

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

NATIONAL INSURANCE CONTRIBUTIONS AND STATUTORY PAYMENTS ACT 2004

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the National Insurance Contributions and Statutory Payments Act 2004 which received Royal Assent on 13 May 2004. They have been prepared by the Inland Revenue in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. The Act (and supporting secondary legislation) contains measures regarding National Insurance contributions on securities-based remuneration.

4. The Act also provides for alignment of the administration of National Insurance contributions and statutory payments with the regime for administering tax – in particular, with regard to:

- the procedures for recovering National Insurance contribution debt;
- the powers to inspect records and obtain information in order to monitor compliance; and
- replacing criminal offences with civil penalties for non-compliance with Statutory Sick Pay (SSP) or Statutory Maternity Pay (SMP) provisions.

OVERVIEW OF THE ACT

5. Section 420 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003), (as substituted by Schedule 22 to the Finance Act 2003) which defines the term “securities” for the purposes of Chapters 1 to 5 of Part 7 of that Act is reproduced at Annex A; an explanation of the various classes of National Insurance contributions is at Annex B; a description of statutory payments, including SSP and SMP, is at Annex C; and a glossary of abbreviations is at Annex D.

Liability for National Insurance contributions

6. The measures at sections 1 to 4, together with any supporting secondary legislation, are designed to simplify employers’ administration of National Insurance contributions by:

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- extending employers' ability to recover primary (employees') Class 1 contributions paid on securities-based earnings of their employees and ex-employees by allowing the employer, with the agreement of the employee, to withhold an amount of the securities equal to the contribution liability (the terms "securities" and "securities based earnings" are explained at para 11) – *sections 1 and 2*; and
- extending the facility whereby employers can ask employees to fund the employer's share of National Insurance contribution liability on the exercise of a share option to include awards of restricted or convertible securities – *sections 3 and 4*.

Administration of National Insurance contributions and Statutory Sick Pay and Statutory Maternity Pay

7. Prior to 1999 the collection and administration of National Insurance contributions and the administration of SSP and SMP were the responsibility of the then Department of Social Security (now the Department for Work and Pensions) and its predecessors. From 1 April 1999 these functions were transferred to the Inland Revenue by the Social Security Contributions (Transfer of Functions etc.) Act 1999 (ToFA 1999).

8. The ToFA 1999 did not, however, align fully the processes and powers for administering contributions and SSP and SMP with those which apply to tax. The measures in sections 5 to 10 are designed to enable the Inland Revenue to deal with the administration of tax, national insurance contributions and SSP and SMP in a coherent manner and, where possible, in a single transaction by:

- aligning the periods of notice required for distraint action to recover contribution debt in England and Wales with those which apply in the recovery of tax – *section 5*;
- aligning the periods of notice required in Scotland for application for a summary warrant to recover contribution debt with those which apply in the recovery of tax – *section 5*;
- aligning distraint procedures to recover contribution debt in Northern Ireland with those which apply in England and Wales – *section 6*;
- allowing for future application of tax law to the recovery of contributions by means of secondary legislation – *sections 5(4) and 6(3)*;
- aligning the powers of Inland Revenue officers to inspect records and gather information for tax and contributions purposes – *sections 7 and 8*; and
- aligning the compliance regime for SSP and SMP with that which applies to the other statutory payments – ie. statutory adoption pay and statutory paternity pay – by replacing criminal penalties for non-compliance with civil penalties – *sections 9 and 10*.

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Application of the Act to Northern Ireland

9. Under the provisions of Schedule 2 to the Northern Ireland Act 1998 matters relating to National Insurance contributions are “excepted” from the competence of the Northern Ireland Assembly. The Act therefore amends any relevant Northern Ireland legislation.

10. The Northern Ireland Act 1998 transferred responsibility for statutory payments to the Northern Ireland Assembly. The Act, with the agreement of the Secretary of State for Northern Ireland and the Northern Ireland Department for Social Development [(the Northern Ireland Assembly being suspended at the time the Act was introduced) – DN check with Andrew] also amends the relevant Northern Ireland legislation relating to SSP and SMP.

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.

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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
- 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.

Agreements and joint elections - employment-related securities

14. Section 3 (Great Britain) and section 4 (Northern Ireland) amend Schedule 1 to the Social Security Contributions and Benefits Act 1992 (CBA 1992) and Schedule 1 to the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (CB(NI)A 1992) to widen the scope of joint National Insurance contributions elections and agreements.

Current position

15. Currently, employers can ask their employees to fund the employer's contribution liability arising when an employee exercises an employment-related option to acquire securities, either through a "joint National Insurance contributions election" or a "joint National Insurance contributions agreement". Using a National Insurance contributions election legally transfers the secondary liability to the employee. It thus removes the need for the employer to provide for the unpredictable secondary liability for contributions in their accounts, when the amount of the employer's contribution liability is contingent on the gain from options on exercise. Under a National Insurance contributions agreement, the liability remains that of the employer and must, therefore, be reflected in the company's accounts. The employee simply reimburses the cost of the liability to the employer.

Effect of the measure

16. Employers who award restricted and convertible securities also face a similar problem in respect of accounting for the unpredictable "post-acquisition" secondary contribution liability on these awards. The term "post-acquisition" relates to a chargeable event following the employee taking ownership of restricted or convertible securities. Typically, a charge to income tax and National Insurance contributions will occur when a restriction applying to the security is lifted or the security is converted into another more valuable form of security. For example, where an employee is awarded shares without any voting or dividend rights for the first two years following the award, the restriction will reduce the value of the shares. When the restriction is lifted at the end of the two year period the shares will increase in value with the benefit of the voting and benefit rights returned. The changes at

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sections 3 and 4 will allow an employer to ask the employee to fund the employer's (secondary) National Insurance contributions liability on post-acquisition earnings derived from restricted and convertible securities.

Administration of National Insurance contributions and Statutory Sick

Pay and Statutory Maternity Pay

Aligning the periods of notice required for distraint action in England and Wales and application for summary warrant in Scotland to recover contribution debt and aligning distraint procedures in Northern Ireland with those which apply in England and Wales

17. The measures at sections 5 and 6 apply to the 3% of contributions which are currently not collected with tax and to which separate processes apply. The purpose of the changes is to allow the Inland Revenue to align the collection and administration of the contributions, so far as is practicable, with the collection of tax in order to allow the Department to deal with a person's tax and National Insurance affairs in one transaction. The contributions in questions are mainly Class 2 contributions paid on a monthly or quarterly basis by the self-employed. However, misalignments with tax provisions also arise in relation to Class 1A contributions (paid by employers on certain benefits received by their employees) and some Class 4 contributions.

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.

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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.

Effect of the measure

23. Section 5(1) provides for the period of notice of distraint action in respect of National Insurance contributions to be aligned with that which is given in respect of tax debts. This will enable both tax and contribution debts to be recovered in a single action and as a result debtors will not face separate actions for recovery and the attendant duplication of costs.

24. However, the Government has no intention of disturbing the current provisions at section 117A of the SSAA 1992 whereby, in cases where a person has appealed a decision on liability for contributions, no action to recover the debt is taken until the appeal has been decided.

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.

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Effect of the measure

29. Section 5(2) provides for the period of notice specified at section 121B to be reduced to 14 days – this is in keeping with the spirit of the DAA(S)A 2002 and will, as in England and Wales, enable both tax and contribution debts to be recovered in a single action.

Recovery of unpaid contributions by distraint in Northern Ireland

Current position

30. The Inland Revenue does not have the same rights to use distraint to recover unpaid contributions in Northern Ireland as it does in England and Wales.

31. Section 115A(1) of the Social Security Administration (Northern Ireland) Act 1992 (SSA(NI)A 1992) provides that the Judgments Enforcement (Northern Ireland) Order 1981 applies:

- where a person is served with a certificate under section 112(1) of that Act; and
- he neglects or refuses to pay contributions, interest or penalty to which the certificate relates within 30 days.

The amount unpaid is then enforceable as a money judgment by the Enforcement of Judgments Office on an application to it by the Inland Revenue.

Effect of the measure

32. Section 6(1) provides for authorised officers of the Inland Revenue to take distraint action in their own right in Northern Ireland and for the powers they can call upon to levy distraint to be consistent with those which apply in England and Wales.

Powers to combine recovery of contributions with tax

Current position

33. National Insurance matters are outside the scope of Finance Acts. Para 6 of Schedule 1 to the CBA 1992 provides for the provisions of the Income Tax Acts or PAYE regulations to have effect in respect of administration of various contributions. This provision obviates the need to amend primary legislation relating to National Insurance contributions to reflect changes to tax legislation made through the Finance Act.

34. There is no equivalent provision in relation to contributions which are not collected with tax (in particular Class 1A and Class 2). As a result, misalignment with the tax system can arise until such time as space is found in the Government's legislative programme for change to the relevant contributions legislation.

Effect of the measure

35. Section 5(4) (Great Britain) and section 6(3) (Northern Ireland) provide a power for the Inland Revenue to make regulations to apply the provisions of tax legislation

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to the recovery of unpaid National Insurance contributions which are not collected with tax.

Aligning the powers of Inland Revenue officers to gather information for tax and contributions purposes

Current position

36. Inland Revenue powers to obtain information in relation to contributions are governed by section 110ZA of the SSAA 1992. Section 110ZA was inserted by the ToFA 1999 and was derived from the provisions of section 110 as they previously applied to the then Department of Social Security in relation to contributions. The officers' powers in relation to tax are governed by section 20 of the TMA 1970.

37. The powers in relation to contributions are significantly different to those which apply in relation to tax and include the ability to:

- enter premises without a warrant;
- question anybody found on the premises; and
- compel the provision of information and documents without first issuing a notice subject to third party scrutiny. (Requests for information for tax purposes under section 20 of the TMA 1970 are normally subject to third party scrutiny).

Effect of the measure

38. Section 7 (Great Britain) and section 8 (Northern Ireland) provide for the provisions of section 20, 20B and 20BB of the TMA 1970 to apply to National Insurance contributions.

39. Section 20 of the TMA 1970 allows the Inland Revenue to obtain information about a person's tax affairs. It applies to other aspects of the Inland Revenue's business, for example, Tax Credits.

40. The application of section 20 to National Insurance contributions will allow the Inland Revenue to ask any contributor (including secondary contributors) to provide documents and information about their liability for National Insurance contributions. The Inland Revenue can also ask third parties to provide documents that they have which are relevant to the contributions liability of another.

41. Information and documents are provided in response to formal notices. The consent of a Tax Appeal Commissioner is needed before such a notice can be issued.

Aligning the powers of Inland Revenue officers to inspect records for SSP and SMP purposes

Current position

42. Inland Revenue officers' powers in relation to SSP and SMP are governed by section 110ZA of the SSAA 1992 in Great Britain and section 104ZA of the SSA(NI) A 1992 in Northern Ireland. The officers' powers in relation to tax are governed by

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regulation 55 of the Income Tax (Employments) Regulations 1993 (S.I. 1993 No. 744)¹

43. The powers in relation to SSP and SMP are significantly different to those which apply in relation to tax and include the ability to:

- enter premises without a warrant;
- question anybody found on the premises; and
- compel the provision of information and documents (without first subjecting that request to third party scrutiny).

Effect of the measure

44. Section 9 (Great Britain) and section 10 (Northern Ireland) replace the provisions of section 110ZA of the SSAA 1992 and section 104ZA of the SSA(NI)A 1992 in relation to SSP and SMP with regulation making powers to allow for regulations equivalent to the tax regulations to be made for SSP and SMP purposes.

Aligning the compliance regime for SSP and SMP with that which applies to tax and the other statutory payments

Current position

45. Employers' failures to meet their obligations under the SSP and SMP schemes are currently dealt with by a series of minor criminal offences under section 113 of the SSAA 1992 which are punishable by a fine not exceeding level 3 on the standard scale – currently £1,000. Equivalent failures in relation to tax, statutory paternity pay and statutory adoption pay are dealt with by civil penalties up to a maximum of £3,000.

46. As a result an employer's failure in relation to SSP and SMP can result in him receiving a criminal record whereas an identical failure in relation to another statutory payment does not.

Effect of the measure

47. Section 9 (Great Britain) and section 10 (Northern Ireland) provide that, as is the case with statutory paternity pay and statutory adoption pay, employers' failures to meet their obligations under the SSP and SMP schemes are subject to civil penalties which reflect those applicable under the TMA 1970.

¹ As amended by: regulation 6 of the Income Tax (Employments) (Amendment No 2) Regulations 1995 (SI 1995 No. 447); regulation 19 of the Income Tax (Employments) (Amendment) Regulations 1998 (SI 1998 No. 2484) and regulations 7 and 21 of the Income Tax (Electronic Communications) (Miscellaneous Amendments) Regulations 2001 (SI 2001 No. 1081).

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)² to be amended to enable employers to recoup the primary contributions on security-based earnings by withholding sufficient securities to cover the cost of these contributions.

² 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)

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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

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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 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.

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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).

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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.

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.

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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.

COMMENCEMENT

90. Except for sections 13, 14 and 15 (Commencement, Extent and the Short Title) which came into force on Royal Assent, the provisions of the Act will be brought into force by commencement order.

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

HANSARD REFERENCES

91. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard references
HOUSE OF COMMONS		
Introduction	27 November 2003	Vol 415 Col 140-141
Second Reading	6 January 2004	Vol 416 Col 190 - 222
Committee	13 January 2004	Hansard Standing Committee D
Report and Third Reading	28 January 2004	Vol 417 Col 323-334
HOUSE OF LORDS		
First Reading	29 January 2004	Vol 657 Col 323
Second Reading	26 February 2004	Vol 658 Col 379-387
Grand Committee	15 March 2004	Vol 659 Col GC1-GC12
Report	30 March 2004	Vol 659 Col 1177
Third Reading	6 April 2004	Vol 659 Col 1723

ROYAL ASSENT - 13 May 2004 House of Lords Hansard Vol 661 Col 506

House of Commons Hansard Vol 421 Col 536

Annex A

Section 420 of the Income Tax (Earnings and Pensions) Act 2003 (as substituted by Schedule 22 to the Finance Act 2003)

Interpretation of Chapters 1 to 5

420 Meaning of "securities" etc

(1) Subject to subsections (5) and (6), for the purposes of this Chapter and Chapters 2 to 5 the following are "securities"-

- (a) shares in any body corporate (wherever incorporated) or in any unincorporated body constituted under the law of a country or territory outside the United Kingdom,
- (b) debentures, debenture stock, loan stock, bonds, certificates of deposit and other instruments creating or acknowledging indebtedness,
- (c) warrants and other instruments entitling their holders to subscribe for securities (whether or not in existence or identifiable),
- (d) certificates and other instruments conferring rights in respect of securities held by persons other than the persons on whom the rights are conferred and the transfer of which may be effected without the consent of those persons,
- (e) units in a collective investment scheme,
- (f) futures, and
- (g) rights under contracts for differences or contracts similar to contracts for differences.

(2) In subsection (1)(e) "collective investment scheme" means arrangements-

- (a) which are made with respect to property of any description, including money, and
- (b) the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

(3) In subsection (1)(f) "futures" means rights under a contract for the sale of a commodity or other property under which delivery is to be made at a future date at a price agreed when the contract is made; and for this purpose a price is to be taken to be agreed when the contract is made-

- (a) if it is left to be determined by reference to the price at which a contract is to be entered into on a market or exchange or could be entered into at a time and place specified in the contract, and

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- (b) in a case where the contract is expressed to be by reference to a standard lot and quality, even if provision is made for a variation in the price to take account of any variation in quantity or quality on delivery.
- (4) For the purposes of subsection (1)(g) a contract similar to a contract for differences is a contract-
- (a) which is not a contract for differences, but
 - (b) the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property or an index or other factor designated in the contract.
- (5) The following are not "securities" for the purposes of this Chapter or Chapters 2 to 5-
- (a) cheques and other Acts of exchange, bankers' drafts and letters of credit (other than Acts of exchange accepted by a banker),
 - (b) money and statements showing balances on a current, deposit or savings account,
 - (c) leases and other dispositions of property and heritable securities,
 - (d) rights under contracts of insurance (within the meaning of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001), and
 - (e) options.
- (6) The Treasury may by order amend subsections (1) to (5).
- (7) An order under subsection (6) may include any appropriate consequential provision (including provision amending any enactment).
- (8) In this Chapter and Chapters 2 to 5-
- "interest"**, in relation to securities (or shares), means an interest in them less than full beneficial ownership and includes an interest in proceeds of their sale, but does not include a right to acquire them,
 - "securities option"** means a right to acquire securities, and
 - "shares"** includes stock.

ANNEX B

Overview of National Insurance Contributions³

There are six classes of contributions.

- **Class 1** contributions which are paid by both employees and employers on the employee's earnings – the employee's share is known as the *primary contribution*, the employer's as the *secondary contribution*. Class 1 contributions are payable on all gross earnings including commissions and bonuses, on readily convertible assets given to employees and on employees' liabilities paid by employers. Primary contributions are payable at 11% of earnings above £91 up to £610 per week (£4,732 to £31,720 per year) and 1% of income above this limit. Secondary contributions are payable at 12.8% of all earnings above £91 per week. There are arrangements for reducing the rates of both primary and secondary contributions where the employee has contracted out of the State Second Pension. Class 1 contributions are normally collected monthly by the Inland Revenue along with PAYE income tax.
- **Class 1A** contributions are payable by employers on all taxable benefits in kind other than the provision of child care. Class 1A contributions are collected annually by the Inland Revenue.
- **Class 1B** contributions are payable annually by employers on non-cash items which are dealt with under a PAYE Settlement Agreement.
- **Class 2** contributions are paid by the self-employed at a flat rate of £2.05 per week – a self-employed person can be exempted from liability where earnings are below £4,215 per year. Class 2 contributions are paid either monthly or quarterly.
- **Class 3** contributions are paid on a voluntary basis by people who fall outside the scope of Class 1 and 2 contributions at a flat rate of £7.15 per week.
- **Class 4** contributions are paid annually by the self-employed on Schedule D Case I or II profits at a rate of 8% on profits between £4,745 and £31,720 and 1% of profits above £31,720.

³ Amounts and rates are for the 2004/5 tax year

Overview of Statutory Payments⁴

There are four Statutory Payments.

- **Statutory Sick Pay (SSP)** is paid to employees by their employer when the employee is incapable of work for four or more calendar days in a row. The employee does not need to provide the employer with medical evidence. There are some qualifying conditions the employee must satisfy. The main one is to have average weekly earnings of at least £79 in a period of at least 8 weeks before they became incapable of work. SSP is payable for a maximum of 28 weeks at £66.15 a week. If the employee is not entitled to SSP or they run out of their entitlement the employer must complete a form to enable the employee to claim Incapacity Benefit.
- **Statutory Maternity Pay (SMP)** is paid to pregnant employees by their employers when they satisfy the qualifying conditions. The employee must:
 - provide the employer with medical evidence of their pregnancy and the week the baby is due;
 - have worked for the employer continuously for 26 weeks up to and including the 15th week before the week the baby is due;
 - have average weekly earnings of at least £79 in a period of at least 8 weeks up to and including the 15th week before the week the baby is due; and
 - give their employer 28 days notice of when they want to take time off work.

SMP is payable at 2 rates. The first 6 weeks is paid at 90% of the average weekly earnings. The remaining 20 weeks are paid at the lower of £102.80 a week or 90% of the average weekly earnings. If the employee is not entitled to SMP the employer must complete a form to enable the employee to claim Maternity Allowance.

- **Statutory Adoption Pay (SAP)** is paid by employers to employees who are adopting a child on their own or to one member of a couple who are adopting a child together. The employee must:
 - provide the employer with evidence that they have been matched with a child for adoption;
 - have worked for the employer continuously for 26 weeks up to and including the week in which they are matched with a child for adoption;
 - have average weekly earnings of at least £79 in a period of at least 8 weeks up to and including the week in which they are matched with a child for adoption; and
 - give their employer 28 days notice of when they want to take time off work.

⁴ Amounts are for the 2004/05 year

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

SAP is payable for 26 weeks at the lower of £102.80 a week or 90% of the average weekly earnings. There is no state benefit if the employee is not entitled to SAP.

- **Statutory Paternity Pay (SPP)** which is paid by employers to employees who satisfy the qualifying conditions and who are:
 - the baby's biological father; or
 - the partner or husband of the mother but not the baby's biological father, including a female partner in a same sex couple; or
 - the partner of someone adopting a child on their own; or adopting a child with their partner.

The employee must:

- provide the employer with a declaration of family commitment;
- have worked for the employer continuously for 26 weeks up to and including the 15th week before the week the baby is due OR up to and including the week in which the adopter is matched with a child for adoption;
- remain continuously employed until the baby is born or the child is placed for adoption (this means the child starts living permanently with the person who will be adopting them);
- have average weekly earnings of at least £79 in a period of at least 8 weeks up to and including the week in which the baby is due OR the week in which the adopter is matched with a child for adoption; and
- give their employer 28 days notice of when they want to take time off work.

SPP is payable for 1 or 2 whole weeks at the lower of £102.80 a week or 90% of the average weekly earnings. The employee may be entitled to Income Support if they are not entitled to SPP.

The Inland Revenue is responsible for providing employers with support to help them operate all four Statutory Payment schemes and also for ensuring that employees receive their correct entitlement.

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

ANNEX D

Glossary of abbreviations

Abbreviation	Term
CBA 1992	Social Security Contributions and Benefits Act 1992
CB(NI)A 1992	Social Security Contributions and Benefits (Northern Ireland) Act 1992
DAA(S)A 2002	Debt Arrangement and Attachment (Scotland) Act 2002
ITEPA 2003	Income Tax (Earnings and Pensions) Act 2003
SAP	Statutory Adoption Pay
SMP	Statutory Maternity Pay
SPP	Statutory Paternity Pay
SSAA 1992	Social Security Administration Act 1992
SSA(NI)A 1992	Social Security Administration (Northern Ireland) Act 1992
SSP	Statutory Sick Pay
TMA 1970	Taxes Management Act 1970
ToFA 1999	Social Security Contributions (Transfer of Functions etc.) Act 1999
UEL	Upper Earnings Limit (<i>for liability for primary Class 1 National Insurance contributions</i>)

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