

NATIONAL INSURANCE CONTRIBUTIONS AND STATUTORY PAYMENTS ACT 2004

EXPLANATORY NOTES

BACKGROUND TO THE ACT

Recovery of unpaid contributions by distraint in England and Wales

Current position

18. Distraint involves taking possession of a debtor's goods and, if the debtor fails to pay the sum owed in the time allowed, removing them and putting them up for sale by public auction.
19. Where National Insurance contributions are collected with tax, paragraph 6 of Schedule 1 to the CBA 1992 provides for them to be paid, accounted for and recovered in a similar manner to tax. Thus, where both National Insurance contributions and tax are unpaid, the debt can be recovered in a single distraint action governed by tax legislation.
20. However, where, for example, a self-employed person has failed to pay both Class 2 contributions and tax, distraint on the contributions debt is governed by section 121A of the Social Security Administration Act 1992 (SSAA 1992) in England and Wales whereas distraint on the tax debt is governed by section 61 of the Taxes Management Act 1970 (TMA 1970).
21. The provisions of section 121A of the SSAA 1992 require a debtor to be given a 30 day period of notice of distraint action whereas, under tax legislation, there is no such requirement. This requirement pre-dates the transfer of responsibility for contribution matters from the then Department of Social Security to the Inland Revenue. The 30 day period was originally intended to reflect the period allowed for making an appeal against an adverse decision. However, the standard debt collection procedures in the Inland Revenue provide for a series of stages where the debt can be challenged and, if necessary, appealed against before the issue of a notice of distraint.
22. Although there is no statutory requirement in tax legislation to provide notice of distraint, in line with accepted good practice and the Government's proposals for effective enforcement of debt recovery, the Inland Revenue's guidance specifies that debtors should be given a 7 day period of notice of distraint action.