



Childcare Payments Act 2014

2014 CHAPTER 28

Recovery of top-up payments

35 Recovery of top-up payments where tax credits award made on a review

- (1) This section applies where—
 - (a) a person (“P”), or (in the case of a joint claim) P or P’s partner at the time of the claim, applies for a review under section 21A of the Tax Credits Act 2002 of a decision not to make an award of a tax credit or to terminate such an award, and
 - (b) the conclusion on the review is that the decision is varied or cancelled.
- (2) P is liable to pay HMRC an amount equal to the sum of—
 - (a) any top-up payments made to P for an entitlement period falling wholly within the relevant period, and
 - (b) the relevant proportion of the sum of any top-up payments made to P for an entitlement period falling partly within the relevant period.
- (3) The “relevant period” means the period in relation to which the following conditions are met—
 - (a) it falls within the review period (see subsection (4)),
 - (b) it is a period for which an award of a tax credit is made, or continues, as a result of the variation or cancellation of the decision, and
 - (c) where the award has been made to P and P’s partner on a joint claim, the person who was P’s partner at the time of the claim has been P’s partner throughout the period.
- (4) The “review period” means the period which—
 - (a) begins with the day on which the decision was made, and
 - (b) ends with—
 - (i) the day on which the person who applied for the review is notified of its conclusions, or
 - (ii) if that day falls within an entitlement period for which P has made a valid declaration of eligibility, the last day of the entitlement period.

- (5) In subsection (2)(b) the “relevant proportion”, in relation to top-up payments made for an entitlement period, means a proportion equal to the proportion of the entitlement period which falls within the relevant period.
- (6) In this section “joint claim” has the same meaning as in the Tax Credits Act 2002.
- (7) For provision about terminating an award of a tax credit when a declaration of eligibility is made for a subsequent entitlement period, see section 30.

36 Recovery of top-up payments where tax credits award made on appeal

- (1) This section applies where—
 - (a) a person (“P”), or (in the case of a joint claim) P or P’s partner at the time of the claim, has brought an appeal under section 38 of the Tax Credits Act 2002 against a decision not to make an award of a tax credit or to terminate such an award, and
 - (b) the appeal is upheld.
- (2) P is liable to pay HMRC an amount equal to the sum of—
 - (a) any top-up payments made to P for an entitlement period falling wholly within the relevant period, and
 - (b) the relevant proportion of the sum of any top-up payments made to P for an entitlement period falling partly within the relevant period.
- (3) The “relevant period” means the period in relation to which the following conditions are met—
 - (a) it falls within the appeal period (see subsection (4)),
 - (b) it is a period for which an award of a tax credit is made, or continues, as a result of the appeal being upheld, and
 - (c) where the award has been made to P and P’s partner on a joint claim, the person who was P’s partner at the time of the claim has been P’s partner throughout the period.
- (4) The “appeal period” means the period which—
 - (a) begins with the day on which the decision was made, and
 - (b) ends with—
 - (i) the day on which the person who brought the appeal is notified of the decision on the appeal, or
 - (ii) if that day falls within an entitlement period for which P has made a valid declaration of eligibility, the last day of the entitlement period.
- (5) In subsection (2)(b) the “relevant proportion”, in relation to top-up payments made for an entitlement period, means a proportion equal to the proportion of the entitlement period which falls within the relevant period.
- (6) In this section “joint claim” has the same meaning as in the Tax Credits Act 2002.
- (7) For provision about terminating an award of a tax credit when a declaration of eligibility is made for a subsequent entitlement period, see section 30.

37 Recovery of top-up payments where universal credit award made on revision

- (1) This section applies where any of the following decisions has been revised under section 9 of the Social Security Act 1998 or Article 10 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))—
 - (a) a decision not to make an award of universal credit to a person (“P”) or to P and P’s partner jointly;
 - (b) a decision to terminate such an award.
- (2) P is liable to pay HMRC an amount equal to the sum of—
 - (a) any top-up payments made to P for an entitlement period falling wholly within the relevant period, and
 - (b) the relevant proportion of the sum of any top-up payments made to P for an entitlement period falling partly within the relevant period.
- (3) The “relevant period” means the period in relation to which the following conditions are met—
 - (a) it falls within the revision period (see subsection (4)),
 - (b) it is a period for which an award of universal credit is made, or continues, as a result of the revision of the decision, and
 - (c) where the award has been made to P and P’s partner jointly, the person who was P’s partner at the time of the decision has been P’s partner throughout the period.
- (4) The “revision period” means the period which—
 - (a) begins with the day on which the decision was made, and
 - (b) ends with—
 - (i) the day on which the person in relation to whom the decision was made is notified that the decision has been revised, or
 - (ii) if that day falls within an entitlement period for which P has made a valid declaration of eligibility, the last day of the entitlement period.
- (5) In subsection (2)(b) the “relevant proportion”, in relation to top-up payments made for an entitlement period, means a proportion equal to the proportion of the entitlement period which falls within the relevant period.

38 Recovery of top-up payments where universal credit award made on appeal

- (1) This section applies where—
 - (a) a person (“P”), or (in the case of a claim made jointly) P or P’s partner at the time of the claim, has brought an appeal under the appropriate legislation against a decision not to make an award of universal credit or to terminate such an award, and
 - (b) the appeal is upheld.
- (2) In subsection (1) “the appropriate legislation” means any of the following—
 - (a) the Social Security Act 1998;
 - (b) the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10));
 - (c) Part 1 of the Welfare Reform Act 2012;
 - (d) any provision made for Northern Ireland which corresponds to that Part of that Act.

- (3) P is liable to pay HMRC an amount equal to the sum of—
- (a) any top-up payments made to P for an entitlement period falling wholly within the relevant period, and
 - (b) the relevant proportion of the sum of any top-up payments made to P for an entitlement period falling partly within the relevant period.
- (4) The “relevant period” means the period in relation to which the following conditions are met—
- (a) it falls within the appeal period (see subsection (5)),
 - (b) it is a period for which an award of universal credit is made, or continues, as a result of the appeal being upheld, and
 - (c) where the award has been made to P and P’s partner jointly, the person who was P’s partner at the time of the claim has been P’s partner throughout the period.
- (5) The “appeal period” means the period which—
- (a) begins with the day on which the decision was made, and
 - (b) ends with—
 - (i) the day on which the person who brought the appeal is notified of the decision on the appeal, or
 - (ii) if that day falls within an entitlement period for which P has made a valid declaration of eligibility, the last day of the entitlement period.
- (6) In subsection (3)(b) the “relevant proportion”, in relation to top-up payments made for an entitlement period, means a proportion equal to the proportion of the entitlement period which falls within the relevant period.

39 Recovery of top-up payments where person fails to give childcare account notice

- (1) This section applies where—
- (a) a person has made a declaration of eligibility for an entitlement period,
 - (b) on the day on which the person made the declaration, the person, or a person who was the person’s partner at that time, (“E”) was an eligible employee in relation to a relevant childcare scheme, and
 - (c) E has failed to give E’s employer a childcare account notice before the end of the relevant period (see subsection (2)).
- (2) In subsection (1)(c) “the relevant period” means—
- (a) the entitlement period for which the declaration was made, or
 - (b) where the declaration was made for the purposes of opening a childcare account, the period of 3 months beginning with the day on which it was made.
- (3) The person who made the declaration is liable to pay HMRC an amount equal to the sum of any top-up payments made to the person for the entitlement period.
- (4) Expressions used in this section and in section 12 have the same meaning in this section as they have in that section.

40 Recovery of top-up payments in other cases

- (1) If—

- (a) a top-up payment is made into a childcare account, and
 - (b) the account-holder is not entitled to the top-up payment,the account-holder is liable to pay HMRC an amount equal to the amount of the top-up payment.
- (2) If—
 - (a) a person who holds a childcare account causes or permits a prohibited payment to be made from the account, and
 - (b) at the time of the payment the person knew, or ought to have known, that the payment was a prohibited payment,the person is liable to pay HMRC an amount not exceeding the top-up element of the prohibited payment.
- (3) If a person fails to make a payment in accordance with a requirement imposed by subsections (1) to (3) of section 23 (refunds of payments made from childcare accounts), the person is liable to pay HMRC the top-up element of the payment.
- (4) If a prohibited payment is made to a person from a childcare account as a result of the dishonesty of that or some other person, each of those persons is liable to pay HMRC the top-up element of the prohibited payment.
- (5) Where—
 - (a) a body corporate is liable under subsection (3) or (4) to pay an amount to HMRC, and
 - (b) the liability is attributable (wholly or partly) to the dishonesty of a person falling within subsection (6),that person (as well as the body corporate) is liable to pay that amount to HMRC.
- (6) The persons are—
 - (a) a director, manager, secretary or similar officer of the body corporate;
 - (b) any person who was purporting to act in such a capacity.
- (7) Where the affairs of a body corporate are managed by its members, subsection (5) applies in relation to the acts and defaults of a member, in connection with that management, as if the member were a director of the body corporate.
- (8) Where—
 - (a) a Scottish firm is liable under subsection (3) or (4) to pay an amount to HMRC, and
 - (b) the liability is attributable (wholly or partly) to the dishonesty of a partner of the firm or a person purporting to act as such a partner,that person (as well as the firm) is liable to pay that amount to HMRC.
- (9) For provision about calculating the top-up element of a payment, see section 21.

41 Assessment and enforcement of recoverable amounts

- (1) Where a person is liable under any of sections 35 to 40 (“the relevant section”) to pay an amount to HMRC—
 - (a) HMRC may assess the amount, and
 - (b) if they do so, they must notify the person.
- (2) No assessment may be made under this section after—

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- (a) the end of the period specified in subsection (3), or
 - (b) if earlier, the end of the period of 12 months beginning with the day on which HMRC first believed, or had reasonable grounds for believing, that the person was liable under the relevant section to pay an amount to HMRC.
- (3) The period referred to in subsection (2)(a) is—
- (a) the period of 4 years beginning with the day on which the person became liable under the relevant section to pay an amount to HMRC, or
 - (b) in a case where the person became liable under the relevant section to pay an amount to HMRC as a result of the person's dishonesty, the period of 20 years beginning with that day.
- (4) Where two or more persons—
- (a) are liable under section 40(3) or (4) to pay an amount to HMRC, and
 - (b) have each been notified of an assessment under this section in respect of the amount,
- each of those persons is jointly and severally liable to pay the amount assessed under this section.
- (5) Where a person is notified of an assessment under this section, the amount payable as a result of the assessment must be paid—
- (a) in a case where the person does not apply for a review of the assessment within the period specified in section 57(2)(a), before the end of that period,
 - (b) in a case where the person applies for a review of the assessment but does not give notice of an appeal against the assessment, before the end of the period in which notice of such an appeal could have been given, or
 - (c) in a case where notice of such an appeal has been given, on the day on which the appeal is determined or withdrawn.
- (6) A requirement to pay an amount to HMRC under any of sections 35 to 40 may be enforced as if the amount were income tax charged in an assessment and due and payable.

See also sections 52 to 54 (which contain further powers to recover amounts owed to HMRC).