

EXPLANATORY MEMORANDUM TO

THE NATIONAL INSURANCE CONTRIBUTIONS (APPLICATION OF PART 7 OF THE FINANCE ACT 2004) (AMENDMENT) (AMENDMENT) REGULATIONS 2017

2017 No. 1308

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 These Regulations amend the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) Regulations 2017 (S.I. 2017/1174) (the “Amendment Regulations”) to correct typographical errors in the commencement provisions of those Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 These Regulations were laid before Parliament less than 21 days before they come into force. The breach of the 21-day rule arises from the need to correct the Amendment Regulations, which were made on the 29th November 2017 and laid before Parliament the following day.
- 3.2 The correction is necessary because of typographical errors in Regulation 1(3) of the Amendment Regulations, which refers to regulations 6(b), 11 and 14(2)(c) but should have referred to regulations 5(b), 10 and 13(2)(c).
- 3.3 The Amendment Regulations come into force in two stages. Most of the regulations come into force on the 21st December 2017, in accordance with Regulation 1(2) of the Amendment Regulations. However, regulations relating to employer obligations (namely regulations 5(b), 10 and 13(2)(c)) are intended to come into force on the 6th April 2018, in accordance with Regulation 1(3) of the Amendment Regulations. As a result of the typographical errors regulation 1(3) erroneously refers to regulations 6(b), 11 and 14(2)(c). Regulations 6(b) and 14(2)(c) do not exist. Regulation 11 does not relate to employers’ obligations.
- 3.4 The corrections must be in force on 21st December 2017 to prevent employer obligations prematurely coming into force on that day.
- 3.5 The Commissioners for Her Majesty’s Revenue and Customs regret the inconvenience caused by the typographical errors which have required correction and have agreed with the Statutory Instrument Registrar that HMSO will make these Regulations available free of charge to those who can show they purchased the Amendment Regulations.

Other matters of interest to the House of Commons

- 3.6 As this instrument is subject to negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The legislative context of these Regulations is the same as the Amendment Regulations 2017.
- 4.2 Part 7 of the Finance Act 2004 provides for the notification (“disclosure”) of certain arrangements and proposals for arrangements (“schemes”), relating to certain taxes, to HMRC. This is known as the Disclosure of Tax Avoidance Schemes (“DOTAS”) regime.
- 4.3 Section 117 of the Finance Act 2015 (“FA 2015”) made amendments to Part 7 of FA 2004 and section 98C of the Taxes Management Act 1970 (c.9). These amendments are set out in Schedule 17 to FA 2015.
- 4.4 Sections 308, 309 and 310 of FA 2004 require certain persons to provide information about schemes falling within certain descriptions. This requirement usually falls on a person within the meaning of a promoter in section 307 of FA 2004. The promoter must explain how the scheme works within 5 days of the earliest of the scheme being marketed, made available for implementation or being implemented.
- 4.5 Section 311 of FA 2004 provides that HMRC may issue a scheme reference number (SRN) to the person who made the disclosure. Section 312 of FA 2004 requires a promoter to issue a SRN to a client whom the promoter becomes aware has entered into a transaction forming part of the scheme. Section 312A of FA 2004 imposes a similar obligation on the client to pass the SRN to other persons who are party to the scheme. Any person who receives a SRN must report it to HMRC unless exempted by Regulations.
- 4.6 Different rules apply where the client is an employer whose employees are party to the scheme. The employer must pass the SRN to each relevant employee but only the employer is required to report the SRN to HMRC, both in respect of the employer’s own involvement with the scheme and that of each relevant employee.
- 4.7 Section 98C of the Taxes Management Act 1970 (“TMA”) imposes penalties on persons who fail to comply with obligations under Part 7 of FA 2004.
- 4.8 The DOTAS regime is applied to arrangements that seek to obtain an advantage in relation to National Insurance Contributions (“NICS”) by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, pursuant to section 132A of the Social Security Administration Act 1992 (c. 5).
- 4.9 The Amendment Regulations replicate the changes made by FA 2015 to Part 7 of FA 2004 within the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 These Regulations correct typographical errors in the Amendment Regulations.
- 7.2 The Amendment Regulations intended to replicate the changes made by FA 2015 to Part 7 of FA 2004 for NICs with immediate effect, save in relation to the rules that require an employer to report an SRN and relevant information about affected employees to HMRC where the scheme relates to one or more of their employees. This requirement was intended to come into effect from 6th April 2018, meaning the first report would be for 2018/19 and would be made by 19th April 2019. The reason for this is that the requirement relates to the entirety of the relevant NICs year. The Amendment Regulations intended to delay the introduction of the requirement to prevent employers having to submit employee details relating to the part of the NICs year falling before the regulations come into force.
- 7.3 Due to the typographical errors the Amendment Regulations introduce the rules that require an employer to report employee information to HMRC where the scheme relates to their employees for the whole of NIC year ending on 5 April 2018, by 19 April 2018, even though the regulations do not take effect until 21st December 2017. In addition to this the Amendment Regulations delay the introduction of rules requiring introducers of schemes to provide information to HMRC until the 6th April 2018. These Regulations correct those errors.

Consolidation

- 7.4 These are the first changes to the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) Regulations 2017. There are currently no plans to consolidate them.

8. Consultation outcome

- 8.1 The Government published a consultation document on 31 July 2014 entitled 'Strengthening the Tax Avoidance Disclosure Regimes'. That consultation led to the changes made to the DOTAS legislation by the Finance Act 2015 and associated amendments to the DOTAS Regulations. The Amendment Regulations replicates those changes for the purpose of applying DOTAS to arrangements that seek an advantage in relation to NICs.
- 8.2 The draft Amendment Regulations were shared with key representative bodies to ensure the regulations accurately replicate what is in the main DOTAS primary legislation. HMRC received very few comments and none of them required the Amendment Regulations to be changed.
- 8.3 These Regulations have not been subject to consultation.

9. Guidance

- 9.1 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 There is no impact on the public sector.
- 10.3 A Tax Information and Impact Note covering the Amendment 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 this instrument.

11. Regulating small business

- 11.1 The legislation applies to small business in so far as businesses of any size can develop, market or use tax avoidance schemes.
- 11.2 The Government expects this measure to reduce the administrative burden upon small business by preventing the premature introduction of employer obligations.

12. Monitoring & review

- 12.1 HMRC routinely monitors the information it receives under DOTAS and uses that information to evaluate this measure and any future policy developments.

13. Contact

- 13.1 Gary Coombs in the Counter-Avoidance Directorate of HM Revenue and Customs Tel; 03000 589577 or email: gary.coombs@hmrc.gsi.gov.uk, can answer any queries regarding the instrument.