

2012 No. 1868

SOCIAL SECURITY

**The National Insurance Contributions (Application of Part 7 of
the Finance Act 2004) Regulations 2012**

Made - - - - - *16th July 2012*

Laid before Parliament *17th July 2012*

Coming into force - - - *1st September 2012*

The Treasury make the following Regulations in exercise of the powers conferred upon them by sections 132A(1) and 189(4) and (5) of the Social Security Administration Act 1992(a).

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 and shall come into force on 1st September 2012.

Interpretation

2. In these Regulations—

“the Descriptions Regulations” means the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006(b) as modified by these Regulations.

“the Information Regulations” means the Tax Avoidance (Information) Regulations 2012(c) as modified by these Regulations.

“introducer”, in relation to a notifiable contribution proposal, has the meaning given by regulation 7(2);

“HMRC” means the Commissioners for Her Majesty’s Revenue and Customs;

“notifiable arrangements” and “notifiable proposal” have the meaning given to them in section 306 of the Finance Act 2004(d);

(a) 1992 c. 5; section 132A was inserted by section 7 of the National Insurance Contributions Act 2006 (c. 10) and section 189 was amended by paragraph 109 of Schedule 7 and Schedule 8 to the Social Security Act 1998 (c. 14).
(b) S.I. 2006/1543 as amended by S.I. 2009/2033 and S.I. 2010/2834.
(c) S.I. 2012/1836.
(d) 2004 c. 12.

“Part 7” means Part 7 of the Finance Act 2004 (disclosure of tax avoidance schemes)(a) and a reference to a numbered section (without more) is a reference to a section of Part 7;

“prescribed” means prescribed by the Information Regulations, unless the context otherwise requires;

“promoter”, in relation to notifiable contribution arrangements or a notifiable contribution proposal, has the meaning given by regulation 7;

“reference number” means the reference number allocated under regulation 12 or section 311 as the case may be;

“tribunal” means the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal.

Structure of the Regulations

3.—(1) Regulations 5 to 21 make provision corresponding to Part 7 (other than section 314 (legal professional privilege)) in so far as that Part applies to income tax.

(2) Regulations 22 to 24 make provision corresponding to section 98C and section 118(2) of the Taxes Management Act 1970(b) (penalties for failure to comply with Part 7 of the Finance Act 2004) and other provisions of the Taxes Management Act 1970 in so far as they relate to a penalty under section 98C.

(3) Regulations 25 to 28 modify regulations made under Part 7 in so far as they apply to income tax.

Revocations

4.—(1) The regulations described in Regulation 29 are revoked.

(2) Anything begun under or for the purpose of any regulations revoked by these Regulations shall be construed under or, as the case may be, for the purpose of the corresponding provision of these Regulations.

(3) Where any document refers to a provision of a regulation revoked by these Regulations, such reference shall, unless the context otherwise requires, be construed as a reference to the corresponding provision of these Regulations.

PART 2

Provisions corresponding to Part 7 of the Finance Act 2004

Application of Part 2

5.—(1) This Part applies to—

- (a) notifiable contribution arrangements; and
- (b) notifiable contribution proposals

which fall within any description prescribed by the Descriptions Regulations.

(2) The Table below shows which of the following regulations corresponds to which provision of Part 7.

(a) Part 7 has been amended by Schedule 27 to the Finance Act 2007 (c. 11), Schedule 38 to the Finance Act 2008 (c. 9), S.I. 2009/56, S.I. 2009/571, paragraphs 423 and 429 of Schedule 1 to the Corporation Tax Act 2010 (c. 4), paragraph 302 of Schedule 8 and Part 13 to Schedule 10 to the Taxation (International and Other Provisions) Act 2010 (c.8) and Schedule 17 to the Finance Act 2010 (c. 13).

(b) 1970 c. 9; section 98C was inserted by sections 315 and 319 of the Finance Act 2004 (c. 12) and amended by sections 108 and 110 of the Finance Act 2007 (c. 11), paragraph 7 of Schedule 38 to the Finance Act 2008 (c. 9), and paragraph 10 of Schedule 17 to the Finance Act 2010 (c.13).

<i>Section within Part 7</i>	<i>Corresponding provision of these Regulations</i>
Section 306 (meaning of “notifiable arrangements” and “notifiable proposal”)	Regulation 5
Section 306A (doubt as to notifiability)	Regulation 6
Section 307 (meaning of promoter)	Regulation 7
Section 308 (duties of promoter)	Regulation 8
Section 308A (supplemental information)	Regulation 9
Section 309 (duty of person dealing with promoter outside the United Kingdom)	Regulation 10
Section 310 (duty of parties to notifiable arrangements not involving promoter)	Regulation 11
Section 311 (arrangements to be given reference number)	Regulation 12
Section 312 (duty of promoter to notify client of number)	Regulation 13
Section 312A (duty of client to notify parties of number)	Regulation 14
Section 313 (duty of parties to notifiable arrangements to notify Board of number etc)	Regulation 15
Section 313ZA (duty of promoter to provide details of clients)	Regulation 16
Section 313A (pre-disclosure enquiry)	Regulation 17
Section 313B (reasons for non-disclosure: supporting information)	Regulation 18
Section 313C (information provided to introducers)	Regulation 19
Section 314A (order to disclose)	Regulation 20
Section 316 (information to be provided in form and manner specified by Board)	Regulation 21

Doubt as to notifiability

- 6.—(1) HMRC may apply to the tribunal for an order that—
- (a) a proposal is to be treated as a notifiable contribution proposal; or
 - (b) arrangements are to be treated as notifiable contribution arrangements.
- (2) An application must specify—
- (a) the proposal or arrangements in respect of which the order is sought; and
 - (b) the promoter.
- (3) On an application the tribunal may make the order only if satisfied that HMRC—
- (a) have taken all reasonable steps to establish whether the proposal is a notifiable contribution proposal or the arrangements are notifiable contribution arrangements; and
 - (b) have reasonable grounds for suspecting that the proposal may be a notifiable contribution proposal or the arrangements may be notifiable contribution arrangements.
- (4) Reasonable steps under paragraph (3)(a) may (but need not) include taking action under regulation 17 or 18.
- (5) Grounds for suspicion under paragraph (3)(b) may include—
- (a) the fact that the relevant arrangements fall within a description prescribed by the Descriptions Regulations;
 - (b) an attempt by the promoter to avoid or delay providing information or documents about the proposal or arrangements under or by virtue of regulation 17 or 18;

- (c) the promoter's failure to comply with a requirement under or by virtue of regulation 17 or 18 or section 313A or 313B in relation to another proposal or other arrangements.

(6) Where an order is made under this regulation in respect of a proposal or arrangements, the period for the purposes of paragraphs (1) and (3) of regulation 8 is that prescribed.

(7) An order under this regulation in relation to a proposal or arrangements is without prejudice to the possible application of regulation 8, other than by virtue of this regulation, to the proposal or arrangements.

Meaning of promoter

7.—(1) For the purposes of this Part a person is a promoter—

- (a) in relation to a notifiable contribution proposal if, in the course of a relevant business, the person (“P”) –
 - (i) is to any extent responsible for the design of the proposed arrangements;
 - (ii) makes a firm approach to another person (“C”) in relation to the proposal with a view to P making the proposal available for implementation by C or any other person; or
 - (iii) makes the notifiable contribution proposal available for implementation by other persons; and
- (b) in relation to notifiable contribution arrangements, if the person (“P”) is by virtue of subparagraph (a)(ii) or (iii) a promoter in relation to a notifiable contribution proposal which is implemented by those arrangements or if, in the course of a relevant business, P is to any extent responsible for—
 - (i) the design of the arrangements, or
 - (ii) the organisation or management of the arrangements.

(2) For the purposes of this Part a person is an introducer in relation to a notifiable contribution proposal if the person makes a marketing contact with another person in relation to the proposal.

(3) In this regulation “relevant business” means any trade, profession or business which—

- (a) involves the provision to other persons of services relating to national insurance contributions, or
- (b) is carried on by a bank, as defined by section 1120 of the Corporation Tax Act 2010(a), or by a securities house, as defined by section 1009(3) of that Act.

(4) For the purposes of this regulation anything done by a company is to be taken to be done in the course of a relevant business if it is done for the purposes of a relevant business falling within paragraph (3)(b) carried on by another company which is a member of the same group.

(5) Section 170 of the Taxation of Chargeable Gains Act 1992(b) has effect for determining for the purposes of paragraph (3) whether two companies are members of the same group, but as if in that section—

- (a) for each of the references to a 75% subsidiary there were substituted a reference to a 51% subsidiary, and
- (b) subsection (3)(b) and subsections (6) to (8) were omitted.

(6) For the purposes of this Part a person makes a firm approach to another person in relation to a notifiable contribution proposal if the person makes a marketing contact with the other person in relation to the proposal at a time when the proposed arrangements have been substantially designed.

(a) 2010 c. 4.

(b) 1992. c12; section 170 was amended by section 136 of the Finance Act 1998 (c. 36), paragraph 1 of Schedule 29 to the Finance Act 2000 (c. 17), section 75 of the Finance Act 2001 (c. 9), section 62 of the Finance (No 2) Act 2005 (c. 22), paragraphs 358 and 375 of Schedule 3 to the Corporation Tax Act 2009 (c. 4), paragraph 242 of Schedule 1 to the Corporation Tax Act 2010 (c. 4) and S.I. 2010/2902.

(7) For the purposes of this Part a person makes a marketing contact with another person in relation to a notifiable contribution proposal if—

- (a) the person communicates information about the proposal to the other person;
- (b) the communication is made with a view to that other person, or any other person, entering into transactions forming part of the proposed arrangements; and
- (c) the information communicated includes an explanation of the advantage in relation to any contribution that might be expected to be obtained from the proposed arrangements.

(8) For the purposes of paragraph (6) proposed contribution arrangements have been substantially designed at any time if by that time the nature of the transactions to form part of them has been sufficiently developed for it to be reasonable to believe that a person who wished to obtain the advantage mentioned in paragraph (7)(c) might enter into—

- (a) transactions of the nature developed; or
- (b) transactions not substantially different from transactions of that nature.

(9) A person is not to be treated as a promoter or introducer for the purposes of this Part by reason of anything done in circumstances prescribed by the Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004(a) as modified by these Regulations.

(10) In the application of this Part to a proposal which is not a notifiable contribution proposal or arrangements which are not notifiable contribution arrangements, a reference to a promoter or introducer is a reference to a person who would be a promoter or introducer under paragraphs (1) to (9) if the proposal were a notifiable contribution proposal or arrangements were notifiable contribution arrangements.

Duties of promoter

8.—(1) A person who is a promoter in relation to a notifiable contribution proposal must, within the prescribed period after the relevant date, provide HMRC with the prescribed information relating to the notifiable contribution proposal.

(2) In paragraph (1) “the relevant date” means the earliest of the following—

- (a) the date on which the promoter first makes a firm approach to another person in relation to a notifiable contribution proposal;
- (b) the date on which the promoter makes the notifiable contribution proposal available for implementation by any other person; or
- (c) the date on which the promoter first becomes aware of any transaction forming part of notifiable contribution arrangements implementing the notifiable contribution proposal.

(3) A person who is a promoter in relation to notifiable contribution arrangements must, within the prescribed period after the date on which the person first becomes aware of any transaction forming part of the notifiable contribution arrangements, provide HMRC with the prescribed information relating to those arrangements, unless those arrangements implement a proposal in respect of which notice has been given under paragraph (1).

(4) Paragraph (5) applies where a person complies with paragraph (1) in relation to a notifiable contribution proposal for arrangements and another person is—

- (a) also a promoter in relation to the notifiable contribution proposal or is a promoter in relation to a notifiable contribution proposal for arrangements which are substantially the same as the proposed arrangements (whether they relate to the same or different parties); or
- (b) a promoter in relation to notifiable contribution arrangements implementing the notifiable contribution proposal or notifiable contribution arrangements which are substantially the same as notifiable contribution arrangements implementing the notifiable contribution proposal (whether they relate to the same or different parties).

(a) S.I. 2004/1865; amended by S.I. 2004/2613.

(5) Any duty of the other person under paragraph (1) or (3) in relation to the notifiable contribution proposal or notifiable contribution arrangements is discharged if—

- (a) the person who complied with paragraph (1) has notified the identity and address of the other person to HMRC or the other person holds the reference number allocated to the proposed notifiable contribution arrangements under regulation 12; and
- (b) the other person holds the information provided to HMRC in compliance with paragraph (1).

(6) Paragraph (7) applies where a person complies with section 308(1) in relation to a notifiable proposal and another person is—

- (a) a promoter in relation to a notifiable contribution proposal for arrangements which are substantially the same as the notifiable proposal (whether they relate to the same or different parties); or
- (b) a promoter in relation to notifiable contribution arrangements which are substantially the same as notifiable arrangements implementing the notifiable proposal (whether they relate to the same or different parties).

(7) Any duty of the other person under paragraph (1) or (3) in relation to the notifiable contribution proposal or notifiable contribution arrangements is discharged if—

- (a) the person who complied with section 308(1) in relation to the notifiable proposal has notified the identity and address of the other person to HMRC or the other person holds the reference number allocated to the proposed notifiable arrangements under section 311; and
- (b) the other person holds the information provided to HMRC in compliance with section 308(1).

(8) Paragraph (9) applies where a person complies with paragraph (3) in relation to notifiable contribution arrangements and another person is—

- (a) a promoter in relation to a notifiable contribution proposal for arrangements which are substantially the same as the notifiable contribution arrangements (whether they relate to the same or different parties); or
- (b) also a promoter in relation to the notifiable contribution arrangements or notifiable contribution arrangements which are substantially the same (whether they relate to the same or different parties).

(9) Any duty of the other person under paragraph (1) or (3) in relation to the notifiable contribution proposal or notifiable contribution arrangements is discharged if—

- (a) the person who complied with paragraph (3) has notified the identity and address of the other person to HMRC or the other person holds the reference number allocated to the notifiable contribution arrangements under regulation 12; and
- (b) the other person holds the information provided to HMRC in compliance with paragraph (3).

(10) Paragraph (11) applies where a person complies with section 308(3) in relation to notifiable arrangements and another person is a promoter in relation to a notifiable contribution proposal for arrangements or notifiable contribution arrangements which are substantially the same as the notifiable arrangements (whether they relate to the same or different parties).

(11) Any duty of the other person under paragraph (1) or (3) in relation to the notifiable contribution proposal or notifiable contribution arrangements is discharged if—

- (a) the person who complied with section 308(3) in relation to the notifiable contribution arrangements has notified the identity and address of the other person to HMRC or the other person holds the reference number allocated to the notifiable contribution arrangements under section 311; and
- (b) the other person holds the information provided to HMRC in compliance with section 308(3).

(12) Where a person is a promoter in relation to two or more notifiable contribution proposals or sets of notifiable contribution arrangements which are substantially the same (whether they relate to the same parties or different parties), that person need not provide information under paragraph (1) or (3) if that person has already provided information under either of those paragraphs in relation to any of the other contribution proposals or contribution arrangements.

Supplemental information

9.—(1) This regulation applies where—

- (a) a promoter (“P”) has provided information in purported compliance with paragraph (1) or (3) of regulation 8; but
- (b) HMRC believe that P has not provided all the prescribed information.

(2) HMRC may apply to the tribunal for an order requiring P to provide specified information about, or documents relating to, the notifiable contribution proposal or notifiable contribution arrangements.

(3) The tribunal may make an order under paragraph (2) in respect of information or documents only if satisfied that HMRC have reasonable grounds for suspecting that the information or documents—

- (a) form part of the prescribed information; or
- (b) will support or explain the prescribed information.

(4) A requirement by virtue of paragraph (2) shall be treated as part of P’s duty under paragraph (1) or (3) of regulation 8.

(5) In so far as P’s duty under paragraph (1) or (3) of regulation 8 arises out of a requirement by virtue of paragraph (2) above, the period for the purposes of those paragraphs of regulation 8 and the date after which it begins are those prescribed.

(6) In so far as P’s duty under paragraph (1) or (3) of regulation 8 arises out of a requirement by virtue of paragraph (2) above, the prescribed period may be extended by HMRC by direction.

Duty of person dealing with promoter outside United Kingdom

10.—(1) Any person (“the client”) who enters into any transaction forming part of any notifiable contribution arrangements in relation to which—

- (a) a promoter is resident outside the United Kingdom, and
- (b) no promoter is resident in the United Kingdom,

must provide HMRC with the prescribed information relating to the notifiable contribution arrangements within the prescribed period.

(2) Compliance with regulation 8(1) by any promoter in relation to the notifiable contribution arrangements discharges the duty of the client under paragraph (1).

Duty of parties to notifiable contribution arrangements not involving promoter

11. Any person who enters into any transaction forming part of notifiable contribution arrangements as respects which neither that person nor any other person in the United Kingdom is liable to comply with regulation 8 or regulation 10 must at the prescribed time provide HMRC with the prescribed information relating to the notifiable contribution arrangements.

Arrangements to be given reference number

12.—(1) Where a person complies or purports to comply with regulation 8(1) or (3), regulation 10(1) or regulation 11 in relation to any notifiable contribution proposal or notifiable contribution arrangements, HMRC—

- (a) may within 30 days allocate a reference number in relation to the notifiable contribution arrangements, or in the case of a notifiable contribution proposal, to the proposed notifiable contribution arrangements; and
- (b) if they do so, must notify that number to the person and (where the person is one who has complied or purported to comply with paragraph (1) or (3) of regulation 8) to any other person—
 - (i) who is a promoter in relation to the notifiable contribution proposal (or arrangements implementing the notifiable contribution proposal) or the notifiable contribution arrangements (or proposal implemented by the notifiable contribution arrangements), and
 - (ii) whose identity and address has been notified to HMRC by the person,

except that where the arrangements or proposal concern both national insurance contributions and tax, HMRC shall allocate a single reference number in respect of both matters.

(2) The allocation of a reference number to any notifiable contribution arrangements (or proposed notifiable contribution arrangements) is not to be regarded as constituting any indication by HMRC that the arrangements could as a matter of law result in the obtaining by any person of an advantage in relation to a contribution.

Duty of promoter to notify client of number

13.—(1) This regulation applies where a person who is a promoter in relation to notifiable contribution arrangements is providing (or has provided) services to any person (“the client”) in connection with the notifiable contribution arrangements.

(2) The promoter must, within 30 days after the relevant date, provide the client with the prescribed information relating to any reference number (or, if more than one, any one reference number) that has been notified to the promoter (whether by HMRC or any other person) in relation to—

- (a) the notifiable contribution arrangements; or
- (b) any arrangements, including notifiable arrangements, which are substantially the same as the notifiable contribution arrangements (whether involving the same or different parties).

(3) In paragraph (2) “the relevant date” means the later of—

- (a) the date on which the promoter becomes aware of any transaction which forms part of the notifiable contribution arrangements; and
- (b) the date on which the reference number is notified to the promoter.

(4) But where the conditions in paragraph (5) are met the duty imposed on the promoter under paragraph (2) to provide the client with information in relation to notifiable contribution arrangements is discharged.

(5) Those conditions are that—

- (a) the promoter is also a promoter in relation to a notifiable contribution proposal and provides services to the client in connection with them both;
- (b) the notifiable contribution proposal and the notifiable contribution arrangements are substantially the same; and
- (c) the promoter has provided to the client, in a form and manner specified by HMRC, prescribed information relating to the reference number that has been notified to the promoter in relation to the proposed notifiable contribution arrangements.

(6) HMRC may give notice that, in relation to notifiable contribution arrangements specified in the notice, promoters are not under the duty under paragraph (2) after the date specified in the notice.

Duty of client to notify parties of number

14.—(1) This regulation applies where a person (the “client”) to whom a person who is a promoter in relation to notifiable contribution arrangements or a notifiable contribution proposal is providing (or has provided) services in connection with the notifiable contribution arrangements or notifiable contribution proposal receives prescribed information relating to the reference number allocated to—

- (a) the notifiable contribution arrangements,
- (b) the notifiable contribution proposal, or
- (c) proposed notifiable arrangements, or notifiable arrangements, which are substantially the same as the notifiable contribution proposal or notifiable contribution arrangements.

(2) The client must, within the prescribed period, provide the prescribed information relating to the reference number to any other person—

- (a) who the client might reasonably be expected to know is or is likely to be a party to the arrangements or proposed arrangements, and
- (b) who might reasonably be expected to gain an advantage by reason of the arrangements or proposed arrangements.

(3) HMRC may give notice that, in relation to notifiable contribution arrangements or a notifiable contribution proposal specified in the notice, persons are not under the duty under paragraph (2) after the date specified in the notice.

(4) The duty under paragraph (2) does not apply in the prescribed circumstances.

Duty of parties to notifiable contribution arrangements to notify HMRC of number etc

15.—(1) Any person who is a party to any notifiable contribution arrangements must, at the prescribed time or times, provide HMRC with the prescribed information relating to—

- (a) any reference number notified to him, whether the reference number was allocated under regulation 12 or section 311, and
- (b) the time when he obtains or expects to obtain by virtue of the arrangements an advantage in relation to any contribution.

(2) HMRC may give notice that, in relation to notifiable contribution arrangements specified in the notice, persons are not under the duty under paragraph (1) after the date specified in the notice.

Duty to provide details of clients

16.—(1) This regulation applies where a person who is a promoter in relation to notifiable contribution arrangements is providing (or has provided) services to any person (“the client”) in connection with the notifiable contribution arrangements and either—

- (a) the promoter is subject to the reference number information requirement; or
- (b) the promoter has failed to comply with regulation 8(1) or (3) in relation to the notifiable contributions arrangements (or the notifiable contribution proposal for them) but would be subject to the reference number information requirement if a reference number had been allocated to the notifiable contribution arrangements.

(2) For the purposes of this regulation “the reference number information requirement” is the requirement under regulation 13(2) to provide to the client prescribed information relating to the reference number allocated to the notifiable contribution arrangements.

(3) The promoter must, within the prescribed period after the end of the relevant period, provide HMRC with the prescribed information in relation to the client.

(4) In paragraph (3) “the relevant period” means the prescribed period during which the promoter is or would be subject to the reference number information requirement.

(5) The promoter need not comply with paragraph (3) in relation to any notifiable contribution arrangements at any time after HMRC have given notice under regulation 13(6) in relation to the arrangements.

Pre-disclosure enquiry

17.—(1) Where HMRC suspect that a person (“P”) is the promoter or introducer of a proposal or arrangements which may be a notifiable contribution proposal or notifiable contribution arrangements, HMRC may by written notice require P to state—

- (a) whether in P’s opinion the proposal or arrangements are notifiable by P, and
 - (b) if not, the reasons for P’s opinion.
- (2) A notice must specify the proposal or arrangements to which it relates.
- (3) For the purpose of paragraph (1)(b)—
- (a) it is not sufficient to refer to the fact that a lawyer or other professional has given an opinion,
 - (b) the reasons must show, by reference to this Part and the Descriptions Regulations why P thinks the proposal or arrangements are not notifiable by P, and
 - (c) in particular, if P asserts that the arrangements do not fall within any description prescribed by the Descriptions Regulations the reasons must provide sufficient information to enable HMRC to confirm the assertion.
- (4) P must comply with a requirement under or by virtue of paragraph (1) within—
- (a) the prescribed period, or
 - (b) such longer period as HMRC may direct.

Reasons for non-disclosure: supporting information

18.—(1) Where HMRC receive from a person (“P”) a statement of reasons why a proposal or arrangements are not notifiable by P, HMRC may apply to the tribunal for an order requiring P to provide specified information or documents in support of the reasons.

- (2) P must comply with a requirement under or by virtue of paragraph (1) within—
- (a) the prescribed period, or
 - (b) such longer period as HMRC may direct.
- (3) The power under paragraph (1)—
- (a) may be exercised more than once, and
 - (b) applies whether or not the statement of reasons was received under regulation 17(1)(b).

Information provided to introducers

19.—(1) Where HMRC suspect—

- (a) that a person (“P”) is an introducer in relation to a proposal; and
- (b) that the proposal may be a notifiable contribution proposal,

HMRC may by written notice require P to provide HMRC with the prescribed information in relation to each person who has provided P with any information relating to the proposal.

- (2) A notice must specify the proposal to which it relates.
- (3) P must comply with a requirement under paragraph (1) within—
- (a) the prescribed period; or
 - (b) such longer period as HMRC may direct.

Order to disclose

20.—(1) HMRC may apply to the tribunal for an order that—

- (a) a proposal is a notifiable contribution proposal, or
- (b) arrangements are notifiable contribution arrangements.

(2) An application must specify—

- (a) the proposal or arrangements in respect of which the order is sought, and
- (b) the promoter.

(3) On an application the tribunal may make the order only if satisfied that section 132A(3) of the Social Security Administration Act 1992 applies to the relevant arrangements and that they are within a description prescribed by the Descriptions Regulations.

Information to be provided in form and manner specified by HMRC

21.—(1) HMRC may specify the form and manner in which information required to be provided by any of the information provisions must be provided if the provision is to be complied with.

(2) The “information provisions” are regulations 8(1) and (3), 10(1), 11, 13(2), 14(2), 15(1) and 16(3) and the Information Regulations.

PART 3

Provisions corresponding to section 98C and section 118(2) of the Taxes Management Act 1970 and modifications of related provisions

Notification under Part 2

22.—(1) A person who fails to comply with any of the provisions of Part 2 mentioned in paragraph (2) below shall be liable—

- (a) to a penalty not exceeding—
 - (i) in the case of a provision mentioned in sub-paragraph (a), (b) or (c) of that paragraph, £600 for each day during the initial period (but see also paragraphs (5), (7) and (8) below); and
 - (ii) in any other case, £5,000; and
- (b) if the failure continues after a penalty is imposed under sub-paragraph (a) above, to a further penalty or penalties not exceeding £600 for each day on which the failure continues after the day on which the penalty under sub-paragraph (a) was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).

This is subject to paragraph (14).

(2) Those provisions are—

- (a) regulation 8(1) and (3) (duty of promoter in relation to notifiable contribution proposals and notifiable contribution arrangements),
- (b) regulation 10(1) (duty of person dealing with promoter outside United Kingdom),
- (c) regulation 11 (duty of parties to notifiable contribution arrangements not involving promoter),
- (d) regulation 13(2) (duty of promoter to notify client of reference number),
- (e) regulation 14(2) (duty of client to notify parties of reference number),
- (f) regulation 16 (duty of promoter to provide details of clients),
- (g) regulations 17 and 18 (duty of promoter to respond to inquiry), and
- (h) regulation 19 (duty of introducer to give details of persons who have provided information).

- (3) In this regulation “the initial period” means the period—
- (a) beginning with the relevant day; and
 - (b) ending with the earlier of the day on which the penalty under paragraph (1)(a)(i) is determined and the last day before the failure ceases;

and for this purpose “the relevant day” is the day specified in relation to the failure in the following table.

TABLE

<i>Failure</i>	<i>Relevant day</i>
A failure to comply with paragraph (1) or (3) of regulation 8 in so far as the paragraph applies by virtue of an order under regulation 6	The first day of the prescribed period
A failure to comply with paragraph (1) or (3) of regulation 8 in so far as the paragraph applies by virtue of an order under regulation 9(2)	The first day after the end of the prescribed period (as it may have been extended by a direction under regulation 9(6))
Any other failure to comply with paragraph (1) of regulation 8	The first day after the end of the prescribed period
Any other failure to comply with paragraph (3) of regulation 8	The first day after the end of the prescribed period
A failure to comply with paragraph (1) of regulation 10	The first day after the end of the prescribed period
A failure to comply with regulation 11	The first day after the latest time by which regulation 11 must be complied with in the case concerned

(4) The amount of a penalty under paragraph (1)(a)(i) is to be arrived at after taking account of all relevant considerations, including the desirability of its being set at a level which appears appropriate for deterring the person, or other persons, from similar failures to comply on future occasions having regard (in particular)-

- (a) in the case of a penalty for a person’s failure to comply with regulation 8(1) or (3), to the amount of any fees received, or likely to have been received, by the person in connection with the notifiable contribution proposal (or arrangements implementing the notifiable contribution proposal), or with the notifiable contribution arrangements;
- (b) in the case of a penalty for the person’s failure to comply with regulation 10(1) or 11, to the amount of any advantage gained, or sought to be gained, by the person in relation to any contribution.

(5) If the maximum penalty under paragraph (1)(a)(i) above appears inappropriately low after taking account of those considerations, the penalty is to be of such amount not exceeding £1 million as appears appropriate having regard to those considerations.

(6) Where it appears to an officer of Revenue and Customs that a penalty under paragraph (1)(a)(i) above has been determined on the basis that the initial period begins with a day later than that which the officer considers to be the relevant day, an officer of Revenue and Customs may commence proceedings for a re-determination of the penalty.

(7) Where a failure to comply with a provision mentioned in paragraph (2) concerns a proposal or arrangements in respect of which an order has been made under regulation 6 (doubt as to notifiability), the amounts specified in paragraph (1)(a)(i) and (b) shall be increased to the sum prescribed by the Tax Avoidance Schemes (Penalty) Regulations 2007(a) (as modified by these Regulations).

(a) S.I. 2007/3104 as amended by S.I. 2010/2743.

(8) Where a failure to comply with a provision mentioned in paragraph (2) concerns a proposal or arrangements in respect of which an order has been made under regulation 20 (order to disclose), the amounts specified in paragraph (1)(a)(i) and (b) shall be increased to the sum prescribed by the Tax Avoidance Schemes (Penalty) Regulations 2007 (as modified by these Regulations) in relation to the days falling after the prescribed period.

(9) The making of an order under regulation 6 or 20 does not of itself mean that, for the purposes of regulation 23, a person either did or did not have a reasonable excuse for non-compliance before the order was made.

(10) Where an order is made under regulation 6 or 20 then for the purposes of regulation 23—

- (a) the person identified in the order as the promoter of the proposal or arrangements cannot, in respect of any time after the end of the period mentioned in paragraph (8), rely on doubt as to notifiability as an excuse for failure to comply with regulation 8, and
- (b) any delay in compliance with that regulation after the end of that period is unreasonable unless attributable to something other than doubt as to notifiability.

(11) A person who fails to comply with regulation 15(1) (duty of parties to notifiable contribution arrangements to notify HMRC of number, etc.) or regulation 10 of the Information Regulations shall be liable to a penalty of the relevant sum.

This is subject to paragraph (14).

(12) In paragraph (11) “the relevant sum” means—

- (a) in relation to a person not falling within sub-paragraph (b) or (c) below, £100 in respect of each scheme to which the failure relates,
- (b) in relation to a person who has previously failed to comply with regulation 15(1) or regulation 10 of the Information Regulations on one (and only one) occasion during the period of 36 months ending with the date on which the current failure to comply with that provision began, £500 in respect of each scheme to which the current failure relates (whether or not the same as the scheme to which the previous failure relates), or
- (c) in relation to a person who has previously failed to comply with regulation 15(1) or regulation 10 of the Information Regulations on two or more occasions during the period of 36 months ending with the date on which the current failure to comply with that provision began, £1,000 in respect of each scheme to which the current failure relates (whether or not the same as the schemes to which any of the previous failures relates).

(13) In paragraph (12) above “scheme” means any notifiable contribution arrangements which fall within any description prescribed by the Descriptions Regulations.

(14) Where the notifiable contribution arrangements or proposed notifiable contribution arrangements are, or are substantially the same as, a notifiable arrangements or proposed notifiable arrangements under Part 7 in relation to which a penalty has been imposed under section 98C of the Taxes Management Act 1970 in respect of a failure to comply with the provisions of Part 7, this regulation shall not apply to impose a penalty in respect of the failure to comply with the corresponding provision of these Regulations.

Interpretation

23. For the purposes of this Part—

- (a) a person shall be deemed not to have failed to do anything required to be done within a limited time if it was done within such further time, if any, as HMRC may have allowed; and
- (b) where a person had a reasonable excuse for not doing anything required to be done—
 - (i) that person shall be deemed not to have failed to do it unless the excuse ceased; and
 - (ii) after the excuse ceased, that person shall be deemed not to have failed to do it if it was done without unreasonable delay after the excuse had ceased.

Modification of Part 10 of the Taxes Management Act 1970

24.—(1) Part 10 of the Taxes Management Act 1970(a) so far as it relates to a penalty under section 98C of that Act shall apply in relation to a penalty under regulation 22 with the following modifications.

(2) In section 100 (determination of penalties by officer of Board) for subsection (2)(f) (penalties to which subsection (1) of the section does not apply) substitute—

“(f) regulation 22(1)(a) of the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012.”.

PART 4

Modification of Regulations under Part 7

Modification of the Descriptions Regulations

25.—(1) The Descriptions Regulations apply to notifiable contribution arrangements and notifiable contribution proposals with the following modifications and any reference in those Regulations to sections 306 to 313C and section 314A shall be construed as a reference to the corresponding provision of these Regulations (see regulation 5(2)).

(2) In regulation 1 (citation, commencement and effect) omit paragraphs (2) and (3).

(3) In regulation 5 (prescribed descriptions of arrangements)—

(a) in paragraph (1) for “income tax, corporation tax and capital gains tax” substitute “national insurance contributions”, and

(b) in paragraph (2) omit sub-paragraphs (f) to (h).

(4) In Part 3—

(a) for “tax advantage” wherever it occurs substitute “advantage within the meaning given by section 132A(7) of the Social Security Administration Act 1992”; and

(b) for “a tax advantage” wherever it occurs substitute “an advantage within the meaning given by section 132A(7) of the Social Security Administration Act 1992”.

(5) In regulation 10 (Description 5: standardised tax products), in the heading and paragraphs (1) and (3) for “tax product” substitute “national insurance contributions product”.

(6) Omit regulations 12 to 17A.

The Information Regulations

26.—(1) The Information Regulations apply to notifiable contribution arrangements and notifiable contribution proposals with the following modifications and—

(a) any reference in those Regulations to sections 306 to 313C and section 314A shall be construed as a reference to the corresponding provision of these Regulations (see regulation 5(2)); and

(b) any reference in those Regulations to section 98C of the Taxes Management Act 1970 shall be construed as a reference to regulation 22 of these Regulations.

(2) In regulation 2 (interpretation)—

(a) insert the following definition immediately before the definition of “employment”—

““contributions” means national insurance contributions;”;

(b) after the definition of “filing date” insert—

(a) 1970 c. 9. Section 100 was substituted by section 167 of the Finance Act 1989 (c. 26) and relevantly amended by sections 315 and 319 of the Finance Act 2004.

“notifiable contribution arrangements” has the meaning given by section 132A(3) of the Social Security Administration Act 1992;

“notifiable contribution proposal” has the meaning given by section 132A(3) of the Social Security Administration Act 1992;”;

(c) omit the definition of “the prescribed taxes”.

(3) In regulation 4 (prescribed information in respect of notifiable proposals and arrangements)—

(a) wherever the words appear—

(i) for “any of the prescribed taxes” substitute “the contributions”;

(ii) for “notifiable arrangements” substitute “notifiable contribution arrangements”;

(iii) for “notifiable proposal” substitute “notifiable contribution proposal”; and

(iv) for “tax advantage” substitute “advantage”;

(b) in paragraphs (1)(b), (2)(c) and (3)(b) omit “, the IHT Arrangements Regulations or the SDLT Arrangements Regulations”; and

(c) in paragraph (5) omit the definitions of “the IHT Arrangements Regulations” and “the SDLT Arrangements Regulations”.

(4) In regulation 5 (time for providing information under section 308, 308A, 309 or 310)—

(a) in paragraph (2) for “proposal or arrangements” substitute “contribution proposal or contribution arrangements”;

(b) in paragraph (3) for “notifiable proposal or arrangements” substitute “notifiable contribution proposal or notifiable contribution arrangements”; and

(c) in paragraphs (6), (7) and (8) for “notifiable arrangements” substitute “notifiable contribution arrangements”.

(5) In regulation 7 (time for providing information under section 312A) for “notifiable arrangements” substitute “notifiable contribution arrangements”.

(6) In regulation 8 (exemption from duty under section 312A)—

(a) for “a tax advantage in respect of income tax or capital gains tax” substitute “an advantage”; and

(b) for “notifiable arrangements” substitute “notifiable contribution arrangements”.

(7) Omit regulation 9.

(8) For regulation 10 (prescribed cases under section 313(3)(b)) substitute—

“Prescribed information under regulation 15 of the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012: timing and manner of delivery

10.—(1) For the purposes of regulation 15 of the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (duty of parties to notifiable contribution arrangements to notify HMRC of number, etc) the prescribed information is—

(a) the reference number allocated by HMRC under regulation 12 to the notifiable contribution arrangements or notifiable contribution proposal;

(b) the earnings period in which the person making the notification expects an advantage to be obtained; and

(c) the employer’s name, address and Unique Taxpayer Reference (UTR).

(2) The prescribed information shall be provided by the employer to HMRC in such form and manner as they may specify.

(3) Unless paragraph (4) applies, the prescribed time at which a person who is a party to notifiable contribution arrangements must provide HMRC with information under

regulation 15 is whichever of (a) or (b) below applies in respect of the tax year in which the employer first enters into a transaction forming part of the notifiable contribution arrangements and whichever applies in respect of each subsequent year until an advantage ceases to apply to any person—

- (a) in the case of a non-Real Time Information employer any time before the date on which the return under paragraph 22(1) of Schedule 4 to the Social Security (Contributions) Regulations 2001 (return by employer at end of year)^(a) is or would be due; or
- (b) in the case of a Real Time Information employer, 14 days after the end of the final tax period of the tax year.

In this paragraph, “non-Real Time Information employer” and “Real Time Information employer” have the meanings given in paragraph 1 of Schedule 4 to the Social Security Contributions Regulations 2001 (interpretation; provisions derived from the Income Tax Acts and the Income Tax (Pay As You Earn) Regulations 2003).

(4) Where the advantage which is expected to arise from the notifiable contribution arrangements relates to Class 1A contributions only, and the transactions which comprise the notifiable contribution arrangements do not give rise to an advantage in relation to tax, the prescribed time is any time before the date on which the return under regulation 80(1) of the Social Security (Contributions) Regulations 2001 (return by employer) is or would be due—

- (a) for the year in which the employer first enters into a transaction forming part of the notifiable contribution arrangements; and
- (b) for each subsequent year until the advantage ceases to apply to any person.

In this paragraph the term “an advantage in relation to tax” shall be construed in accordance with section 318(1).”.

(9) Omit regulations 11 and 12.

(10) In regulation 13(1)(b)(i) (prescribed information under section 313ZA: information and timing) before “arrangements” insert “contribution”.

(11) In regulation 15(1)(b) (prescribed information under section 313C: information and timing) before “proposal” insert “contribution”.

(12) In regulation 17 (electronic delivery of information)—

- (a) in paragraph (2)—
 - (i) for sub-paragraph (a) substitute—

“(a) it is authorised by virtue of Part 7A of the Social Security (Contributions) Regulations 2001 (electronic communications); and”;
 - (ii) in paragraph (b) for “section” substitute “Part”.
- (b) in paragraph (3)(a) for “regulations under section 132 of the Finance Act 1999” substitute “Part 7A of the Social Security (Contributions) Regulations 2001 (electronic communications)”.

(13) Omit regulation 18.

The Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004

27.—(1) The Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004 apply to notifiable contribution arrangements and notifiable contribution proposals as they apply to income tax with the following modifications and any reference in those Regulations to sections 306 to 313C and section 314A shall be construed as a reference to the corresponding provision of these Regulations (see regulation 5(2)).

(a) S.I. 2001/1004; paragraph 22(1) of Schedule 4 was amended by S.I. 2003/93 and paragraph 1 of Schedule 4 was relevantly amended by S.I. 2012/821.

- (2) In regulation 1 (citation, commencement and interpretation) for paragraph (2) substitute—
“(2) In these Regulations—
“notifiable contribution arrangements” and “notifiable contribution proposal” have the meanings given by section 132A(3) of the Social Security Administration Act 1992.”
- (3) In regulation 4 (persons not to be treated as promoters under section 307(1)(a)(i) or (b)(i))—
(a) for “tax advice” wherever it occurs substitute “advice about national insurance contributions”; and
(b) for “tax advantage” wherever it occurs substitute “advantage”.
- (4) In regulation 6 (legal professional privilege) for “section 314” substitute “section 132A(6) of the Social Security Administration Act 1992”.

The Tax Avoidance Schemes (Penalty) Regulations 2007

28. The Tax Avoidance Schemes (Penalty) Regulations 2007 apply to notifiable contribution arrangements and notifiable contribution proposals as they apply to income tax and—

- (a) any reference in those Regulations to sections 306 to 313C and section 314A shall be construed as a reference to the corresponding provision of these Regulations (see regulation 5(2)); and
(b) any reference in those Regulations to section 98C of the Taxes Management Act 1970 shall be construed as a reference to regulation 22 of these Regulations.

PART 5

Revocations

29. The following instruments are revoked.

- (a) the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2007(a);
(b) the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) Regulations 2008(b);
(c) the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) Regulations 2009(c);
(d) the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) (No. 2) Regulations 2009(d); and
(e) the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) Regulations 2010(e).

Jeremy Wright
Angela Watkinson

16th July 2012

Two of the Lords Commissioners of Her Majesty's Treasury

(a) S.I. 2007/785.
(b) S.I. 2008/2678.
(c) S.I. 2009/208.
(d) S.I. 2009/612.
(e) S.I. 2010/2927.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the National Insurance Contributions (application of Part 7 of the Finance Act 2004) Regulations 2007 (S.I. 2007/785) (“the 2007 Regulations”) and consolidate all subsequent amendments to those Regulations with minor further amendments.

These Regulations make provision corresponding to the Part 7 of the Finance Act 2004 (“the 2004 Act”) and apply regulations under that Part (with necessary modifications) to the extent that they relate to income tax to arrangements or proposals for arrangements which are intended to avoid national insurance contributions.

Part 1 deals with introductory matters, interpretation and provides that anything begun under the 2007 Regulations shall be continued under the corresponding provision of these Regulations.

Part 2 contains provisions corresponding to Part 7 of the 2004 Act (disclosure of tax avoidance schemes). The exception is section 314 (legal professional privilege) which is instead included in the enabling powers at section 132A(6).

Part 3 makes provisions corresponding to section 98C of the Taxes Management Act 1970 (penalties for failure to comply with Part 7 of the 2004 Act) and applies Part 10 of the Taxes Management Act 1970 with modifications in so far as it applies to a penalty under that section.

Part 4 applies regulations made under Part 7 of the 2004 Act to national insurance contribution avoidance schemes and proposals and modifies them as necessary. They are the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 (S.I. 2006/1543), the Tax Avoidance Schemes (Information) Regulations 2012 (S.I. 2012/xxxx), the Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004 (S.I. 2004/1865) and the Tax Avoidance Schemes (Penalty) Regulations 2007 (S.I. 2007/3104).

Part 5 revokes the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2007 and its amending instruments.

A Tax Information and Impact Note has not been prepared for this instrument as it contains no substantive changes to tax policy.

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