 in respect of each failure to—
- (a) maintain a record of an authorisation, in accordance with regulation 7(1) and (2),
 - (b) maintain a record of the date on which the explanation of section 424 of ITA 2007 was given, in accordance with regulation 7(3) and (4),
 - (c) maintain a record of a notice of cancellation, in accordance with regulation 7(5) and (6),
 - (d) send an annual statement, in accordance with regulation 8(1), and
 - (e) maintain a record of an annual statement, in accordance with regulation 8(4) and (5).
- (2) But in relation to a tax year a donor intermediary's liability for penalties under paragraph (1) attributable to that tax year is subject to a limit of £3,000.
- (3) For the purposes of paragraph (2) a failure referred to—
- (a) in paragraph (1)(a) is attributable to the tax year in which the authorisation was obtained,
 - (b) in paragraph (1)(b) is attributable to the tax year in which the explanation of section 424 of ITA 2007 was given,
 - (c) in paragraph (1)(c) is attributable to the tax year in which the notice of cancellation was given, and
 - (d) in paragraph (1)(d) and (e) is attributable to the tax year in respect of which the annual statement was required to be sent.
- (4) A donor intermediary who fails to comply with a notice under regulation 7(7) to produce a record for inspection is liable to a penalty of £300.
- (5) If the failure mentioned in paragraph (4) continues after the date on which a penalty is imposed under that paragraph in respect of the failure, the donor intermediary is liable to a further penalty or penalties not exceeding £60 for each subsequent day on which the failure continues.

Assessment of penalties

- 13.**—(1) If a donor intermediary becomes liable to a penalty under regulation 12, an officer of Revenue and Customs may assess the penalty.
- (2) If an officer does so, the officer must notify the donor intermediary.
- (3) An assessment of a penalty under regulation 12(1) must be made within the period of 12 months beginning with the date on which the failure first came to the attention of an officer of Revenue and Customs.
- (4) An assessment of a penalty under regulation 12(4) or (5) must be made within the period of 12 months beginning with the date on which donor intermediary became liable to the penalty.

Suspension of penalties

- 14.**—(1) HMRC may suspend a penalty under regulation 12(1) or (4) by notice in writing to the donor intermediary liable to the penalty.
- (2) A notice must specify—
- (a) that the penalty is to be suspended,
 - (b) a period of suspension not exceeding two years, and
 - (c) conditions of suspension to be complied with by the donor intermediary.
- (3) HMRC may suspend a penalty only if compliance with a condition of suspension would help the donor intermediary to avoid becoming liable to further penalties under these Regulations.
- (4) A condition of suspension may specify—
- (a) action to be taken, and

- (b) a period within which it must be taken.
- (5) On the expiry of the period of suspension—
 - (a) if the donor intermediary satisfies HMRC that the conditions of suspension have been complied with, the suspended penalty is cancelled, and
 - (b) otherwise, the suspended penalty becomes payable.
- (6) If, during the period of suspension of a penalty under paragraph (1), the donor intermediary becomes liable for another penalty under these Regulations, the suspended penalty becomes payable.

Right to appeal in respect of penalties

15.—(1) A donor intermediary may appeal against a decision of HMRC that a penalty is payable under these Regulations.

(2) A donor intermediary may appeal against a decision of HMRC as to the amount of a penalty payable under these Regulations.

(3) A donor intermediary may appeal against a decision of HMRC not to suspend a penalty payable under these Regulations.

(4) A donor intermediary may appeal against a decision of HMRC setting conditions of suspension of a penalty under these Regulations.

Procedure on appeal in respect of penalties

- 16.**—(1) Notice of an appeal under regulation 15 must be given—
- (a) in writing,
 - (b) to HMRC, and
 - (c) before the end of 30 days beginning with the date on which the notification was given—
 - (i) under regulation 13 in the case of an appeal under regulation 15(1) to (3), or
 - (ii) under regulation 14 in the case of an appeal under regulation 15(4).
- (2) It must state the grounds of appeal.
- (3) On an appeal under regulation 15(1) that is notified to the tribunal, the tribunal may confirm or cancel the assessment.
- (4) On an appeal under regulation 15(2) that is notified to the tribunal, the tribunal may—
- (a) confirm the assessment, or
 - (b) substitute another assessment that the officer of Revenue and Customs had power to make.
- (5) On an appeal under regulation 15(3) that is notified to the tribunal—
- (a) the tribunal may order HMRC to suspend the penalty only if it thinks that HMRC’s decision not to suspend was flawed, and
 - (b) if the tribunal orders HMRC to suspend the penalty—
 - (i) the donor intermediary may appeal against a provision of the notice of suspension, and
 - (ii) the tribunal may order HMRC to amend the notice.
- (6) On an appeal under regulation 15(4) that is notified to the tribunal, the tribunal may—
- (a) affirm the conditions of suspension, or
 - (b) vary the conditions of suspension, but only if the tribunal thinks that HMRC’s decision in respect of the conditions was flawed.
- (7) In paragraphs (5) and (6) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.
- (8) Regulation 14 is subject to the possibility of an order under this regulation.

Enforcement of penalties

17.—(1) A penalty under these Regulations must be paid before the end of the period of 30 days beginning with the date mentioned in paragraph (2).

(2) That date is—

- (a) the date on which the notification under regulation 13 is given in respect of the penalty, or
- (b) if a penalty is suspended under regulation 14, the date on which the suspended penalty becomes payable, or
- (c) if a notice of appeal under regulation 16 is given, the date on which the appeal is finally determined or withdrawn.

(3) A penalty under these Regulations may be enforced as if it were income tax charged in an assessment and due and payable.

[Name]

[Name]

Date

Two of the Commissioners for Her Majesty's Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Donations to Charity by Individuals (Appropriate Declarations) Regulations 2000 (S.I. 2000/2074) (“the 2000 Regulations”) set out the requirements for a gift aid declaration (“declaration”) given by an individual donor (“donor”) in respect of their charitable donations.

Section 20 of the Finance Act 2015 (c. 11) amended the gift aid relief provisions in Chapter 2 of Part 8 of the Income Tax Act 2007 (c. 3) to enable declarations to be given by an intermediary acting on behalf of a donor (“donor intermediary”) and to be received by intermediaries acting on behalf of charities.

These Regulations specify the manner in which a declaration is to be given on or after 6th April 2017, providing for the involvement of donor intermediaries. They also impose record keeping requirements on charities and donor intermediaries and require donor intermediaries to provide statements of account to donors.

Regulation 3(1) amends the 2000 Regulations so that they do not apply to gifts made after 5th April 2017. Regulation 3(2) provides that a declaration given before 6th April 2017 which is capable of covering charitable donations made on or after that date, continues to have effect.

Regulation 4 specifies the manner in which a declaration may be given.

Regulation 5 sets out the requirements for a declaration given by a donor and regulation 6 sets out the requirements for a declaration given by a donor intermediary.

Regulation 7 imposes record keeping requirements on a donor intermediary.

Regulation 8 specifies the circumstances in which a donor intermediary must send an annual statement to a donor.

Regulation 9 imposes record keeping requirements on a charity and specifies the circumstances in which it must send statements to a donor.

Regulation 10 specifies the circumstances in which a declaration is treated as never having had effect and regulation 11 specifies the circumstances in which a declaration ceases to have effect.

Regulations 12 to 17 make provision for penalties to be imposed on donor intermediaries for breach of specified obligations under these Regulations.

Annex B: Draft Explanatory Memorandum

EXPLANATORY MEMORANDUM TO

THE DONATIONS TO CHARITY (GIFT AID DECLARATIONS) REGULATIONS 2016

2016No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue & 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 These 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 the behalf of multiple charities.
- 2.2 These 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 These 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. The new process of creating GADs on the donor's behalf is optional and if the intermediary and/or charity feels the existing process, of collecting a GAD from a donor each time an individual makes a donation to charity, will yield a higher Gift Aid return then they can still use this process.
- 2.4 These Regulations ensure that 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 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 [XX] of the Finance Act 2016 (c. [XX])) have been used.
- 3.2 Regulation 5(1)(c) requires that a GAD given by a donor must "identify the gift or gifts" to which it relates. This terminology is familiar to the charity sector from

regulation 4(1)(c) of the 2000 Regulations, where it provides the basis for a donor to give what is referred to as an “enduring GAD” which covers more than one gift. In contrast, regulation 6(1)(c) requires that a GAD given by a donor intermediary must “identify the gift” to which it relates. That is, a donor intermediary cannot give an enduring GAD. 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).

- 3.3 Part 3 of the Regulations 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 the Regulations means that the charity would not be entitled to claim Gift Aid relief in respect of a donation.

Other matters of interest to the House of Commons

- 3.4 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 The 2000 Regulations set out the requirements for a GADs given by an individual donor in respect of their charitable donations.
- 4.2 Section 20 of the Finance Act 2015 amended the Gift Aid relief provisions in Chapter 2 of Part 8 of the Income Tax Act 2007 to enable GADs to be given by an intermediary acting on behalf of a donor and to be received by intermediaries acting on behalf of charities.

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 £5bn in Gift Aid tax repayments to the sector since 2010–11. The Government is committed to increasing Gift Aid on eligible donations and is seeking ways to achieve this aim.
- 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, we expect 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.

8. Consultation outcome

8.1 The Regulations being consulted on follow the extensive consultation with external stakeholders referred to in paragraph 7.2.

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 A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

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 the instrument.

Annex C: Relevant draft primary legislation

Amendments made to legislation at Finance Act 15

Intermediaries and Gift Aid

(1) Chapter 2 of Part 8 of ITA 2007 (gift aid) is amended as follows.

(2) In section 416 (meaning of .qualifying donation. for the purpose of gift aid relief).

(a) in subsection (1)(b).

(i) after the individual insert, or an intermediary representing the individual, and

(ii) after the charity insert, or an intermediary representing the charity

(b) after subsection (1) insert.

(1A) For the purpose of subsection (1)(b) an intermediary is.

(a) a person authorised by the individual to give a gift aid declaration on behalf of that individual to the charity,

(b) a person authorised by a charity to receive a gift aid declaration on behalf of that charity, or

(c) a person authorised to perform both of the roles described in paragraphs (a) and (b)

(3) For section 428(3) (regulations in relation to gift aid declarations) substitute.

(3) The regulations may also require.

(a) charities, or intermediaries within the meaning of section 416(1A), to keep records with respect to declarations received from individuals or from those intermediaries, and

(b) intermediaries to produce, for inspection by an officer of the Commissioners for Her Majesty's Revenue and Customs, any records required to be kept by those intermediaries by regulations made under paragraph (a).

(4) The regulations may also make different provision for different cases or circumstances, including.

(a) different provision for declarations made in a different manner or by different descriptions of persons, and

(b) different provision depending on whether or not an intermediary, within the meaning of section 416(1A), is involved in the giving or receiving of the declaration

(4) The amendments made by this section have effect in relation to gifts made on

or after a day appointed in regulations made by the Treasury.

(5) Section 1014(4) of ITA 2007 (regulations etc subject to annulment) does not apply to regulations under subsection (4).

Legislation included in Finance Bill 16

Gift aid: power to impose penalties on charities and intermediaries

(1) At the end of section 428 of ITA 2007 insert—

“(5) The regulations may also make provision—

(a) for the imposition of a penalty of a specified amount (which must not exceed £3000) for a failure to comply with a specified requirement imposed by the regulations,

(b) for the assessment and recovery of the penalty (which may include provision about the reduction of the penalty in specified circumstances), and

(c) conferring a right of appeal against a decision that a penalty is payable.”

(2) The amendment made by this section comes into force on such day as the Treasury may by regulations made by statutory instrument appoint.

Annex D: Relevant primary legislation before Finance Act 2015

416 Meaning of “qualifying donation”

(1) A gift made to a charity by an individual is a qualifying donation for the purposes of this Chapter if—

- (a) conditions A to F are met, and
- (b) the individual gives the charity a gift aid declaration relating to the gift (see section 428).

(2) Condition A is that the gift takes the form of a payment of a sum of money.

(3) Condition B is that the payment is not subject to any condition as to repayment.

(4) Condition C is that the payment is not a sum falling within section 713(3) of ITEPA 2003 (payroll deduction scheme).

(5) Condition D is that the payment is not deductible in calculating the individual's income from any source.

(6) Condition E is that the payment is not conditional on, associated with or part of an arrangement involving, the acquisition of property by the charity from the individual or a person connected with the individual.

An acquisition by way of gift is ignored for the purposes of this condition.

(6A) Condition EA is that the payment is not by way of, and does not amount in substance to, waiver by the individual of entitlement to sums (whether of principal or return) due to the individual from the charity in respect of an amount—

- (a) advanced to the charity, and
- (b) in respect of which a person, whether or not the individual, has obtained relief under Part 5B (relief for social investments)

(7) Condition F is that—

- (a) there are no benefits associated with the gift, or
- (b) there are benefits associated with the gift but the restrictions on those benefits are not breached.

See sections 417 to 421 for provision about benefits associated with gifts.

428 Meaning of “gift aid declaration”

(1) In this Chapter “gift aid declaration” means a declaration which—

- (a) is given in the manner specified by regulations made by the Commissioners for Her Majesty's Revenue and Customs, and
- (b) contains any information and any statements required by the regulations.

(2) The regulations may provide for declarations—

- (a) to have effect,
 - (b) to cease to have effect, or
 - (c) to be treated as never having had effect,
- in any circumstances and for any purposes specified by the regulations.

(3) The regulations may—

- (a) require charities to keep records with respect to declarations received from individuals, and
- (b) make different provision for declarations made in a different manner.