
STATUTORY INSTRUMENTS

2012 No. 1868

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

PART 3

Provisions corresponding to section 98C and section 118(2) of the Taxes Management Act 1970 and modifications of related provisions

Notification under Part 2

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

- (a) to a penalty not exceeding—
 - (i) in the case of a provision mentioned in sub-paragraph (a), (b) or (c) of that paragraph, £600 for each day during the initial period (but see also paragraphs (5), (7) and (8) below); and
 - (ii) in any other case, £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 (14).

- (2) Those provisions are—
 - (a) regulation 8(1) and (3) (duty of promoter in relation to notifiable contribution proposals and notifiable contribution arrangements),
 - (b) regulation 10(1) (duty of person dealing with promoter outside United Kingdom),
 - (c) regulation 11 (duty of parties to notifiable contribution arrangements not involving promoter),
 - (d) regulation 13(2) (duty of promoter to notify client of reference number),
 - (e) regulation 14(2) (duty of client to notify parties of reference number),
 - (f) regulation 16 (duty of promoter to provide details of clients),
 - (g) regulations 17 and 18 (duty of promoter to respond to inquiry), and
 - (h) regulation 19 (duty of introducer to give details of persons who have provided information).
- (3) In this regulation “the initial period” means the period—
 - (a) beginning with the relevant day; and
 - (b) ending with the earlier of the day on which the penalty under paragraph (1)(a)(i) is determined and the last day before the failure ceases;

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and for this purpose “the relevant day” is the day specified in relation to the failure in the following table.

TABLE

<i>Failure</i>	<i>Relevant day</i>
A failure to comply with paragraph (1) or (3) of regulation 8 in so far as the paragraph applies by virtue of an order under regulation 6	The first day of the prescribed period
A failure to comply with paragraph (1) or (3) of regulation 8 in so far as the paragraph applies by virtue of an order under regulation 9(2)	The first day after the end of the prescribed period (as it may have been extended by a direction under regulation 9(6))
Any other failure to comply with paragraph (1) of regulation 8	The first day after the end of the prescribed period
Any other failure to comply with paragraph (3) of regulation 8	The first day after the end of the prescribed period
A failure to comply with paragraph (1) of regulation 10	The first day after the end of the prescribed period
A failure to comply with regulation 11	The first day after the latest time by which regulation 11 must be complied with in the case concerned

(4) The amount of a penalty under paragraph (1)(a)(i) is to be arrived at after taking account of all relevant considerations, including the desirability of its being set at a level which appears appropriate for deterring the person, or other persons, from similar failures to comply on future occasions having regard (in particular)-

- (a) in the case of a penalty for a person’s failure to comply with regulation 8(1) or (3), to the amount of any fees received, or likely to have been received, by the person in connection with the notifiable contribution proposal (or arrangements implementing the notifiable contribution proposal), or with the notifiable contribution arrangements;
- (b) in the case of a penalty for the person’s failure to comply with regulation 10(1) or 11, to the amount of any advantage gained, or sought to be gained, by the person in relation to any contribution.

(5) If the maximum penalty under paragraph (1)(a)(i) above appears inappropriately low after taking account of those considerations, the penalty is to be of such amount not exceeding £1 million as appears appropriate having regard to those considerations.

(6) Where it appears to an officer of Revenue and Customs that a penalty under paragraph (1)(a)(i) above has been determined on the basis that the initial period begins with a day later than that which the officer considers to be the relevant day, an officer of Revenue and Customs may commence proceedings for a re-determination of the penalty.

(7) 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 6 (doubt as to notifiability), the amounts specified in paragraph (1)(a)(i) and (b) shall be increased to the sum prescribed by the Tax Avoidance Schemes (Penalty) Regulations 2007(1) (as modified by these Regulations).

(8) 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 20 (order to disclose), the amounts specified in paragraph (1)(a)(i) and (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.

(9) The making of an order under regulation 6 or 20 does not of itself mean that, for the purposes of regulation 23, a person either did or did not have a reasonable excuse for non-compliance before the order was made.

(10) Where an order is made under regulation 6 or 20 then for the purposes of regulation 23—

- (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 (8), rely on doubt as to notifiability as an excuse for failure to comply with regulation 8, 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.

(11) A person who fails to comply with regulation 15(1) (duty of parties to notifiable contribution arrangements to notify HMRC of number, etc.) or regulation 10 of the Information Regulations shall be liable to a penalty of the relevant sum.

This is subject to paragraph (14).

(12) In paragraph (11) “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 15(1) or regulation 10 of the Information Regulations 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
- (c) in relation to a person who has previously failed to comply with regulation 15(1) or regulation 10 of the Information Regulations 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).

(13) In paragraph (12) above “scheme” means any notifiable contribution arrangements which fall within any description prescribed by the Descriptions Regulations.

(14) Where the notifiable contribution arrangements or proposed notifiable contribution arrangements are, or are substantially the same as, a notifiable arrangements or proposed notifiable arrangements under Part 7 in relation to which a penalty has been imposed under section 98C of the Taxes Management Act 1970 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.

Interpretation

23. For the purposes of this Part—

- (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 HMRC 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

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- (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.

Modification of Part 10 of the Taxes Management Act 1970

24.—(1) Part 10 of the Taxes Management Act 1970(2) so far as it relates to a penalty under section 98C of that Act shall apply in relation to a penalty under regulation 22 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) substitute—

- “(f) regulation 22(1)(a) of the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012.”.

(2) 1970 c. 9. Section 100 was substituted by section 167 of the Finance Act 1989 (c. 26) and relevantly amended by sections 315 and 319 of the Finance Act 2004.