

EXPLANATORY MEMORANDUM TO
THE NATIONAL INSURANCE CONTRIBUTIONS (APPLICATION OF PART 7 OF
THE FINANCE ACT 2004) (AMENDMENT) REGULATIONS 2015

2015 No. 531

1. This explanatory memorandum has been prepared by H.M. Revenue and Customs (HMRC), on behalf of HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations make changes to the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 which correspond to changes to Part 7 of the Finance Act 2004 (“Part 7 of FA 2004”) and section 98C of the Taxes Management Act 1970 (“TMA 1970”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

Disclosure of tax avoidance schemes

4.1 Part 7 of FA 2004 provides for the disclosure to HMRC of certain tax arrangements and proposals for arrangements (“schemes”). This regime is known as the Disclosure of Tax Avoidance Schemes (“DOTAS”).

4.2 Section 98C of TMA 1970 imposes penalties for those who fail to comply with disclosure obligations without reasonable excuse.

Disclosure of contribution avoidance schemes

4.3 Section 132A of the Social Security Administration Act 1992 provides for the Treasury to make regulations mirroring Part 7 of FA 2004 and section 98C TMA 1970 as they apply to income tax for the purposes of National Insurance contributions (“NICs”).

4.4 The scope of DOTAS was extended in 2007 specifically to include NICs by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (S.I. 2012/1868).

Finance Act 2014: Promoters of tax avoidance schemes regime & new DOTAS information powers

4.5 Part 5 of FA 2014 introduced legislation to tackle the behaviour of certain promoters of tax avoidance schemes (known as ‘high risk promoters’). The legislation includes provision amending section 98C of TMA 1970 to ensure that a higher

standard of reasonable excuse applies where a person has failed to comply with certain DOTAS obligations and the promoter, for the purposes of the DOTAS obligation, is also a ‘monitored promoter’ for the purposes of Part 5 of FA 2014 (section 275 of FA 2014).

4.6 In addition, Part 6 of FA 2014 amended Part 7 of FA 2004 to allow HMRC to request further information on schemes disclosed under DOTAS in addition to that provided when the scheme was disclosed. It also amended section 98C of TMA 1970 to enable penalties to be imposed if a promoter fails to comply with the request (section 284 of FA 2014).

National Insurance Contributions Act 2015

4.7 Part 5 of FA 2014 has been extended to NICs by virtue of Parts 2 and 3 of Schedule 2 to the National Insurance Contributions Act 2015 (“NICA 2015”). The effect is that the promoters of tax avoidance schemes legislation applies to both tax and NICs.

4.8 We are using the powers in Section 132A of the Social Security Administration Act 1992 to mirror the tax changes described in paragraphs 4.5 and 4.6 above.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As this instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

• *What is being done and why*

7.1 Tax avoidance involves using the tax law to obtain a tax advantage that Parliament never intended. It frequently involves contrived and artificial transactions that serve no purpose other than to reduce tax liability. Tax avoidance enables some taxpayers to gain an unfair advantage, undermining confidence in the tax system.

7.2 HMRC’s anti avoidance strategy has three core elements:

- Preventing avoidance at the outset where possible;
- Detecting it early where it persists;
- Countering it effectively by challenge by HMRC.

7.3 DOTAS is a key component of the detection element of the strategy. It also informs counteraction and contributes to preventing avoidance by affecting the economics of the promotion of avoidance schemes.

7.4 In addition to the disclosure regime, the ‘high risk promoter’ regime has been introduced as a further strategic response to avoidance and is intended to deter the use

of avoidance schemes through influencing the behaviour of promoters, their intermediaries and clients.

7.5 As a consequence of extending the high risk promoter regime to NICs. These regulations introduce a higher standard of reasonable excuse for persons who have failed to comply with certain disclosure obligations. This corresponds to changes made to section 98C of TMA 1970 by Part 5 of the Finance Act 2014 (“FA 2014”).

7.6 They also introduce a new requirement for further information to be provided by a promoter of contribution avoidance schemes when requested by HMRC and for a penalty to apply when this request is not met. This corresponds to changes made to both Part 7 of FA 2004 and section 98C of TMA 1970 by Part 6 of FA 2014.

- ***Consolidation***

7.7 This is the second time that the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 have been amended. There are no current plans to consolidate these Regulations.

8. Consultation outcome

8.1 HMRC published a consultation document “Lifting the Lid on Tax Avoidance Schemes on 23 July 2012 and the Summary of responses was published 11 December 2012. Both documents can be viewed on the following link: <https://www.gov.uk/government/collections/national-insurance-contributions-bill-2014>. There has been no consultation on these regulations as the NICs changes are made as a consequence of tax changes, and take account of the responses received during the consultation referred to above.

9. Guidance

Relevant guidance will be updated.

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited to those that engage in tax avoidance schemes.

10.2 No impact on the public sector is foreseen.

10.3 The Tax Information and Impact Note covering this instrument was published on the 17th July 2014 alongside the draft clauses and explanatory notes for the National Insurance Contribution Bill and is available on the GOV.UK website at: <https://www.gov.uk/government/publications/promoters-of-tax-avoidance-schemes>. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 This legislation applies to small business in so far as businesses of any size can develop, market or use tax avoidance schemes. The Government expects this measure will have little, if any, impact on small businesses.

12. Monitoring & review

The measure will be monitored and amendments made as appropriate.

13. Contact

Hasan Mustafa at HMRC, Tel: 03000 586 718 or e-mail:
hasan.mustafa@hmrc.gsi.gov.uk can answer any queries regarding the instrument.