

EXPLANATORY MEMORANDUM TO
THE TAX CREDITS ACT 2002 (ADDITIONAL PAYMENTS MODIFICATION AND
DISAPPLICATION) REGULATIONS 2022

2022 No. 1208

1. Introduction

- 1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) on behalf of His Majesty's Treasury and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The instrument simplifies and clarifies HMRC's recoverability rules for overpayments of additional payments made in accordance, with section 1(2) or 4(1) or (2) of the Social Security (Additional Payments) Act 2022, which, result from official error and where the underlying tax credits award that enabled additional payments was fraudulent. This instrument simplifies and clarifies these rules by modifying and disapplying sections of the Tax Credits Act 2002 (TCA 2002) for the recovery of incorrect additional payments made.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The modifications to the TCA 2002 have effect from 28 June 2022. It is necessary to bring the instrument into force retrospectively as the Social Security (Additional Payments) Act 2022 came into force on 28 June 2022.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction which the instrument forms part of the law of) is the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

- 5.1 Victoria Atkins MP, Financial Secretary to the Treasury has made the following statement regarding Human Rights:

“In my view the provisions of the Tax Credits Act 2002 (Additional Payments Modification and Disapplication) Regulations 2022 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 This instrument is made in accordance with Section 6 of the Social Security (Additional Payments) Act 2022 and is the first exercise of these powers.

- 6.2 This instrument disapplies Sections 14 to 19 of the TCA 2002 in respect of overpaid additional payments for tax credits recipients where there is no entitlement, to clarify that a person will not be able to seek a Mandatory Reconsideration or Appeal a decision to recover an overpaid additional payment, as outlined in the Social Security (Additional Payments) Act 2022.
- 6.3 Section 20 of the TCA 2002 is modified to create a distinct recovery mechanism for the discovery of additional payments that have been paid in error. A decision under Section 20 that an additional payment made in error is limited by the instrument to five years, beginning from the 6 April following the tax year in which the additional payment is made.
- 6.4 Section 28 of the TCA 2002 is modified to include additional payments made under the Social Security (Additional Payments) Act 2022. This clarifies that additional payments incorrectly paid are an overpayment and can be recovered using the methods provided for in Section 29 TCA 2002.
- 6.5 Section 67 of the TCA 2002 is modified to include a definition of additional payments.

7. Policy background

What is being done and why?

- 7.1 The Government introduced additional payments for those on means-tested benefits to help with the cost of living. The payment of £650 will be paid in two lump sums and the payment is separate to a person's benefit or tax credits.
- 7.2 To receive the additional payment for tax credits, a person must have been entitled, or later found to be entitled on a day within a specified qualifying period. If a person receives both tax credits and a social security benefit from the Department for Work and Pensions (DWP), they are only entitled to one additional payment which will be paid by DWP.
- 7.3 If claimants receive an additional payment, but HMRC later finds they were not eligible for it, the additional payment may need to be paid back. The additional payment recovery policy relates to recovery powers where the additional payments have been made in error or as a result of fraud.
- 7.4 Where an HMRC fraud investigation determines the underlying tax credits has been awarded as a result of fraud, HMRC policy is that the overpaid additional payment is recoverable.
- 7.5 Where HMRC has made an error in paying the additional payment to a tax credits recipient who is not eligible or who has already received the payment either from DWP or HMRC, HMRC policy is that the overpaid additional payment is recoverable.
- 7.6 The instrument disapplies tax-credits specific decision-making mechanisms within Sections 14-19 of the TCA 2002, in favour of a simpler standalone discovery mechanism within Section 20 of the TCA 2002. This clarifies, as outlined in section 6 of the Social Security (Additional Payments) Act 2022, that there is no review or appeal right in respect of a decision that an additional payment has been made incorrectly. Claimants continue to have a review and appeal right in respect of their underlying entitlement to a tax credit.

- 7.7 The instrument clarifies that HMRC can treat an overpaid additional payment as though it were an overpayment of tax credits within section 28 of the TCA 2002. As a result, this clarifies that the overpaid additional payment will be recovered using the provisions within section 29 of the TCA 2002.
- 7.8 The instrument simplifies and clarifies the recovery mechanism to be used for overpaid additional payments. The instrument also imposes a time limit of 5 years on HMRC for a decision to be made on recovery.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.9 For the purposes of administration, section 6 of the Social Security (Additional Payments) Act 2022 applied any provision in relation to a child tax credit or working tax credit, to additional payments paid by reference to a tax credit, as if they were a payment of a tax credit. This included provision relating to overpayments and recovery.

Why is it being changed?

- 7.10 Prior to this instrument there was a need to simplify and provide clarity in respect of the discovery and recovery mechanism, to be used for overpaid additional payments.

What will it now do?

- 7.11 This instrument simplifies and clarifies the law by modifying and disapplying sections of the TCA 2002 in a limited way. The instrument also imposes a time limit of 5 years on HMRC for a decision to be made on recovery.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 As this instrument amends Primary legislation, this is not applicable.

10. Consultation outcome

- 10.1 As the instrument related to payments that are not payments of a child tax credit or working tax credit, the payments made under the Social Security (Additional Payments) Act 2022 are not within a policy area covered by section 2 of HMRC's Memorandum of Understanding with the Social Security Advisory Committee.
- 10.2 No separate consultation exercise was conducted as this instrument makes minor changes to tax credits legislation.

11. Guidance

- 11.1 These amendments will be reflected in the Tax Credits Technical Manual [Tax Credits Technical Manual - HMRC internal manual - GOV.UK \(www.gov.uk\)](#) and in guidance for claimants. The GOV.UK website will also be updated to reflect the amendments once the instrument comes into force.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A full Impact Assessment has not been prepared for this instrument because there is no, or no significant impact on the private or voluntary sectors foreseen.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is minimal as the instrument makes minor changes to account for the additional payments.
- 14.2 The value of overpaid additional payments will be accounted for separately to tax credits overpayments in HMRC's Annual Report and Accounts.
- 14.3 The instrument does not include a statutory review clause.

15. Contact

- 15.1 Mandy Clark at HMRC, Telephone: 03000 544321 or email: Mandy.clark@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 James Knipe, Deputy Director for Welfare Policy at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Victoria Atkins MP, Financial Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.