
STATUTORY INSTRUMENTS

2012 No. 1868

The National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012

PART 2

Provisions corresponding to Part 7 of the Finance Act 2004

Application of Part 2

- 5.—(1) This Part applies to—
- (a) notifiable contribution arrangements; and
 - (b) notifiable contribution proposals

which fall within any description prescribed by the Descriptions Regulations.

(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 proposal”)	Regulation 5
Section 306A (doubt as to notifiability)	Regulation 6
Section 307 (meaning of promoter)	Regulation 7
Section 308 (duties of promoter)	Regulation 8
Section 308A (supplemental information)	Regulation 9
Section 309 (duty of person dealing with promoter outside the United Kingdom)	Regulation 10
Section 310 (duty of parties to notifiable arrangements not involving promoter)	Regulation 11
Section 311 (arrangements to be given reference number)	Regulation 12
Section 312 (duty of promoter to notify client of number)	Regulation 13
Section 312A (duty of client to notify parties of number)	Regulation 14
Section 313 (duty of parties to notifiable arrangements to notify Board of number etc)	Regulation 15

<i>Section within Part 7</i>	<i>Corresponding provision of these Regulations</i>
Section 313ZA (duty of promoter to provide details of clients)	Regulation 16
Section 313A (pre-disclosure enquiry)	Regulation 17
Section 313B (reasons for non-disclosure: supporting information)	Regulation 18
Section 313C (information provided to introducers)	Regulation 19
Section 314A (order to disclose)	Regulation 20
Section 316 (information to be provided in form and manner specified by Board)	Regulation 21

Doubt as to notifiability

- 6.—(1) HMRC may apply to the tribunal for an order that—
- (a) a proposal is to be treated as a notifiable contribution proposal; or
 - (b) arrangements are to be treated as notifiable contribution arrangements.
- (2) An application must specify—
- (a) the proposal or arrangements in respect of which the order is sought; and
 - (b) the promoter.
- (3) On an application the tribunal may make the order only if satisfied that HMRC—
- (a) have taken all reasonable steps to establish whether the proposal is a notifiable contribution proposal or the arrangements are notifiable contribution arrangements; and
 - (b) have reasonable grounds for suspecting that the proposal may be a notifiable contribution proposal or the arrangements may be notifiable contribution arrangements.
- (4) Reasonable steps under paragraph (3)(a) may (but need not) include taking action under regulation 17 or 18.
- (5) Grounds for suspicion under paragraph (3)(b) may include—
- (a) the fact that the relevant arrangements fall within a description prescribed by the Descriptions Regulations;
 - (b) an attempt by the promoter to avoid or delay providing information or documents about the proposal or arrangements under or by virtue of regulation 17 or 18;
 - (c) the promoter's failure to comply with a requirement under or by virtue of regulation 17 or 18 or section 313A or 313B in relation to another proposal or other arrangements.
- (6) Where an order is made under this regulation in respect of a proposal or arrangements, the period for the purposes of paragraphs (1) and (3) of regulation 8 is that prescribed.
- (7) An order under this regulation in relation to a proposal or arrangements is without prejudice to the possible application of regulation 8, other than by virtue of this regulation, to the proposal or arrangements.

Meaning of promoter

- 7.—(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, the person ("P") –

- (i) is to any extent responsible for the design of the proposed arrangements;
 - (ii) makes a firm approach to another person (“C”) in relation to the proposal with a view to P making the proposal available for implementation by C or any other person; or
 - (iii) makes the notifiable contribution proposal available for implementation by other persons; and
 - (b) in relation to notifiable contribution arrangements, if the person (“P”) is by virtue of subparagraph (a)(ii) or (iii) a promoter in relation to a notifiable contribution proposal which is implemented by those arrangements or if, in the course of a relevant business, P is to any extent responsible for—
 - (i) the design of the arrangements, or
 - (ii) the organisation or management of the arrangements.
- (2) For the purposes of this Part a person is an introducer in relation to a notifiable contribution proposal if the person makes a marketing contact with another person in relation to the proposal.
- (3) In this regulation “relevant business” means any trade, profession or business which—
- (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 1120 of the Corporation Tax Act 2010⁽¹⁾, or by a securities house, as defined by section 1009(3) of that Act.
- (4) 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 (3)(b) carried on by another company which is a member of the same group.
- (5) Section 170 of the Taxation of Chargeable Gains Act 1992⁽²⁾ has effect for determining for the purposes of paragraph (4) 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.
- (6) For the purposes of this Part a person makes a firm approach to another person in relation to a notifiable contribution proposal if the person makes a marketing contact with the other person in relation to the proposal at a time when the proposed arrangements have been substantially designed.
- (7) For the purposes of this Part a person makes a marketing contact with another person in relation to a notifiable contribution proposal if—
- (a) the person communicates information about the proposal to the other person;
 - (b) the communication is made with a view to that other person, or any other person, entering into transactions forming part of the proposed arrangements; and
 - (c) the information communicated includes an explanation of the advantage in relation to any contribution that might be expected to be obtained from the proposed arrangements.
- (8) For the purposes of paragraph (6) proposed contribution arrangements have been substantially designed at any time if by that time the nature of the transactions to form part of them has been sufficiently developed for it to be reasonable to believe that a person who wished to obtain the advantage mentioned in paragraph (7)(c) might enter into—

(1) 2010 c. 4.

(2) 1992, c.12; section 170 was amended by section 136 of the Finance Act 1998 (c. 36), paragraph 1 of Schedule 29 to the Finance Act 2000 (c. 17), section 75 of the Finance Act 2001 (c. 9), section 62 of the Finance (No 2) Act 2005 (c. 22), paragraphs 358 and 375 of Schedule 3 to the Corporation Tax Act 2009 (c. 4), paragraph 242 of Schedule 1 to the Corporation Tax Act 2010 (c. 4) and S.I. 2010/2902.

- (a) transactions of the nature developed; or
- (b) transactions not substantially different from transactions of that nature.

(9) A person is not to be treated as a promoter or introducer 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(3) as modified by these Regulations.

(10) In the application of this Part to a proposal which is not a notifiable contribution proposal or arrangements which are not notifiable contribution arrangements, a reference to a promoter or introducer is a reference to a person who would be a promoter or introducer under paragraphs (1) to (9) if the proposal were a notifiable contribution proposal or arrangements were notifiable contribution arrangements.

Duties of promoter

8.—(1) A person who is a promoter in relation to a notifiable contribution proposal must, within the prescribed period after the relevant date, provide HMRC with the prescribed information relating to the notifiable contribution proposal.

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

- (a) the date on which the promoter first makes a firm approach to another person in relation to a notifiable contribution proposal;
- (b) the date on which the promoter makes the notifiable contribution proposal available for implementation by any other person; or
- (c) the date on which the promoter first becomes aware of any transaction forming part of notifiable contribution arrangements implementing the notifiable contribution proposal.

(3) A person who is a promoter in relation to notifiable contribution arrangements must, within the prescribed period after the date on which the person first becomes aware of any transaction forming part of the notifiable contribution arrangements, provide HMRC with the prescribed information relating to those arrangements, unless those arrangements implement a proposal in respect of which notice has been given under paragraph (1).

(4) Paragraph (5) applies where a person complies with paragraph (1) in relation to a notifiable contribution proposal for arrangements and another person is—

- (a) also a promoter in relation to the notifiable contribution proposal or is a promoter in relation to a notifiable contribution proposal for arrangements which are substantially the same as the proposed arrangements (whether they relate to the same or different parties); or
- (b) a promoter in relation to notifiable contribution arrangements implementing the notifiable contribution proposal or notifiable contribution arrangements which are substantially the same as notifiable contribution arrangements implementing the notifiable contribution proposal (whether they relate to the same or different parties).

(5) Any duty of the other person under paragraph (1) or (3) in relation to the notifiable contribution proposal or notifiable contribution arrangements is discharged if—

- (a) the person who complied with paragraph (1) has notified the identity and address of the other person to HMRC or the other person holds the reference number allocated to the proposed notifiable contribution arrangements under regulation 12; and
- (b) the other person holds the information provided to HMRC in compliance with paragraph (1).

(6) Paragraph (7) applies where a person complies with section 308(1) in relation to a notifiable proposal and another person is—

- (a) a promoter in relation to a notifiable contribution proposal for arrangements which are substantially the same as the notifiable proposal (whether they relate to the same or different parties); or
 - (b) a promoter in relation to notifiable contribution arrangements which are substantially the same as notifiable arrangements implementing the notifiable proposal (whether they relate to the same or different parties).
- (7) Any duty of the other person under paragraph (1) or (3) in relation to the notifiable contribution proposal or notifiable contribution arrangements is discharged if—
- (a) the person who complied with section 308(1) in relation to the notifiable proposal has notified the identity and address of the other person to HMRC or the other person holds the reference number allocated to the proposed notifiable arrangements under section 311; and
 - (b) the other person holds the information provided to HMRC in compliance with section 308(1).
- (8) Paragraph (9) applies where a person complies with paragraph (3) in relation to notifiable contribution arrangements and another person is—
- (a) a promoter in relation to a notifiable contribution proposal for arrangements which are substantially the same as the notifiable contribution arrangements (whether they relate to the same or different parties); or
 - (b) also a promoter in relation to the notifiable contribution arrangements or notifiable contribution arrangements which are substantially the same (whether they relate to the same or different parties).
- (9) Any duty of the other person under paragraph (1) or (3) in relation to the notifiable contribution proposal or notifiable contribution arrangements is discharged if—
- (a) the person who complied with paragraph (3) has notified the identity and address of the other person to HMRC or the other person holds the reference number allocated to the notifiable contribution arrangements under regulation 12; and
 - (b) the other person holds the information provided to HMRC in compliance with paragraph (3).
- (10) Paragraph (11) applies where a person complies with section 308(3) in relation to notifiable arrangements and another person is a promoter in relation to a notifiable contribution proposal for arrangements or notifiable contribution arrangements which are substantially the same as the notifiable arrangements (whether they relate to the same or different parties).
- (11) Any duty of the other person under paragraph (1) or (3) in relation to the notifiable contribution proposal or notifiable contribution arrangements is discharged if—
- (a) the person who complied with section 308(3) in relation to the notifiable contribution arrangements has notified the identity and address of the other person to HMRC or the other person holds the reference number allocated to the notifiable contribution arrangements under section 311; and
 - (b) the other person holds the information provided to HMRC in compliance with section 308(3).
- (12) 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), that person need not provide information under paragraph (1) or (3) if that person has already provided information under either of those paragraphs in relation to any of the other contribution proposals or contribution arrangements.

Supplemental information

9.—(1) This regulation applies where—

- (a) a promoter (“P”) has provided information in purported compliance with paragraph (1) or (3) of regulation 8; but
- (b) HMRC believe that P has not provided all the prescribed information.

(2) HMRC may apply to the tribunal for an order requiring P to provide specified information about, or documents relating to, the notifiable contribution proposal or notifiable contribution arrangements.

(3) The tribunal may make an order under paragraph (2) in respect of information or documents only if satisfied that HMRC have reasonable grounds for suspecting that the information or documents—

- (a) form part of the prescribed information; or
- (b) will support or explain the prescribed information.

(4) A requirement by virtue of paragraph (2) shall be treated as part of P’s duty under paragraph (1) or (3) of regulation 8.

(5) In so far as P’s duty under paragraph (1) or (3) of regulation 8 arises out of a requirement by virtue of paragraph (2) above, the period for the purposes of those paragraphs of regulation 8 and the date after which it begins are those prescribed.

(6) In so far as P’s duty under paragraph (1) or (3) of regulation 8 arises out of a requirement by virtue of paragraph (2) above, the prescribed period may be extended by HMRC by direction.

Duty of person dealing with promoter outside United Kingdom

10.—(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
- (b) no promoter is resident in the United Kingdom,

must provide HMRC with the prescribed information relating to the notifiable contribution arrangements within the prescribed period.

(2) Compliance with regulation 8(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

11. Any person who enters into any transaction forming part of notifiable contribution arrangements as respects which neither that person nor any other person in the United Kingdom is liable to comply with regulation 8 or regulation 10 must at the prescribed time provide HMRC with the prescribed information relating to the notifiable contribution arrangements.

Arrangements to be given reference number

12.—(1) Where a person complies or purports to comply with regulation 8(1) or (3), regulation 10(1) or regulation 11 in relation to any notifiable contribution proposal or notifiable contribution arrangements, HMRC—

- (a) may within 30 days allocate a reference number in relation to the notifiable contribution arrangements, or in the case of a notifiable contribution proposal, to the proposed notifiable contribution arrangements; and

- (b) if they do so, must notify that number to the person and (where the person is one who has complied or purported to comply with paragraph (1) or (3) of regulation 8) to any other person—
 - (i) who is a promoter in relation to the notifiable contribution proposal (or arrangements implementing the notifiable contribution proposal) or the notifiable contribution arrangements (or proposal implemented by the notifiable contribution arrangements), and
 - (ii) whose identity and address has been notified to HMRC by the person,

except that where the arrangements or proposal concern both national insurance contributions and tax, HMRC 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 HMRC 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

13.—(1) This regulation applies where a person who is a promoter in relation to notifiable contribution arrangements is providing (or has provided) services to any person (“the client”) in connection with the notifiable contribution arrangements.

(2) The promoter must, within 30 days after the relevant date, provide the client with the prescribed information relating to any reference number (or, if more than one, any one reference number) that has been notified to the promoter (whether by HMRC or any other person) in relation to—

- (a) the notifiable contribution arrangements; or
- (b) any arrangements, including notifiable arrangements, which are substantially the same as the notifiable contribution arrangements (whether involving the same or different parties).

(3) In paragraph (2) “the relevant date” means the later of—

- (a) the date on which the promoter becomes aware of any transaction which forms part of the notifiable contribution arrangements; and
- (b) the date on which the reference number is notified to the promoter.

(4) But where the conditions in paragraph (5) are met the duty imposed on the promoter under paragraph (2) to provide the client with information in relation to notifiable contribution arrangements is discharged.

(5) Those conditions are that—

- (a) the promoter is also a promoter in relation to a notifiable contribution proposal and provides services to the client in connection with them both;
- (b) the notifiable contribution proposal and the notifiable contribution arrangements are substantially the same; and
- (c) the promoter has provided to the client, in a form and manner specified by HMRC, prescribed information relating to the reference number that has been notified to the promoter in relation to the proposed notifiable contribution arrangements.

(6) HMRC may give notice that, in relation to notifiable contribution arrangements specified in the notice, promoters are not under the duty under paragraph (2) after the date specified in the notice.

Duty of client to notify parties of number

14.—(1) This regulation applies where a person (the “client”) to whom 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 receives prescribed information relating to the reference number allocated to—

- (a) the notifiable contribution arrangements,
- (b) the notifiable contribution proposal, or
- (c) proposed notifiable arrangements, or notifiable arrangements, which are substantially the same as the notifiable contribution proposal or notifiable contribution arrangements.

(2) The client must, within the prescribed period, provide the prescribed information relating to the reference number to any other person—

- (a) who the client might reasonably be expected to know is or is likely to be a party to the arrangements or proposed arrangements, and
- (b) who might reasonably be expected to gain an advantage by reason of the arrangements or proposed arrangements.

(3) HMRC may give notice that, in relation to notifiable contribution arrangements or a notifiable contribution proposal specified in the notice, persons are not under the duty under paragraph (2) after the date specified in the notice.

(4) The duty under paragraph (2) does not apply in the prescribed circumstances.

Duty of parties to notifiable contribution arrangements to notify HMRC of number etc

15.—(1) Any person who is a party to any notifiable contribution arrangements must, at the prescribed time or times, provide HMRC with the prescribed information relating to—

- (a) any reference number notified to him, whether the reference number was allocated under regulation 12 or section 311, and
- (b) the time when he obtains or expects to obtain by virtue of the arrangements an advantage in relation to any contribution.

(2) HMRC may give notice that, in relation to notifiable contribution arrangements specified in the notice, persons are not under the duty under paragraph (1) after the date specified in the notice.

Duty to provide details of clients

16.—(1) This regulation applies where a person who is a promoter in relation to notifiable contribution arrangements is providing (or has provided) services to any person (“the client”) in connection with the notifiable contribution arrangements and either—

- (a) the promoter is subject to the reference number information requirement; or
- (b) the promoter has failed to comply with regulation 8(1) or (3) in relation to the notifiable contributions arrangements (or the notifiable contribution proposal for them) but would be subject to the reference number information requirement if a reference number had been allocated to the notifiable contribution arrangements.

(2) For the purposes of this regulation “the reference number information requirement” is the requirement under regulation 13(2) to provide to the client prescribed information relating to the reference number allocated to the notifiable contribution arrangements.

(3) The promoter must, within the prescribed period after the end of the relevant period, provide HMRC with the prescribed information in relation to the client.

(4) In paragraph (3) “the relevant period” means the prescribed period during which the promoter is or would be subject to the reference number information requirement.

(5) The promoter need not comply with paragraph (3) in relation to any notifiable contribution arrangements at any time after HMRC have given notice under regulation 13(6) in relation to the arrangements.

Pre-disclosure enquiry

17.—(1) Where HMRC suspect that a person (“P”) is the promoter or introducer of a proposal or arrangements which may be a notifiable contribution proposal or notifiable contribution arrangements, HMRC may by written notice require P to state—

- (a) whether in P’s opinion the proposal or arrangements are notifiable by P, and
 - (b) if not, the reasons for P’s opinion.
- (2) A notice must specify the proposal or arrangements to which it relates.
- (3) For the purpose of paragraph (1)(b)—
- (a) it is not sufficient to refer to the fact that a lawyer or other professional has given an opinion,
 - (b) the reasons must show, by reference to this Part and the Descriptions Regulations why P thinks the proposal or arrangements are not notifiable by P, and
 - (c) in particular, if P asserts that the arrangements do not fall within any description prescribed by the Descriptions Regulations the reasons must provide sufficient information to enable HMRC to confirm the assertion.
- (4) P must comply with a requirement under or by virtue of paragraph (1) within—
- (a) the prescribed period, or
 - (b) such longer period as HMRC may direct.

Reasons for non-disclosure: supporting information

18.—(1) Where HMRC receive from a person (“P”) a statement of reasons why a proposal or arrangements are not notifiable by P, HMRC may apply to the tribunal for an order requiring P to provide specified information or documents in support of the reasons.

- (2) P must comply with a requirement under or by virtue of paragraph (1) within—
- (a) the prescribed period, or
 - (b) such longer period as HMRC may direct.
- (3) The power under paragraph (1)—
- (a) may be exercised more than once, and
 - (b) applies whether or not the statement of reasons was received under regulation 17(1)(b).

Information provided to introducers

- 19.**—(1) 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,

HMRC may by written notice require P to provide HMRC with the prescribed information in relation to each person who has provided P with any information relating to the proposal.

- (2) A notice must specify the proposal to which it relates.

- (3) P must comply with a requirement under paragraph (1) within—
 - (a) the prescribed period; or
 - (b) such longer period as HMRC may direct.

Order to disclose

- 20.**—(1) HMRC may apply to the tribunal for an order that—
- (a) a proposal is a notifiable contribution proposal, or
 - (b) arrangements are notifiable contribution arrangements.
- (2) An application must specify—
- (a) the proposal or arrangements in respect of which the order is sought, and
 - (b) the promoter.

(3) On an application the tribunal may make the order only if satisfied that section 132A(3) of the Social Security Administration Act 1992 applies to the relevant arrangements and that they are within a description prescribed by the Descriptions Regulations.

Information to be provided in form and manner specified by HMRC

21.—(1) HMRC may specify the form and manner in which information required to be provided by any of the information provisions must be provided if the provision is to be complied with.

(2) The “information provisions” are regulations 8(1) and (3), 10(1), 11, 13(2), 14(2), 15(1) and 16(3) and the Information Regulations.