

2007 No. 785

SOCIAL SECURITY

**The National Insurance Contributions (Application of Part 7 of
the Finance Act 2004) Regulations 2007**

<i>Made</i>	- - - -	<i>12th March 2007</i>
<i>Laid before Parliament</i>		<i>12th March 2007</i>
<i>Coming into force</i>	- -	<i>1st May 2007</i>

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

PART 1

Introduction

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) Regulations 2007 and shall come into force on 1st May 2007.

(2) If—

- (a) a notifiable contribution arrangement or a notifiable contribution proposal is, or is substantially the same as (whether it relates to the same parties or different parties), a notifiable arrangement or a notifiable proposal under Part 7 in relation to which the promoter has provided information in accordance with sections 308(1) or (3), 309 or 310 where the first day of the period or time (as the case may be) within which the prescribed information must be provided falls before 1st May 2007, these Regulations do not apply;
- (b) the relevant date in relation to a notifiable contribution proposal (b) falls before 1st May 2007, regulation 7 (duties of promoter) does not apply;
- (c) the date on which the promoter(c) first becomes aware of any transaction forming part of notifiable contribution arrangements falls before 1st May 2007, regulation 7 does not apply;
- (d) the date on which any transaction forming part of arrangements entered into falls before 1st May 2007, regulations 8 (duty of person dealing with promoter outside United

(a) 1992 c.5. Section 132A is inserted by s7(2) of the National Insurance Contributions Act 2006 (c. 10). It extends to the whole of the United Kingdom. Section 192(5) of the Social Security Administration Act 1992 (which lists the provisions of the Act which extend to Northern Ireland) is amended by section 7(4) of the National Insurance Contributions Act 2006 to include regulations made under section 132A of the Social Security Administration Act 1992 and regulations made under section 189 for the purpose of regulations under section 132A.

(b) “Notifiable contribution proposal” and “notifiable contribution arrangements” are defined in regulation 5 of these Regulations.

(c) “Promoter” is defined in regulation 6 of these Regulations.

Kingdom) and 9 (duty of parties to notifiable contribution arrangements not involving promoter do not apply).

Interpretation

2. In these Regulations—

“advantage” has the meaning given to it in section 132A(7) of the Social Security Administration Act 1992;

“arrangements” has the meaning given to it in that subsection;

“the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;

“the Information Regulations” means the Tax Avoidance (Information) Regulations 2004(a) as modified by these Regulations.

“Part 7” means Part 7 of the Finance Act 2004 (b) and a reference to a numbered section (without more) is a reference to a section of Part 7;

“prescribed” means prescribed by the Information Regulations, unless the context otherwise requires;

“promoter”, in relation to notifiable contribution arrangements or a notifiable contribution proposal, has the meaning given by regulation 6; and

“reference number”, in relation to any notifiable contribution arrangements, means the reference number allocated under regulation 10;

Structure of the Regulations

3. Regulations 4 to 13 make provision corresponding to Part 7 (other than section 314 (legal professional privilege (c)) in so far as that Part applies to notifiable contribution arrangements and proposals.

Regulations 14 to 15 make provision corresponding to section 98C of the Taxes Management Act 1970 (penalties for failure to comply with Part 7 of the Finance Act 2004)(d) and other provisions of the Taxes Management Act 1970 so far as they relate to a penalty under that section.

Regulations 16 to 18 modify regulations made under Part 7 in so far as they apply to notifiable contribution arrangements and proposals.

PART 2

Provision corresponding to Part 7 of the Finance Act 2004

4.—(1) This Part applies to—

- (a) notifiable contribution arrangements, and
- (b) notifiable contribution proposals

which fall within any description prescribed by the Tax Avoidance Schemes (Prescribed Description of Arrangements) Regulations 2006(e) as modified by these Regulations.

(a) S.I. 2004/1864.

(b) 2004 c.12.

(c) Section 132A(6) makes provision which corresponds to that made by section 314 and prevents the making of regulations which would limit its application.

(d) Section 98C was inserted by sections 315(1) and 319 of the Finance Act 2004.

(e) S.I. 2006/1543.

(2) The Table below shows which of the following regulations corresponds to which provision of Part 7.

<i>Section within Part 7</i>	<i>Corresponding provision of these Regulations</i>
Section 306 (meaning of “notifiable arrangements” and “notifiable proposals”).	Regulation 5
Section 307 (meaning of “promoter”)	Regulation 6
Section 308 (duties of promoter)	Regulation 7
Section 309 (duty of person dealing with promoter outside the United Kingdom)	Regulation 8
Section 310 (duty of parties to notifiable arrangements not involving promoter)	Regulation 9
Section 311 (arrangements to be given reference number))	Regulation 10
Section 312 (duty of promoter to notify client of number)	Regulation 11
Section 313 (duty of parties to notifiable arrangements to notify Board of number etc)	Regulation 12
Section 316 (information to be provided in form and manner specified by the Commissioners)	Regulation 13

Meaning of “notifiable contribution arrangements and “notifiable contribution proposal”

5. In this Part—

“notifiable contribution arrangements” means any arrangements which —

- (a) enable, or might be expected to enable, any person to obtain an advantage in relation to a contribution, and
- (b) are such that the main benefit, or one of the main benefits, that might be expected to arise from the arrangements is the obtaining of that advantage;

“notifiable contribution proposal” means a proposal for arrangements which, if entered into, would be notifiable contribution arrangements (whether the proposal relates to a particular person or to any person who may seek to take advantage of it)(a).

Meaning of promoter

6.—(1) For the purposes of this Part a person is a promoter—

- (a) in relation to a notifiable contribution proposal if, in the course of a relevant business—
 - (i) he is to any extent responsible for the design of the proposed arrangements, or
 - (ii) he makes the notifiable contribution proposal available for implementation by other persons; and
- (b) in relation to notifiable contribution arrangements, if he is by virtue of sub-paragraph (a)(ii) a promoter in relation to a notifiable contribution proposal which is implemented by those arrangements or if, in the course of a relevant business, he is to any extent responsible for—
 - (i) the design of the arrangements, or
 - (ii) the organisation or management of the arrangements.

(2) In this regulation “relevant business” means any trade, profession or business which—

(a) The definitions of “notifiable contribution arrangements” and “notifiable contribution proposal” are set out in section 132A(3) of the Social Security Administration Act 1992.

- (a) involves the provision to other persons of services relating to national insurance contributions, or
- (b) is carried on by a bank, as defined by section 840A of the Taxes Act 1988(a), or by a securities house, as defined by section 209A(4)(b) of that Act.

(3) For the purposes of this regulation anything done by a company is to be taken to be done in the course of a relevant business if it is done for the purposes of a relevant business falling within paragraph (2)(b) carried on by another company which is a member of the same group.

(4) Section 170 of the Taxation of Chargeable Gains Act 1992(c) has effect for determining for the purposes of paragraph (3) whether two companies are members of the same group, but as if in that section—

- (a) for each of the references to a 75% subsidiary there were substituted a reference to a 51% subsidiary, and
- (b) subsection (3)(b) and subsections (6) to (8) were omitted.

(5) A person is not to be treated as a promoter for the purposes of this Part by reason of anything done in circumstances prescribed by the Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004(d) as modified by these Regulations

Duties of promoter

7.—(1) The promoter must, within the prescribed period after the relevant date, provide the Commissioners with the information required by the Information Regulations relating to any notifiable contribution proposal.

(2) In paragraph (1) “the relevant date” means the earlier of the following—

- (a) the date on which the promoter makes a notifiable contribution proposal available for implementation by any other person, or
- (b) the date on which the promoter first becomes aware of any transaction forming part of notifiable contribution arrangements implementing the notifiable contribution proposal.

(3) The promoter must, within the period prescribed by the Information Regulations after the date on which he first becomes aware of any transaction forming part of any notifiable contribution arrangements, provide the Commissioners with prescribed information relating to those arrangements, unless those arrangements implement a proposal in respect of which notice has been given under paragraph (1).

(4) Where two or more persons are promoters in relation to the same notifiable contribution proposal or notifiable contribution arrangements, compliance by any of them with paragraph (1) or (3) discharges the duty under either of those paragraphs of the other or others.

(5) Where a person is a promoter in relation to two or more notifiable contribution proposals or sets of notifiable contribution arrangements which are substantially the same (whether they relate to the same parties or different parties), he need not provide information under paragraph (1) or (3) if he has already provided information under either of those paragraphs in relation to any of the other proposals or arrangements.

Duty of person dealing with promoter outside United Kingdom

8.—(1) Any person (“the client”) who enters into any transaction forming part of any notifiable contribution arrangements in relation to which—

- (a) a promoter is resident outside the United Kingdom, and

(a) 1988 c.1. Section 840A was inserted by paragraph 1(1) of Schedule 37 to the Finance Act 1996 (c. 8) and amended by sections 281 and 284 of, and paragraph 36 of Schedule 35 to, the Finance Act 2004 and articles 2(1) and (2), 13 and 46 of S.I. 2001/3629.

(b) Section 209A was inserted by section 102(2) and (3) of the Finance Act 2002 (c. 23).

(c) 1992 c.12.

(d) S.I. 2004/1865 as amended by regulation 2 of S.I. 2004/2613.

(b) no promoter is resident in the United Kingdom,
must provide the Commissioners with the prescribed information relating to the notifiable contribution arrangements within the prescribed period.

(2) Compliance with regulation 7(1) by any promoter in relation to the notifiable contribution arrangements discharges the duty of the client under paragraph (1).

Duty of parties to notifiable contribution arrangements not involving promoter

9. Any person who enters into any transaction forming part of notifiable contribution arrangements as respects which neither he nor any other person in the United Kingdom is liable to comply with regulation 7 or regulation 8 must at the prescribed time provide the Commissioners with prescribed information relating to the notifiable contribution arrangements.

Arrangements to be given reference number

10.—(1) Where a person complies with regulation 7(1) or (3), regulation 8(1) or 9 in relation to any notifiable contribution proposal or arrangements, the Commissioners may within 30 days—

- (a) allocate a reference number in relation to those proposals or arrangements, and
- (b) if they do so, notify the person of that number,

except that where the arrangements or proposals concern both national insurance contributions and tax, the Commissioners shall allocate a single reference number in respect of both matters.

(2) The allocation of a reference number to any notifiable contribution arrangements (or proposed notifiable contribution arrangements) is not to be regarded as constituting any indication by the Commissioners that the arrangements could as a matter of law result in the obtaining by any person of an advantage in relation to a contribution.

Duty of promoter to notify client of number

11.—(1) Any promoter who is providing services to any person (“the client”) in connection with notifiable contribution arrangements must, within 30 days after the relevant date, provide the client with prescribed information relating to any reference number that has been notified to the promoter by the Commissioners in accordance with regulation 10 or, where the arrangements are, or are substantially the same as, notifiable arrangements, section 311—

- (a) in relation to those arrangements, or
- (b) in relation to arrangements which are substantially the same as those arrangements (whether made between the same parties or different parties).

(2) In paragraph (1) “the relevant date” means—

- (a) the date on which the promoter first becomes aware of any transaction forming part of the notifiable contribution arrangements, or
- (b) if later, the date on which a reference number is first notified to the promoter under regulation 10.

Duty of parties to notifiable contribution arrangements to notify the Commissioners of number, etc.

12.—(1) Any person who is a party to any notifiable contribution arrangements must provide the Commissioners with the prescribed information relating to—

- (a) any reference number notified to him under regulation 10 by the Commissioners or under regulation 11 by the promoter, and
- (b) the time when he obtains or expects to obtain by virtue of the arrangements an advantage in relation to any contribution.

(2) A person is not liable to a penalty under—

- (a) section 98A of the Taxes Management Act 1970(a)(special penalties in the case of certain returns); or
- (b) paragraph 7B(2)(h) of Schedule 1 to the Social Security Contributions and Benefits Act 1992,

by reason of any failure to include in any return or account any reference number or other information required by virtue of regulation 8 of the Information Regulations (but see regulation 14 for the penalty for failure to comply with this regulation).

Information to be provided in form and manner specified by Commissioners

13. The information required by regulations 7(1) or (3), 8(1), 9, 11(1) or 12(1) must be provided in a form and manner specified by the Commissioners.

PART 3

Provisions corresponding to section 98C of the Taxes Management Act 1970 and modifications of related provisions

Notification under Part 2

14.—(1) A person who fails to comply with any of the provisions of regulations 4 to 12 mentioned in paragraph (2) below shall be liable—

- (a) to a penalty not exceeding £5,000, and
- (b) if the failure continues after a penalty is imposed under sub-paragraph (a) above, to a further penalty or penalties not exceeding £600 for each day on which the failure continues after the day on which the penalty under sub-paragraph (a) was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).

This is subject to paragraph (6).

(2) Those provisions are—

- (a) regulation 7(1) and (3) (duty of promoter in relation to notifiable contribution proposals and notifiable contribution arrangements),
- (b) regulation 8(1) (duty of person dealing with promoter outside United Kingdom),
- (c) regulation 9 (duty of parties to notifiable contribution arrangements not involving promoter), or
- (d) regulation 11(1) (duty of promoter to notify client of reference number).

(3) A person who fails to comply with regulation 12(1) (duty of parties to notifiable contribution arrangements to notify the Commissioners of number, etc.) shall be liable to a penalty of the relevant sum.

This is subject to paragraph (6).

(4) In paragraph (3) “the relevant sum” means—

- (a) in relation to a person not falling within sub-paragraph (b) or (c) below, £100 in respect of each scheme to which the failure relates,
- (b) in relation to a person who has previously failed to comply with regulation 12 on one (and only one) occasion during the period of 36 months ending with the date on which the current failure to comply with that provision began, £500 in respect of each scheme to which the current failure relates (whether or not the same as the scheme to which the previous failure relates), or

(a) 1970 c.9. This section applies by virtue of paragraph 7(1) of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c.4).

- (c) in relation to a person who has previously failed to comply with regulation 12 on two or more occasions during the period of 36 months ending with the date on which the current failure to comply with that provision began, £1,000 in respect of each scheme to which the current failure relates (whether or not the same as the schemes to which any of the previous failures relates).

(5) In paragraph (4) above “scheme” means any notifiable contribution arrangements.

(6) Where the notifiable contribution arrangement or notifiable contribution proposal is, or is substantially the same as, a notifiable arrangement or a notifiable proposal under Part 7 in relation to which a penalty has been imposed under section 98C of the Taxes Management Act 1970^(a) in respect of a failure to comply with the provisions of Part 7, this regulation shall not apply to impose a penalty in respect of the failure to comply with the corresponding provision of these Regulations.

Modification of Part 10 of the Taxes Management Act 1970

15.—(1) Part 10 of the Taxes Management Act 1970 so far as it relates to a penalty under section 98C of that Act shall apply in relation to a penalty under regulation 14 with the following modifications.

(2) In section 100 (determination of penalties by officer of Board) for subsection (2)(f) (penalties to which subsection (1) of the section does not apply)^(b) substitute—

“(f) regulation 14(1)(a) of the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2006.”.

(3) In section 100C^(c) (penalty proceedings before Commissioners) for subsection (1A) substitute—

“(1A) In its application to a penalty under regulation 14(1)(a) of the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2006, subsection (1) above has effect with the omission of the words “General or”.”.

PART 4

Modification of Regulations under Part 7

Modification of the Tax Avoidance Schemes (Prescribed Description of Arrangements) Regulations 2006

16.—(1) The Tax Avoidance Schemes (Prescribed Description of Arrangements) Regulations 2006^(d), apply to notifiable contribution arrangements and notifiable contribution proposals with the following modifications and any reference in those Regulations to sections 306 to 313 shall be construed as a reference to the corresponding provision of these Regulations (see regulation 4(2)).

(2) In regulation 1 (citation, commencement and effect) omit paragraphs (2) and (3).

(3) In regulation 5 (prescribed description of arrangements)—

(a) in paragraph (1) for “income tax, corporation tax and capital gains tax” substitute “national insurance contributions”, and

(b) in paragraph (2) omit sub-paragraphs (f) and (g).

(4) In Part 3—

(a) for “tax advantage” wherever it occurs substitute “advantage”; and

^(a) Section 98C was inserted by sections 315(1) and 319 of the Finance Act 2004.

^(b) Section 100 was substituted by section 167 of the Finance Act 1989 (c.26) and paragraph (2)(f) was inserted by sections 315(2) and 319 of the Finance Act 2004.

^(c) Section 100C was inserted by section 167 of the Finance Act 1989 (c.26) and subsection (1A) of that section was inserted by sections 315(3) and 319 of the Finance Act 2004(c. 12).

^(d) S.I. 2006/1543.

- (b) for “a tax advantage” wherever it occurs substitute “an advantage”.
- (5) In regulation 10 (Description 5: standardised tax product), in the heading and paragraphs (1) and (3) for “tax product” substitute “national insurance contributions product”.
- (6) Omit regulations 12 to 17.

The Tax Avoidance Schemes (Information) Regulations 2004

17.—(1) The Tax Avoidance Schemes (Information) Regulations 2004(a)(“the Information Regulations”) apply to notifiable contribution arrangements and notifiable contribution proposals with the following modifications and any reference in those Regulations to sections 306 to 313 shall be construed as a reference to the corresponding provision of these Regulations (see regulation 4(2)).

- (2) Omit regulation 1(2).
- (3) In regulation 2(b)(interpretation)—
 - (a) omit the definitions of “the SDLT Arrangements Regulations”(c) and “corporation tax”;
 - (b) insert the following definition immediately before the definition of “employment”—

““contributions” means national insurance contributions;”;
 - (c) for the definitions of “notifiable arrangements” and “notifiable proposal” substitute—

““notifiable contribution arrangements” has the meaning given by section 132A(3) of the Social Security Administration Act 1992;

“notifiable contribution proposal” has the meaning given by section 132A(3) of the Social Security Administration Act 1992;”;
 - (d) omit the definition of “the prescribed taxes”.
- (4) In regulation 3 (prescribed information in respect of notifiable proposals and arrangements) wherever the words appear—
 - (a) for “any of the prescribed taxes” substitute “the contributions”;
 - (b) for “notifiable arrangements” substitute “notifiable contribution arrangements”;
 - (c) for “notifiable proposal” substitute “notifiable contribution proposal”;
 - (d) for “tax advantage” substitute “advantage”; and
 - (e) omit “or the SDLT Arrangement Regulations”(d)
- (5) In regulation 4 (time for providing information under section 308, 309 or 310)—
 - (a) in paragraphs (4), (5) and (5A) for “notifiable arrangements” substitute “notifiable contribution arrangements”;
 - (b) in paragraph (5) for “paragraphs (5ZA) and (5A) substitute “paragraph (5A)”;
 - (c) omit paragraphs (5ZA), (7) and (8).
- (6) Omit regulation 5 (statutory clearances).
- (7) For regulation 8 (prescribed information under section 313: timing and manner of delivery) substitute—

“Prescribed information under regulation 12 of the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2006

8.—(1) For the purposes of regulation 12 of the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2006 (duty of parties to notifiable contribution arrangements to notify the Commissioners of number, etc.)—

(a) S.I. 2004/1864. These Regulations were amended by S.I. 2004/2613, 2005/1869, 2006/1544.
 (b) Regulation 2 was itself amended by regulations 2 and 3 of S.I. 2005/1869.
 (c) This definition was inserted by regulation 3 of S.I. 2005/1869.
 (d) These references were inserted by regulation 4 of S.I. 2005/1869.

- (a) the prescribed information is—
 - (i) the reference number allocated by the Commissioners under regulation 12 to the notifiable contribution arrangements or notifiable contribution proposals;
 - (ii) the earnings period in which the person making the notification expects an advantage to be obtained;
 - (iii) the employer's name, address and Unique Taxpayer Reference (UTR); and
- (b) the prescribed time at which a person who is a party to notifiable contribution arrangements must provide the Commissioners with information under that regulation is any time before the date specified in paragraph 22(1) of Schedule 4 to the Social Security (Contributions) Regulations 2001^(a).

(2) In the case of a person who is the employer of an employee, by reason of whose employment an advantage is expected to arise to any person in respect of national insurance contributions as a result of notifiable contribution arrangements, the prescribed information shall be notified to the Commissioners on a return in such form as they may specify by the time prescribed in paragraph (1)(b)."

(8) In regulation 10 (electronic delivery of information)—

- (a) in paragraph (2)—
 - (i) for sub-paragraph (a) substitute—

"(a) it is authorised by virtue of Part 7A of the Social Security (Contributions) Regulations 2001^(b); and ";
 - (ii) in paragraph (b) for "section" substitute "Part"; and
- (b) in paragraph (3)(a) for "regulations under section 132 of the Finance Act 1999" substitute "Part 7A of the Social Security (Contributions Regulations) 1991".

The Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004

18.—(1) The Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004^(c) apply to notifiable contribution arrangements and notifiable contribution proposals as they apply to income tax with the following modifications and any reference in those Regulations to sections 306 to 313 shall be construed as a reference to the corresponding provision of these Regulations (see regulation 4(2)).

(2) In regulation 1 (citation, commencement and interpretation) for paragraph (2) substitute—

"(2) In these Regulations—

"notifiable contribution arrangements" and "notifiable contribution proposal" have the meanings given by section 132A(3) of the Social Security Administration Act 1992."

(3) In regulation 4 (persons not to be treated as promoters under section 307(1)(a)(i) or (b)(i))—

- (a) for "tax advice" wherever it occurs substitute "contribution advice"; and
- (b) for "tax advantage" wherever it occurs substitute "advantage".

(4) In regulation 6 (legal professional privilege) for "section 314" substitute "section 132A(6) of the Social Security Administration Act 1992".

Dave Watts

Frank Roy

12th March 2007

Two of the Lords Commissioners of Her Majesty's Treasury

(a) S.I. 2001/1004. Paragraph 22 has been amended: the relevant amendment is that made by regulation 32(12)(a) of S.I. 2004/770.

(b) Part 7A was inserted by regulations 2 and 23 of the Social Security (Contributions, Categorisation of Earners and Intermediaries)(Amendment) Regulations 2004 (S.I. 2004/770).

(c) S.I. 2004/1865 as amended by regulation 2 of S.I. 2004/2613.

EXPLANATORY NOTE

(This note is not part of the Regulation)

These Regulations make provision corresponding to Part 7 of the Finance Act 2004 and apply regulations under that Part to the extent that they relate to income tax, with necessary modifications, to arrangements or proposals for arrangements which are intended to avoid national insurance contributions. They are made in consequence of the enactment of section 7 of the National Insurance Contributions Act 2006 (c. 10).

Part 1 deals with introductory matters.

Part 2 contains provisions corresponding to Part 7 of the Finance Act 2004, other than section 314, which cannot be replicated because of section 132A(6) of the Social Security Administration Act 1992 (c. 5), inserted by section 7 of the National Insurance Contributions Act 2006.

Part 3 makes provisions corresponding to section 98C of the Taxes Management Act 1970 (penalties for failure to comply with Part 7 of the Finance Act 2004) and applies other provisions of the Taxes Management Act 1970 with modifications so far as they relate to a penalty under that section.

Part 4 modifies the Tax Avoidance Schemes (Prescribed Description of Arrangements) Regulations 2006 (S.I. 2006/1543), the Tax Avoidance Schemes (Information) Regulations 2004 (S.I. 2004/1864) (“the Information Regulations”) and the Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004 (S.I. 2004/1865) in so far as they relate to national insurance contribution avoidance schemes and proposals.

A regulatory impact analysis has been prepared in relation to the provisions of the Social Security Administration Act 1992 dealing with avoidance schemes in relation to national insurance contributions which is available on HM Treasury’s website at hmrc.gov.uk/ria-nicbill05.pdf

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