

2022 No. 1208

SOCIAL SECURITY

**The Tax Credits Act 2002 (Additional Payments Modification
and Disapplication) Regulations 2022**

<i>Made</i>	- - - -	<i>18th November 2022</i>
<i>Laid before Parliament</i>		<i>21st November 2022</i>
<i>Coming into force</i>	- -	<i>22nd December 2022</i>

The Commissioners for His Majesty’s Revenue and Customs, in exercise of the powers conferred by sections 6(5) and (6) and 10(1) of the Social Security (Additional Payments) Act 2002^(a), make the following Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Tax Credits Act 2002 (Additional Payments Modification and Disapplication) Regulations 2022 and come into force on 22nd December 2022 but regulations 2 to 6 have effect from 28th June 2022.

(2) In these Regulations “additional payment” means payments made by His Majesty’s Revenue Customs in accordance with section 1(2) or 4(1) or (2) of the Social Security (Additional Payments) Act 2002.

Modification and disapplication of the Tax Credits Act 2002

2. The Tax Credits Act 2002^(b) is modified as follows.

3. In respect of an additional payment, made to a person who is, or persons who are, not entitled to the additional payment, sections 14 to 19 are disappplied.

4. Section 20^(c) has effect as if after subsection (5), there were inserted—

“(5A) Where the Board^(d) have reasonable grounds for believing that an additional payment has been paid to a person, or two persons jointly, by reference to a child tax credit or working tax credit and that the person or persons had no entitlement to the payment, the Board may decide that the additional payment was paid incorrectly.

(a) 2002 c. 38.

(b) 2002 c. 21. Part 1 of the Tax Credits Act 2002 (but not Schedule 1 or 3) was repealed by paragraph 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5) as commenced by S.I. 2019/167. However, this repeal is subject to the savings provisions in article 3 of that instrument, under which tax credits continue to subsist for specific categories of claimant.

(c) Section 20 was relevantly amended by Schedule 15 to the Finance (No. 2) Act 2017 (c. 32), article 2 of S.I. 2014/886 and article 2 of S.I. 2021/44.

(d) “Board” is defined in section 67 as meaning the Commissioners of Inland Revenue. By virtue of section 50(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11), references to the Board are to be read as references to the Commissioners for HMRC.

(5B) But no decision may be made under subsection (5A) after the period of five years beginning with the end of the tax year in which the additional payment is made.”

5. Section 28(a) has effect as if—

- (a) in subsection (1)—
 - (i) after “sections 18 to 21C),” there were inserted “or where the Commissioners have decided that an additional payment was paid incorrectly,”,
 - (ii) after “any part of it,” there were inserted “or the incorrectly paid additional payment, or any part of it,”,
- (b) in subsection (2), after “an excess” there were inserted “or incorrectly paid additional payment”,
- (c) in subsections (3) and (4), after “awarded” there were inserted “or to whom the additional payment was made”.

6. Section 67(b) has effect as if, at the appropriate place, there were inserted—

““*additional payment*” means a payment made under section 1(2) or 4(1) or (2) of the Social Security (Additional Payments) Act 2022 or a payment purporting to be a payment under any of those provisions.”

Joanna Rowland
Jonathan Athow

18th November 2022

Two of the Commissioners for His Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers in section 6(5), 6(6) and 10(1) of the Social Security (Additional Payments) Act 2022 (c. 38) (“SSAPA”). This is the first exercise of these powers. These Regulations modify the Tax Credit Act 2002 (c. 21) (“TCA 2002”) to create a distinct recovery mechanism for His Majesty’s Revenue and Customs (“HMRC”) to recover additional payments made under section 1(2) or 4(1) or (2) of SSAPA where it is determined that a person has received a payment of the additional payment, to which they were not entitled.

Regulation 1 provides for citation, commencement and interpretation. In addition, and made under section 6(6) of SSAPA, regulation 1 provides that regulations 2 to 6 will be applied retrospectively from 28 June 2022.

Regulation 3 disapplies sections 14 to 19, of the TCA 2002, in respect of additional payments paid to persons who are not entitled to the additional payment. As a consequence of this regulation such a person, from whom HMRC are seeking to recover an additional payment, will not be able to seek a mandatory review of the decision to recover the additional payment or to appeal that decision to the First-tier Tribunal.

Regulation 4 modifies section 20 of the TCA 2002, so as to apply that section to additional payments made under section 1(2) or 4(1) or (2) of SSAPA. By applying that section, additional payments may be recovered from recipients who are not entitled to those additional payments under SSAPA. A decision that an additional payment was incorrectly paid may only be made within five years, beginning with 6th April after the tax year in which the additional payment is made.

Regulation 5 modifies subsections (1), (2), (3) and (4) of section 28 of the TCA 2002 to include payments made under SSAPA. As a consequence of this modification, any additional payment

(a) Section 28 was relevantly amended by article 6 of S.I. 2017/781 and article 2(6) of S.I. 2021/44.
(b) Section 67 has not been relevantly amended.

which should not have been made becomes an overpayment, for the purposes of the TCA 2002, and can be recovered using the recovery methods specified in section 29 of the TCA 2002.

Regulation 6 modifies section 67 of the TCA 2002 to include a definition of additional payments.

A full impact statement has not been produced because no impact on the private, voluntary or public sector is foreseen.

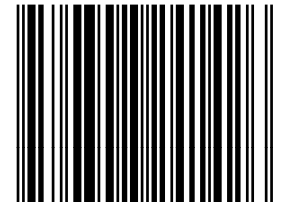
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