

CHILDCARE PAYMENTS ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Recovery of Top-Up Payments

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

157. **Section 35** sets out the rules that apply where a person who has a childcare account, or the person's partner, has applied for a review of a decision not to make, or to terminate, a tax credit award and the decision is changed. Where this means that they receive a backdated tax credit award, there would be a period when they would have received support under both schemes. The section allows for the recovery of top-up payments received during any entitlement period or part of an entitlement period that overlaps with both the period of the tax credits review and the period for which a tax credit award was made or continued as a result of the review decision. The effect of this provision is to prevent a person getting support under both schemes.
158. Subsection (2) provides that the person must pay HMRC an amount equal to the top-up payments made for an entitlement period falling within the 'relevant period', or the 'relevant proportion' of top-up payments where only part of the entitlement period overlaps with the 'relevant period'. For example, if a person has received £500 of top-up payments during an entitlement period, and one month of that entitlement period falls within the 'relevant period', the amount the person would be liable to pay would be a third of £500. Where a person has not received any top-up payments there will be nothing for them to pay.
159. Subsections (3) and (4) set out how the 'relevant period' is to be determined. This is a period that falls within both the 'review period' and the period for which a tax credit award was made or continued as a result of the review. The 'review period' is defined as starting on the day the decision is made and ending on the day the person who applied for the review is notified of its conclusions or, if that day is part way through an active entitlement period, the last day of that entitlement period. Thus the review period is the maximum period for which the person could have been entitled to childcare support under both schemes.

Section 36: Recovery of top-up payments where tax credit award made on appeal

160. **Section 36** sets out the rules that apply where a person has a childcare account and the person or their partner also has an ongoing tax credit appeal which is subsequently upheld. If the person's tax credit appeal is upheld their tax credit award will be backdated, possibly for some months, and therefore there could be a significant period when the person is entitled to support under both this scheme and under tax credits. The section allows for the recovery of top-up payments received during any entitlement period that falls within both the appeal period and the period for which the award of tax credits is made or continued as a result of the appeal decision. The effect of this provision is to prevent a person getting support under both schemes.

161. Subsection (1) provides for this rule to apply where a person or their partner has an appeal upheld against a decision either not to make an award of tax credits or to terminate a tax credit award.
162. Subsection (2) provides that the person must pay HMRC an amount equal to the top-up payments made for an entitlement period falling within the 'relevant period', or the 'relevant proportion' of top-up payments where only part of the entitlement period overlaps with the 'relevant period'. Subsection (5) sets out that the 'relevant proportion' of any top-up payments is equal to the proportion of the entitlement period which falls within the relevant period.
163. Subsections (3) and (4) set out how the 'relevant period' is to be determined. This is a period which falls within both the appeal period and the period for which the award of tax credits is made or continued as a result of the appeal decision. The 'appeal period' begins on the day on which the decision which is the subject of the appeal is made and ends on the day the person is notified of the decision on the appeal or, if that day is part way through an active entitlement period, the last day of that period.

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

164. **Section 37** makes provision about universal credit which corresponds to that made by section 35 in relation to tax credits.

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

165. **Section 38** makes provision about universal credit which corresponds to that made by section 36 in relation to tax credits.

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

166. **Section 39** sets out the rules that apply where a person has a childcare account, they or their partner are part of a relevant childcare scheme as set out in section 12 and they fail to leave that scheme. This section allows HMRC to recover top-up payments that the person has received.
167. Subsection (1) provides for the section to apply where a person makes a declaration of eligibility in a case where they or their partner are included in an employer's tax-exempt childcare scheme and they (or their partner) fail to leave the scheme before the end of the 'relevant period'. Under subsection (3) an amount equal to any top-up payments made in the entitlement period will be payable to HMRC by the person who made the declaration.
168. Subsection (2) defines the 'relevant period' as the entitlement period for which the declaration was made, or, if the declaration was made when opening a childcare account, the three-month period beginning with the day the declaration was made.

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.

Section 41: Assessment and enforcement of recoverable amounts

176. **Section 41** provides for the process by which HMRC may assess and enforce amounts which are recoverable under sections 35 to 40. HMRC must notify a person if it assesses that they are liable to repay such an amount.
177. Subsections (2) and (3) impose time limits on HMRC for making assessments. An assessment must be made by the earlier of:
 - four years from the time the person first became liable to pay the amount to HMRC (or, in cases of dishonesty, 20 years from that time), or
 - 12 months from the day HMRC first believed, or had reasonable grounds to believe, that the person was liable to pay the required amount.
178. Subsection (5) requires a person to pay an amount assessed under this section:
 - within 30 days, if they do not apply for a review;
 - within 30 days of the end of the review, if they do not appeal against its conclusion; and
 - if they do appeal, on the day the appeal is decided or withdrawn.
179. Subsection (4) provides that if two or more people have been notified that they are liable to pay an amount to HMRC as a result of an assessment relating to subsection (3) or (4) of section 40, then that can be enforced against them either individually or together.
180. Subsection (6) provides that the requirement to pay any amount to HMRC can be enforced in the same way as income tax which is due.