

NATIONAL INSURANCE CONTRIBUTIONS AND STATUTORY PAYMENTS ACT 2004

EXPLANATORY NOTES

BACKGROUND TO THE ACT

Liability for National Insurance contributions

Recovery of primary National Insurance contributions from employees following payments of security-based earnings.

11. Instead of paying by cash an employer may choose to reward an employee by, for instance, giving them “securities” or granting them options to acquire securities (“securities-based earnings”). Broadly speaking, the term “securities” covers shares, company loan stock, Government gilts and a number of specialised financial instruments. It does not cover cash, cheques, leases, insurance or options. Section 420 of ITEPA 2003 (as substituted by Schedule 22 to the Finance Act 2003), which is reproduced at Annex A, defines the term for the purposes of Chapters 1 to 5 of Part 7 of that Act.

Current position

12. Securities-based earnings paid by an employer are earnings for National Insurance purposes and are therefore subject to Class 1 contributions. The employer is liable for secondary Class 1 contributions and the employee is liable for primary Class 1 contributions. The employer is liable to account for and pay those primary contributions to the Inland Revenue and may recover them through deductions from the employee's "cash" earnings. There are no "cash" earnings for the employer to deduct the employee's primary contributions liability on the securities based earnings from. Therefore they initially have to make the payment of primary contributions to the Inland Revenue on behalf of the employee. Up to 2002/3 there was rarely any primary contribution liability to pay. This was because earnings above the Upper Earnings Limit (UEL) £30,420 were not liable to primary contributions. Most employees who receive security-based remuneration earned above the UEL and the employer did not have to pay primary contributions on their behalf. From 2003/4 onwards there is a 1% primary Class 1 contribution charge above the UEL. The current limits on recovery from the employee may result in the employer being left unable to recover the primary contributions from his employee when the employer has paid them on the employee's behalf.

Effect of the measure

13. [Section 1](#) (Great Britain) and [section 2](#) (Northern Ireland) and supporting secondary legislation, will extend the ability of the employer to recover contributions in two ways:
 - the employer, with the written consent of the employee, will be able to retain, or require the employee to sell, an amount of securities equal to their contribution liability; and

These notes refer to the National Insurance Contributions and Statutory Payments Act 2004 (c.3) which received Royal Assent on 13 May 2004

- the employer, with the written consent of the employee, will be able to retain, or require the employee to sell, an amount of securities equal to their National Insurance contribution liability in the year that the employee ceased working for the employer and the following year.