

NATIONAL INSURANCE CONTRIBUTIONS AND STATUTORY PAYMENTS ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Employers' Liability for National Insurance contributions

Section 1 – Payment of Class 1 contributions: Great Britain

48. [Section 1](#) amends paragraph 3 of Schedule 1 to the CBA 1992 in order to extend the employer's ability to recover primary Class 1 contributions from his employee in respect of non-monetary earnings.
49. Subsection (3) amends paragraph 3 of Schedule 1 to the CBA 1992 so as to insert sub-paragraphs (3A) and (3B) after sub-paragraph (3). These sub-paragraphs apply where an employer makes a payment of non-monetary earnings to an employee. They allow the employer to recover primary Class 1 contributions paid on the employee's behalf in the manner prescribed by regulations. It is intended that regulations will allow the employer, with the written consent of the employee, to recover the primary Class 1 contributions by either:
- retaining some or all of the securities; or
 - requiring the employee to sell some or all of the securities and using the proceeds to reimburse the employer.

It is intended that regulations will also allow the employer and employee to enter into written agreements about methods of recovery at any time up to the day that the securities-based earnings are treated as paid.

50. Subsection (4) amends paragraph 3(4) of Schedule 1 to the CBA 1992 to allow recovery of primary Class 1 contributions in respect of ex-employees in the tax year following the year of cessation of their employment. Sub-paragraph 3(4) previously limited recovery to the year in which the employee ceased the employment.
51. Subsection (5) amends paragraph 3(5) by removing paragraph (b). This has been omitted because the new sub-paragraphs (3A) and (3B) now allow recovery of primary Class 1 contributions from employees in respect of non-monetary earnings, thus sub-paragraph 3(5)(b) becomes an unnecessary repetition. Paragraph 3(5)(b) also limited the options for making regulations concerning the forms of recovery to cases where the employee was ceasing employment in the tax year and there were insufficient cash earnings from which the deductions could be made. These restrictions have been removed to allow paragraph 7 of Schedule 4 to the Social Security (Contributions) Regulations 2001 ([S.I. 2001 No. 1004](#))¹ to be amended to enable employers to

¹ As amended by regulation 7 of the Social Security (Contributions) (Amendment No. 5) Regulations 2002 ([S.I. 2002 No. 2929](#)), regulation 2 of the Social Security (Contributions) (Amendment No. 4) Regulations 2003 ([S.I. 2003 No. 1337](#)) and regulation 31(3) of the Social Security (Contributions, Categorisation of Earners and Intermediaries) (Amendment) Regulations 2004 ([S.I. 2004 No. 770](#))

recoup the primary contributions on security-based earnings by withholding sufficient securities to cover the cost of these contributions.

52. Section 2 – Payment of Class 1 contributions: Northern Ireland

53. [Section 2](#) replicates the provisions of Section 1 in respect of the CB(NI)A 1992.

Section 3 – Agreements and joint elections: Great Britain

54. Subsection (1) provides for the following amendments to Schedule 1 to the CBA 1992.

55. Subsection (2) extends the scope of paragraph 3A of Schedule 1 to the CBA 1992 in relation to agreements entered into between employers and their employees. These allow employers to recover secondary Class 1 National Insurance contributions from their employees in respect of post-acquisition income from both restricted and convertible securities. Subsection (2) also inserts sub-paragraph (2A) which introduces a condition to the use of agreements; namely, that such agreements may not be used in respect of relevant employment income if the market value of the securities from which that income derives has been artificially depressed.

56. The term “artificially depressed market value” is used in the title of Chapter 3A of Part 7 of ITEPA 2003 (as substituted by Schedule 22 to the Finance Act 2003). That Chapter applies in certain cases where the market value of employment-related securities (or other relevant securities or interests in securities) is reduced by things done otherwise than for genuine commercial purposes. The following are among the things that are, for the purposes of Chapter 3A of Part 7 of ITEPA 2003, done otherwise than for genuine commercial purposes:

- anything done as part of a scheme or arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax or National Insurance contributions; and
- any transaction between companies which are members of the same group on terms which are not such as might be expected to be agreed between persons acting at arm’s length (other than a payment for group relief).

57. Subsection (2) also inserts sub-paragraph (2B) (to paragraph 3A of Schedule 1 to the CBA 1992) which defines “relevant employment income” in three ways:

- an amount that counts as employment income of the earner under section 426 of ITEPA (restricted securities: charge on certain post-acquisition events), as amended by Schedule 22 of the Finance Act 2003;
- an amount that counts as employment income of the earner under section 438 of ITEPA (convertible securities: charge on certain post-acquisition events), as amended by Schedule 22 of the Finance Act 2003;
- a gain that is treated as remuneration derived from the earner’s employment by virtue of section 4(4)(a) of the CBA 1992, as consequentially amended by Schedule 22 of the Finance Act 2003. This section treats as earnings gains from securities options.

58. Subsection (3) amends paragraph 3B of Schedule 1 to the CBA 1992 in order to extend the joint National Insurance contributions election facility to include relevant employment income that is derived from restricted or convertible securities (by virtue of post-acquisition chargeable events only). Further changes are made to ensure that a joint election may not be used with respect to relevant employment income if the market value of the securities from which that income derives has been artificially depressed. Subsection (3) also provides that a joint National Insurance contributions election in respect of relevant employment income from restricted or convertible securities may

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not be applied to any contributions in respect of a payment of relevant employment income made before the election is entered into.

59. Subsection (4) provides that the amendments made by this section will apply to agreements and elections entered into after the date of commencement of this section in respect of relevant employment income which counts as employment income after commencement of the section.
60. Subsection (5) defines “post-commencement employment income”, for the purposes of subsection (4), as amounts of relevant employment income which, after the date of commencement of this section, count as employment income.

Section 4 – Agreements and joint elections: Northern Ireland

61. **Section 4** replicates the provisions of section 3 in relation to Northern Ireland by amending the equivalent sections of the CB(NI)A 1992.

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:

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- 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;
 - making incorrect payments of SSP or SMP; and
 - (an employer) receiving incorrect SMP payments.

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