

NATIONAL INSURANCE CONTRIBUTIONS AND STATUTORY PAYMENTS ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Administration of National Insurance contributions and Statutory Sick

Pay and Statutory Maternity Pay

Section 5 – Recovery of contributions, etc: Great Britain

62. Subsection (1) amends section 121A(1)(b) of the SSAA 1992 by substituting a reference to “7 days” for the reference to “30 days”. As amended section 121A(1)(b) will provide in England and Wales for distraint action to be conducted where a person has failed to pay the amount due by way of contributions within 7 days of the issue of a certificate under section 118(1) of the SSAA 1992.
63. Subsection (2) amends section 121B(1) of the SSAA 1992 by substituting a reference to “14 days” for the reference to “30 days”. As amended section 121B(1) will provide in Scotland for application for a summary warrant where a person has failed to pay the amount due by way of contributions within 14 days of the issue of certificate under section 118(1) of the SSAA.
64. Subsection (3) inserts subsection (8A) into section 121C of the SSAA 1992 to provide that all sums due under personal liability notices regarding contribution debts are to be recovered in the same manner as Class 1 contributions – ie. under tax legislation. Section 121C allows the Inland Revenue to make the officers of a company personally liable for contribution debts which have not been paid by the company in cases where they have perpetrated fraud, or been negligent in carrying out their responsibilities.
65. Subsection (4) inserts new paragraph 7BZA after paragraph 7B of Schedule 1 to the CBA 1992. Paragraph 7BZA is a power to provide, by regulations, for income tax legislation to apply to the recovery of National Insurance contributions which are not collected with tax.

Section 6 – Recovery of contributions, etc: Northern Ireland

66. Subsection (1) substitutes a new section 115A for section 115A of the SSA(NI)A 1992 to replicate, in relation to Northern Ireland, the provisions of section 121A SSAA 1992 (as amended by subsection (1) of section 5) in relation to England and Wales.
67. Subsections (2) and (3) replicate respectively the provisions of subsections (3) and (4) of section 5 by amending the equivalent provisions of the SSA(NI)A 1992 and the CB(NI)A 1992.

Section 7 - Class 1, 1A, 1B or 2 contributions: powers to call for documents etc: Great Britain

68. **Section 7** provides for section 110ZA SSAA 1992 to be replaced to:
- remove the existing powers of entry and examination for National Insurance contributions purposes; and
 - attach National Insurance contributions to the information powers in section 20 of the TMA1970.
69. Section 110ZA(1) applies section 20 of the TMA 1970 together with sections 20B and 20BB to National Insurance contribution matters.
70. Section 110ZA(2) provides alternate readings for various references in those sections so that they make sense in relation to National Insurance contributions.
71. Section 110ZA(3) limits the scope of the section to certain classes of contributions. Class 3 contributions are voluntary contributions and Class 4 contributions are already attached to all of the provisions of the Taxes Acts by virtue of section 16 of the CBA 1992.

Section 8 - Class 1, 1A, 1B or 2 contributions: powers to call for documents etc: Northern Ireland

72. **Section 8** replicates the provisions of section 7 in relation to Northern Ireland.

Section 9 - Compliance regime for statutory sick pay and statutory maternity pay: Great Britain

73. **Section 9** provides:
- a routine inspection power to allow officers to examine books and records relating to SSP AND SMP; and
 - civil penalties for failures to comply with the requirements of the SSP AND SMP schemes and fits those civil penalties into the procedural framework which surrounds civil penalties generally in the Revenue.
74. Subsections (2) and (3) create regulation making powers to require the records to be maintained and information provided for SSP and SMP purposes.
75. Subsection (4) removes SSP and SMP from the scope of section 113 of the SSAA (criminal offences).
76. Subsection (5) inserts a new section 113A which provides civil penalties for a number of different failures:
- failure to produce records;
 - failure to keep records;
 - failure to provide information; or
 - failure to pay SSP or SMP.
77. The new section 113A (8) applies Schedule 1 to the Employment Act 2002 in relation to the new penalties. That Schedule sets out the penalties procedure and appeals rules.
78. Subsection (5) also inserts new section 113B which provides for penalties in cases of fraud or negligence. Four circumstances are covered:
- making incorrect statements or declarations;
 - producing incorrect documents or records;

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

- making incorrect payments of SSP or SMP; and
 - (an employer) receiving incorrect SMP payments.
79. New section 113B (4) and (5) applies Schedule 1 to the Employment Act 2002. That Schedule sets out the penalties procedure and appeals rules.

Section 10 - Compliance regime for statutory sick pay and statutory maternity pay: Great Britain

80. **Section 10** replicates the provisions of section 9 in the relation to Northern Ireland.

Schedule 1 - Minor and consequential amendments

81. **Paragraph 1** provides for amendments to the CBA 1992.
82. **Paragraph 1(2)** amends section 10A(4) of the CBA 1992 to reflect the renumbering of the provisions in sections 6 and 10 of the CBA 1992 by paragraph 2 of Schedule 9 to the Welfare Reform and Pensions Act 1999 and section 74 of the Child Support, Pensions and Social Security Act 2000 respectively. Section 10A of the CBA 1992 deals with Class 1B contributions.
83. **Paragraph 1(3)** amends section 18 of the CBA 1992. Section 18 deals with special Class 4 contributions payable by people who are treated as self-employed for contributions purposes but who are not taxed under Schedule D. The amendment inserts a reference to the new paragraph 7BZA of Schedule 1 to the CBA 1992 (inserted by section 5(4)) alongside the existing reference to paragraph 6 to that Schedule to prevent duplication of provision to apply tax legislation to the recovery of Class 4 contributions.
84. **Paragraph 2** makes equivalent amendments to the CB(NI)A 1992 in respect of Northern Ireland.
85. **Paragraph 3** provides for amendments to the SSAA 1992.
86. **Paragraph 3(2)** amends section 111 (3) of the SSAA 1992 to reflect the fact that the new section 110ZA (inserted by section 7) does not provide powers of itself but extends section 20 of the TMA 1970. This prevents a breach of section 20 in relation to National Insurance contributions becoming a criminal offence by virtue of section 111(1). Breaches of section 20 are dealt with by way of civil penalties under other provisions of the TMA 1970.
87. **Paragraph 3(3):**
- removes part of section 162 of the SSAA 1992 which relates to penalties for breaches of the old section 110ZA (*sub-paragraphs (a) and (b)*); and
 - amends section 162(4A) of the SSAA 1992 by inserting a reference to the new paragraph 7BZA of Schedule 1 to the CBA 1992 (inserted by section 5(4)) to provide that any interest or penalties on late paid contributions recovered under the new powers are paid into the National Insurance Fund.
88. **Paragraph 4** makes equivalent amendments to the SS(NI)A 1992 in respect of Northern Ireland.
89. **Paragraph 5** amends section 4 of the ToFA 1999. Section 4 of, and Schedule 4 to, the ToFA 1999 provide the legislative framework for the recovery through the courts of National Insurance contributions which are not collected with tax. The amendments at sub-paragraphs (2) and (4) have the effect of disapplying the provisions of Schedule 4 to the ToFA 1999 in relation to the recovery of contributions to which tax provisions apply by virtue of regulations made under paragraph 7BZA of Schedule 1 to the CBA 1992 or the CB(NI)A 1992 (inserted by section 5(4) and 6(3)). The amendment at paragraph (3) disapplies the provisions of Schedule 4 to the ToFA in relation to Class 4 contributions

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

payable by virtue of section 18 of the CBA 1992 which are to be recovered under tax legislation.