

SCHEDULES

SCHEDULE 2

Section 4

APPLICATION OF PARTS 4 AND 5 OF FA 2014 TO NATIONAL INSURANCE CONTRIBUTIONS

PART 1

FOLLOWER NOTICES & ACCELERATED PAYMENTS: CLASS 1, 1A, 1B AND CERTAIN CLASS 2

Introduction

- 1 Part 4 of FA 2014 (follower notices and accelerated payments) has effect with the following modifications.

General

- 2 References to tax or a relevant tax, other than references to particular taxes, include relevant contributions.
- 3 References to a charge to tax include a liability to pay relevant contributions and references to a person being chargeable to tax, or to tax being charged, are to be construed accordingly.
- 4 References to an assessment to tax include a NICs decision relating to a person's liability for relevant contributions.
- 5 References to a tax enquiry include a relevant contributions dispute.
- 6 A "relevant contributions dispute" arises if—
- (a) without making a NICs decision, HMRC notifies a person in writing that HMRC considers the person to be liable to pay an amount of relevant contributions, and
 - (b) the person notifies HMRC in writing (a "notification of dispute") that the person disputes liability for some or all of the contributions ("the disputed contributions").
- 7 The relevant contributions dispute is in progress, in relation to the notification of dispute, during the period which—
- (a) begins with the day on which the person gives the notification of dispute, and
 - (b) ends (at which point it is to be treated as completed) with the day on which—
 - (i) the disputed contributions are paid in full,
 - (ii) HMRC and the person enter into an agreement in writing as to the person's liability for the disputed contributions and any amount of those contributions that the person is to pay under that agreement is paid,

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- (iii) an officer of Revenue and Customs makes a NICs decision in relation to the person’s liability for the disputed contributions, or
 - (iv) without making a NICs decision, HMRC notifies the person in writing that HMRC no longer considers the person to be liable to pay the disputed contributions.
- 8 References to a return into which a tax enquiry is in progress include a notification of dispute in relation to which a relevant contributions dispute is in progress.
- 9 References to a tax appeal include a NICs appeal.
- 10 A “NICs appeal” means—
- (a) an appeal, under section 11 of SSC(TF)A 1999 or Article 10 of the Social Security Contributions (Transfer of Functions, etc) (Northern Ireland) Order 1999 (S.I. 1999/671), against a NICs decision relating to relevant contributions, or
 - (b) an appeal against any determination of—
 - (i) an appeal within paragraph (a), or
 - (ii) an appeal within this paragraph.
- 11 (1) A reference to a provision of Part 7 of FA 2004 (disclosure of tax avoidance schemes) (a “DOTAS provision”) includes a reference to—
- (a) that DOTAS provision as applied by regulations under section 132A of SSAA 1992 (disclosure of contributions avoidance arrangements);
 - (b) any provision of regulations under that section that corresponds to that DOTAS provision,
- whenever the regulations are made.
- (2) Regulations under section 132A of SSAA 1992 may disapply, or modify the effect of, sub-paragraph (1).

List of relevant taxes

- 12 The definition of “relevant tax” in section 200 (“relevant tax”) has effect as if relevant contributions were listed in it.

Circumstances in which follower notice may be given

- 13 For the purposes of section 204 (circumstances in which a follower notice may be given), Condition B is also met if, in a relevant contributions dispute, a person disputes liability for relevant contributions on the basis mentioned in subsection (3) of that section (regardless of whether the notification of dispute was given on that basis).

Follower notices: corrective action and penalties

- 14 (1) This paragraph applies in a case in which, by virtue of this Part of this Schedule, a follower notice is given by virtue of section 204(2)(a).
- (2) For the purposes of section 208 (penalty if corrective action not taken in response to follower notice), the necessary corrective action is taken in respect of the denied advantage if (and only if)—

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- (a) in a case in which the denied advantage can be counteracted by making a payment to HMRC, P makes that payment and notifies HMRC that P has done so, or
 - (b) in any case, P takes all necessary action to enter into an agreement in writing with HMRC for the purpose of relinquishing the denied advantage.
- (3) Accordingly—
- (a) subsections (4) to (7) and (9) to (11) of section 208 do not apply, and
 - (b) the reference in section 209(3)(a) to P amending a return or claim is to be treated as a reference to P making a payment mentioned in sub-paragraph (2)(a).
- (4) Terms used in this paragraph that are defined for the purposes of section 208 have the same meaning as in that section.

Follower notices: aggregate penalties

- 15 (1) In section 212 (aggregate penalties), references to a “relevant penalty provision” include—
- (a) any provision mentioned in subsection (4) of that section, as applied in relation to relevant contributions by regulations (whenever made);
 - (b) section 98A of TMA 1970, as applied in relation to relevant contributions by regulations (whenever made);
 - (c) any provision specified in regulations made by the Treasury under which a penalty can be imposed in respect of relevant contributions.
- (2) The Treasury may by regulations disapply, or modify the effect of, sub-paragraph (1)(a) or (b).
- (3) The Treasury may by regulations modify section 212 as it has effect in relation to a relevant penalty provision by virtue of sub-paragraph (1)(b) or (c).
- (4) Section 175(3) to (5) of SSCBA 1992 (various supplementary powers) applies to a power to make regulations conferred by this paragraph.
- (5) Regulations under this paragraph must be made by statutory instrument.
- (6) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of either House of Parliament.

Circumstances in which accelerated payment notice may be given

- 16 For the purposes of section 219 (circumstances in which an accelerated payment notice may be given), Condition B is also met if, in a relevant contributions dispute, a person disputes liability for relevant contributions on the basis mentioned in subsection (3) of that section (regardless of whether the notification of dispute was given on that basis).

Nature and recovery of accelerated payment

- 17 (1) This paragraph applies in relation to an accelerated payment (see section 223(2)) so far as (but only so far as) it represents understated tax (see section 220) that consists of an additional amount that would be due and payable in respect of relevant contributions (“the understated contributions”).

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- (2) The accelerated payment is a payment of the understated contributions (and not a payment on account of them).
- (3) Accordingly, subsections (3) and (7) to (9) of section 223 do not apply in relation to the accelerated payment.
- (4) The accelerated payment must be paid before the end of the payment period regardless of whether P brings a NICs appeal that relates to the understated contributions.
- (5) Section 117A of SSAA 1992 and section 111A of SSA(NI)A 1992 (issues arising in proceedings: contributions etc) do not apply to proceedings for the recovery of any amount of the accelerated payment that is unpaid at the end of the payment period.
- (6) A certificate of an officer of Revenue and Customs under section 25A of CRCA 2005 (certificates of debt) that the accelerated payment has not been paid is to be treated as conclusive evidence that the amount is unpaid.
- (7) If some or all of the understated contributions are subsequently repaid to P—
 - (a) the contributions repaid are to be treated, for the purposes of determining a person’s entitlement to benefit, or the amount of a person’s benefit, as not having been paid, but
 - (b) that does not affect any payments of benefit made to a person before the repayment.
- (8) In sub-paragraph (7) “benefit” means a contributory benefit or a statutory payment.
- (9) Terms used in this paragraph that are defined for the purposes of section 223 have the same meaning as in that section.

Effect of accelerated payment notice in respect of appeal

- 18 (1) This paragraph applies where—
- (a) a person (“P”) has been given an accelerated payment notice by virtue of section 219(2)(b) (notice given when appeal pending), which has not been withdrawn, and
 - (b) the appeal by virtue of which the notice could be given was a NICs appeal in relation to relevant contributions.
- (2) P must pay the disputed contributions (see sub-paragraph (8))—
- (a) if no representations were made under section 222 in respect of the notice, on or before the last day of the period of 90 days beginning with the day the notice is given, and
 - (b) if representations were so made, on or before whichever is later of—
 - (i) the last day of the 90 day period mentioned in paragraph (a), and
 - (ii) the last day of the period of 30 days beginning with the day on which HMRC’s determination in respect of those representations is notified under section 222.
- (3) Subsections (4) and (5) of section 117A of SSAA 1992 or (as the case may be) of section 111A of SSA(NI)A 1992 (decision of officer of HMRC not conclusive if subject to appeal and proceedings for recovery to be adjourned pending appeal) do not apply to proceedings before a court for recovery of the disputed contributions.

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- (4) Accordingly, if proceedings have been adjourned under subsection (5) of either of those sections, they cease to be adjourned, so far as they relate to the recovery of the disputed contributions, from the end of the applicable period under sub-paragraph (2).
- (5) A certificate of an officer of Revenue and Customs under section 25A of CRCA 2005 (certificates of debt) that the disputed contributions have not been paid is to be treated as conclusive evidence that the disputed contributions are unpaid.
- (6) If some or all of the disputed contributions are subsequently repaid to P—
 - (a) the contributions repaid are to be treated, for the purposes of determining a person’s entitlement to benefit, or the amount of a person’s benefit, as not having been paid, but
 - (b) that does not affect any payments of benefit made to a person before the repayment.
- (7) In sub-paragraph (6) “benefit” means a contributory benefit or a statutory payment.
- (8) In this paragraph “the disputed contributions” means the relevant contributions to which the NICs appeal relates so far as they are disputed tax specified in the notice under section 221(2)(b).

Penalty for failure to pay accelerated payment

- 19 (1) Subsection (7) of section 226 (penalty for failure to pay accelerated payment) applies in relation to a penalty under that section imposed by virtue of this Part of this Schedule, but the reference in that subsection to tax does not include relevant contributions.
- (2) But in their application by virtue of sub-paragraph (1), the provisions of Schedule 56 to FA 2009 mentioned in that subsection have effect—
 - (a) as if references to an assessment to tax were to a NICs decision relating to a person’s liability for relevant contributions,
 - (b) as if a reference to an appeal against an assessment to the tax concerned were a reference to an appeal against a NICs decision,
 - (c) as if sub-paragraph (3)(b) of paragraph 11 were omitted (but see paragraph 20 of this Schedule), and
 - (d) with any other necessary modifications.

Recovery of penalties under Part 4 of FA 2014

- 20 (1) A penalty under section 208 or 226 imposed by virtue of this Part of this Schedule may be recovered as if it were an amount of relevant contributions which is due and payable.
- (2) Section 117A of SSAA 1992 or (as the case may be) section 111A of SSA(NI)A 1992 (issues arising in proceedings: contributions etc) has effect in relation to proceedings before a court for recovery of the penalty as if the assessment of the penalty were a NICs decision as to whether the person is liable for the penalty.
- (3) Accordingly, section 211(4)(b) (assessment of penalty to be enforced as if it were an assessment to tax) does not apply in relation to a penalty under section 208 imposed by virtue of this Part of this Schedule.

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Withdrawal, modification or suspension of accelerated payment notice

- 21 In section 227 (withdrawal, modification or suspension of accelerated payment notice), subsection (9) has effect as if the provisions mentioned there included paragraph 18(2) of this Schedule.

Interpretation

- 22 In this Part of this Schedule—
- “accelerated payment notice” means an accelerated payment notice under Chapter 3 of Part 4 of FA 2014;
 - “contributory benefit” means—
 - (a) a contributory benefit under Part 2 of SSCBA 1992,
 - (b) a jobseeker’s allowance under JA 1995,
 - (c) an employment and support allowance under Part 1 of WRA 2007,
 - (d) state pension or a lump sum under Part 1 of PA 2014,
 - (e) bereavement support payment under section 30 of that Act, or
 - (f) any corresponding benefit in Northern Ireland;
 - “the disputed contributions”, other than in paragraph 18, has the meaning given by paragraph 6(b);
 - “HMRC” means Her Majesty’s Revenue and Customs;
 - “NICs appeal” has the meaning given by paragraph 10;
 - “NICs decision” means a decision under section 8 of SSC(TF)A 1999 or Article 7 of the Social Security Contributions (Transfer of Functions, etc) (Northern Ireland) Order 1999 (S.I. 1999/671);
 - “notification of dispute” has the meaning given by paragraph 6(b);
 - “relevant contributions” means the following contributions under Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992—
 - (a) Class 1 contributions;
 - (b) Class 1A contributions;
 - (c) Class 1B contributions;
 - (d) Class 2 contributions which a person is, or is alleged to be, liable to pay but in relation to which section 11A of the Act in question (application of certain provisions of the Income Tax Acts in relation to Class 2 contributions under section 11(2) of that Act) does not, or would not, apply;
 - “relevant contributions dispute” has the meaning given by paragraphs 6 and 7;
 - “statutory payment” means a statutory payment for the purposes of section 4C of SSCBA 1992 or section 4C of SSCB(NI)A 1992;
- and references to sections are to sections of FA 2014, unless otherwise indicated.

PART 2

PROMOTERS OF AVOIDANCE SCHEMES: CLASS 1, 1A, 1B AND CERTAIN CLASS 2

Introduction

- 23 Part 5 of FA 2014 (promoters of tax avoidance schemes) has effect with the following modifications.

General

- 24 References to tax, other than in references to particular taxes, include relevant contributions.
- 25 References to a tax advantage include the avoidance or reduction of a liability to pay relevant contributions.
- 26 (1) A reference to a provision of Part 7 of FA 2004 (disclosure of tax avoidance schemes) (a “DOTAS provision”) includes a reference to—
- (a) that DOTAS provision as applied by regulations under section 132A of SSAA 1992 (disclosure of contributions avoidance arrangements);
 - (b) any provision of regulations under that section that corresponds to that DOTAS provision,
- whenever the regulations are made.
- (2) Regulations under section 132A of SSAA 1992 may disapply, or modify the effect of, sub-paragraph (1).

Duty to notify Commissioners

- 27 In section 253 (duty of persons to notify the Commissioners), references to a tax return include a return relating to relevant contributions that is required to be made by or under an enactment.

Power to obtain information and documents

- 28 In section 255 (power to obtain information and documents), references to a person’s tax position include the person’s position as regards deductions or repayments of relevant contributions, or of sums representing relevant contributions, that the person is required to make by or under an enactment.

Limitation of defence of reasonable care

- 29 In section 276 (limitation of defence of reasonable care), the reference in subsection (1) to a document of a kind listed in the Table in paragraph 1 of Schedule 24 to FA 2007 includes a document, relating to relevant contributions, in relation to which that Schedule applies (and, accordingly, the reference to that Schedule in subsection (2) of that section includes that Schedule as it so applies).

List of taxes

- 30 The definition of “tax” in section 283(1) (interpretation) has effect as if relevant contributions were listed in it.

Interpretation

- 31 In this Part of this Schedule—
- (a) “relevant contributions” means the following contributions under Part 1 of SSCBA 1992 or Part 1 of SSCB(NI)A 1992—
 - (i) Class 1 contributions;
 - (ii) Class 1A contributions;
 - (iii) Class 1B contributions;
 - (iv) Class 2 contributions which must be paid but in relation to which section 11A of the Act in question (application of certain provisions of the Income Tax Acts in relation to Class 2 contributions under section 11(2) of that Act) does not apply;
 - (b) references to sections are to sections of FA 2014, unless otherwise indicated.

PART 3

APPLICATION OF PARTS 4 AND 5 OF FA 2014: CLASS 4

- 32 In section 16 of SSCBA 1992 (application of Income Tax Acts and destination of Class 4 contributions), in subsection (1), at the end of paragraph (c) insert “and
- (d) the provisions of Part 4 (follower notices and accelerated payments) and Part 5 (promoters of tax avoidance schemes) of the Finance Act 2014.”.

PART 4

COMMENCEMENT AND TRANSITORY PROVISION

- 33 (1) Parts 1 and 3 of this Schedule come into force at the end of the period of 2 months beginning with the day on which this Act is passed.
- (2) Part 2 of this Schedule comes into force—
- (a) for the purposes of making regulations under Part 5 of FA 2014, on the day on which this Act is passed, and
 - (b) for remaining purposes, at the end of the period of 2 months beginning with the day on which this Act is passed.
- 34 Before the coming into force of the repeals in section 4C of SSCBA 1992 made by Part 1 of Schedule 14 to >WRA 2012 (abolition of benefits superseded by universal credit), the reference in paragraph 22 to a jobseeker’s allowance is to be treated as a reference to a contribution-based jobseeker’s allowance (within the meaning of JA 1995).
- 35 Before the coming into force of the repeal of section 22(8) of SSCBA 1992 made by Part 1 of Schedule 14 to >WRA 2012 (abolition of benefits superseded by universal credit), the reference in paragraph 22 to an employment and support allowance is to be treated as a reference to a contributory allowance (within the meaning of Part 1 of WRA 2007).