

2015 No. 531

SOCIAL SECURITY

The National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) Regulations 2015

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| <i>Made</i> - - - - | <i>5th March 2015</i> |
| <i>Laid before Parliament</i> | <i>6th March 2015</i> |
| <i>Coming into force</i> - - | <i>12th April 2015</i> |

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

Citation, commencement and effect

1.—(1) These Regulations may be cited as the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) Regulations 2015 and come into force on 12th April 2015.

(2) These Regulations have effect in relation to prescribed information about notifiable contribution proposals or notifiable contribution arrangements(b) provided by a person in compliance, or purported compliance, with regulations 8, 10 and 11 of the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012(c) on or after 12th April 2015.

(3) For the purposes of this regulation “prescribed” has the meaning given by regulation 2 of the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012.

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

2. The National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 are amended as follows.

3. In regulation 2 (interpretation), at the end, insert—

““working day” means a day which is not a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday under the Banking and Financial Dealings Act 1971(d) in any part of the United Kingdom.”.

(a) 1992 c. 5; section 132A was inserted by section 7(2) of the National Insurance Contributions Act 2006 (c. 10). Section 189(4) was amended by Part 1 of the Schedule to the Public Bodies (Abolition of the Disability Living Allowance Advisory Board) Order 2013 (S.I. 2013/252). Section 189(4) and (5) was amended by paragraph 109 of Schedule 7 and Schedule 8 to the Social Security Act 1998 (c. 14).

(b) “Notifiable contribution proposals” and “notifiable contribution arrangements” have the meanings given in section 132A(3) of the Social Security Administration Act 1992.

(c) S.I. 2012/1868; amended by S.I. 2013/2600.

(d) 1971 c. 80.

4. In the Table at regulation 5(2) (provisions corresponding to Part 7 of the Finance Act 2004(a)), after the row relating to section 310 (duty of parties to notifiable arrangements not involving promoter) insert—

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| “Section 310A (duty to provide further information requested by HMRC) | Regulation 11A |
| Section 310B (failure to provide information under section 310A: application to the Tribunal) | Regulation 11B(b)”. |

5. After regulation 11 (duty of parties to notifiable contribution arrangements not involving promoter) insert—

“Duty to provide further information requested by HMRC

11A.—(1) This regulation applies where—

- (a) a person has provided the prescribed information about notifiable contribution proposals or notifiable contribution arrangements in compliance with regulation 8, 10 or 11, or
- (b) a person has provided information in purported compliance with regulation 10 or 11 but HMRC believe that the person has not provided all the prescribed information.

(2) HMRC may require the person to provide—

- (a) further specified information about the notifiable contribution proposals or notifiable contribution arrangements (in addition to the prescribed information under regulation 8, 10 or 11);
- (b) documents relating to the notifiable contribution proposals or notifiable contribution arrangements.

(3) Where HMRC impose a requirement on a person under this regulation, the person must comply with the requirement within—

- (a) the period of 10 working days beginning with the day on which HMRC imposed the requirement, or
- (b) such longer period as HMRC may direct.

Failure to provide information under regulation 11A: application to the Tribunal

11B.—(1) This regulation applies where HMRC—

- (a) have required a person to provide information or documents under regulation 11A, but
- (b) believe that the person has failed to provide the information or documents required.

(2) HMRC may apply to the tribunal for an order requiring the person to provide the information or documents required.

(3) The tribunal may make an order under paragraph (2) only if satisfied that HMRC have reasonable grounds for suspecting that the information or documents will assist HMRC in considering the notifiable contribution proposals or notifiable contribution arrangements.

(4) Where the tribunal makes an order under paragraph (2), the person must comply with it within—

(a) 2004 c. 12.

(b) Sections 310A and 310B of the Finance Act 2004 (c. 12) were inserted by section 284(1) and (2) of the Finance Act 2014 (c. 26). Regulations 11A and 11B are inserted by regulation 5 of this instrument.

- (a) the period of 10 working days beginning with the day on which the tribunal made the order, or
- (b) such longer period as HMRC may direct.”.

6. In regulation 21(2) (information to be provided in form and manner specified by HMRC) after “11,” insert “11A,”.

7. In regulation 22 (notification under Part 2)—

- (a) in paragraph (1)(a)(i), for “or (c)” substitute “, (c) or (ca)”;
- (b) in paragraph (2), after sub-paragraph (c) insert—
 - “(ca) regulation 11A (duty to provide further information requested by HMRC),”;
- (c) in paragraph (3), at the end of the table insert—

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| “A failure to comply with regulation 11A | The first day after the end of the period within which the person must comply with regulation 11A”; |
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- (d) in paragraph (4)(a)—
 - (i) for “person’s” substitute “promoter’s”;
 - (ii) after “(3)” insert “or regulation 11A”;
 - (iii) for “person” substitute “promoter”;
- (e) in paragraph (4)(b)—
 - (i) before “person’s” insert “relevant”;
 - (ii) for “or 11” substitute “, 11 or 11A”;
 - (iii) before “person” insert “relevant”;
- (f) after paragraph 4, insert—
 - “(4A) In paragraph 4—
 - (a) “promoter” has the same meaning as in regulation 7, and
 - (b) “relevant person” means a person who enters into any transaction forming part of notifiable contribution arrangements within the meaning of regulation 5.”;
- (g) after paragraph 10, insert—
 - “(10A) Where a person fails to comply with—
 - (a) regulation 10 and the promoter for the purposes of that regulation is a monitored promoter for the purposes of Part 5 of the Finance Act 2014(a), or
 - (b) regulation 11 and the notifiable contribution arrangements for the purposes of that regulation are arrangements of such a monitored promoter,
 then for the purposes of regulation 23 (interpretation) legal advice which the person took into account is to be disregarded in determining whether the person had a reasonable excuse, if the advice was given or procured by that monitored promoter.
 - (10B) In determining for the purpose of regulation 23 whether or not a person who is a monitored promoter within the meaning of Part 5 of the Finance Act 2014 had a reasonable excuse for a failure to do anything required to be done under a provision mentioned in paragraph (2), reliance on legal advice is to be taken automatically not to constitute a reasonable excuse if either—
 - (a) the advice was not based on a full and accurate description of the facts, or
 - (b) the conclusions in the advice that the person relied on were unreasonable.”.

(a) 2014 c. 26; Part 5 (Promoters of Tax Avoidance Schemes) is applied to Class 1, 1A, 1B and certain Class 2 contributions by Part 2 of Schedule 2 to the National Insurance Contributions Act 2015 (c. 5).

David Evennett
Gavin Barwell

5th March 2015

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 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.

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