

2017 No. 1174

SOCIAL SECURITY

The National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) Regulations 2017

Made - - - - 29th November 2017

Laid before Parliament 30th November 2017

Coming into force in accordance with regulation 1.

The Treasury make the following Regulations in exercise of the powers conferred by sections 132A(1) and (2) and 189(4) and (5) of the Social Security Administration Act 1992(a).

Citation and commencement

1.—(1) These Regulations may be cited as the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) Regulations 2017.

(2) Subject to paragraph (3) these Regulations come into force on 21st December 2017.

(3) Regulations 6(b), 11 and 14(2)(c) come into force on 6th April 2018.

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(b) are amended as follows.

3. In regulation 2 (interpretation) after the definition of “the Descriptions Regulations” insert—

““employer” means the secondary contributor determined under—

(a) section 7 of the Social Security Contributions and Benefits Act 1992(c);

(b) regulation 5 of, and Schedule 3 to, the Social Security (Categorisation of Earners) Regulations 1978(d); or

(c) regulation 122 of the Social Security (Contributions) Regulations 2001(e);”.

4. In regulation 3 (structure of the regulations) in paragraph (1) for “21” substitute “21D”.

(a) 1992 c. 5; section 132A was inserted by section 7(1) and (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) and by S.I. 2013/252.

(b) S.I. 2012/1868.

(c) 1992 c. 4.

(d) S.I. 1978/1689 relevantly amended by S.I. 1990/1894, 1994/726, 1998/1728, 2003/736, 2003/2420, 2004/770, 2005/3133, 2012/816 and 2015/635.

(e) S.I. 2001/1004.

5. In the table at regulation 5(2) (provisions corresponding to Part 7 of the Finance Act 2004)(a)—

- (a) after the row relating to section 310B (failure to provide information under section 310A: application to the Tribunal) insert—
“Section 310C (duty of promoters to provide updated information) Regulation 11C”;
- (b) after the row relating to section 313ZB (enquiry following disclosure of client details) insert—
“Section 313ZC (duty of employer to notify HMRC of details of employees etc)”;
- (c) after the row relating to section 316 (information to be provided in form and manner specified by Board) insert—
“Section 316A (duty to provide additional information) Regulation 21A
Section 316B (confidentiality) Regulation 21B
Section 316C (publication by HMRC) Regulation 21C
Section 316D (section 316C: subsequent judicial rulings) Regulation 21D”.

6. After regulation 11B (failure to provide information under regulation 11A: application to the Tribunal)(b) insert—

“Duty of promoters to provide updated information

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

- (a) information has been provided under regulation 8 about any notifiable contribution arrangements, or proposed notifiable contribution arrangements, to which a reference number is allocated under regulation 12, and
- (b) after the provision of information, there is a change in relation to the arrangements of a kind mentioned in paragraph (2).

(2) The changes referred to in paragraph (1)(b) are—

- (a) a change in the name by which the notifiable contribution arrangements or proposed notifiable contribution arrangements, are known;
- (b) a change in the name or address of any person who is a promoter in relation to the notifiable contribution arrangements or, in the case of proposed notifiable contribution arrangements, the notifiable contribution proposal.

(3) A person who is a promoter in relation to the notifiable contribution arrangements or, in the case of proposed notifiable contribution arrangements, the notifiable contribution proposal must inform HMRC of the change mentioned in paragraph (1)(b) within 30 days after it is made.

(4) Paragraphs (5) and (6) apply for the purposes of paragraph (3) where there is more than one person who is a promoter in relation to the notifiable contribution arrangements or notifiable contribution proposal.

(5) If the change in question is a change in the name or address of a person who is a promoter in relation to the notifiable contribution arrangements or notifiable contribution proposal, it is the duty of that person to comply with paragraph (3).

(6) If a person provides information in compliance with paragraph (3), the duty imposed by that paragraph on any other person, so far as relating to the provision of that information, is discharged.”.

(a) The table entries relating to “Section 310A” and “Section 310B” were inserted by S.I. 2015/531 and the table entries relating to “Section 312B” and “Section 313ZB” were inserted by S.I. 2013/2600.
(b) Regulation 11B was inserted by S.I. 2015/531.

7. In regulation 12(1)(a) (arrangements to be given reference number), for “30 days” substitute “90 days”.

8.—(1) In regulation 14 (duty of client to notify parties of number) after paragraph (2) insert—

“(2A) Where the client—

- (a) is an employer, and
- (b) by reason of the contribution arrangements or proposed contribution arrangements, receives or might reasonably be expected to receive an advantage, in relation to the employment of one or more of the client’s employees,

the client must, within the prescribed period, provide to each of the client’s relevant employees prescribed information relating to the reference number.”.

(2) In paragraphs (3) and (4) for “paragraph (2)” substitute “paragraph (2) or (2A)”.

(3) After paragraph (3) insert—

“(3A) For the purposes of this regulation—

- (a) “relevant employee” means an employee in relation to whose employment the client receives or might reasonably be expected to receive the advantage mentioned in paragraph (2A);
- (b) “employee” includes former employee; and
- (c) a reference to employment includes holding an office (and references to “employee” and “employer” are to be construed accordingly).”.

9. In regulation 15 (duty of parties to notifiable contribution arrangements to notify HMRC of number etc) after paragraph (2) insert—

“(3) The duty under paragraph (1) does not apply in prescribed circumstances.”.

10. After regulation 16A (enquiry following disclosure of client details)(a) insert—

“Duty of employer to notify HMRC of details of employees etc

16B.—(1) This regulation applies if conditions A, B and C are met.

(2) Condition A is that 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 to a person (“the client”).

(3) Condition B is that the client receives information under regulation 13(2) or as mentioned in regulation 13(5).

(4) Condition C is that the client is an employer in circumstances where, as a result of the notifiable contribution arrangements or proposed notifiable contribution arrangements—

- (a) one or more of the client’s employees receive, or might reasonably be expected to receive, in relation to their employment, an advantage, or
- (b) the client receives or might reasonably be expected to receive an advantage in relation to the employment of one or more of the client’s employees.

(5) Where an employee is within paragraph (4)(a), or is an employee mentioned in paragraph (4)(b), the client must provide HMRC with prescribed information relating to the employee at the prescribed time or times.

(6) The client need not comply with paragraph (5) in relation to any notifiable contribution arrangements at any time after HMRC has given notice under regulation 13(6) or 15(2) in relation to the notifiable contribution arrangements.

(7) The duty under paragraph (5) does not apply in prescribed circumstances.

(a) Regulation 16A was inserted by S.I. 2013/2600.

(8) Regulation 14(3A) applies for the purposes of this regulation as it applies for the purpose of that regulation.”.

11. In regulation 19 (information provided to introducers)—

(a) for the heading substitute “Provision of information to HMRC by introducers”,

(b) for paragraph (1) substitute—

“(1) This regulation applies 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.”,

(c) after paragraph (1) insert—

“(1A) HMRC may by written notice require P to provide HMRC with one or both of the following—

(a) prescribed information in relation to each person who has provided P with any information relating to the proposal;

(b) prescribed information in relation to each person with whom P has made a marketing contact in relation to the proposal.”, and

(d) in paragraph (3) for “paragraph (1)” substitute “paragraph (1A)”.

12.—(1) In regulation 21 (information to be provided in form and manner specified by HMRC)(a)—

(a) in paragraph (2) after “11A,” insert “11C,” and

(b) for “and 16(3)” insert “, 16(3) and 16B(5)”.

(2) After regulation 21 insert—

“Duty to provide additional information

21A.—(1) This regulation applies where a person is required to provide information under regulation 13(2) or 14(2) or (2A).

(2) HMRC may specify additional information which must be provided by that person to the recipients under regulation 13(2) or 14(2) or (2A) at the same time as the information referred to in paragraph (1).

(3) HMRC may specify the form and manner in which the additional information is to be provided.

(4) For the purposes of this regulation “additional information” means information supplied by HMRC which relates to notifiable contribution proposals or notifiable contribution arrangements in general.

Confidentiality

21B. No duty of confidentiality or other restriction on disclosure (however imposed) prevents the voluntary disclosure by any person to HMRC of information or documents which the person has reasonable grounds for suspecting will assist HMRC in determining whether there has been a breach of any requirement imposed by or under these Regulations.

Publication by HMRC

21C.—(1) HMRC may publish information about—

(a) any notifiable contribution arrangements, or proposed notifiable contribution arrangements, to which a reference number is allocated under regulation 12;

(a) Regulation 21 was amended by S.I. 2015/531.

- (b) any person who is a promoter in relation to the notifiable contribution arrangements or, in the case of proposed notifiable contribution arrangements, the notifiable contribution proposal.
- (2) The information that may be published is (subject to paragraph (4))—
- (a) any information relating to arrangements within paragraph (1)(a), or a person within paragraph (1)(b), that is prescribed information for the purposes of regulation 8, 10 or 11;
 - (b) any ruling of a court or tribunal relating to any such arrangements or person (in that person’s capacity as a promoter in relation to a notifiable contribution proposal or notifiable contribution arrangements);
 - (c) the number of persons in any period who enter into transactions forming part of notifiable contribution arrangements within paragraph (1)(a);
 - (d) whether notifiable contribution arrangements within paragraph (1)(a) are APN relevant;
 - (e) any other information that HMRC considers it appropriate to publish for the purpose of identifying arrangements within paragraph (1)(a) or a person within paragraph (1)(b).
- (3) The information may be published in any manner that HMRC considers appropriate.
- (4) No information may be published under this regulation that identifies a person who enters into a transaction forming part of notifiable contribution arrangements within paragraph (1)(a).
- (5) But where a person who is a promoter within paragraph (1)(b) is also a person mentioned in paragraph (4), nothing in paragraph (4) is to be taken as preventing the publication under this regulation of information so far as relating to the person’s activities as a promoter.
- (6) Before publishing any information under this regulation that identifies a person as a promoter within paragraph (1)(b), HMRC must—
- (a) inform the person that they are considering doing so, and
 - (b) give the person reasonable opportunity to make representations about whether it should be published.
- (7) Arrangements are “APN relevant” for the purposes of paragraph (2)(d) if HMRC has indicated in a publication that it may exercise (or has exercised) its power under section 219 of the Finance Act 2014^(a) (accelerated payment notices) by virtue of the arrangements being DOTAS arrangements within the meaning of that section.

Subsequent judicial rulings

21D.—(1) This regulation applies if—

- (a) information about notifiable contribution arrangements, or proposed notifiable contribution arrangements, is published under regulation 21C,
- (b) at any time after the information is published, a ruling of a court or tribunal is made in relation to contribution arrangements, and
- (c) HMRC is of the opinion that the ruling is relevant to the arrangements mentioned in sub-paragraph (a).

(2) A ruling is “relevant” to the arrangements if—

(a) 2014 c. 26. Section 219 was amended by section 157(18) to (20) of the Finance Act 2016 (c. 24). Section 219 has been applied to “relevant contributions” by paragraph 1 of Part 1 of Schedule 2 to the National Insurance Contributions Act 2015 (c.5) with the modifications contained in the rest of that part of the Schedule. Paragraph 22 defines “relevant contributions” for the purposes of the application of Part 4 of the Finance Act 2014 to national insurance contributions. Paragraph 16 makes specific modifications to section 219.

- (a) the principles laid down, or reasoning given, in the ruling would, if applied to the arrangements, allow the purported advantage arising from the arrangements in relation to contributions, and
 - (b) the ruling is final.
- (3) HMRC must publish information about the ruling.
- (4) The information must be published in the same manner as HMRC published the information mentioned in sub-paragraph (1)(a) (and may also be published in any other manner that HMRC considers appropriate).
- (5) A ruling is “final” if it is—
- (a) a ruling of the Supreme Court, or
 - (b) a ruling of any other court or tribunal in circumstances where—
 - (i) no appeal may be made against the ruling,
 - (ii) if an appeal may be made against the ruling with permission, the time limit for applications has expired and either no application has been made or permission has been refused,
 - (iii) if such permission to appeal against the ruling has been granted or is not required, no appeal has been made within the time limit for appeals, or
 - (iv) if an appeal was made, it was abandoned or otherwise disposed of before it was determined by the court or tribunal to which it was addressed.
- (6) Where a ruling is final by virtue of paragraph (5)(b)(ii), (iii) or (iv), the ruling is to be treated as made at the time when the paragraph in question is first satisfied.
- (7) In this regulation, “contribution arrangements” means arrangements in respect of which it would be reasonable to conclude (having regard to all the circumstances) that the obtaining of an advantage in relation to contributions was the main purpose, or one of the main purposes.”.

13.—(1) Regulation 22 (notification under Part 2) is amended as follows.

(2) In paragraph 2—

- (a) after sub-paragraph (ca)(a) insert—
 - “(cb) regulation 11C (duty of promoters to provide updated information)”,
- (b) in sub-paragraph (e) after “regulation 14(2)” insert “and 14(2A)”,
- (c) after sub-paragraph (fa)(b) insert—
 - “(fb) regulation 16B (duty of employer to notify HMRC of details of employees etc)”,
- (d) in sub-paragraph (g) omit “and”,
- (e) for sub-paragraph (h) substitute—
 - “(h) regulation 19 (provision of information to HMRC by introducers), and”, and
- (f) after sub-paragraph (h) insert—
 - “(i) regulation 21A (duty to provide additional information).”.

(3) In paragraph (11) for “penalty of the relevant sum” substitute “penalty not exceeding the relevant sum”.

(4) In paragraph (12)—

- (a) in sub-paragraph (a) for “£100” substitute “£5,000”,
- (b) in sub-paragraph (b) for “£500” substitute “£7,500”,
- (c) in sub-paragraph (c) for “£1000” substitute “£10,000”.

(a) Sub-paragraph (ca) was inserted by S.I.2015/531.
 (b) Sub-paragraph (fa) was inserted by S.I. 2013/2600.

14. In regulation 26 (the information regulations)—

- (a) omit paragraph (6), and
- (b) in paragraph (8) for the substituted regulation 10(3) substitute—

“(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 14 days after the end of the final tax period of the tax year in respect of which any person first enters into a transaction forming part of the notifiable contribution arrangements and in respect of each subsequent year until an advantage ceases to apply to any person.

In this paragraph, “tax period” has the meaning given in paragraph 1(2) of Schedule 4 to the Social Security (Contribution) Regulations 2001(a) (interpretation).”.

*David Evennett
Andrew Griffiths*

29th November 2017

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”) by virtue of the Finance Act 2015 (c. 11).

Regulation 2 introduces the amendments to the NICs Disclosure Regulations.

Regulation 3 provides a definition of “employer”.

Regulation 4 makes a consequential amendment to Regulation 3 (Structure of the Regulations) to reflect the changes being made.

Regulation 5 updates the table at regulation 5(2) of the NICs Disclosure Regulations to show that new regulations 11C, 16B and 21A to 21D correspond with sections 310C, 313ZC, and 316A to 316D of FA 2004.

Regulation 6 adds new regulation 11C into the NICs Disclosure Regulations and, in particular, requires promoters to notify HMRC within 30 days if the name of a scheme or the name or address of a promoter changes after a reference number has been issued under regulation 12 of those Regulations.

Regulation 7 amends regulation 12(1) of the NICs Disclosure Regulations so as to increase the period within which HMRC may allocate a reference number to notifiable contribution proposals or arrangements from 30 to 90 days.

Regulation 8 introduces a new paragraph (2A) into regulation 14 of the NICs Disclosure Regulations. It requires that where an employer receives, or might reasonably be expected to receive, an advantage from notifiable contribution arrangements or proposed contribution arrangements relating to an employee’s employment, the employer must provide prescribed information to the employee.

Regulation 9 adds a new paragraph (3) to regulation 15 of the NICs Disclosure Regulations as a consequence of the changes introduced in new regulation 16B of those Regulations.

(a) S.I. 2001/1004.

Regulation 10 introduces a new regulation 16B into the NICs Disclosure Regulations. It requires employers to provide HMRC with prescribed information within prescribed times about each employee where the employee or the employer gains an advantage from notifiable contribution arrangements. New regulation 16B(6) enables HMRC to issue a notice under regulation 13(6) or 15(2) of the NICs Disclosure Regulations to exclude the employer from having to comply with the requirements of regulation 16B.

Regulation 11 amends regulation 19 of the NICs Disclosure Regulations. It enables HMRC to require a person suspected of being an introducer in relation to a notifiable contribution proposal to provide prescribed information about those with whom they have made a marketing contact.

Regulation 12 amends regulation 21 of the NICs Disclosure Regulations and inserts regulations 21A to 21D after that regulation.

New regulation 21A enables HMRC to specify additional information which must be provided where a person is required to provide information under regulation 13(2), 14(2) or 14(2A) of the NICs Disclosure Regulations.

New regulation 21B provides that no duty of confidentiality or other restrictions on disclosure would apply to persons who voluntarily provide information or documents to HMRC which they suspect may assist HMRC in determining whether there has been a breach of any of the requirements under the NICs Disclosure Regulations.

New Regulation 21C enables HMRC to publish information about promoters and schemes that are notified under the NICs Disclosure Regulations and which have been issued with a reference number under regulation 12 of those Regulations. HMRC must inform a promoter before publishing any information which would identify that person as a promoter and may not publish any information that will identify scheme users.

New Regulation 21D requires HMRC to publish information about court rulings that are relevant to the earlier publication of information under regulation 21C of the NICs Disclosure Regulations and to publish it in the same manner as the original publication.

Regulation 13 amends regulation 22 of the NICs Disclosure Regulations. It increases the penalties for a person who fails to comply with regulation 15(1) of those Regulations or with regulation 10 of the Tax Avoidance (Information) Regulations 2012 (S.I. 2012/1836) (“the Information Regulations”). The penalties are increased to an amount not exceeding £5,000, £7,500 and £10,000, respectively, for the three categories of failures mentioned in regulation 22(12) of the NICs Disclosure Regulations.

Regulation 14 omits regulation 26(6) of the NICs Disclosure Regulations and amends regulation 26(8) of those Regulations so as to align National Insurance provisions more closely with the tax provisions set out in regulation 13B of the Information Regulations.

A Tax Information and Impact Note covering these Regulations was published on 10 December 2014 and can be found at www.gov.uk/government/publications/disclosure-of-tax-avoidance-schemes. It remains an accurate summary of the impacts that apply to these Regulations.

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