# National Insurance time limits

Employment Tax | Tax voice




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Eleanor Meredith highlights the changes being made to the NIC time limits

## Introduction

The Autumn Statement announced that the Government was considering reform of the time limits related to the recovery of National Insurance from April 2018 as explained in para 4.9 of the Green Book:

> ***4.9 Removing National Insurance from the effects of the Limitation Act*** *– From April 2018, the government will remove NICs from the effects of the Limitation Act 1980 and Northern Ireland equivalent. This will align the time limits and recovery process for enforcing National Insurance debts with other taxes. The government will consult on the details.*

As might be expected, the commentary in the Finance Bill clauses released in December 2016 was also light, given that reform is not imminent:

> ***6.7. Removing NICs from the effects of the Limitation Act and aligning the assessment and recovery of NICs with that of Income Tax and other taxes***

> *As announced at Autumn Statement 2016, the government will remove NICs from the effects of the Limitations Act 1980 and Northern Ireland equivalent. This will align the time limits and recovery process for enforcing National Insurance debts with other taxes. It will take effect from April 2018. The government will consult on the detail in early 2017.*

What neither document made clear is that different law currently applies in Scotland vis-a-vis the rest of the UK regarding time limits for National Insurance.

No announcement has so far been made regarding the law applying in Scotland and how it is applied by HMRC, currently and going forward. This article considers this in more detail, although it poses more questions than it answers.

## Current law and practice

The Statute of Limitations does not apply to debts of National Insurance where these are considered by the Scottish Courts. Rather, the Prescription and Limitation (Scotland) Act 1973 applies in Scotland and provides for a time limit of 20 years for collection of debts, including NIC. This is relevant in terms of deciding how far back the Courts might apply a historic liability, if it were to be pursued via the Scottish Courts. (The Statute of Limitations has a similar 20-year time limit for the rest of the UK, but only in discovery cases; the more familiar time limit is of course six years.)

As a practical matter this has historically had limited impact, as HMRC's past practice has been to pursue arrears of liability through English Courts, and therefore to apply the six-year time limit that applies more widely in England, Wales and Northern Ireland, both to settlements pursued through the Courts and to those agreed outside it.

More recently, however, HMRC has argued that "normal" settlements involving "Scottish employers" should cover a 20-year period, in line with the Prescription and Limitation (Scotland) Act. While this appears to be a reasonable outcome where HMRC actively pursues a liability via a Scottish Court it appears far less justifiable where an employer is settling out of Court with HMRC.

It is especially concerning, because it is not clear what sort of connection an employer has to have with Scotland to fall within HMRC's definition of a Scottish employer. While businesses incorporated in Scotland or with a Head Office there

might expect to be regarded as a Scottish employer, any employer with a place of business in

Scotland is potentially at risk of a 20-year time limit applying if HMRC argues that it would pursue any outstanding National Insurance liability via the Scottish Courts.

## Conclusions

Clarification of what is intended in terms of time limits for NIC for Scotland from 6 April 2018 is urgently needed. There seems no obvious reason to impose an increased potential future burden on those employers that do business in Scotland and not just the rest of the UK. Clarification of what HMRC regards as a “Scottish employer” is still more urgent, together with confirmation of tax years for which HMRC is seeking to argue that a different treatment should apply to settlements agreed without Court intervention where a Scottish employer, however defined, is involved.