

NATIONAL INSURANCE CONTRIBUTIONS AND STATUTORY PAYMENTS ACT 2004

EXPLANATORY NOTES

BACKGROUND TO THE ACT

Recovery of unpaid contributions by summary warrant in Scotland

Current position

25. From 30 December 2002, the Debt Arrangement and Attachment (Scotland) Act 2002 (DAA(S)A 2002) replaced the diligence of poinding and warrant sales (the Scottish equivalent of distraint) with a new diligence of attachment.
26. Section 121B of the SSAA 1992 provides, following the granting of a summary warrant by the sheriff, for recovery of unpaid National Insurance contributions, which are not collected with tax, by:
 - an attachment;
 - an earnings arrestment; or
 - an arrestment and action of furthcoming or sale.
27. In a similar vein to section 121A of the SSAA 1992 in relation to England and Wales, in Scotland section 121B of that Act requires that a 30 day period of notice must have elapsed before a summary warrant can be sought from the sheriff. The recovery of tax debt in Scotland is governed by section 63 of the TMA 1970 which stipulates a minimum period of 14 days which must have elapsed before a summary warrant may be sought. As a result, a similar misalignment to that described in relation to England and Wales at paragraphs 21 and 22 also occurs in Scotland.
28. The DAA(S)A 2002 does not impose a statutory period of notice to attachment. However, amongst the safeguards introduced by that Act is a requirement to provide the debtor with a “debt advice and information package”. This takes the form of a booklet “Dealing with Debt: finding your feet” which is published by the Scottish Executive. The booklet stipulates that the debtor has 14 days to pay following a “charge for payment”. In the absence of a charge to pay in summary warrant cases, the creditor is required to provide the debtor with a debt advice and information pack.