
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 2012 (S.I. 2012/1868) (“the NICs Disclosure Regulations”) to correspond with changes made to Part 7 of the Finance Act 2004 (c. 12) (“FA 2004”) and section 98C of the Taxes Management Act 1970 (c. 9) (“TMA 1970”) by the Finance Act 2014 (c. 26) (“FA 2014”).

Regulations 3, 5 and 6 make amendments to the NICs Disclosure Regulations in relation to further powers to obtain information about contribution avoidance schemes. These amendments correspond with changes made to Part 7 of FA 2004 by section 284(2) to (4) of FA 2014.

Regulation 3 adds a definition of “working day” to regulation 2 of the NICs Disclosure Regulations for the purposes of determining when information or documents have to be provided under new regulation 11A or 11B. Regulation 5 adds regulation 11A to the NICs Disclosure Regulations which provides that where a person has made a disclosure in compliance, or purported compliance, with regulations 8, 10 or 11 of the NICs Disclosure Regulations, HMRC may require that person to provide documents or more information about the avoidance scheme. Regulation 5 also adds regulation 11B which provides that where a person has failed to provide information or documents required, HMRC may ask the tribunal for an order requiring the information or documents to be provided. Regulation 6 amends regulation 21 of the NICs Disclosure Regulations so that information required under that regulation has to be provided in the manner and form specified by HMRC.

Regulation 4 updates the table at regulation 5(2) of the NICs Disclosure Regulations to show that new regulations 11A and 11B correspond with sections 310A and 310B of FA 2004.

Regulation 7(a) to (f) amend regulation 22 of the NICs Disclosure Regulations to provide for penalties where a person has failed to provide information or documents required under new regulation 11A. These provisions corresponds with changes made to section 98C of TMA 1970 by section 284(6) to (10) of FA 2004.

Regulation 7(g) adds new regulation 22(10A) to the NICs Disclosure Regulations, which provides that if a person wishes to argue that they have a reasonable excuse under regulation 23 for a failure to comply with regulation 10 or 11, they cannot rely on legal advice given to them or obtained by the monitored promoter. Regulation 7(g) also adds new regulation 22(10B) to the NICs Disclosure Regulations which provides that if the monitored promoter wishes to argue that they have a reasonable excuse under regulation 23 for a failure to comply with any of the obligations set out in regulation 22(2), then they cannot rely on legal advice if the advice was not based on a full and accurate description of the facts or if the conclusions in the advice were unreasonable. These amendments corresponds with changes made to section 98C of TMA 1970 by section 275 of FA 2014.

Regulation 1(2) ensures that new regulation 11A of the NICs Disclosure Regulations applies to a person who provides the prescribed information about notifiable contribution proposals or arrangements in compliance, or purported compliance, with regulations 8, 10, or 11 of those Regulations on or after 12th April 2015.

A Tax Information and Impact Note covering this instrument was published on 17th July 2014 alongside the draft clauses and explanatory notes for the National Insurance Contributions Bill and is available on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>. It remains an accurate summary of the impacts that apply to this instrument.