

2008 No. 2678

SOCIAL SECURITY

The National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) Regulations 2008

<i>Made</i> - - - -	<i>9th October 2008</i>
<i>Laid before Parliament</i>	<i>9th October 2008</i>
<i>Coming into force</i> - -	<i>1st November 2008</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).

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) (Amendment) Regulations 2008 and shall come into force on 1st November 2008.

(2) Regulations made under section 56B of the Taxes Management Act 1970(b) (Special Commissioners: procedure) before these Regulations come into force apply (with any necessary modifications) to applications under Part 2 of the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2007 as amended by these Regulations as they apply to appeals (but subject to any regulations made after these Regulations come into force).

(3) A power under Part 2 of the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2007(c) as amended by these Regulations may be exercised in relation to, or by virtue of, matters arising wholly or partly before these Regulations come into force.

Amendments to the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2007

2. The National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2007 are amended as follows.

3. In regulation 1(2)(d) (citation, commencement and effect) for “promoter”, in the second place where it occurs, substitute “promoter)” and for “apply)” substitute “apply”.

4. In regulation 2 (interpretation)—

(a) 1992 c. 5. Section 132A was inserted by section 7(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) was 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) 1970 c. 9. Section 56B was inserted by paragraphs 1 and 4 of Schedule 16 to the Finance (No. 2) Act 1992 (c. 48). It was later amended by section 254 of the Finance Act 1994 (c. 49) and article 2 of S.I. 1999/678.

(c) S.I. 2007/785.

- (a) after the definition of “the Information Regulations” insert—
 ““notifiable arrangements” and “notifiable proposal” have the meaning given to them in section 306 of the Finance Act 2004(a);”,
 - (b) omit “and” after the definition of “promoter”,
 - (c) in the definition of “reference number” after the words “regulation 10” insert “and, in relation to any notifiable arrangements or proposed notifiable arrangements, means the reference number allocated under section 311”, and
 - (d) after the definition of “reference number” insert—
 ““the Special Commissioners” has the meaning given by section 4 of the Taxes Management Act 1970(b).”.
- 5.** In regulation 3 (structure of the Regulations)—
- (a) in the first paragraph for “13” substitute “13A”,
 - (b) in the second paragraph after “section 98C” insert “and section 118(2)(c)”, and
 - (c) in the third paragraph for “18” substitute “19”.
- 6.** In the heading to Part 2 for “Provision” substitute “Provisions”.
- 7.** Before regulation 4 insert the heading “Application of Part 2”.
- 8.** In regulation 4—
- (a) in paragraph (1) for “Description” substitute “Descriptions”, and
 - (b) for the Table after paragraph (2) substitute—

<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 5A
Section 307 (meaning of “promoter”)	Regulation 6
Section 308 (duties of promoter)	Regulation 7
Section 308A (supplemental information)	Regulation 7A
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 312A (duty of client to notify parties of number)	Regulation 11A
Section 313 (duty of parties to notifiable arrangements to notify Board of number etc)	Regulation 12
Section 313A (pre-disclosure enquiry)	Regulation 12A
Section 313B (reasons for non-disclosure: supporting information)	Regulation 12B
Section 314A (order to disclose)	Regulation 12C

- (a) 2004 c. 12.
- (b) This section was substituted by paragraph 1 of Schedule 22 to the Finance Act 1984 (c. 43). Relevant amendments were made by paragraph 3 of Schedule 10 to the Courts and Legal Services Act 1990 (c. 41), the Transfer of Functions (Lord Advocate and Secretary of State) Order (S.I. 1999/678) and paragraph 8 of Schedule 10 to the Tribunals, Courts and Enforcement Act 2007 (c. 15).
- (c) Section 118(2) was amended by Part 7 of Schedule 8 to the Finance Act 1970 (c. 24) and section 94 of the Finance (No. 2) Act 1987 (c. 51).

Section 316 (information to be provided in form and manner specified by Board)
Section 317A (special commissioners: procedure)

Regulation 13
Regulation 13A

9. After regulation 5 (meaning of “notifiable contribution arrangements” and “notifiable contribution proposal”) insert—

“Doubt as to notifiability

5A.—(1) The Commissioners may apply to the Special Commissioners 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 Special Commissioners may make the order only if satisfied that the Commissioners—

- (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 12A or 12B.

(5) Grounds for suspicion under paragraph (3)(b) may include—

- (a) the fact that the relevant arrangements fall within a description prescribed by the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006(a) as modified by these 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 12A or 12B;
- (c) the promoter’s failure to comply with a requirement under or by virtue of regulation 12A or 12B or section 313A or 313B(b) 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 7 is that prescribed by the Information Regulations.

(7) An order under this regulation in relation to a proposal or arrangements is without prejudice to the possible application of regulation 7, other than by virtue of this regulation, to the proposal or arrangements.”.

10. At the end of regulation 6 (meaning of promoter) insert—

“(6) 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 is a reference to a person who would be a promoter under paragraphs (1) to (5)

(a) S.I. 2006/1543. These Regulations were amended by article 4 of S.I. 2007/2484.

(b) Sections 313A and 313B were inserted in the Finance Act 2004 by section 108(5) of the Finance Act 2007 (c. 11).

if the proposal were a notifiable contribution proposal or arrangements were notifiable contribution arrangements.”.

11.—(1) Regulation 7 (duties of promoter) is amended as follows.

(2) In paragraph (1)—

- (a) for “The promoter” substitute “A person who is a promoter in relation to a notifiable contribution proposal”, and
- (b) for “any” substitute “the”.

(3) In paragraph (2)(a) for “a” substitute “the”.

(4) In paragraph (3)—

- (a) for “The promoter” substitute “A person who is a promoter in relation to notifiable contribution arrangements”, and
- (b) for “any notifiable” substitute “the notifiable”.

(5) For paragraph (4) substitute—

“(4) Paragraph (4A) 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).

(4A) 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 the Commissioners or the other person holds the reference number allocated to the proposed notifiable contribution arrangements under regulation 10, and
- (b) the other person holds information provided to the Commissioners in compliance with paragraph (1).

(4B) Paragraph (4C) applies where a person complies with section 308(1)(a) 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).

(4C) 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 the Commissioners or the other person holds the reference number allocated to the proposed notifiable arrangements under section 311(b), and

(a) Section 308 was amended by paragraph 2 of Schedule 38 to the Finance Act 2008 (c. 9).

(b) Section 311 was amended by paragraph 3 of Schedule 38 to the Finance Act 2008.

- (b) the other person holds information provided to the Commissioners in compliance with section 308(1).

(4D) Paragraph (4E) 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).

(4E) 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 the Commissioners or the other person holds the reference number allocated to the notifiable contribution arrangements under regulation 10, and
- (b) the other person holds the information provided to the Commissioners in compliance with paragraph (3).

(4F) Paragraph (4G) 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).

(4G) 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 arrangements has notified the identity and address of the other person to the Commissioners or the other person holds the reference number allocated to the notifiable arrangements under section 311, and
- (b) the other person holds the information provided to the Commissioners in compliance with section 308(3). ”.

12. After regulation 7 (duties of promoter) insert—

“Supplemental Information

7A.—(1) This regulation applies where—

- (a) a promoter (P) has provided information in purported compliance with paragraph (1) or (3) of regulation 7, but
- (b) the Commissioners believe that P has not provided all the prescribed information.

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

(3) The Special Commissioners may make an order under paragraph (2) in respect of information or documents only if satisfied that the Commissioners 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 7.

(5) In so far as P’s duty under paragraph (1) or (3) of regulation 7 arises out of a requirement by virtue of paragraph (2) above, the period for the purposes of those

paragraphs of regulation 7 and the date after which it begins is prescribed by the Information Regulations.

(6) In so far as P's duty under paragraph (1) or (3) of regulation 7 arises out of a requirement by virtue of paragraph (2) above, the prescribed period may be extended by the Commissioners by direction.” .

13. Regulation 10(1) (arrangements to be given a reference number) is amended as follows—

- (a) after “complies” insert “or purports to comply”,
- (b) omit “may within 30 days”,
- (c) in paragraph (a), before “allocate” insert “may within 30 days”, and
- (d) for sub-paragraph (b) substitute—

“(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 7) 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 the Commissioners by the person,”.

14. For regulation 11 (duty of promoter to notify client of number) substitute—

“Duty of promoter to notify client of number

11.—(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 the Commissioners 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 the Commissioners, prescribed information relating to the reference number that has been notified to the promoter in relation to the proposed notifiable contribution arrangements.

(6) The Commissioners 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

11A.—(1) This regulation applies where a person (a “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 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) The Commissioners 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 prescribed circumstances.”.

15.—(1) Regulation 12 (duty of parties to notifiable contribution arrangements to notify the Commissioners of number, etc.) is amended as follows.

(2) In paragraph (1)(a) for “under regulation 10 by the Commissioners or under regulation 11 by the promoter” substitute “, whether the reference number was allocated under regulation 10 or section 311”.

(3) Insert at the end—

“(3) The Commissioners 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.”.

16. After regulation 12 insert—

“Pre-disclosure enquiry

12A.—(1) Where the Commissioners suspect that a person (P) is the promoter of a proposal which may be a notifiable contribution proposal or arrangements which may be notifiable contribution arrangements, they 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 Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 as modified by these 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 Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 as modified by these Regulations, the reasons must provide sufficient information to enable the Commissioners 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 the Commissioners may direct.

Reasons for non-disclosure: supporting information

12B.—(1) Where the Commissioners receive from a person (P) a statement of reasons why a proposal or arrangements are not notifiable by P, the Commissioners may apply to the Special Commissioners 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 the Commissioners 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 12A(1)(b).

Order to disclose

12C.—(1) The Commissioners may apply to the Special Commissioners 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 Special Commissioners may make the order only if satisfied that regulation 5 applies to the relevant arrangements and that they are within a description prescribed by the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 as modified by these Regulations.”.

17. For regulation 13 (information to be provided in form and manner specified by Commissioners) substitute—

“Information to be provided in form and manner specified by Commissioners

13.—(1) The Commissioners 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 7(1) and (3), 8(1), 9, 11(2), 11A(2) and 12(1) and the Information Regulations.

Special Commissioners: procedure

13A. Sections 56B to 56D of the Taxes Management Act 1970(a) (procedure) shall apply (with any necessary modifications) to applications under this Part as to appeals.”.

18. In the title to Part 3 after “section 98C” insert “and section 118(2)”.

19.—(1) Regulation 14 (notification under Part 2) is amended as follows.

(2) In paragraph (1) for “regulations 4 to 12” substitute “Part 2”.

(3) In paragraph (2)—

(a) omit “or” at the end of sub-paragraph (c),

(b) in sub-paragraph (d) for “regulation 11(1)” substitute “regulation 11(2)”, and

(c) after sub-paragraph (d) insert—

“(e) regulation 11A(2) (duty of client to notify parties of reference number), and

(f) regulations 12A and 12B (duty of promoter to respond to inquiry).”.

(4) After paragraph (2) insert—

“(2A) Where a failure to comply with a provision mentioned in paragraph (2) concerns a proposal or arrangements in respect of which an order has been made under regulation 5A (doubt as to notifiability), the amount specified in paragraph (1)(b) shall be increased to the sum prescribed by the Tax Avoidance Schemes (Penalty) Regulations 2007(b) as modified by these Regulations.

(2B) Where a failure to comply with a provision mentioned in paragraph (2) concerns a proposal or arrangements in respect of which an order has been made under regulation 12C (order to disclose), the amount specified in paragraph (1)(b) shall be increased to the sum prescribed by the Tax Avoidance Schemes (Penalty) Regulations 2007 as modified by these Regulations in relation to the days falling after the prescribed period.

(2C) The making of an order under regulation 12C does not of itself mean that, for the purposes of regulation 14A, a person either did or did not have a reasonable excuse for non-compliance before the order was made.

(2D) Where an order is made under regulation 12C then for the purposes of regulation 14A—

(a) the person identified in the order as the promoter of the proposal or arrangements cannot, in respect of any time after the end of the period mentioned in paragraph (2B), rely on doubt as to notifiability as an excuse for failure to comply with regulation 7, and

(b) any delay in compliance with that regulation after the end of that period is unreasonable unless attributable to something other than doubt as to notifiability.”.

(5) In paragraph (3) after “etc.” insert “or the Information Regulations”.

(6) In paragraph (4) after “regulation 12”, in both places it occurs, insert “or the Information Regulations”.

(7) In paragraph (5) after “notifiable contribution arrangements” insert “which fall within any description prescribed by the Tax Avoidance (Prescribed Descriptions of Arrangements) Regulations 2006 as modified by these Regulations”

20. After regulation 14 insert—

“Interpretation

14A. For the purposes of this Part—

(a) 1970 c. 9. Sections 56B to 56D were inserted by paragraphs 1 and 4 of Schedule 16 to the Finance (No. 2) Act 1992 (c. 48).
(b) S.I. 2007/3104.

- (a) a person shall be deemed not to have failed to do anything required to be done within a limited time if it was done within such further time, if any, as the Commissioners may have allowed; and
- (b) where a person had a reasonable excuse for not doing anything required to be done—
 - (i) that person shall be deemed not to have failed to do it unless the excuse ceased, and
 - (ii) after the excuse ceased, that person shall be deemed not to have failed to do it if it was done without unreasonable delay after the excuse had ceased.”.

21.—(1) In regulation 16 (modification of the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006)—

- (a) in paragraph (1) and in the heading to the regulation for “Description” substitute “Descriptions”,
- (b) in paragraph (1) for “313” substitute “313B and section 314A(a)”, and
- (c) in paragraph (3) for “description” substitute “descriptions”.

22.—(1) Regulation 17 (the Tax Avoidance Schemes (Information) Regulations 2004(b)) is amended as follows.

(2) In paragraph (1)—

- (a) for “313” substitute “313B and section 314A”; and
- (b) at the end of paragraph (1) insert “and any reference in those Regulations to section 98C of the Taxes Management Act 1970 shall be construed as a reference to regulation 14.”.

(3) In paragraph (5)—

- (a) after “308,” insert “308A,”, and
- (b) before paragraph (a) insert—
 - “(za) in paragraph (3B) for “notifiable proposal or arrangements” substitute “notifiable contribution proposal or notifiable contribution arrangements”;

(4) After paragraph (6) insert—

“(6A) In regulation 7A (time for providing information under 312A) for “notifiable arrangements”, wherever those words appear, substitute “notifiable contribution arrangements”.

(6B) In regulation 7B (exemption from duty under section 312A) —

- (a) for “tax advantage in respect of income tax or capital gains tax” substitute “advantage”, and
- (b) for “notifiable arrangements”, wherever those words appear, substitute “notifiable contribution arrangements”.

(5) In paragraph (7)—

- (a) in paragraph (1) of the substituted regulation 8—
 - (i) in sub-paragraph (a)(i) for “12” substitute “10”, and
 - (ii) in sub-paragraph (b) at the beginning insert “unless paragraph (1A) applies,”,
- (b) after paragraph (1) insert—
 - “(1A) Where—
 - (a) the advantage which is expected to arise from the notifiable contribution arrangements relates to Class 1A contributions only, and

(a) These sections have been amended by section 108 of the Finance Act 2007 (c. 11) and Schedule 38 of the Finance Act 2008 (c. 9).

(b) S.I. 2004/1864. These Regulations were amended by S.I. 2004/2613, 2005/1869, 2006/1544, 2007/2153, 2007/3103, and 2008/1947.

(b) the transactions which comprise the notifiable contribution arrangements do not give rise to an advantage in relation to tax,

the prescribed time is any time before the date specified in regulation 80(1) of the Social Security (Contributions) Regulations 2001(a).

In this paragraph the term “an advantage in relation to tax” shall be construed in accordance with section 318(1).”, and

(c) in paragraph (2) of the substituted regulation 8 after “paragraph (1)(b)” insert “or (1A)”.

23. In regulation 18(1) (the Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004(b)) for “313” substitute “313B and section 314A”.

24. After regulation 18 insert—

“The Tax Avoidance Schemes (Penalty) Regulations 2007

19. The Tax Avoidance Schemes (Penalty) Regulations 2007(c) apply to notifiable contribution arrangements and notifiable contribution proposals as they apply to income tax and any reference in those Regulations to sections 306 to 313B and section 314A shall be construed as a reference to the corresponding provision of these Regulations (see regulation 4(2)) and any reference in those Regulations to section 98C of the Taxes Management Act 1970(d) shall be construed as a reference to regulation 14.”.

Steve McCabe

Frank Roy

9th October 2008

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 2007 (S.I. 2007/785) (“the 2007 Regulations”). The 2007 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. The amendments made by these Regulations to the 2007 Regulations reflect the amendments made by the Finance Act 2007 and the Finance Act 2008 to Part 7 of the Finance Act 2004 and the related amendments made to Regulations made under that Part. These Regulations also make some clarifications and corrections to the 2007 Regulations.

Regulation 1 makes provision for citation, commencement and effect.

Regulations 2 to 5 make amendments to Part 1 of the 2007 Regulations which deals with introductory matters.

Regulations 6 to 17 make amendments to Part 2 of the 2007 Regulations which contains provisions corresponding to Part 7 of the Finance Act 2004.

Regulations 18 to 20 make amendments to Part 3 of the 2007 Regulations. Part 3 makes provision 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. These Regulations also insert a provision corresponding to section 118(2) of the Taxes Management Act 1970, the

(a) S.I. 2004/1004. Regulation 80(1) was amended by S.I. 2004/770.

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

(c) S.I. 2007/3104.

(d) This section was inserted by section 319 of the Finance Act 2004 (c. 12) and amended by section 108(10) of the Finance Act 2007.

effect of which is to remove liability to a penalty for non-compliance with a duty where a person complies within a period extended by the Commissioners, or where a person has a reasonable excuse for non-compliance.

Regulations 21 to 24 make further modifications to the Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) Regulations 2006 (S.I. 2006/1543) and the Tax Avoidance Schemes (Information) Regulations 2004 (S.I. 2004/1864) and apply the Tax Avoidance Schemes (Penalty) Regulations 2007 (S.I. 2007/3104) with modifications.

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

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 <http://www.hmrc.gov.uk/ria/ria-nicbill05.pdf>.

Impact Assessments have also been prepared in relation to the provisions of the Finance Act 2008 identifying users of disclosed tax avoidance schemes and the provisions of the Finance Act 2007 ensuring compliance with the disclosure regime. Both are available on HM Treasury's website at <http://www.hmrc.gov.uk/ria/users-disclosed-tax-avoid-schemes.pdf> and <http://www.hmrc.gov.uk/ria/ria-tax-avoid-disc.pdf>.

© Crown copyright 2008

Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£5.00