

**2022 No. 526**

**SOCIAL SECURITY**

**The National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) Regulations 2022**

<i>Made</i> - - - -	<i>10th May 2022</i>
<i>Laid before Parliament</i>	<i>11th May 2022</i>
<i>Coming into force</i> - -	<i>1st June 2022</i>

The Treasury make the following Regulations in exercise of the powers conferred by sections 132A(1) and (2) and 189(4), (5) and (6) of the Social Security Administration Act 1992(a).

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) (Amendment) Regulations 2022.

(2) These Regulations come into force on 1st June 2022, subject to paragraphs (3) to (5).

(3) Regulation 11D of the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012(b) (inserted by regulation 7 of these Regulations) applies only in relation to transactions entered into, firm approaches made, and proposals that are made available for implementation, on or after 1st June 2022.

(4) So far as is applicable to a person who is not a promoter in relation to the arrangements or proposed arrangements, regulation 13A of the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (inserted by regulation 11 of these Regulations) applies only where a person is providing (or has provided) services to the client (within the meaning of that regulation) on or after 1st June 2022.

(5) Regulation 21C(1)(c) (inserted by regulation 20(a) of these Regulations) applies—

- (a) in relation to a person who is or has been a promoter in relation to arrangements or proposed arrangements, regardless of when that is or was the case, and
- (b) in relation to a person who is or has been otherwise involved in the supply of arrangements or proposed arrangements, only where that person is so involved on or after 1st June 2022.

(6) Expressions used in this regulation and Part 2 of the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 have the same meaning in this regulation as they have in that Part.

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(a) 1992 c. 5; section 132A was inserted by section 7(1) and (2) of the National Insurance Contributions Act 2006 (c. 10). Section 132A(1) was amended by section 11 of the National Insurance Contributions Act 2022 (c. 9). Section 189(4) to (6) were amended by paragraph 109 of Schedule 7 and by Schedule 8 to the Social Security Act 1998 (c. 14). Section 189(4) and (6) were also amended by S.I. 2013/252.

(b) S.I. 2012/1868 (“the Disclosure Regulations”); amended by: S.I. 2013/2600, S.I. 2015/531 and S.I. 2017/1174.

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

2. The National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 are amended as follows.

3. In regulation 2 (interpretation), in the definition of “reference number”, for “the reference number” substitute “a reference number”.

4. After regulation 5(1) (application of Part 2) insert—

“(1A) This Part also applies to arrangements and proposals which HMRC reasonably suspect to be notifiable contribution arrangements or notifiable contribution proposals (as the case may be).”.

5. In regulation 5(2) (provisions corresponding to Part 7 of the Finance Act 2004), in the table—

(a) after the row relating to section 310C insert—

“Section 310D(a) (notice of potential allocation of reference number: arrangements and proposals suspected of being notifiable)	Regulation 11D”
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(b) for the row relating to section 311 substitute—

“Section 311 (allocation of reference number to arrangements)	Regulation 12”
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(c) after the row relating to section 311 insert—

“Section 311A (duty of HMRC to notify persons of reference number)	Regulation 12A
Section 311B (right of appeal: section 311(3) case)	Regulation 12B
Section 311C (duty to provide further information requested by HMRC: section 311(3) case)	Regulation 12C”

(d) for the row relating to section 312 substitute—

“Section 312 (duty of promoter to notify client of number: section 311(2) case)	Regulation 13”
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(e) after the row relating to section 312 insert—

“Section 312ZA (duty to notify client of reference number: s311(3) case)	Regulation 13A”
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(f) in the row relating to section 312B, omit “to promoter”;

(g) for the row relating to section 313 substitute—

“Section 313 (duty of parties to notify HMRC of reference number etc)	Regulation 15”
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(a) Regulation 2 of the Disclosure Regulations provides, at the definition for “Part 7”, that this means Part 7 (disclosure of tax avoidance schemes) of the Finance Act 2004 (c. 12), and that a reference to a numbered section (without more) is a reference to a section of Part 7.

6. In regulation 7 (meaning of promoter)—

- (a) in paragraph (6) omit “notifiable contribution”;
- (b) in paragraph (8) for “proposed contribution arrangements” substitute “proposed arrangements”.

7. After regulation 11C (duty of promoters to provide updated information), insert—

**“Notice of potential allocation of reference number: arrangements and proposals suspected of being notifiable**

**11D.**—(1) This regulation applies where—

- (a) HMRC have become aware that—
  - (i) a transaction forming part of arrangements has been entered into,
  - (ii) a firm approach has been made to a person in relation to a proposal for arrangements, with a view to making the proposal available for implementation, or
  - (iii) a proposal for arrangements is made available for implementation, and
- (b) HMRC reasonably suspect that the arrangements are notifiable contribution arrangements, or that the proposal is a notifiable contribution proposal.

(2) HMRC may issue a notice to a person explaining that, unless the person is able to satisfy HMRC, before the end of the notice period, that the arrangements are not notifiable contribution arrangements or (as the case may be) the proposal is not a notifiable contribution proposal, HMRC may allocate a reference number to the arrangements or (in the case of a proposal) the proposed arrangements.

(3) But HMRC may not issue a notice under this regulation before the end of the period of 15 days beginning with the day on which they first become aware that the condition in sub-paragraph (a)(i), (ii) or (iii) of paragraph (1) is met.

(4) A notice under this regulation must be issued to any person who, on the day the notice is issued, HMRC reasonably suspect to be a promoter in relation to the arrangements or proposed arrangements.

(5) A notice under this regulation may be issued to any other person who HMRC reasonably suspect to be involved in the supply of the arrangements or proposed arrangements.”.

8. For regulation 12 (arrangements to be given reference number), substitute—

**“Allocation of reference number to arrangements**

**12.**—(1) This regulation applies in—

- (a) a paragraph (2) case, or
- (b) a paragraph (3) case.

(2) A “paragraph (2) case” is a case where a person complies, or purports to comply, with regulation 8(1) or (3), 10(1) or 11 in relation to any notifiable contribution proposal or notifiable contribution arrangements.

(3) A “paragraph (3) case” is a case where—

- (a) notice in relation to arrangements or proposed arrangements has been issued in accordance with regulation 11D (notice of potential allocation of reference number),
- (b) the notice period has expired, and
- (c) the person to whom the notice was given has failed to satisfy HMRC, before the expiry of the notice period, that the arrangements are not notifiable contribution

arrangements or (as the case may be) that the proposal is not a notifiable contribution proposal.

(4) “The notice period” means—

- (a) the period of 30 days beginning with the day on which the notice under regulation 11D is issued, or
- (b) such longer period as HMRC may direct.

(5) HMRC may allocate a reference number to the arrangements, or in the case of a proposal, the proposed arrangements, subject to paragraph (6).

(6) HMRC may not allocate a reference number to arrangements or proposed arrangements after the time limit for doing so.

(7) The time limit for allocating a reference number is—

- (a) in a paragraph (2) case, the end of the period of 90 days beginning with the compliance, or purported compliance, with regulation 8(1) or (3), 10(1) or 11, as the case may be;
- (b) in a paragraph (3) case, the end of the period of one year beginning with the day after the end of the notice period specified in paragraph (4).

(8) HMRC may at any time withdraw a reference number allocated to arrangements in a paragraph (3) case.

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

9. After regulation 12, insert—

**“Duty of HMRC to notify persons of reference number**

**12A.**—(1) If a reference number is allocated in a case within regulation 12(2), HMRC must notify the following of the number—

- (a) the person who has complied, or purported to comply, with regulation 8(1) or (3), 10(1) or 11, and
- (b) where the person has complied, or purported to comply, with regulation 8(1) or (3), any other person—
  - (i) who is a promoter in relation to the proposal (or arrangements implementing it) or the arrangements (or a proposal implemented by them), and
  - (ii) whose identity and address have been notified to HMRC by the person who complied, or purported to comply, with regulation 8(1) or (3).

(2) If a reference number is allocated in a case within regulation 12(3), HMRC must notify the following of the number—

- (a) any person who HMRC reasonably suspect to be, or to have been, a promoter in relation to the arrangements or the proposed arrangements, and
- (b) any other person who HMRC reasonably suspect to be, or to have been, involved in the supply of the arrangements or the proposed arrangements.

(3) The duty in paragraph (2) applies irrespective of whether the notice under regulation 11D as a result of which the reference number was allocated has been issued to the person concerned.

**Right of appeal: regulation 12(3) case**

**12B.**—(1) This regulation applies where HMRC have allocated a reference number to arrangements or proposed arrangements in a case within regulation 12(3).

(2) A person who has been notified of the reference number may appeal to the tribunal against its allocation.

(3) An appeal under this regulation may be brought only on the following grounds—

- (a) that, in issuing the notice under regulation 11D as a result of which the reference number was allocated, HMRC did not act in accordance with that regulation;
- (b) that, in allocating the reference number, HMRC did not act in accordance with regulation 12;
- (c) that the arrangements are not in fact notifiable contribution arrangements or, in the case of proposed arrangements, that the proposal for the arrangements is not in fact a notifiable contribution proposal.

(4) Notice of appeal under this regulation must be given to the tribunal in writing before the end of the period of 30 days beginning with the day on which the person is notified of the number by HMRC.

(5) Notice may be given after that period if the tribunal give permission.

(6) The notice of appeal must specify the grounds of appeal.

(7) On an appeal under this regulation, the tribunal may affirm or cancel HMRC's decision.

(8) If the tribunal cancel HMRC's decision, HMRC must withdraw the reference number.

(9) Bringing an appeal under this regulation does not prevent—

- (a) a power conferred by this Part from being exercised, or
- (b) a duty imposed by this Part from continuing to apply.

#### **Duty to provide further information requested by HMRC: regulation 12(3) case**

**12C.**—(1) This regulation applies where HMRC have allocated a reference number to arrangements or proposed arrangements in a case within regulation 12(3).

(2) HMRC may require a relevant person to provide—

- (a) specified information about the arrangements or proposed arrangements;
- (b) documents relating to the arrangements or proposed arrangements.

(3) In paragraph (2), “relevant person” means—

- (a) any person who HMRC reasonably suspect to be, or to have been, a promoter in relation to the arrangements or the proposed arrangements;
- (b) any other person who HMRC reasonably suspect to be, or to have been, involved in the supply of the arrangements or the proposed arrangements.

(4) HMRC may require information or documents only if they have reasonable grounds for suspecting that the information or documents will assist them in considering the arrangements or proposed arrangements.

(5) Where HMRC impose a requirement on a person under paragraph (2), the person must comply with the requirement before the end of—

- (a) the period of 10 working days beginning with the day on which HMRC imposed the requirement, or
- (b) such longer period as HMRC may direct.”.

**10.** In regulation 13 (duty of promoter to notify client of number)—

- (a) in the heading, at the end insert “: regulation 12(2) case”;
- (b) in paragraph (2)—
  - (i) after “any reference number” insert “allocated in a case within regulation 12(2) or section 311(2)”;
  - (ii) for “one reference number” substitute “one such reference number”.

**11. After regulation 13, insert—**

**“Duty to notify client of reference number: regulation 12(3) case**

**13A.**—(1) This regulation applies where a person is providing (or has provided) services to another person (“the client”) in connection with arrangements or proposed arrangements.

(2) The person must, before the end of the period of 30 days beginning with the relevant date, provide the client with prescribed information relating to any reference number allocated in a case within regulation 12(3) or section 311(3) (or, if more than one, any one such reference number) that has been notified to the person (whether by HMRC or any other person) in relation to—

- (a) the arrangements or proposed arrangements, or
- (b) any arrangements substantially the same as the arrangements or the proposed arrangements (whether involving the same or different parties).

(3) In paragraph (2), “the relevant date” means the date on which the person has been notified of the reference number.

(4) HMRC may give notice that, in relation to arrangements or proposed arrangements specified in the notice, no person is under the duty imposed by paragraph (2) after the date specified in the notice.”.

**12. In regulation 14 (duty of client to notify parties of number)—**

- (a) in paragraph (1), after “prescribed information” insert “under regulation 13”;
- (b) in paragraph (1)(c) for “proposed notifiable arrangements, or notifiable arrangements, which are” substitute “any arrangements”;
- (c) after paragraph (1) insert—

“(1A) This regulation also applies where a person (the “client”) to whom a person is providing (or has provided) services in connection with arrangements or proposed arrangements receives prescribed information under regulation 13A relating to the reference number allocated to—

- (a) the arrangements,
- (b) the proposed arrangements, or
- (c) any arrangements substantially the same as the arrangements or proposed arrangements.”;
- (d) in paragraph (2A)(b), for “contribution arrangements or proposed contribution arrangements” substitute “arrangements or proposed arrangements”;
- (e) in paragraph (3), for “notifiable contribution arrangements or a notifiable contribution proposal” substitute “arrangements or a proposal”.

**13. In regulation 14A (duty of client to provide information to promoter)—**

- (a) in the heading omit “to promoter”;
- (b) for paragraph (1) substitute—

“(1) This regulation applies where a person (“the client”) has been provided with information under regulation 13(2) or regulation 13A(2) (prescribed information about reference number).”;
- (c) in paragraph (2) for “promoter” substitute “person who provided the information”.

**14. In regulation 15 (duty of parties to notifiable contribution arrangements to notify HMRC of number etc)—**

- (a) for the heading substitute “Duty of parties to notify HMRC of reference number etc”;
- (b) in paragraph (1) for “notifiable contribution arrangements” substitute “arrangements to which a reference number has been allocated”;

- (c) in paragraph (1)(a) omit “whether the reference number was allocated under regulation 12 or section 311,”;
- (d) in paragraph (2) omit “notifiable contribution”.

**15. In regulation 16 (duty to provide details of clients)—**

- (a) for paragraphs (1)(a) and (b) substitute—
  - “(a) the promoter is subject to the requirement under regulation 13(2) to provide to the client prescribed information relating to the reference number allocated to—
    - (i) the arrangements, or
    - (ii) any arrangements substantially the same as the arrangements, or
  - (b) the promoter has failed to comply with regulation 8(1) or (3) in relation to the notifiable contribution arrangements (or the notifiable contribution proposal for them) but would be subject to that requirement if a reference number had been allocated to—
    - (i) the notifiable contribution arrangements, or
    - (ii) any arrangements substantially the same as the notifiable contribution arrangements.”;
- (b) after paragraph (1) insert—
  - “(1A) This regulation also applies where—
    - (a) a person (“the provider”) is providing (or has provided) services to another person (“the client”) in connection with arrangements or proposed arrangements, and
    - (b) the provider is subject to the requirement under regulation 13A(2) to provide to the client prescribed information relating to the reference number allocated to—
      - (i) the arrangements or proposed arrangements, or
      - (ii) any arrangements substantially the same as the arrangements or proposed arrangements.”;
- (c) omit paragraph (2);
- (d) in paragraph (3), after “the promoter” insert “or (as the case may be) provider”;
- (e) for paragraph (4) substitute—
  - “(4) In paragraph (3) “the relevant period” means—
    - (a) in a case within paragraph (1), such period as is prescribed and is a period during which the promoter is or would be subject to the requirement mentioned in that paragraph;
    - (b) in a case within paragraph (1A), such period as is prescribed and is a period during which the provider is or would be subject to the requirement mentioned in that paragraph.”;
- (f) after paragraph (5) insert—
  - “(6) The provider need not comply with paragraph (3) in relation to any arrangements at any time after HMRC have given notice under regulation 13A(4) in relation to the arrangements.”.

**16. In regulation 16A (enquiry following disclosure of client details)—**

- (a) for paragraph (1)(a) substitute—
  - “(a) a person (“the service provider”) is providing or has provided services to another person (“the client”) in connection with arrangements or proposed arrangements,
  - (aa) the service provider has provided HMRC with information in relation to the client under regulation 16, and”;
- (b) in paragraph (2), in both places it occurs, for “promoter” substitute “service provider”;
- (c) in paragraph (3) for “promoter” substitute “service provider”.

**17.** In regulation 16B (duty of employer to notify HMRC of details of employees etc)—

(a) for paragraph (2) substitute—

“(2) Condition A is that—

- (a) 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 arrangements or proposal to a person (“the client”); or
- (b) a person is providing (or has provided) services in connection with arrangements or a proposal to a person (“the client”);

(b) in paragraph (3) after “regulation 13(2)” insert “or 13A(2)”;

(c) in paragraph (4), in both places it occurs, omit “notifiable contribution”;

(d) in paragraph (4), in both places it occurs, substitute “arrangements” with “arrangement”;

(e) in paragraph (6)—

- (i) in both places it occurs, omit “notifiable contribution”;
- (ii) after “regulation 13(6)” insert “, 13A(4)”.

**18.** In regulation 21 (information to be provided in form and manner specified by HMRC), in paragraph (2)—

(a) after “11C,” insert “12C,”;

(b) after “13(2),” insert “13A(2),”.

**19.** In regulation 21A (duty to provide additional information), in paragraphs (1) and (2), after “regulation 13(2)” insert “, 13A(2)”.

**20.** In regulation 21C (publication by HMRC)—

(a) for paragraph (1) substitute—

“(1) HMRC may publish information about—

- (a) any arrangements, or proposed arrangements, to which a reference number is allocated under regulation 12;
- (b) where the reference number is allocated in a case within regulation 12(2), any person who is a promoter in relation to the arrangements or, in the case of proposed arrangements, the proposal;
- (c) where the reference number is allocated in a case within regulation 12(3), any person who is or has been—
  - (i) a promoter in relation to the arrangements or proposed arrangements, or
  - (ii) otherwise involved in the supply of the arrangements or proposed arrangements.”;

(b) in paragraph (2)(a)—

- (i) after “paragraph (1)(b)” insert “or (c)”;
- (ii) for “regulation 8, 10 or 11” substitute “any provision of this Part”;

(c) for paragraph (2)(b) substitute—

“(b) any ruling of a court or tribunal relating to—

- (i) arrangements within paragraph (1)(a);
- (ii) a person within paragraph (1)(b), in that person’s capacity as a promoter;
- (iii) a person within paragraph (1)(c), in that person’s capacity as a promoter or a person otherwise involved in the supply of arrangements or proposed arrangements.”;

(d) in paragraph (2)(c) omit “notifiable contribution”;

(e) in paragraph (2)(d) omit “notifiable contribution”;



- (f) in paragraph (2)(e), after “paragraph 1(b)” insert “or (c)”;
- (g) in paragraph (4) omit “notifiable contribution”;
- (h) after paragraph (4) insert—
  - “(4A) No information may be published under this regulation in respect of a person involved in the supply of arrangements or proposed arrangements where there are reasonable grounds for believing that the person’s involvement is limited to activities subject to legal professional privilege.”;
- (i) in paragraph (5)—
  - (i) for “who is a promoter within paragraph (1)(b)” substitute “within paragraph (1)(b) or (c)”;
  - (ii) at the end insert “or a person involved in the supply of arrangements or proposed arrangements.”;
- (j) in paragraph (6), for “a promoter within paragraph (1)(b)” substitute “a person within paragraph (1)(b) or (c)”;
- (k) after paragraph (6) insert—
  - “(6A) Where a reference number is allocated in a case within regulation 12(3)—
    - (a) information that identifies a person within paragraph (1)(c) may not be published for the first time after the end of the period of one year beginning with the day on which the reference number is allocated;
    - (b) no information that identifies a person within paragraph (1)(c) may be published (or continue to be published) after the end of the period of one year beginning with the day on which it is first published.
  - (6B) In determining a period of one year for the purposes of paragraph (6A)(a) or (b), no account is to be taken of any period during which HMRC are prohibited from publishing the information because of proceedings before a court or tribunal.”.

**21. In regulation 21D (subsequent judicial rulings)—**

- (a) in paragraph (1)(a), in both places it occurs omit “notifiable contribution”;
- (b) in paragraph (1)(b) for “contribution arrangements” substitute “arrangements”;
- (c) omit paragraph (7).

**22. In regulation 22 (notification under Part 2)—**

- (a) in paragraph (1)(a)(i), for “or (ca)” substitute “, (ca) or (cc)”;
- (b) after paragraph (2)(cb) insert—
  - “(cc) regulation 12C (duty to provide further information requested by HMRC: regulation 12(3) case),”;
- (c) in paragraph (2)(d) after “reference number” insert “: regulation 12(2) case”;
- (d) after paragraph (2)(d) insert—
  - “(da) regulation 13A(2) (duty to notify client of reference number: regulation 12(3) case),”;
- (e) in paragraph (2)(ea) omit “to promoter”;
- (f) in paragraph (2)(f) omit “of promoter”;
- (g) in paragraph (2)(fa), for “(duty of promoter to provide further information)” substitute “(enquiry following disclosure of client details)”;
- (h) in paragraph (3)(b), at the beginning, insert “subject to paragraph 3B,”;

- (i) in paragraph (3), in the table, at the end insert—

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“A failure to comply with regulation 12C	The first day after the end of the period before the end of which the person must comply with regulation 12C”;
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- (j) after paragraph (3) insert—

“(3A) Paragraph 3B applies where—

- (a) a person fails to comply with a provision mentioned in paragraph (2)(a), (b) or (c) in respect of arrangements or proposed arrangements, and
- (b) a reference number is subsequently allocated to the arrangements or proposed arrangements in a case within regulation 12(3) (allocation of reference number to arrangements: paragraph (3) case).

(3B) Where this paragraph applies, the failure to comply is taken for the purposes of this regulation to have ceased on the day before the reference number is allocated, if it has not already ceased.”;

- (k) after paragraph (4)(a) insert—

“(aa) in the case of a penalty for a person’s failure to comply with regulation 12C, to the amount of any fees received, or likely to have been received by the person in connection with the arrangements, the proposed arrangements or the proposal;”;

- (l) in paragraph (11) for “(duty of parties to notifiable contribution arrangements to notify HMRC of number, etc)” substitute “(duty of parties to notify HMRC of reference number etc)”;

- (m) in paragraph (14) for “a notifiable arrangements or proposed notifiable arrangements under Part 7” substitute “arrangements or a proposal within Part 7”.

**23. In regulation 26 (the information regulations)—**

- (a) in paragraph (1)—

- (i) for “notifiable contribution arrangements” substitute “arrangements”; and
- (ii) for “notifiable contribution proposals” substitute “proposed arrangements within Part 2”;

- (b) omit paragraph (4)(a);

- (c) omit paragraph (5);

- (d) omit paragraph (6A);

- (e) in paragraph (8)—

- (i) in substituted regulation 10(1), for “(duty of parties to notifiable contribution arrangements to notify HMRC of number, etc)” substitute “(duty of parties to notify HMRC of the reference number etc)”;

- (ii) in substituted regulation 10(1)(a)—

- (aa) after “regulation 12” insert “or section 311”;

- (bb) in both places it occurs omit “notifiable contribution”;

- (iii) in substituted regulation 10(3), in both places it occurs, omit “notifiable contribution”;

- (iv) in substituted regulation 10(4), in both places it occurs, omit “notifiable contribution”;

- (v) in substituted regulation 10(4)(a) omit “notifiable contribution”;

- (f) after paragraph (9) insert—

“(9A) In regulation 13(1)(ba) (prescribed information under section 313ZA: information and timing) for “section 311” substitute “section 311 or regulation 12 of the National

Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (allocation of reference number to arrangements).”;

(g) omit paragraph (10);

(h) after paragraph 10A insert—

“(10B) In regulation 13B (prescribed information under section 313ZC: information and timing)—

(a) in paragraph (2)(d) for “a tax advantage” substitute “an advantage”;

(b) in paragraph (2)(e) for “a tax advantage” substitute “an advantage”;

(i) omit paragraph (11).

*Michael Tomlinson*

*Rebecca Harris*

10th May 2022

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 2012 (S.I. 2012/1868) (“the Disclosure Regulations”), to correspond with changes made to Part 7 of the Finance Act 2004 (c. 12) (“FA 2004”) by Schedule 31 to the Finance Act 2021 (c. 26) (“FA 2021”).

Part 7 of FA 2004 provides for disclosure to Her Majesty’s Revenue and Customs (“HMRC”) of information relating to arrangements that enable, or might enable, people to obtain a tax advantage. These arrangements are referred to as “notifiable arrangements” or, before they have been put into effect, a “notifiable proposal”. The individuals responsible for the arrangements are known as “promoters” and are obliged to disclose them to HMRC, with related duties falling on their clients. HMRC allocates reference numbers to such disclosed arrangements.

The amendments made by Schedule 31 to FA 2021 now allow HMRC to allocate a reference number to arrangements or a proposal that have not been disclosed, where HMRC reasonably suspects them to be notifiable. In such circumstances, the amendments also extend the obligations in Part 7 to all persons that HMRC reasonably suspects to be supplying the arrangements, or proposals, and their clients.

Regulation 1 provides for citation, commencement and application of the Regulations.

Regulation 2 introduces the amendments to the Disclosure Regulations.

Regulation 3 amends the existing definition of “reference number” in regulation 2 of the Disclosure Regulations.

Regulation 4 inserts a new paragraph (1A) into regulation 5 of the Disclosure Regulations, in order to extend the application of Part 2 of those Regulations to arrangements and proposals which HMRC reasonably suspect to be notifiable contribution arrangements or notifiable contribution proposals.

Regulation 5 updates the table at regulation 5(2) of the Disclosure Regulations to show that new regulations 11D, 12A, 12B, 12C and 13A correspond with sections 310D, 311A, 311B, 311C and 312ZA of FA 2004, which were inserted by FA 2021. It also makes various consequential amendments to other rows in the table.

Regulation 6 amends regulation 7(6) and (8) of the Disclosure Regulations so as to extend the meaning of “making a firm approach to another person” for the purposes of Part 2 of the Disclosure Regulations, so that it now applies to arrangements and proposed arrangements other than notifiable contribution arrangements or notifiable contribution proposals.

Regulation 7 inserts a new regulation 11D into the Disclosure Regulations which, in particular, allows HMRC to issue a notice to a person of the potential allocation of a reference number in cases where HMRC reasonably suspect that arrangements or a proposal for arrangements are notifiable contribution arrangements or a notifiable contribution proposal (as the case may be).

Regulation 8 substitutes regulation 12 of the Disclosure Regulations. New regulation 12 sets out two situations in which HMRC may allocate a reference number to arrangements (including proposed arrangements). The first case where a reference number may be so allocated is a case where a person complies, or purports to comply, with regulation 8(1) or (3), regulation 10(1) or regulation 11 of the Disclosure Regulations in relation to any notifiable contribution proposal or notifiable contribution arrangements (a “paragraph 2” case). The second case is where a notice has been issued under regulation 11D of the Disclosure Regulations in relation to arrangements or proposed arrangements, and the notice period has expired, but the person to whom the notice was given has failed to satisfy HMRC that the arrangements or proposed arrangements are not notifiable contribution arrangements or a notifiable contribution proposal, as the case may be (a “paragraph 3” case).

Regulation 9 inserts new regulations 12A to 12C into the Disclosure Regulations. New regulation 12A imposes a duty on HMRC to notify promoters, or people whom HMRC suspect to be promoters or involved in supplying arrangements, of a reference number which it has allocated. New regulation 12B provides for a right of appeal to the tribunal against HMRC’s decision to allocate a reference number to arrangements or proposed arrangements in a “paragraph 3” case. New regulation 12C imposes a duty on people whom HMRC suspect to be promoters, or involved in supplying arrangements, to provide further information requested by HMRC where HMRC has allocated a reference number to arrangements or proposed arrangements in a “paragraph 3” case.

Regulation 10 makes consequential amendments to regulation 13 of the Disclosure Regulations, so as to require a promoter to notify a client of a reference number in a “paragraph 2” case.

Regulation 11 inserts a new regulation 13A into the Disclosure Regulations. New regulation 13A imposes a duty on a person providing services (a “service provider”) in connection with arrangements or proposed arrangements to provide their client with prescribed information relating to a reference number within a period of 30 days of being advised of the reference number by HMRC.

Regulation 12 amends regulation 14 of the Disclosure Regulations, so as to extend the existing duty in that provision (to notify certain persons of an reference number) to cases where the client receives the prescribed information from a service provider, as set out in new regulation 13A of the Disclosure Regulations.

Regulation 13 amends regulation 14A of the Disclosure Regulations so as to impose a duty on a client to provide prescribed information in cases where they have been provided with information by a promoter under regulation 13(2), or by a service provider under new regulation 13A(2), of the Disclosure Regulations.

Regulation 14 amends regulation 15 of the Disclosure Regulations in order to extend the existing duty in that provision to “paragraph 3” cases.

Regulation 15 amends regulation 16 of the Disclosure Regulations to extend the existing duty in that provision (for a promoter to provide HMRC with details of their clients) to people who are subject to the new duty in regulation 13A of the Disclosure Regulations.

Regulation 16 amends regulation 16A of the Disclosure Regulations to allow HMRC to require a service provider to provide prescribed information.

Regulation 17 amends regulation 16B of the Disclosure Regulations, principally to extend the application of that provision to cases involving service providers as well as promoters.

Regulation 18 amends regulation 21 of the Disclosure Regulations to insert references in that provision to new regulations 12C and 13A(2) of the Disclosure Regulations, so that information required under those provisions must be provided in a prescribed form.

Regulation 19 amends regulation 21A of the Disclosure Regulations to insert a reference in that provision to new regulation 13A(2) of the Disclosure Regulations, so that HMRC may require additional information to be provided to users of arrangements or proposed arrangements.

Regulation 20 amends regulation 21C of the Disclosure Regulations, to create new rules about cases where HMRC may publish information about arrangements or proposed arrangements which have been allocated with a reference number. It also provides for the time periods within which HMRC may publish such information, and that no information may be published in respect of a person involved in the supply of such arrangements or proposed arrangements where there are reasonable grounds for believing that the person's involvement is limited to activities subject to legal professional privilege.

Regulation 21 makes consequential amendments to regulation 21D of the Disclosure Regulations, to reflect the amendments made to regulation 21C.

Regulation 22 amends regulation 22 of the Disclosure Regulations, which applies the penalty provisions in section 98C of the Taxes Management Act 1970 (c. 9) to breaches of the Disclosure Regulations. Regulation 22 extends these provisions to include failures to comply with new regulations 12C and 13A(2) of the Disclosure Regulations, and makes other consequential amendments.

Regulation 23 amends regulation 26 of the Disclosure Regulations in various places to take account of amendments made to the Tax Avoidance Schemes (Information) Regulations 2012 (S.I. 2012/1836) by the Tax Avoidance Schemes (Information) (Amendment) Regulations 2021 (S.I. 2021/980).

A Tax Information and Impact Note covering this instrument was published on 12th May 2021 alongside information about amendments to section 132A of the Social Security Administration Act 1992 (c. 5) and is available on the website at <https://www.gov.uk/government/publications/proposals-for-tackling-promoters-and-enablers-of-national-insurance-contributions-avoidance-schemes>. It remains an accurate summary of the impacts that apply to this instrument.

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