

2010 No. 2927

SOCIAL SECURITY

The National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) Regulations 2010

<i>Made</i>	- - - -	<i>8th December 2010</i>
<i>Laid before Parliament</i>		<i>9th December 2010</i>
<i>Coming into force</i>	- -	<i>1st January 2011</i>

The Treasury make the following Regulations in exercise of the powers conferred by section 132A of the Social Security Administration Act 1992(a).

Citation and commencement

1. These Regulations may be cited as the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) Regulations 2010 and shall come into force on 1st January 2011.

Amendments to the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2007

2. Amend the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2007(b) as follows.

3. In regulation 2 (interpretation) after the definition of “the Information Regulations” insert—
- ““introducer”, in relation to a notifiable contribution proposal, has the meaning given by regulation 6(1A);
 - “make a firm approach” has the meaning given by regulation 6(4A);
 - “make a marketing contact” has the meaning given by regulation 6(4B);”.

4.—(1) Amend the table in regulation 4(2) (application of Part 2)(c) as follows.

(2) In the first column—

- (a) after the entry for Section 313 insert “Section 313ZA (duty to provide details of clients)”;
- (b) after the entry for Section 313B insert “Section 313C (information provided to introducers)”.

(3) In the second column—

- (a) after the entry for Regulation 12 insert “Regulation 12ZA”;
- (b) after the entry for Regulation 12B insert “Regulation 12BA”.

(a) 1992 c. 5. Section 132A was inserted by section 7(2) of the National Insurance Contributions Act 2006 (c. 10).
(b) S.I. 2007/785. Relevant amending instruments are S.I. 2008/2678 and S.I. 2009/208 and 612.
(c) Regulation 4(2) was amended by S.I. 2008/2678 and S.I. 2009/208.

- 5.—(1)** Amend regulation 6 (meaning of promoter)(**a**) as follows.
- (2) In paragraph (1)—
- (a) in sub-paragraph (a) for the words from “business” to “makes” substitute
“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”.
- (b) in sub-paragraph (b) after “(a)(ii)” insert “or (iii)”.
- (3) After paragraph (1) insert—
- “(1A) 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.”.
- (4) After paragraph (4) insert—
- “(4A) 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.
- (4B) 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.
- (4C) For the purposes of paragraph (4A) 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 (4B)(c) might enter into—
- (a) transactions of the nature developed; or
- (b) transactions not substantially different from transactions of that nature.”.
- (5) In paragraph (5) after “promoter” insert “or introducer”.
- (6) In paragraph (6) after “promoter” (in both places) insert “or introducer”.
- 6.—(1)** Amend regulation 7(2) (duties of promoter)(**b**) as follows.
- (2) For “earlier” substitute “earliest”.
- (3) Before sub-paragraph (a) insert—
- “(za) the date on which the promoter first makes a firm approach to another person in relation to a notifiable contribution proposal;”.
- 7.** After regulation 12 insert—

(a) Regulation 6 was amended by S.I. 2008/2678.

(b) Regulation 7 was amended by S.I. 2008/2678.

“Duty to provide details of clients

12ZA.—(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 7(1) or (3) in relation to the notifiable contribution 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 11(2) to provide to the client the 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 the Commissioners with the prescribed information in relation to the client.

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

(5) The promoter need not comply with paragraph (3) in relation to any notifiable contribution arrangements at any time after the Commissioners have given notice under regulation 11(6) in relation to the arrangements.”.

8. In regulation 12A(1) (pre-disclosure enquiry)(a)—

- (a) after “promoter” insert “or introducer”;
- (b) after “of a proposal” insert “or arrangements”; and
- (c) omit “arrangements which may be”.

9. After regulation 12B insert—

“Information provided to introducers

12BA.—(1) Where the Commissioners 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,

they may by written notice require P to provide the Commissioners 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 the Commissioners may direct.”.

10. In regulation 13(2) (information to be provided in form and manner specified by the Commissioners)(b) for “and 12(1)” substitute “, 12(1) and 12ZA(3)”.

11.—(1) Amend regulation 14 (notification under Part 2)(c) as follows.

(2) In paragraph (1) for sub-paragraph (a) substitute—

“(a) to a penalty not exceeding—

(a) Regulations 12A and 12B were inserted by S.I. 2008/2678.

(b) Regulation 13 was amended by S.I. 2008/2678.

(c) Regulation 14 was amended by S.I. 2008/2678.

- (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 (2A), (2B) and (2ZC) below); and
- (ii) in any other case, £5,000; and”.

(3) In paragraph (2)—

- (a) omit the “and” at the end of sub-paragraph (e);
- (b) after that sub-paragraph insert—
 - “(ea) regulation 12ZA (duty of promoter to provide details of clients),”; and
- (c) in sub-paragraph (f) insert at the end—
 - “, and
 - (g) regulation 12BA (duty of introducer to give details of persons who have provided information)”.

(4) After paragraph (2) insert—

“(2ZA) 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 7 in so far as the paragraph applies by virtue of an order under regulation 5A	The first day of the prescribed period
A failure to comply with paragraph (1) or (3) of regulation 7 in so far as the paragraph applies by virtue of an order under regulation 7A(2)	The first day after the end of the prescribed period (as it may have been extended by a direction under regulation 7A(6))
Any other failure to comply with paragraph (1) of regulation 7	The first day after the end of the prescribed period
Any other failure to comply with paragraph (3) of regulation 7	The first day after the end of the prescribed period
A failure to comply with paragraph (1) of regulation 8	The first day after the end of the prescribed period
A failure to comply with regulation 9	The first day after the latest time by which regulation 9 must be complied with in the case concerned

(2ZB) 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 7(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 a person's failure to comply with regulation 8(1) or 9, to the amount of any advantage gained, or sought to be gained, by the person in relation to a contribution.

(2ZC) 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.

(2ZD) 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."

(5) In paragraphs (2A) and (2B) for "amount specified in paragraph (1)(b)" substitute "amounts specified in paragraph (1)(a)(i) and (b)".

(6) In paragraphs (2C) and (2D) after "under regulation" insert "5A or".

12. In regulation 16(6) (modification of the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006)(a) for "17" substitute "17A".

13. After regulation 17(7) (modification of the Tax Avoidance Schemes (Information) Regulations 2004)(b) insert—

"(7A) In regulation 8ZA(1)(b)(i) before "arrangements" insert "contribution".

(7B) In regulation 8C(1)(b) before "proposal" insert "contribution".

*Michael Fabricant
Angela Watkinson*

8th December 2010

Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2007 (S.I. 2007/785) ("the 2007 Regulations"). The 2007 Regulations make provision corresponding to Part 7 of the Finance Act 2004 (disclosure of tax avoidance schemes) and apply regulations under that Part to the extent that they relate to income tax, with necessary modifications, to arrangements or proposals for arrangements which are intended to avoid national insurance contributions ("NICs"). The amendments made by these Regulations to the 2007 Regulations reflect the amendments made by the Finance Act 2010 (c. 13) to Part 7 of the Finance Act 2004 (c. 12) and the related amendments made to regulations made under that Part.

Regulation 1 provides for citation and commencement.

Regulation 3 makes changes to the definitions in Part 1 of the 2007 Regulations.

Regulations 4 to 10 amend Part 2 of the 2007 Regulations and insert provisions relating to NICs which reflect the amendments made by the Finance Act 2010 to the corresponding tax provisions in Part 7 of the Finance Act 2004.

Regulation 11 amends Part 3 of the 2007 Regulations by inserting penalty provisions relating to NICs which reflect those made by the Finance Act 2010 to the corresponding tax provisions in section 98C of the Taxes Management Act 1970 (c. 9).

Regulations 12 and 13 respectively disapply an amendment made to the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 (S.I. 2006/1543) and

(a) Regulation 16 was amended by S.I. 2008/2678.

(b) Regulation 17 was amended by S.I. 2008/2678 and S.I. 2009/612.

modify amendments made to the Tax Avoidance Schemes (Information) Regulations 2004 (S.I. 2004/1864).

A full Impact Assessment has been prepared covering the package of measures which includes these regulations. It is available at: <http://webarchive.nationalarchives.gov.uk/20091222074811/http://hmrc.gov.uk/budget2010/strength-revise-dotas-ia-5295.pdf>

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STATUTORY INSTRUMENTS

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