RESEARCH PAPER 03/93
23 DECEMBER 2003

The *National Insurance Contributions and Statutory Payments Bill* 2003-04

Bill 2 of 2003-04

The *National Insurance Contributions and Statutory Payments Bill* (Bill 2 of 2003-04) was introduced in the House of Commons on 27 November 2003. It contains a number of minor measures with an overriding theme of improving the administration of national insurance contributions, statutory sick pay and statutory maternity pay.

The Bill does not make any changes to the structure or rates of national insurance contributions or disturb the principle of the contributory system. It extends to the whole of the United Kingdom.

The Bill is due to have a second reading on 6 January 2004.

Antony Seely

BUSINESS & TRANSPORT SECTION

HOUSE OF COMMONS LIBRARY

Recent Library Research Papers include:

03/76	The *European Parliamentary and Local Elections (Pilots) Bill* [Bill 160 of 2002-03]	16.10.03
03/77	Officers of Parliament – a Comparative Perspective	20.10.03
03/78	UK Defence Procurement Policy	20.10.03
03/79	The Private Finance Initiative (PFI)	21.10.03
03/80	The Monetary Policy Committee: decisions and performance	30.10.03
03/81	Economic Indicators [includes article: National Statistics revisions]	03.11.03
03/82	Inflation: the value of the pound 1750-2002	11.11.03
03/83	Unemployment by Constituency, October 2003	12.11.03
03/84	An introduction to Devolution in the UK	17.11.03
03/85	House of Lords – Developments since January 2002	25.11.03
03/86	Economic Indicators [includes article: Background to the Pre-Budget report – the golden rule]	01.12.03
03/87	Employment Tribunals	09.12.03
03/88	Asylum and Immigration: the 2003 Bill	11.12.03
03/89	Asylum and Immigration: proposed changes to publicly funded legal advice and representation	12.12.03
03/90	*Child Trust Funds Bill* [Bill 1 of 2003-04]	12.12.03

Research Papers are available as PDF files:

- *to members of the general public on the Parliamentary web site, URL:* ***http://www.parliament.uk***
- *within Parliament to users of the Parliamentary Intranet, URL:* ***http://hcl1.hclibrary.parliament.u****k*

ISSN 1368-8456

Summary of main points

The *National Insurance Contributions and Statutory Payments Bill* (Bill 2 of 2003-04) was introduced in the House of Commons on 27 November 2003.[1] The Inland Revenue was given responsibility for national insurance contributions (NICs) and the administration of statutory sick pay (SSP) and statutory maternity pay (SMP) in April 1999. Certain anomalies in their administration – compared with the administration of tax – remain. Aligning these procedures requires primary legislation. The other measures in the Bill – to improve the administration of NICs – are not aimed at alignment, because they do not have tax equivalents. Information about the Bill – including the Bill's regulatory impact assessment – is collated on the Revenue's internet site.[2]

The explanatory notes to the Bill [Bill 2-EN] provide an overview of its purpose:

The measures at clauses 1 to 4 [of the Bill], together with any supporting secondary legislation, are designed to simplify employers' administration of National Insurance contributions by:

- extending employers' ability to recover 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 - *clauses 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 - *clauses 3 and 4*.

The measures in clauses 5 to 10 [of the Bill] 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 - *clause 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 - *clause 5*;
- aligning distraint procedures to recover contribution debt in Northern Ireland with those which apply in England and Wales - *clause 6*;
- allowing for future application of tax law to the recovery of contributions by means of secondary legislation - *clauses 5(4) and 6(3)*;
- aligning the powers of Inland Revenue officers to inspect records and gather information for tax and contributions purposes - *clauses 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 - *clauses 9 and 10*.

---

1 HC Deb 27 November 2003 cc 140-1; Inland Revenue press notice 98/03, 27 November 2003. The Queen's Speech did not refer to the Bill specifically.

2 http://www.inlandrevenue.gov.uk/nic/nic_bill.htm

Two useful annexes to the explanatory notes provide an explanation of the various classes of NICs and a description of statutory payments, including SSP and SMP. For convenience these are reproduced in an appendix to this paper.

National taxation (including NICs) and the system of statutory payments remain reserved matters,[3] although in Northern Ireland responsibility for statutory payments lies with the Northern Ireland Assembly. The Assembly was suspended at the time the Bill was introduced. As a consequence the changes the Bill makes to Northern Ireland legislation relating to SSP and SMP are being made with the agreement of the Secretary of State for Northern Ireland and the Northern Ireland Department for Social Development.[4]

---

3 With the exception that the Scottish Parliament is empowered under ss 73 & 74 of the *Scotland Act 1998* to introduce a tax varying resolution, to increase or decrease the basic rate of income tax for Scottish taxpayers from the rate determined by the UK Parliament by up to 3p in the £.

4 *Explanatory Notes* [Bill 2-EN] paras 9-10

CONTENTS

I Background

A. Transferring responsibility for NICs to the Inland Revenue

In his March 1998 Budget the Chancellor, Gordon Brown, announced a series of changes to National Insurance, as part of the Government's aim "to create a modern tax system that will help create jobs and reward work." One of these measures was the "establishment of a single organisation to deal with both income tax and National Insurance."[5] At the time responsibility for National Insurance contributions (NICs) and the administration of both statutory sick pay and statutory maternity pay lay with the Contributions Agency (CA) – an Executive Agency of the then Department for Social Security. The *Social Security Contributions (Transfer of Functions etc.) Act 1999* transferred the Agency to the Inland Revenue with effect from 1 April 1999.[6]

This measure had been one of the recommendations of the Taylor report published in March 1998:[7] a review of the tax and benefits system by Martin Taylor then chief executive of Barclays Bank, commissioned by the Chancellor following the 1997 General Election. Mr Taylor recommended a series of changes to improve the benefits of work for those on low incomes, and, in relation to NI, his conclusions led to changes in the rates and the base of NICs for employers and employees and in the rate of contributions paid by the self employed.

In his report Martin Taylor argued that the lack of alignment between NI and income tax was a cause for concern, particularly as employers were faced with separately recording and accounting for two sorts of NICs as well as income tax. He suggested that the NICs coverage of benefits in kind should be extended, and that a single organisation should have the responsibility for collecting tax and NICs:

> At present, benefits in kind are not subject to NICs, other than the employer-only Class 1A charge on company cars and car fuel. This gives employers an advantage in offering benefits in kind, so reducing the NICs yield and distorting competition. However, it does not look straightforward to value benefits in kind, at least on anything like the income tax rules, on the current NICs pay period basis. So a full employee and employer NICs charge may not be easy for employers to handle. The pragmatic solution may be to extend, perhaps at a higher NICs rate, the Class 1A employer-only charge ….
>
> Understandably, some employers and representative bodies argue for closer alignment of the detailed charging rules for tax and NICs, as well as for broader

---

5 HC Deb 17 March 1998 cc 1103-1104

6 The background to this measure is examined in *Social Security Contributions (Transfer of Functions etc.) Bill [HL]*, Library Research paper 99/12, 5 February 1999.

7 HM Treasury, *Work incentives: a report by Martin Taylor*, March 1998. At present the report is available from the Treasury's site at: http://www.hm-treasury.gov.uk/mediastore/otherfiles/taylor.pdf.

> alignment. Bringing benefits in kind generally into a Class 1A NICs charge would be such an alignment, assuming it also followed income tax rules.[8] There are strong arguments for looking for further alignment of NICs with the employment income charge and with the boundaries of the PAYE charge. This could be started by bringing NICs operational and policy functions together with their tax equivalents in the Inland Revenue. Such a move would send a strong signal that the Government was serious about reducing business costs by progressive alignment over the longer term.[9]

When the legislation to merge the Contributions Agency into the Revenue was given a second reading in the Commons, Alistair Darling, then Secretary of State for Social Security, explained that the decision to merge reflected certain historical changes in national insurance:

> The House will be aware that, at the moment, national insurance contributions are administered by the Contributions Agency, which is part of the Department of Social Security. Income tax is administered by the Inland Revenue. The reason that NICs are collected separately from income tax goes back to the origins of the modern welfare state. Those historical divisions are no longer sensible. In 1948, workers did not begin to pay tax until they were close to average earnings. On the other hand, national insurance was designed as a universal, flat-rate scheme, so nearly all workers paid their national insurance stamp. Many had no contact with the Inland Revenue.
>
> Two developments have changed that. First, in 1961 and again in 1975, contributions by employees and employers became earnings-related. Because of that, a majority of NICs began to be collected under the pay-as-you-earn system. Profit-related class 4 NICs for the self-employed were introduced and collected alongside schedule D income tax. As a result, the Inland Revenue now collects 94 per cent. of NICs and the Contributions Agency collects only about 6 per cent. of NICs, principally the flat-rate class 2 charge on the self-employed. Secondly, more and more of those paying NICs are also paying income tax. Eighty per cent. of employees who pay NICs also pay income tax.
>
> Employers do not understand the logic of keeping separate the administration and structure of national insurance contributions and tax. Just over 1 million employers are liable to pay national insurance contributions for their employees, and have to deduct both tax and national insurance contributions from employees' pay. However, they have to cope with two separate sets of rules. Moreover, if they have questions, they have to deal with two separate Departments. Those starting out on their own--perhaps starting up their own business or in other self-

---

8 [Legislation to extend the scope of Class 1A NICs was included the *Child Support, Pensions and Social Security Act 2000.*]

9 *op.cit.* pp 14-16

> employment--also have to deal with separate Departments on tax and on national insurance. I therefore believe that the case for change is overwhelming.[10]

In their report on the work of the Inland Revenue published in May 1999 the Treasury Committee welcomed the merger "as a step towards substantial streamlining and reductions in compliance costs."[11] One example of this type of change was given in the Revenue's 1999-2000 Annual Report:

> **Employer reviews** Staff in local offices carry out reviews, mainly on employers' premises, to ensure employers' compliance with the law. These are to account for the full amount of tax and NICs due under the PAYE/NICs/Construction Industry Deduction Scheme regulations and to report correctly expenses and benefits provided to employees. From April 1999, we started the process of integrating the NICs survey work with the employer compliance review work. An experimental office was set up in each region to consider how best to merge the business streams. The structure, training programmes and procedures have now been agreed and are being rolled out across the network during 2000/01. From 1st April 2000 employer compliance teams will cover all matters relating to tax and NICs liabilities in a single integrated review.[12]

In the past the Contributions Agency had been quite strongly criticised, in particular by the Adjudicator's Office – the independent body set up in 1993 to deal with complaints about maladministration by the tax authorities – in relation to its handling of customer complaints.[13] The Adjudicator made some comments on changes in the standard of service given to customers after the merger in its 2000 Annual Report:

> In 1999 I welcomed the steps the Contributions Agency and the Contributions Unit in Northern Ireland had taken to align their complaints handling procedures with those of the Inland Revenue with whom they merged in April 1999. Since the merger the National Insurance Contributions Office has reorganised its complaints handling, in many ways, to mirror the work of this office. When the National Insurance Contributions Office receives a request from this office for a report on a complaint it is passed to a stand-alone team who conduct their own investigation. They look at why there is a complaint and try to establish ways of preventing it happening again. Of course we do not always agree with the conclusions that the National Insurance Contributions Office has reached, but we very much welcome the huge strides they have taken to improve the service they offer to their customers.
>
> When we first considered complaints in 1995 about what was then the Contributions Agency we upheld 83% of them; this has now fallen to 55%. This is still a far higher percentage than for the rest of the Inland Revenue or Customs

---

10 HC Deb 8 February 1999 cc 36-7

11 *Sixth report: Inland Revenue*, 25 May 1999 HC 199 1998-99 para 56

12 *Inland Revenue Annual Report 1999-2000* Cm 5029 January 2001 p 17

13 The issue is discussed in Library Research paper 99/12, 5 February 1999 pp 30-33.

> and Excise, but we have been impressed by the National Insurance Contribution Office's keenness for our views on how their service could be further improved. We look forward to working with them in the coming year to achieve our common aim of improving the service for their customers.[14]

Nevertheless, in April 2002 the Institute of Chartered Accountants issued a press notice, critical of the limited benefits, as they saw them, from the transfer of functions to the Inland Revenue:

> On the third birthday of the merger between the Inland Revenue and the National Insurance Contributions Office, the Institute of Chartered Accountants in England & Wales' Tax Faculty is today (April 1) calling for the promised benefits of the integration to be realised. When the merger took place on 1 April 1999, the Inland Revenue claimed that the merger would:
>
> - reduce the burdens on businesses and people;
> - share experience, knowledge and skills in combating avoidance and making better use of resources;
> - enable a more joined-up approach to customer service;
> - to achieve a gradual alignment of the tax and NIC rules.
>
> The Tax Faculty supported this merger and agreed that it should be phased in over a three-year period. Now that three years have passed, the Tax Faculty is concerned that the stated merger benefits have not been achieved and that the performance of the merged NIC office has in that time deteriorated.
>
> The main areas for concern highlighted by our members are:
>
> - long delays in dealing with correspondence;
> - correspondence not being dealt with;
> - the NIC employers' helpline appears less than helpful;
> - a lack of consistency between local offices, head office and the employers' helpline;
> - NIC issues and problems appear to have been downgraded in importance following the merger;
> - key NIC personnel appear to have moved on or left, leaving a gap in understanding of NIC issues in the merged operation;
> - claims for repayment of NIC have become more complicated.
>
> Peter Bickley, Technical Manager of the Institute's Tax Faculty, said: "There have been some benefits of the merger, noticeably that PAYE and NIC audit visits are now unified, there has been some alignment of the income tax and NIC rules and steps have been taken to counter avoidance schemes. However, we are concerned that the stated merger benefits are slow in coming through and that in some respects the NIC service appears to have deteriorated. Now the merger has bedded down, the Tax Faculty would like to see clear action taken to satisfy the

---

[14] *The Adjudicator's Office Annual Report 2000* pp 3-4

> original objectives. We are also concerned that burdens on employers have increased rather than reduced. There is a pressing need to take further steps to align definitions for income tax and NIC and to ensure that items are treated consistently. There are also major issues outstanding, for example adopting a consistent treatment for pension contributions and expenses."
>
> Peter Bickley concluded: "In spite of raising more revenue than VAT, and more than corporation tax, CGT and IHT combined, National Insurance Contributions appear to be regarded as the 'Cinderella' of taxes. The handling of NIC matters appears if anything to be getting worse, with a knock-on effect on the burdens placed on business and those who pay NIC. It is essential that steps are taken to ensure that the merger achieves its objectives and reduces burdens, otherwise there is a danger that the merger will have failed to deliver the promised benefits."[15]

B. Aligning NICs and statutory payments with tax

In his 1998 report on work incentives Martin Taylor did not advocate the much wider change supported by some employers – full integration of NICs and income tax:

> Some employers and representative bodies have in the past argued that NICs should be completely merged with income tax. This would save them the work of separately recording and accounting for two sorts of NICs as well as tax. This is an understandable suggestion, particularly for small employers who face relatively high unit costs for operating PAYE and NICs. However, full integration of employee NICs would require a substantially higher, basic rate of income tax. This could have very large redistributional effects, particularly if this higher rate were applied to other sources of income, such as pensions … Full integration would also mean a complete redefinition of the contributory principle for short term benefits and for pensions. It seems more worthwhile to focus on changes which would reduce the disincentives in the NICs system without raising such major policy questions.[16]

To date the Government has shared Mr Taylor's scepticism for this reform:

> **Mr. Laws:** To ask the Chancellor of the Exchequer what plans he has to align further the income tax and national insurance systems; and if he will make a statement.
>
> **Dawn Primarolo:** There are no plans for the structural alignment of Tax and National Insurance. The Revenue, however, continues to work with employer representatives and others to look for opportunities to align the tax and National

---

15 ICAEW press notice, *Institute calls for action on income tax and NIC merger*, 1 April 2002

16 *Work incentives: a report by Martin Taylor*, March 1998 p 13. Further background on the Taylor Report and the historical development of NI is given in *The National Insurance Contributions Bill*, Library Research paper 02/32, 8 May 2002.

> Insurance rules at a practical level while having regard to the need to protect the individuals' benefit entitlement.[17]

Nevertheless, when the merger of the Contributions Agency into the Revenue was announced, the Government confirmed that this would provide an opportunity for further alignment between NICs and income tax. Alistair Darling, then Secretary of State, mentioned this issue when the *Social Security Contributions (Transfer of Functions etc.) Bill* received its second reading in the Commons:

> Business is rightly concerned about the technical differences in tax and national insurance contributions practice and law that add complexity and increase costs. We want to consider the scope for further alignment in discussions with representative bodies. As a first step, we have already announced a review of the inquiry powers that will be available to Inland Revenue staff. We are considering how best to provide a wider unified consultation process to ensure a productive environment for discussing the improvements.[18]

In the 1999 Pre-Budget Report the Government announced that the Revenue would work with employers' representatives and others on reducing technical differences between tax and NICs:

> **3.56** Employers often suggest that the differences in the detailed rules for pay-as-you-earn (PAYE) income tax and national insurance contributions (NICs) and their application cause difficulties when dealing with payroll. By bringing policy responsibility for tax and NICs together in the Inland Revenue the Government has now provided a single focus for employers' representatives to discuss improvements in legislation and processes across both PAYE and national insurance. The Inland Revenue will work with employers' representatives and others on options to reduce technical differences, while having due regard to individuals' benefit entitlement.[19]

This was followed by a commitment in the 2000 Budget:

> The Inland Revenue will be publishing for consultation this Spring proposals for simplifying some of the aspects of National Insurance Contributions (NICs) that create complexity and worry for employers and their payroll administrators. These will include giving employers more time to deal with particular difficult payments and providing simplified arrangements for accounting for NICs paid on behalf of employees seconded abroad. And the Inland Revenue will set out options for ensuring that its officers have common and appropriate powers for their examination of employers' tax and NICs records.[20]

---

17 HC Deb 10 February 2003 c 612W
18 HC Deb 8 February 1999 c 41
19 *Pre-Budget Report*, Cm 4479 November 1999 para 3.56
20 Inland Revenue Budget press notice REV10, *Helping to get it right*, 21 March 2000

The Revenue's consultation paper was issued in June 2000,[21] covering a number of issues:

- The powers of officers to check employers' records
- Ways to make it easier for employers to calculate NICs correctly
- The definition of 'pay' for tax and NICs purposes
- The assessment of NICs on UK employees seconded abroad, and the guidance offered by the Revenue in these circumstances
- The assessment of NICs on payments of vouchers made by third parties.

In July 2001 the Revenue published a summary of the comments it had received, and their response. As this paper noted, "a total of 22 responses were received. The majority of the replies were from high profile organisations involved in tax and NICs reflecting the technical focus of the proposals in the paper."[22] The paper went on to explain how the Revenue would proceed:

> In view of the positive feedback received on the proposals, the Inland Revenue are now pressing ahead to introduce them as soon as possible. Business representatives and employers will receive detailed guidance and information on each option as they come on line. The Inland Revenue has already consulted further on how best to solve the problems associated with awards from third parties … There were several common areas raised by respondents on other matters of concern that were outside the scope of the paper. These will help inform any future initiatives in the area of tax/NICs simplification.[23]

This Bill deals with the first of these issues only: the powers of officers to check employers' records (specifically clauses 7 and 8 of the Bill). Formal consultation on the other provisions of the Bill – insofar as it has taken place – has been through other means. This is discussed in more detail below.

---

21 *Simplifying National Insurance Contributions for Employers: a technical discussion paper*, June 2000

22 *Simplifying National Insurance Contributions for Employers: summary of comments and IR response*, July 2001 p 3

23 *op.cit.* pp 3-4

II The Bill

The *National Insurance Contributions and Statutory Payments Bill* was introduced in the House of Commons on 27 November 2003. It provisions appear to be relatively uncontroversial. To date the Bill has not been discussed in the House at any length. It has not been commented on in the mainstream press, and professional organisations do not appear to have published any substantive commentary on its provisions. The Revenue's internet site presents a list of FAQs on the Bill: these focus on clauses 1 and 2 of the Bill, though two general observations are made:

> **Q Does the Bill increase NICs charges?**
> **A** No, the Bill makes useful changes to the administration of National Insurance and statutory payments to reduce technical differences between them and the administration of tax. It makes no changes to the rates or structure of NICs.
>
> **Q When will the Bill receive Royal Assent?**
> **A** The NICs Bill is subject to Parliamentary process and it will receive Royal Assent on completion of that process. We can confirm the Bill was introduced into the House of Commons on the 27 November and we will update this website as the Bill progresses through Parliament.[24]

In its discussion of the Bill's contents, the Revenue's regulatory impact assessment (RIA) divides the Bill into five main measures, each comprising of two clauses. This structure is followed below. A short description of the purpose and intended effect of each measure is provided in the RIA and is reproduced here. For completeness, it should be noted that the Bill contains two schedules collating minor and consequent amendments, and repeals and revocations. Three other clauses (clauses 13-15) deal with the date this legislation is to come into force (this date is to be specified by Order), the Bill's territorial extent, and its short title.

A. NICs on security-based remuneration: employees' liability (Clauses 1 & 2)

> **Purpose and intended effect**
> The Government is keen to encourage increased employee share ownership. The introduction of the 1% additional NICs charge on employees' primary NICs liability above the Upper Earnings Limit (UEL) could have an unintended impact on employers' ability to recover from an employee the primary NICs arising on non-cash payments of earnings such as securities. When an employer makes a security-based payment of earnings NICs liability does not arise until, for example, options are exercised to acquire shares (or other securities), or restrictions attached to shares are lifted. At that point the employer is liable to account for and pay to the Inland Revenue both the primary and secondary NICs

[24] As noted, the Revenue's page on the Bill is at: http://www.inlandrevenue.gov.uk/nic/nic_bill.htm

> due on the employee's gain. Until 5th April 2003 it was unlikely that primary NICs would be due on share based earnings as, typically, employees would have paid up to the UEL on their regular cash earnings. But, from 6th April 2003 there has been a further 1% due on earnings that exceed the UEL. The two measures in this clause are intended to remove some of the restrictions placed on the employer's ability to recover the primary NICs payable with respect to security-based payments of earnings.
>
> With the employee's agreement, the employer may currently retain some of the shares or securities so as to cover the primary Class 1 NICs, but this only applies to security-based earnings paid to *former* employees *in the same year that they cease to work for that employer*. And it only applies where there are insufficient monetary earnings from which to recover. The existing provision is required because an employee may be able to exercise an option to acquire securities for a period after they leave the employment of the awarding company.
>
> The proposals here seek to widen the choices available to employees and employers for meeting the primary NICs in these circumstances by:
>
> - enabling the retention of securities by employers to pay primary NIC liabilities arising on security-based payments of earnings to *existing* employees (ie so that existing employees who do not want to pay NICs on these gains out of their other cash earnings may have a choice); and
> - enabling the retention of securities by employers to pay primary NIC liabilities arising on security-based payments of earnings to former employees in the year *after* they ceased to work for that employer.

An additional 1 per cent national insurance contribution on earnings above the upper earnings limit (UEL) was one of a series of NIC rate increases announced by the Chancellor Gordon Brown in his Budget speech on 17 April 2002, to take effect from April 2003.[25] For employees the rate of NICs was increased by 1 percentage point to a rate of 11% on all earnings between the primary threshold and the upper earnings limit, and in addition to this, a 1% rate was introduced on earnings above the UEL.[26] At the time of the Budget some commentators argued that the new 1% rate was simply an increase in the higher rate of income tax. That said, many appear to have taken the view that for higher earners the increase in tax was much less than had been feared and thus not unwelcome.[27]

It is worth noting that the tax rules applying to employee acquisition of shares and other types of securities were rewritten by provisions in the *Finance Act 2003* (specifically schedule 22).[28] Equivalent changes to the NICs rules were made by the *Social Security*

---

25 HC Deb 17 April 2002 cc 590-592

26 Full details of all the changes to NIC rates announced in the 2002 Budget are given in Library Research paper 02/32, 8 May 2002.

27 "Extra £900 will come off £100,000 salary", *Financial Times*, 20 April 2002

28 These changes were debated at the Committee stage of the Bill: SC Deb (B) 22 May 2003 cc 247-290.

(Contributions)(Amendment No 5) Regulations SI 2003/2085. Detailed guidance on the rules was recently published by the Revenue.[29]

It would appear that some employers might be concerned as to how the arrangements set out in clauses 1 and 2 are to work in practice. The Revenue's internet site has a series of FAQs on this issue, and they are reproduced below:

> **Q What does Clause 1 and 2 do?**
> **A** Clauses 1 and 2 extend employers' ability to recover Class 1 primary National Insurance Contributions (NICs) paid on behalf of their employees and ex-employees on securities based earnings. They allow the employer, with the agreement of the employee, to withhold an amount of securities equal to the value of the employees NICs paid on their behalf.
>
> The employer can recover by this method in the year that the gain arises for current employees, in the year of cessation and the year following cessation for ex-employees. These changes will be made by amending both primary and secondary legislation. Regulations will be introduced to specify how the agreements can be entered into and the types of earnings that can be included.
>
> **Q Can I ask employees to enter into these agreements now?**
> **A** No. Currently these agreements can only be made with employees in the year that they cease working for you. For employees who receive the gain before cessation (but in the year of cessation) these agreements are limited to situations when the NICs cannot be recovered from cash earnings.
>
> **Q Once the Bill becomes an Act can I ask employees to enter into these agreements?**
> **A** You will be able to enter into these agreements once the bill receives Royal Assent, and the Clauses are given effect by a treasury commencement order and the necessary supporting Regulations are in force. These will be laid before Parliament following Royal Assent. The Clauses are currently drafted to allow employers to enter into agreements with their employees any time up to the day that the security based remuneration is paid.
>
> **Q Can I ask my employees to enter into the new Joint NIC Agreements and Elections now?**
> **A** No. Currently there is no statutory provision to allow employers and employees to either make the new Agreements or Elections for restricted and convertible securities. However, you can make Agreements and Elections for employment related securities options (previously just share options), including Long Term Incentive Plans and if you click here you will see further information on that subject.

---

[29] *Tax Bulletin: special edition no.7*, December 2003 http://www.inlandrevenue.gov.uk/bulletins/tbse7.pdf Those interested are referred to "Reform of employee securities taxation: parts 1 & 2", *The Tax Journal*, 21-28 July 2003

Q Once the Bill becomes an Act can I ask my employees to enter into the new Joint NIC Agreements and Elections for securities already awarded?
A Yes, after the Bill receives Royal Assent, and the Clauses are given effect by a Treasury commencement order and the necessary supporting Regulations are in force. The Clauses as currently drafted will allow employers and employees to jointly make Elections and Agreements for restricted or convertible securities already awarded. However, the terms of the Elections and Agreements cannot be applied to any employment income that has already arisen from those securities and treated as earnings before the Election or Agreement is made.

Q When will the supporting draft Regulations be published?
A The Regulations are currently being drafted and, subject to Ministerial approval, will be laid before Parliament following Royal Assent of the Bill.

Q Will the employees who agree to pay the employers NIC liability, either through an Agreement or an Election, obtain Income Tax relief?
A Yes, we propose to include a measure in the Finance Bill 2004 for employees who bear the employer's NIC liability, either under an Agreement or an Election, to get Income Tax relief for the amount of employer's secondary NIC paid by them. The provisions are likely to operate in the same way as the Income Tax relief currently provided for the employee's payment of secondary NIC on gains from securities options.

Q Will the Inland Revenue provide model Joint NIC elections and guidance on their website?
A Yes. We will provide model Joint NIC Elections and guidance on the website. As most of the requirements for the new Elections are similar to the Elections for securities options, the existing models will be amended to cater for applications to restricted and convertible securities.

Q As an employing company I can get Corporation Tax relief for the restricted and convertible securities acquired by my employees. Will that relief be affected if they agree to pay the secondary employers NIC liability on these securities?
A Along with a proposal to provide for Income Tax relief, we propose to make a consequential amendment to Schedule 23 Finance Act 2003. This is to ensure the Corporation Tax relief for employee share acquisition is available as originally provided and will not be affected by the employee getting income tax relief for those securities.

Q Can an Election or Agreement be entered into where the employment income would be charged to income tax under Chapters 3A or 3B?
A Chapters 3A and 3B in Part 7 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) are anti-avoidance provisions and, therefore, the proposed extension of the NIC Agreements and Elections to employment related securities will not be applicable to employment income that arises by virtue of those chapters.

B. NICs on security-based earnings: joint elections (Clauses 3 & 4)

Purpose and intended effect

Currently, employers can ask their employees to fund the employer's NICs liability arising when an employee exercises an employment-related option to acquire securities, either through a NICs "election" or an "agreement". This enables the employer to remove the need to provide for the unpredictable secondary liability for NICs in their accounts, when the amount of the employer's NIC liability is contingent on the gain from options on exercise. Employers who award restricted and convertible securities have told us that they also face the same problem in respect of these awards.

We therefore also want to allow employers to ask employees to bear the secondary NICs liability arising on payments of earnings in the form of this type of award of securities. Consequential changes will also be made to *Income Tax (Earnings and Pensions) Act 2003* so that the employee can obtain income tax relief for the amount of employer's NIC liability payable by them.

Since April 1999 NICs have been charged on gains arising when share options are exercised outside an Inland Revenue approved scheme if the shares are readily convertible into cash. The Government's *Budget 2000* document touched on difficulties that some companies have faced in awarding employees share options:

> Many e-commerce and high-tech companies offer their employees substantial share options as part of their remuneration package. Where options are exercised outside an Inland Revenue approved scheme and the shares are readily convertible into cash, companies are liable for employers' NICs on the gain. For companies with volatile share prices this creates an exposure to an unpredictable NICs liability and can put at risk their investment strategies and damage future growth. The Government has received suggestions that employers' exposure to these difficulties could be resolved, for example, by allowing a voluntary agreement between employer and employee that all or part of the employer's NICs liability will be met by the employee. The Government is seeking views on these suggestions. It is attracted to improving flexibility in this area and is considering legislation as part of its support for the employees of companies with high growth potential.[30]

To tackle this problem, legislation was introduced in the *Child Support, Pensions and Social Security Act 2000*[31]:

- first, to allow the whole or part of an employer's NICs on options to be recovered from the employee (subject to a voluntary agreement with the

---

30 HM Treasury, *Budget 2000*, HC 346 March 2000 p 47

31 specifically ss 71 & 81 of the *Child Support, Pensions and Social Security Act 2000*; and s 56 of the *Finance Act 2000*

employee), or transferred to the employee, following the employer and employee making a joint election to that effect approved by the Inland Revenue;

- second, to allow employees to set the employer's NI paid by them as a result of this change against their liability to income tax on the share option.[32]

Guidance on the procedure for making an agreement or an election is published on the Revenue's site.[33]

C. Recovery of NICs debt (Clauses 5 & 6)

Purpose and intended effect

Even before the transfer of the responsibility for NICs to the Inland Revenue, some 96% of NICs were collected with income tax, and the legislation enabling recovery of debt to take place applied to these NICs in exactly the same way as the tax they were collected with. Thus an employer would account for the tax due from employees' wages under PAYE and the NICs due in respect of the same wages on one form, and the Inland Revenue would take one action to recover non or under payment. Similarly self-employed people making a return of their taxable income have the tax and Class 4 (profit related) NICs due on that income assessed and collected at the same time.

But the classes of NICs that hitherto were not collected with tax have, historically, different legal structures and procedures attached to them. This is now highlighted in the Inland Revenue where for reasons both of customer service and administrative efficiency, all the taxpayers'/contributors' liabilities should be dealt with in the same way and at the same time. This part of the Bill addresses the misalignments for the recovery of debt in that small proportion (4%) of NICs which were previously handled separately from tax.

The main group impacted by these misalignments are the self-employed where, as stated above, their profit related tax and NICs (Class 4) are handled together, but the flat rate Class 2 NICs (which is the element that earns state pension entitlement) are dealt with entirely separately. The specific elements to be aligned are:

- the statutory periods of notice following the issue of a written notice before authorised officers can take action to distrain goods in England and Wales or apply for a summary warrant and attachment in Scotland;
- the distraint procedures in Northern Ireland.

---

[32] Inland Revenue press notice 96/00, 19 May 2000

[33] http://www.inlandrevenue.gov.uk/shareschemes/elections.htm The issue is discussed in "Transferring NICs on share option gains", *The Tax Journal*, 28 May 2001; and, "An election you'll lose", *Financial Times*, 18 October 2003.

The RIA to the Bill notes that one of the main changes from this alignment – reducing the notice period for taking action in England and Wales to distrain goods from 30 days to 7 days – has been recommended elsewhere:

> Professor John Beatson QC published in 2000 his *Independent Review of Bailiff Law* in which he considered the period of notice for distraint action generally. In his report Professor Beatson recommended that for distraint action on private premises a period of 7 days' notice should be given, and for distraint action on commercial premises the recommended period of notice was 72 hours.[34] This recommendation was supported in both the Lord Chancellor's Department's Green Paper *Towards Effective Enforcement*[35] on the structure and regulation of civil enforcement action which was published in 2001 and the subsequent White Paper *Effective Enforcement* Cm 5744[36] published in March 2003.[37]

Further details on the White Paper *Effective Enforcement* are given in a recent Library standard note.[38] As the Explanatory Notes to the Bill observe, the procedures for debt recovery in Scotland have been reformed by the *Debt Arrangement and Attachment (Scotland) Act 2002*, which has replaced the diligence of poinding and warrant sales (the Scottish equivalent of distraint) with a new diligence of attachment. Some background information on this reform is available in a paper published by the Research Service of the Scottish Parliament.[39] The Act does not impose a statutory period of notice to attachment. However, a 14 day notice period is stipulated in official guidance that debtors must be given in these circumstances.[40]

D. The powers of officers to check employers' records (Clauses 7 & 8)

Purpose and intended effect

> The transfer of business [from the Contributions Agency to the Revenue] has left a situation in which our inspection powers for NICs are greater than those for tax. In cases where we are dealing with both tax and NICs at the same time it is difficult for employers to understand why, in the same inspection of both NICs

---

34 Professor J. Beatson QC, *Independent Review of Bailiff Law*, The University of Cambridge Centre for Public Law June 2000 (see p 19-21) http://www.dca.gov.uk/enforcement/beatson.pdf

35 Lord Chancellor's Department, *A single piece of bailiff law and a regulatory structure for enforcement*, July 2001 (see para 4.9-4.12) http://www.dca.gov.uk/enforcement/enfrev01/index.htm

36 Lord Chancellor's Department, *Effective Enforcement* Cm 5744 March 2003 (see paras 184-8) http://www.dca.gov.uk/enforcement/wp/index.htm

37 *National Insurance Contributions and Statutory Payments Bill: regulatory impact assessment*, November 2003 p 21

38 "Effective Enforcement: the Government's White Paper on civil enforcement", Library standard note SN/HA/2160, 14 May 2003

39 *Abolition of Poindings and Warrant Sales Bill SPICE Research paper 00/21*, 27 October 2000 http://www.scottish.parliament.uk/S1/whats_happening/research/pdf_res_papers/rp00-21.pdf

40 For details see, Scottish Executive, *Dealing with Debt: finding your feet*, 2003 http://www.scotland.gov.uk/library5/justice/dwdl.pdf

> and tax, there are different powers for each. The clauses here achieve alignment through a series of changes to the legislation.
>
> First, clause 7 dispenses with the package of powers transferred to the Inland Revenue in Section 110ZA of the *Social Security Administration Act 1992*. This includes the ability to:
>
> - enter premises;
> - question anybody found on the premises; and
> - compel them to provide information and documents (without first subjecting that request to third party scrutiny)
>
> Routine inspection powers already exist for both tax and NICs which allow our officers to examine employers records (these are in regulations). But there are cases where we need additional information for NICs purposes. So, second, in these cases we intend to apply the Inland Revenue's information powers contained in Section 20 of the *Taxes Management Act*, to NICs. This will allow the Tax Appeal Commissioners to ensure that we are acting fairly and properly.
>
> In addition, minor changes to the *Social Security (Contributions) Regulations 2001* were needed as the review identified a need to provide a specific right of access to computer records (in common with the power that currently exists for PAYE). These changes have been made through the *Social Security (Contributions)(Amendment) Regulations 2003* (S.I. 2003 No. 183) which came into force on 6 April 2003 and therefore do not form part of the measures for this Bill.

During the passage of the *Social Security Contributions (Transfer of Functions etc.) Act 1999* in the House of Lords, several Lords raised the concern that Inland Revenue officers would have greater powers of enforcement relating to NICs, SSP and SMP compared with their counterparts in the Contributions Agency (CA). The Government acknowledged these anxieties, and two amendments were made to the Bill at this stage, concerning the powers of officers to enter premises.[41] At this time Baroness Hollis, speaking for the Government, announced that the Revenue would review this issue in the light of experience:

> This Bill is not the occasion for substantial change of powers since the aim of the Bill is to transfer the CA as a "going concern". We have been clear from the outset that professional advisers would be nervous that there might be a levelling up of powers. This we have very deliberately not done. Nevertheless, we accept that the statutory powers of enforcement under NICs legislation that the Inland Revenue will inherit will not be fully consistent with the existing powers in relation to tax. It is in no one's interests to have any lack of clarity or certainty about the state's powers to ask questions or ask to enter premises.

---

[41] For more details see Library Research paper 99/12, 5 February 1999 pp 45-46.

> We anticipate that, after this legislation takes effect, the Inland Revenue will be consulting with a range of opinion about desirable harmonisations of tax and NICs. Indeed, those discussions have already started. Some areas for discussion would be on the details of the charging rules. Others would be on the administration powers and administrative processes to the extent that they impinge on employers and others. So we see considerable merit in conducting a review of inspectors' powers, taking into account the rights of individual contributors as well as the interests of employers and the need to block fraud.
>
> Such a review needs to be done properly, running well beyond the timescale of this Bill. Moreover, the review needs to look at the wider context. The Inland Revenue is being given other tasks such as policing the national minimum wage and student loan recovery, and handling the working families tax credit. All three involve employers, although we hope to burden them as little as possible. It may be that, on close examination, different powers are indeed needed for different purposes. But our starting-point must be that a Revenue officer visiting an employer should have much the same powers, and limitations on those powers, whatever the purpose of the visit--in other words, as much congruence as possible.
>
> I am conscious that the Committee on the Enforcement Powers of the Revenue Departments, set up in 1980 under the distinguished chairmanship of the noble and learned Lord, Lord Keith of Kinkel, took some four years to produce its reports. And enactment of its recommendations, in detailed consultation with representative bodies, took another five years. That committee was exemplary in its thoroughness and very wide-ranging in its scope. While we want this review to be thorough, we do not intend to be so wide-ranging. That is, not least, because we want to see the outcome--which I do not pre-judge--on a much faster time-scale.[42]

Clauses 7 and 8 of the Bill represent the outcome to this review.

As noted above, in June 2000 the Revenue issued a consultation paper which, among other issues, raised this particular question. As an introduction to the subject the Revenue set out what it believed should be the key principles to employer compliance reviews:

> We believe that the powers we have for employer compliance work should have the following features:
>
> - They should be simple to understand.
> - They should be adequate to obtain access to the records and information that we need.
> - They should be able to be exercised with the minimum of intrusion and interference in the citizen's affairs.
> - They should be certain and transparent so that employers clearly understand their rights and obligations.

---

[42] HL Deb 25 January 1999 c 819

- They should be consistent. Where there are variations for different purposes these should be justified objectively by a clear need and not by historical accident.
- They should be subject to effective safeguards against error or abuse.[43]

Responses to this list were positive – and in its follow-up document in July 2001, the Revenue took the opportunity to respond to certain caveats raised (*the Revenue's response is italics*):

> Respondents generally agreed with the key principles of Employer Compliance powers put forward in the discussion paper. Additional attributes suggested were "fair", "equitable" and a due regard for employer's costs. One respondent suggested that the attributes should be enshrined in law so that the courts could ensure that they were effective in practice.
>
> *We agree that fairness is an important principle. It is one which underlies our compliance policy. Fairness not only in the way in which we conduct compliance activity but also in our attempts to enable all employers to comply with their obligations. We are concerned that employer's costs should be kept to a minimum and it is already part of our policy that Employer Compliance officers should make every effort to bring this about.*[44]

In carrying out employer compliance reviews, Revenue officers have 'routine powers' to examine employers' records wherever the records are held or wherever the Inland Revenue and the employer agree the inspection should take place. There are a number of situations in which these powers may prove insufficient:

- the hidden economy employer (an employer who was previously unknown to the Revenue). The employer may deduct tax and NICs but those deductions do not find their way to the Exchequer. By their very nature these employers do not respond to polite written requests for access to records. They may not trade from fixed premises and may be in one place for a short period of time;

- where the employer and employee collude and "cash in hand" wages are paid. This practice has a number of implications. By colluding to suppress true gross wages both tax and NIC may be evaded, false claims to benefits or tax credits may be enabled and the employer gains an unfair competitive advantage;

- where there is potential for fraud from abuses of the national insurance number system. The Government is committed to ensuring the integrity of the national insurance number system. To support this enquiries may need to

---

[43] *Simplifying National Insurance Contributions for Employers: a technical discussion paper*, June 2000 pp 10-11

[44] *Simplifying National Insurance Contributions for Employers: summary of comments and IR response*, July 2001

> be made in cases where it is suspected that a false or hijacked national insurance number (NINO) has been used. It may be suspected that a person is working and claiming benefit using two NINOs, or even claiming personal tax allowances twice in two separate jobs. This is an area where there is liaison between Inland Revenue employer compliance officers and the Benefits Agency.[45]

Where this is the case, officers may employ the 'non-routine' powers granted under section 20 of the *Taxes Management Act 1970*, if they are investigating a tax matter. However, separate legislative provision is made for the purposes of NICs, SSP and SMP (under section 110ZA of the *Social Security Administration Act 1992*). The Revenue's consultation paper describes these powers in some detail, noting that in the latter case officers may easily obtain immediate access to premises, and have access to documents to a relatively quicker time-scale (full details are given in Annex 2 to the document). The Revenue concluded, "there is a clear contrast of effect and ethos between the two approaches" even though, in its view, "there is no intrinsic difference in the situations being investigated."[46]

In responses to the consultation there was general support for the Revenue's proposal to extend the existing regime for tax to all classes of NICs and SSP/SMP: "respondents were generally content that the S20 powers were a suitable replacement for S110ZA. The S20 powers were seen as robust yet balanced whereas S110ZA was viewed as disproportionate with few safeguards."[47] Again, there were some reservations, to which the Revenue *responded*:

> Respondents generally supported the proposals. A client survey carried out by one respondent indicated that 93% of clients either agreed or strongly agreed that the proposed changes were broadly sensible. There was some reluctance to fully endorse the proposals without seeing the guidelines on how employer compliance powers would be used.
>
> *We welcome the positive response to the proposed changes and agree that any new internal guidance should be made public. Our internal guidance on Employer Compliance and on the use of our information powers is already published. We will make sure that any new guidance will also be published and there will be an opportunity for consultation on any changes made to the appropriate codes of practice as a result of this review.*[48]

---

45 *Simplifying NICS*, June 2000 pp 13-14. This issue is discussed in, HM Treasury, *The informal economy: a report by Lord Grabiner QC*, March 2000 (see pp 7-8, 17-18). At present this is available at: http://www.hm-treasury.gov.uk/media//60F77/74.pdf

46 *op.cit.* p 14

47 *Simplifying NICS: IR response*, July 2001 p 5

48 *op.cit.* p 5

E. SSP/SMP civil procedures (Clauses 9 & 10)

Purpose and intended effect

Our compliance regime for SSP/SMP is presently completely out of step with that for tax, NICs and tax credits and, indeed with the regime for the new schemes Statutory Paternity Pay and Statutory Adoption Pay (SPP/SAP). This is because employers' failures to meet their obligations under the SSP/SMP schemes are dealt with by a series of minor criminal offences. For SPP/SAP a system of civil penalties exists to deal with entirely similar failures by employers. We believe that this series of criminal offences is wholly disproportionate to the compliance risk for SSP/SMP schemes. A civil penalty system is a more proportionate system for dealing with employer failures.

The RIA to the Bill notes that this measure is based on the compliance regimes for statutory paternity pay and statutory adoption pay, "which were widely consulted on before they were introduced in the *Employment Act 2002*." The introduction of paid paternity leave and paid adoption leave were one of a series of options first explored in a Green Paper published in December 2000,[49] following a review of these arrangements announced in the 2000 Budget.[50] Further consultation was launched in May 2001, leading in turn to the Government publishing its plans in November that year.[51] Further background is given in a Library Research paper, published when the legislation to effect these changes was first presented to the House.[52]

---

49 *Work and Parents: Competitiveness and Choice*, December 2000 http://www2.dti.gov.uk/er/g_paper/pdfs/wpgreen.pdf

50 HC Deb 21 March 2000 c 864

51 DTI, *Government Response on Simplification of Maternity Leave, Paternity Leave and Adoption Leave*, November 2001 (see pp 48-49 in particular on the compliance regime). This document, and associated material on the development of parenting rights in recent years, is available at: http://www.dti.gov.uk/er/individual/workparents_hist.htm

52 Library Research paper 01/93, 15 November 2001

III Bibliography

General information on NICs and statutory payments

Social Security Contributions (Transfer of Functions etc.) Bill [HL], Library Research paper 99/12, 5 February 1999
http://www.parliament.uk/commons/lib/research/rp99/rp99-012.pdf

Social Security Select Committee, *The contributory principle*, 7 June 2000 HC 56 1999-2000
http://www.publications.parliament.uk/pa/cm199900/cmselect/cmsocsec/56/5602.htm

Employment Bill, Library Research paper 01/93, 15 November 2001
http://www.parliament.uk/commons/lib/research/rp2001/rp01-093.pdf
[Part II of this paper discusses the 'family friendly' measures in the Bill, which included changes to the system of statutory payments.]

The National Insurance Contributions Bill, Library Research paper 02/32, 8 May 2002
http://www.parliament.uk/commons/lib/research/rp2002/rp02-032.pdf

Greg Kaplan & Andrew Leicester, *A survey of the UK benefits system: Institute for Fiscal Studies Briefing Note no.13*, October 2002
http://www1.ifs.org.uk/taxsystem/benefitsurvey.pdf

Stuart Adam & Greg Kaplan, *A survey of the UK tax system: Institute for Fiscal Studies Briefing Note no.9*, November 2002
http://www1.ifs.org.uk/taxsystem/taxsurvey.pdf

Government Actuary's Department, *Government Actuary's Quinquennial Review of the National Insurance Fund*, Cm 6008 October 2003
http://www.gad.gov.uk/publications/docs/qr5-fullreport.pdf

Detailed guidance on statutory maternity pay is published on the DTI's internet site at: http://www.dti.gov.uk/er/maternity.htm

Detailed guidance on statutory sick pay is published on the Inland Revenue's internet site at: http://www.inlandrevenue.gov.uk/pdfs/emp2003/e14_2003.pdf

General information available on the Commons intranet only

Statutory Sick Pay, Library standard note SN/BT/1866, 3 June 2003
http://hcl1.hclibrary.parliament.uk/notes/bts/snbt-01866.pdf

Statutory Maternity Pay: chronology, Library standard note SN/BT/319, 10 June 2002
http://hcl1.hclibrary.parliament.uk/notes/bts/snbt-00319.pdf

Maternity pay and leave, Library standard note SN/BT/1429, 12 April 2002
http://hcl1.hclibrary.parliament.uk/notes/bts/snbt-01429.pdf

Statutory Sick Pay: re-imbursement of employers, Library standard note SN/BT/320, 25 January 2000
http://hcl1.hclibrary.parliament.uk/notes/bts/snbt-00320.pdf

Material directly related to the Bill

Inland Revenue, *Simplifying National Insurance Contributions for Employers: a technical discussion paper*, June 2000
http://www.inlandrevenue.gov.uk/consult/simple_intro.htm

Inland Revenue, *Simplifying National Insurance Contributions for Employers: summary of comments and IR response*, July 2001
http://www.inlandrevenue.gov.uk/consult_new/simplify-nic-07-01.pdf

Lord Chancellor's Department, *Effective Enforcement: improved methods of recovery for civil court debt and commercial rent and a single regulatory regime for warrant enforcement agents*, Cm 5744 March 2003
http://www.dca.gov.uk/enforcement/wp/index.htm

Inland Revenue press notice 98/03, *National Insurance Contributions and Statutory Payments Bill*, 27 November 2003
http://www.gnn.gov.uk/gnn/national.nsf/IR/7D38C4FCE33293E280256DEB005F4C62?opendocument

Inland Revenue, *National Insurance Contributions and Statutory Payments Bill: regulatory impact assessment*, November 2003
http://www.inlandrevenue.gov.uk/ria/nics_ria.pdf

National Insurance Contributions and Statutory Payments Bill 2003-04: Explanatory Notes, [Bill 2-EN] 27 November 2003
http://www.publications.parliament.uk/pa/cm200304/cmbills/002/en/04002x--.htm

IV Overview of NICs and statutory payments[53]

National insurance contributions

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 £89 up to £595 per week (£4,615 to £30,940 per year) and 1% of income above this limit. Secondary contributions are payable at 12.8% of all earnings above £89 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 per week - a self-employed person can be exempted from liability where earnings are below £4,095 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 £6.65 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 £4,615 and £30,940 and 1% of profits above £30,940.

---

53 *Explanatory Notes* [Bill 2-EN] 27 November 2003 pp 19-21. Amounts and rates are for the 2003/4 tax year.

Statutory Payments

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 £77 in a period of at least 8 weeks before they became incapable of work. SSP is payable for a maximum of 28 weeks at £64.35 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 £77 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 £100 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 £77 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.

SAP is payable for 26 weeks at the lower of £100 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 £77 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 £100 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 are 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.