

CHILDCARE PAYMENTS ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Recovery of Top-Up Payments

Section 40: Recovery of top-up payments in other cases

169. **Section 40** sets out other circumstances when HMRC will be able to recover top-up payments. Top-up payments will be recoverable if they are paid to a person who was not entitled to them, or when they are used for non-qualifying purposes.
170. Subsection (1) provides that if a top-up payment is made into a person's childcare account and that person is not entitled to it, the person must pay HMRC an amount equal to the amount of the top-up payment which they received.
171. Subsection (2) provides that in cases where a person causes or allows a prohibited payment (as defined in section 20) to be made from a childcare account, where they knew or ought to have known that it was a prohibited payment, that person will be liable to repay HMRC an amount that does not exceed the value of the top-up element of the prohibited payment concerned. Subsection (9) refers to section 21 which sets out how the top-up element of a prohibited payment is to be calculated.
172. Subsection (3) provides that where a person fails to make a payment in accordance with section 23, they are liable to pay HMRC the top-up element of that payment.
173. Subsection (4) provides that where a prohibited payment from a childcare account is made to a person due to the dishonest action by them or another person, each person involved in the dishonest action will be liable to repay HMRC the top-up element of the prohibited payment in question.
174. Subsection (5) provides that where a company is liable to pay an amount to HMRC in accordance with subsection (3) or (4) and that liability is because of the dishonesty of one of its directors or officers, that person along with the company is also liable to repay HMRC the amount. Subsection (8) applies where a Scottish partnership is liable to repay an amount under this section as a result of dishonesty by a partner or by a person purporting to act as a partner. In such cases, both that person and the partnership will be liable to pay that amount to HMRC.
175. Subsection (7) provides that where a company is managed by its members (for example, a co-operative), subsection (5) will apply to the actions of a member in relation to the management of the company as if that person were a director of that company.