

SOCIAL SECURITY (ADDITIONAL PAYMENTS) (NO.2) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Social Security (Additional Payments) (No.2) Bill as brought from the House of Commons on 7 March 2023 (HL Bill 114).

- These Explanatory Notes have been prepared by the Department for Work and Pensions in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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These Explanatory Notes relate to the Social Security (Additional Payments) (No.2) Bill as brought from the House of Commons on 7 March 2023 (HL Bill 114)

Overview of the Bill

- 1 The Social Security (Additional Payments) (No.2) Bill makes provisions for additional payments from the 2023/24 financial year to help with the increased costs of living. Specifically, it provides for three separate payments totalling up to £900 for claimants receiving a payment of a means-tested benefit, and a payment of £150 for claimants receiving a payment of a qualifying disability benefit.
- 2 The Act aims to:
 - make provision for the Secretary of State or His Majesty's Revenue and Customs (HMRC) to make three means-tested additional payments amounting to up to £900 to an eligible person who has a qualifying entitlement to social security benefits or tax credits and sets out the specific qualifying social security benefits or tax credits;
 - make provision for the Secretary of State to make a £150 disability additional payment to an eligible individual and sets out the specific qualifying disability benefits;
 - ensure that no account is taken of an additional payment in considering a person's liability to tax; and
 - allow for data sharing to take place between HMRC and the Secretary of State to enable accurate additional payments to be made securely.

Policy background

- 3 The Chancellor of the Exchequer announced a package of measures as part of his Autumn statement on 17 November 2022 to support households with the rising cost of living. This includes cost of living payments (known as 'additional payments' in this Bill) for the most vulnerable households at a total cost of around £8.6 billion in 23/24. These are in addition to the similar measures announced in May 2022 and provided for in the Social Security (Additional Payments) Act 2022.
- 4 The additional payments will be targeted at the most vulnerable households. The Government will make payments of up to £900 to households in receipt of means-tested benefits at a total cost to the Exchequer of around £7.5 billion in 2023/24. The means-tested additional payments will be made in three payments. The Government will make payments of £150 to individuals in receipt of eligible disability benefits at a cost to the Exchequer of around £1.2 billion in 2023/24.

Legal background

- 5 The means-tested additional payments and the disability additional payments are new social security payments created by this legislation. Eligibility for these additional payments depends on eligibility for an existing means-tested or disability benefit, respectively, as determined under the legislation for the relevant qualifying benefit. Further details of the relevant legislation for the qualifying benefits are set out in the clause commentary as required. The existing legislation for the qualifying benefits remains unchanged.
- 6 These payments will be delivered by the Department for Work and Pensions (DWP) and HMRC but this will require data sharing in order to prevent duplication of payments or avoid people missing out on payments. In addition, data sharing with the Scottish Government and the Northern Ireland Executive will be needed in order to ensure these payments are delivered to recipients there. There will be a reliance on DWP and HMRC cooperating to exercise their functions in relation to additional payments through existing data sharing provisions. This Bill does apply some modifications to those provisions as required to enable data sharing for the purpose of delivering these new payments. Modifications to section 127 of the Welfare Reform Act 2012 enable data sharing between HMRC and DWP. Modifications to section 3 of the Social Security Act 1998 allow data sharing between HMRC, DWP, MoD and the Department for Communities. Section 34 of the Scotland Act 2016 is modified to allow data sharing between DWP and the Scottish Ministers.
- 7 These additional payments are being legislated for as a new benefit reserved in Great Britain. Social security is reserved in Scotland, but there are some exceptions to this reservation which are set out in Schedule 5 to the Scotland Act 1998. Some of the benefits which enable the claimant to qualify to receive these additional payments are devolved in Scotland since they are covered by an exception. However, the additional payments themselves are not devolved. The additional payments are a reserved matter as they are payments to respond to the increases in cost of living and do not fall within any of the exceptions to the reservation of social security in Scotland.
- 8 Social security is a transferred matter in Northern Ireland (except for tax credits which is not a social security benefit) but in the absence of a fully functional Northern Ireland Assembly, Parliament will legislate for Northern Ireland to provide parity of availability to these additional payments for means-tested and disability benefit recipients in Northern Ireland. Tax credits are an excepted matter in Northern Ireland and a reserved matter in Scotland and Wales. This means the UK government is responsible for tax credits for the whole of the UK.

Territorial extent and application

- 9 The Bill extends to England and Wales, Scotland and Northern Ireland.

Commentary on provisions of Bill

Part 1: Means-tested additional payments

Clause 1: Means-tested additional payments: main payments

- 10 Clause 1 places upon the Secretary of State and HMRC a duty to make payments of £301, £300, and £299 to a person with a qualifying entitlement to a qualifying social security benefit or to tax credits in respect of each qualifying day. Qualifying days will be set in regulations using the delegated powers in this clause. A person is defined as an individual or a couple (but not each member of a couple separately).
- 11 Specifically, subsection (1) provides for the Secretary of State to make payments to a person with a qualifying entitlement to a social security benefit in respect of the first qualifying day for the first payment, the second qualifying day for the second payment and the third qualifying day for the third payment.
- 12 Subsection (2) provides for HMRC to make payments to a person who has a qualifying entitlement to child tax credit or working tax credit, but not to a social security benefit, in respect of the first qualifying day for the first payment, the second qualifying day for the second payment and the third qualifying day for the third payment.
- 13 Subsection (3) defines the qualifying social security benefits for the purpose of this Bill.
- 14 Subsections (4), (6) and (7) provide for the latest qualifying date in respect of the first, second and third payments respectively, and specifies that the qualifying date for each will be specified in regulations. The qualifying date can be earlier, but no later, than the dates in subsections (4), (6) and (7). These qualifying dates are not dates of payment.
- 15 Subsections (5) and (8) provide those regulations may specify a qualifying date prior to the date those regulations come into force and in respect of the first qualifying date also before the Act or the regulations come into force.

Clause 2: Qualifying entitlements: social security benefits

- 16 Clause 2 defines the qualification criteria that the Secretary of State must apply in order to make additional payments to people entitled to eligible social security benefits.
- 17 Subsection (1) provides that a person has a qualifying entitlement in respect of a qualifying day if they are entitled to a payment of at least 1p in respect of an assessment period ending during the period of one month ending with the qualifying day (for people in receipt of universal credit); or entitled to a payment of at least 1p on any day during the period of one month ending with the qualifying day (for people in receipt of state pension credit, income-based jobseeker's allowance, income support or income-related employment and support).

Example (1): Qualifying entitlement to universal credit for the means-tested additional payments

If the qualifying day for a particular means-tested additional payment was 1 January 2023, to be eligible for that means-tested additional payment a person would need to have an entitlement to a universal credit payment of at least 1p in respect of an assessment period that ends between 2 December 2022 to 1 January 2023 inclusive. These dates are examples only; qualifying days will be set out in regulations.

Example (2): Qualifying entitlement to income support for the means-tested additional payments

If the qualifying day for a particular means-tested additional payment was 1 January 2023, to be eligible for that means-tested additional payment a person would need to have an entitlement to an income support payment of at least 1p on any day in the period 2 December 2022 to 1 January 2023 inclusive. These dates are examples only; qualifying days will be set out in regulations.

- 18 Subsection 2 provides for a person with an entitlement of less than 10p in respect of state pension credit, income-based jobseekers allowance, income support or income-related employment and support allowance, who do not receive a payment of those benefits as a result of *de minimis* rules, to be treated as if they were entitled to a payment of the qualifying benefit. This enables them to then receive an additional payment. The *de minimis* for universal credit is 1p and therefore a person with entitlement of less than 10p, but 1p or more, in respect of universal credit has entitlement to additional payments.

Clause 3: Qualifying entitlements: tax credits

- 19 Clause 3 defines the qualification criteria that HMRC must apply in order to make additional payments for people entitled to working tax credits or child tax credits.
- 20 Subsection (1) defines what is meant by the qualifying entitlement to child tax credit or working tax credit by reference to a qualifying day. This requires HMRC to have made a payment of tax credits in respect of a day in the qualifying period. The person must receive a payment of child tax credit or working tax credit in respect of any day during the period of one month ending with the qualifying day. Subsection (2) clarifies scenarios which do not fall within Subsection (1) which include those: paid a lump sum in advance, for a qualifying period, under Regulation 10 of the Tax Credits (Payments by the Commissioners) Regulations 2002, but whose eligibility to tax credits has ceased; and payments of tax credits obtained as a result of fraud.

Example (3): Qualifying entitlement to child tax credit for the means-tested additional payments

If the qualifying day for a particular means-tested additional payment was 1 January 2023, to be eligible for that means-tested additional payment HMRC would have made a payment of child tax credit with respect to any day in the period 2 December 2022 to 1 January 2023 inclusive, unless the person's tax credit award consists of a single advance payment and ends before 2 December 2022 or was made on a fraudulent basis. These dates are examples only; qualifying days will be set out in regulations.

Clause 4: Applicable benefits or tax credits

- 21 Clause 4 addresses situations where a person has a qualifying entitlement to more than one social security benefit or tax credit to ensure a person does not receive duplicate payments on the basis of entitlement to more than one social security benefit or tax credit.

- 22 Clause 4 provides that where a person has a qualifying entitlement to more than one social security benefit in respect of the qualifying day, that additional payment shall be made in relation to the first benefit listed in 1(3) to which the individual is entitled.
- 23 In addition, the clause provides that where a person has a qualifying entitlement to both working tax credit and child tax credit on the qualifying days, the additional payment should be made in respect of their entitlement to child tax credit.
- 24 Situations in which a person has a qualifying benefit to both a social security benefit and tax credit are addressed in section 1(2), which provides that HMRC must make a payment if any person has a qualifying entitlement to a tax credit, but not to a social security benefit.

Example (4): A person with a qualifying entitlement to more than one social security benefit

An individual reaches state pension age during the qualifying window and is entitled to a universal credit payment of at least 1p in respect of an assessment period which ends within the qualifying window. With effect from when they reach state pension age they also now have an entitlement to a state pension credit payment of at least 1p. They will be eligible for the means-tested additional payment as a result of their qualifying entitlement to universal credit because universal credit takes precedence over other social security benefits as set out in Clause 4.

Part 2: Disability additional payments

Clause 5: Disability additional payments

- 25 Clause 5 provides that the Secretary of State is to make a payment of £150 to a person entitled to a payment of a qualifying disability benefit in respect of a qualifying day.
- 26 Subsection (2) defines the disability benefits that can qualify a person for an additional payment.
- 27 Subsection (3) provides for the latest date for the qualifying day in respect of a disability additional payment, and that the date will be specified in regulations. The qualifying date is not the date of payment. Subsection (4) states that these regulations may specify a qualifying day prior to the date the regulations come into force. Subsection (5) provides that where an individual is entitled to more than one disability benefit that would qualify them to an additional payment in respect of the qualifying day, that additional payment shall be made in relation to the first benefit listed in subsection (2) to which the individual is entitled.

Part 3: Administration etc.

Clause 6: Administration of additional payments

- 28 Subsections (1) and (2) provide that provisions - including about overpayment and recovery - apply as if the additional payment were a payment or award of the social security benefit, tax credit or disability benefit which conferred entitlement to the additional payment. Subsection (3) provides that the provisions in subsection (1) equally apply to purported additional payments which were not in fact made in compliance with the duties in section 1 and 5. Therefore, overpaid additional payments can be recovered in line with provisions of the social security benefit, tax credit or disability benefit which conferred entitlement.

- 29 Subsection (2) provides that although the underlying social security benefit, tax credit or disability benefit can be reviewed or appealed an additional payment cannot be reviewed or appealed.
- 30 Subsections (2)(b), (4), (5) and (6) provide that the provisions referenced in subsection (1) may be modified.
- 31 Subsection (4) provides that subsection (1) (including with respect to subsection (3)) is subject to regulations made by the Secretary of State, the Treasury or HMRC under subsection (5).
- 32 Subsections (5) and (6) provide that regulations may be made in relation to the additional payments by the Secretary of State, the Treasury or HMRC to apply or disapply, with or without modifications, any provision applying in relation to a social security benefit, tax credit or disability benefit and that these regulations may have effect from the day the Act comes into force.

Clause 7: Cooperation etc between the Secretary of State and HMRC

- 33 Clause 7 provides for the co-operation and data sharing arrangements between different UK Government Departments, and between UK Government Departments, Scottish Ministers and the Department for Communities in Northern Ireland.
- 34 Specifically, subsections (2), (3) and (4) makes provision for data sharing between HMRC, the Secretary of State, the Department for Communities and Scottish Ministers. Subsection (2) modifies section 3 of the Social Security Act 1998 to allow for disclosure of information in relation to the additional payments between HMRC and the Department for Communities.
- 35 Subsection (3) modifies section 127 of the Welfare Reform Act such that Secretary of State and HMRC are able to share and use information in relation to the additional payments.
- 36 Subsection (4) modifies section 34 of the Scotland Act 2016 to allow disclosure in relation to the additional payments between the Secretary of State and Scottish Ministers.
- 37 Subsections (5) and (6) make provisions for instances where it is found that a payment has been made by HMRC that should have been made by the Secretary of State, or vice versa. In such cases, providing that no duplicate payment has been made, the payment shall be treated as having been made in accordance with the applicable duty, and therefore is not recoverable. This ensures that a payment does not have to be recovered and reissued by the correct body.

Clause 8: Payments to be disregarded for the purposes of tax and social security

- 38 This clause provides for additional payments to be disregarded for the purposes of tax and entitlement to social security benefits and tax credits.

Clause 9: Amendments to other legislation

- 39 This clause modifies other legislation.
- 40 Subsection (1) modifies the Social Security (Additional Payments) Act 2022, ensuring that administrative provisions applying in relation to the relevant disability benefits apply to a payment in purported compliance with the duty of make a disability additional payment. Subsection (2) provides for this amendment to be treated as having come into force on 28 June 2022.
- 41 Subsection (3) modifies the Tax Credits Act 2002 (Additional Payments Modification and Disapplication) Regulations 2022 which 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 that Act. The modifications made under subsections (4) and (5) extend the application of the regulations to payments made by HMRC under clause 1(2) of the Social Security

(Additional Payments) Act 2023. Subsection 6 provides for the modifications to be treated as if they had been made under the provisions to make regulations in clause 6(5) and (6) and clause 11.

Part 4: Final provisions

Clause 10: Interpretation

42 This clause defines terms used in this Bill and is self-explanatory.

Clause 11: Regulations

43 The content of this section is self-explanatory.

Clause 12: Extent, commencement, and short title

44 Subsection (2) provides that the provisions of the Act commence on Royal Assent.

Commencement

Financial implications of the Bill

45 These additional payments require Government spending of over £8.6 billion. The means-tested additional payments in 2023/2024 are £7.5 billion, with an additional £0.1 billion each year from 2024/2025 to 2027/2028 and the disability additional payments in 2023/2024 are £1.2 billion, with an additional £0.1 billion each year from 2024/25 to 2027/28.

Parliamentary approval for financial costs or for charges imposed

46 The House of commons passed a money resolution for this Bill on 21st February 2023 to cover expenditure by the Secretary of State and HMRC of the cost of living payments. The Bill does not require a way and means resolution because the Bill does not authorise new taxation or other similar charges on the people

Compatibility with the European Convention on Human Rights

47 The Minister for Lords Viscount Younger of Leckie's view is that the Bill is compatible with the European Convention on Human Rights.

Duty under section 20 of the Environment Act 2021

48 The Minister for Lords Viscount Younger of Leckie's view is that the Bill does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

Annex A – Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
<i>Part 1: Means-tested additional payments</i>							
Clause 1: Means-Tested additional payments: Main payment	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 2: Qualifying entitlements: social security benefits	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 3: Qualifying entitlements: Tax Credits	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 4: Applicable benefits or Tax Credits	Yes	Yes	N/A	Yes	N/A	Yes	N/A
<i>Part 2: Disability additional payments</i>							
Clause 5: Disability additional payments	Yes	Yes	N/A	Yes	N/A	Yes	N/A
<i>Part 3: Administration etc.</i>							
Clause 6: Administration of additional payments	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 7: Cooperation between the SOS and HMRC	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 8: Payments to be disregarded for the purpose of Tax and social security	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 9: Amendments to other legislation	Yes	Yes	N/A	Yes	N/A	Yes	N/A
<i>Part 4: Final provisions</i>							
Clause 10 : Interpretation	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 11: Regulations	Yes	Yes	N/A	Yes	N/A	Yes	N/A
Clause 12: Extent, commencement, and short title	Yes	Yes	N/A	Yes	N/A	Yes	N/A

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