EXPLANATORY MEMORANDUM TO

THE NATIONAL INSURANCE CONTRIBUTIONS (APPLICATION OF PART 7 OF THE FINANCE ACT 2004) (AMENDMENT) REGULATIONS 2022

2022 No. 526

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) on behalf of the Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 (S.I. 2012/1868) to correspond with changes made to Part 7 of the Finance Act 2004 and to section 98C of the Taxes Management Act 1970 by Schedule 21 to the Finance Act 2021.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Part 7 of the Finance Act 2004 ("FA 2004") provides for the notification of, and disclosure of information relating to, arrangements that enable, or might enable, people to obtain a tax advantage to HMRC. This is known as the Disclosure of Tax Avoidance Schemes regime ("DOTAS").

6.2 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 the arrangements to HMRC, with related duties falling on their clients. HMRC allocates reference numbers to such disclosed arrangements.

6.3 Section 98C of the Taxes Management Act 1970 ("TMA") imposes penalties on persons who fail to comply with obligations under Part 7 of FA 2004.

6.4 Schedule 31 to the Finance Act 2021 amends Part 7 of FA 2004 to 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. Schedule 31 also amends section 98C of TMA in consequence of these changes.

6.5 Section 132A of the Social Security Administration Act 1992 ("SSAA 1992") provides for the Treasury to make regulations to apply rules corresponding to those in Part 7 of FA 2004 in relation to arrangements involving National Insurance Contributions ("NICs"). Rules corresponding to DOTAS are applied to arrangements that seek to obtain an advantage in relation to NICs by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 ("the NICs Disclosure Regulations").

6.6 Section 11 of the National Insurance Contributions Act 2022 amends section 132A of SSAA 1992 to enable regulations to be made in relation to arrangements involving NICs to correspond with the amendments made to DOTAS by Finance Act 2021. This is the first use of section 132A of SSAA 1992 as amended by Section 11 of the National Insurance Contributions Act 2022.

7. Policy background

What is being done and why?

7.1 The government announced in Budget 2020 that measures would be introduced to tackle promoters of tax avoidance schemes to allow HMRC to take action more quickly.

7.2 This package of measures included changes to strengthen the DOTAS regime. DOTAS is designed to give HMRC early information about avoidance schemes, how they work and who is using them. However, increasingly promoters had failed to voluntarily meet their obligations to disclose tax avoidance schemes, requiring HMRC to take action to force disclosure. Enforcing these powers took time, and promoters continued to market their schemes.

7.3 Following consultation, the DOTAS measure, announced in Budget 2020, was enacted in Finance Act 2021. This entitles HMRC to issue notices informing persons it suspects of being promoters and other suppliers of a scheme that, unless they can satisfy HMRC that the scheme described in the notice is not notifiable, HMRC may allocate a reference number. This puts further obligations on the promoter, including a requirement to pass on this reference number to users of the avoidance scheme. Penalties may be charged where the promoter does not comply with these requirements.

7.4 The DOTAS measure is designed to give HMRC earlier and more comprehensive detail about avoidance schemes and ensure that people using the arrangements are informed that they are using avoidance schemes that have been notified to HMRC.

7.5 The changes in these regulations ensure that rules that correspond to the DOTAS changes enacted in Finance Act 2021 apply to arrangements that seek to obtain an advantage in relation to NICs. This provides a mechanism for ensuring there is transparency for people who are involved in NICs avoidance schemes, and to change the behaviours of those involved in promoting such schemes. It is designed to make sure that HMRC can act quickly and decisively where promoters fail to provide information on their NICs avoidance schemes under DOTAS.

7.6 This instrument replicates those changes for NICs avoidance schemes with effect from 1 June 2022.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans to consolidate the legislation which is amended by this instrument.

10. Consultation outcome

10.1 The government consulted on the package of measures announced in Budget 20 between 21 July 2020 and 15 September 2020. Respondents to the consultation were generally supportive of the package and in favour of taking strong action against the promoters of tax avoidance schemes. A summary of responses was published and can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/966585/Promoters_of_tax_avoidance_summary_of_responses.pdf

10.2 These regulations, which make changes that correspond to the changes made to DOTAS in Finance Act 21, were published in draft for consultation between 17 February and 16 March 2022 and can be found here:

https://www.gov.uk/government/consultations/draft-regulations-dotas-the-national-insurance-contributions-application-of-part-7-of-the-finance-act-2004-amendment-regulations-2022

10.3 The publication of this consultation on GOV.UK was brought to the attention of external stakeholders via email and the publication itself invited comments. No comments were received on the draft regulations.

11. Guidance

11.1 The latest guidance on the DOTAS regime is at the following GOV.UK address https://www.gov.uk/government/publications/disclosure-of-tax-avoidance-schemes-guidance.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note covering this instrument was published on 12 May 2021 on GOV.UK 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.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that the impact on them is an inevitable consequence of their doing business in this area.

Our decision is justified by the wider public interest in ensuring that a proper disclosure is made.

14. Monitoring & review

14.1 This legislation will be monitored through the oversight of avoidance cases, and through communication with taxpayers and practitioners affected by the measure.

14.2 This instrument does not include a statutory review clause because it relates to a tax, duty, levy or other charge and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Leroy Wilson at HMRC, Telephone: 03000 513499 or email: leroy.wilson@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Angela Walker, Deputy Director for Counter-Avoidance Policy HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon Lucy Frazer QC MP, Financial Secretary at the Treasury, can confirm that this Explanatory Memorandum meets the required standard.