

**2006 No.**

**SOCIAL SECURITY**

**The National Insurance Contributions (Application of Part 7 of  
the Finance Act 2004) Regulations 2006**

*Made* - - - -

*Laid before the House of Commons*

*Coming into force* - -

The Treasury, in exercise of the powers conferred upon them by section 132A(1) of the Social Security Administration Act 1992(a), make the following Regulations:

**PART 1**

**Introduction**

**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) Regulations 2006 and shall come into force on [..].

(2) If—

- (a) the relevant date in relation to a notifiable contribution proposal or arrangement(b) falls before [D], regulation 7 does not apply;
- (b) the date on which the promoter(c) first becomes aware of any transaction forming part of arrangements before that date, regulation 7 does not apply;
- (c) the date on which any transaction forming part of arrangements entered into falls before that date, regulations 8 and 9 do not apply.

**Interpretation**

**2.** In these Regulations—

"advantage" has the meaning given to it in section 132A(7) of the Social Security Administration Act 1992;

"arrangements" has the meaning given to it in that subsection;

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

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(a) 1992 c.5. Section 132A is inserted by s7(2) of the National Insurance Contributions Act 2006 (c. 10). It extends to the whole of the United Kingdom.  
(b) "Notifiable contribution proposal" and "notifiable contribution arrangements" are defined in regulation 5 of these Regulations.  
(c) "Promoter" is defined in regulation 6 of these Regulations.

“Part 7” means Part 7 of the Finance Act 2004 (a);

“promoter”, in relation to notifiable contribution arrangements or a notifiable contribution proposal, has the meaning given by regulation 6; and

“reference number”, in relation to any notifiable contribution arrangements, means the reference number allocated under regulation 10;

“the Information Regulations” means the Tax Avoidance (Information) Regulations 2004(b).

### Structure of the Regulations

3. Regulations 4 to 12 make provision corresponding to Part 7 of the Finance Act 2004 (other than section 314 (legal professional privilege (c)) in so far as that Part applies to contribution avoidance arrangements and proposals.

Regulation 13 to 14 make 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 other provisions of the Taxes Management Act 1970 so far as it relates to a penalty under that section.

Regulations 15 to 22 modify regulations made under Part 7 insofar as they apply to contribution avoidance arrangements and proposals.

## PART 2

### Provision corresponding to Part 7 of the Finance Act 2004

4. 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 proposals”).	Regulation 5
Section 307 (meaning of “promoter”)	Regulation 6
Section 308 (duties of promoter)	Regulation 7
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 313 (duty of parties to notifiable arrangements to notify Board of number etc)	Regulation 12

### Meaning of “notifiable contribution arrangements and “notifiable contribution proposal”

5. In this Part—

“notifiable contribution arrangements” means any arrangements which —

(a) enable, or might be expected to enable, any person to obtain an advantage in relation to a contribution, and

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(a) 2004 c.12.

(b) S.I. 2004/1864.

(c) Section 132A(6) makes provision which corresponds to that made by section 314 and prevents the making of regulations which would limit its application.

- (b) are such that the main benefit, or one of the main benefits, that might be expected to arise from the arrangements is the obtaining of that advantage;

“notifiable contribution proposal” means a proposal for arrangements which, if entered into, would be notifiable contribution arrangements (whether the proposal relates to a particular person or to any person who may seek to take advantage of it)(a).

### Meaning of promoter

- 6.—(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—
    - (i) he is to any extent responsible for the design of the proposed arrangements, or
    - (ii) he makes the notifiable contribution proposal available for implementation by other persons, and
  - (b) in relation to notifiable contribution arrangements, if he is by virtue of paragraph (a)(ii) a promoter in relation to a notifiable contribution proposal which is implemented by those arrangements or if, in the course of a relevant business, he is to any extent responsible for—
    - (i) the design of the arrangements, or
    - (ii) the organisation or management of the arrangements.
- (2) 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 840A of the Taxes Act 1988(b), or by a securities house, as defined by section 209A(4) of that Act.
- (3) 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 (2)(b) carried on by another company which is a member of the same group.
- (4) Section 170 of the Taxation of Chargeable Gains Act 1992(c) has effect for determining for the purposes of paragraph (3) 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.

### Duties of promoter

- 7.—(1) The promoter must, within the prescribed period after the relevant date, provide the Commissioners with the information required by the Information Regulations as modified by regulations 16 to 21 relating to any notifiable contribution proposal.
- (2) In paragraph (1) “the relevant date” means the earlier of the following—
- (a) the date on which the promoter makes a notifiable contribution proposal available for implementation by any other person, or
  - (b) the date on which the promoter first becomes aware of any transaction forming part of notifiable contribution arrangements implementing the notifiable contribution proposal.
- (3) The promoter must, within the period prescribed by the Information Regulations (as adapted by regulations 18 and 20 of these Regulations) after the date on which he first becomes aware of

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(a) The definitions of “notifiable contribution arrangements” and “notifiable contribution proposal” are set out in section 132A(3) of the Social Security Administration Act 1992.  
(b) 1988 c.1.  
(c) 1992 c.12.

any transaction forming part of any notifiable contribution arrangements, provide the Commissioners with prescribed information relating to those arrangements, unless those arrangements implement a proposal in respect of which notice has been given under paragraph (1).

(4) Where two or more persons are promoters in relation to the same notifiable contribution proposal or notifiable contribution arrangements, compliance by any of them with paragraph (1) or (3) discharges the duty under either of those paragraphs of the other or others.

(5) 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), he need not provide information under paragraph (1) or (3) if he has already provided information under either of those subsections in relation to any of the other proposals or arrangements.

### **Duty of person dealing with promoter outside United Kingdom**

**8.**—(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 the Commissioners with the information relating to the notifiable contribution arrangements prescribed by the Information Regulations, as adapted by these Regulations, within the period prescribed by those Regulations.

(2) Compliance with regulation 7(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**

**9.** Any person who enters into any transaction forming part of notifiable contribution arrangements as respects which neither he nor any other person in the United Kingdom is liable to comply with regulation 7 or regulation 8 must at the prescribed time provide the Commissioners with prescribed information relating to the notifiable contribution arrangements.

### **Arrangements to be given reference number**

**10.**—(1) Where a person complies with regulation 7(1) or (3), regulation 8(1) or 9 in relation to any notifiable contribution proposal or arrangements, the Commissioners may within 30 days—

- (a) allocate a reference number in relation to those proposals or arrangements, and
- (b) if they do so, notify the person of that number,

except that where the arrangements or proposals concern both national insurance contributions and tax, the Commissioners 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 the Commissioners 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**

**11.**—(1) Any promoter who is providing services to any person ("the client") in connection with notifiable contribution arrangements must, within 30 days after the relevant date, provide the client with prescribed information relating to any reference number that has been notified to the promoter by the Commissioners—

- (a) in relation to those arrangements, or
- (b) in relation to arrangements which are substantially the same as those arrangements (whether made between the same parties or different parties).

(2) In paragraph (1) "the relevant date" means—

- (a) the date on which the promoter first becomes aware of any transaction forming part of the notifiable contribution arrangements, or
- (b) if later, the date on which a reference number is first notified to the promoter under regulation 10.

**Duty of parties to notifiable contribution arrangements to notify the Commissioners of number, etc.**

**12.—**(1) Any person who is a party to any notifiable contribution arrangements must provide the Commissioners with the information prescribed by the Information Regulations relating to—

- (a) any reference number notified to him under regulation 10 by the Commissioners or under regulation 11 by the promoter, and
- (b) the time when he obtains or expects to obtain by virtue of the arrangements an advantage in relation to any relevant contribution.

(2) A person is not liable to a penalty under—

- (a) section 98A of the Taxes Management Act 1970(a)(special penalties in the case of certain returns); or
- (b) paragraph 7B(2)(h) of Schedule 1 to the Social Security Contributions and Benefits Act 1992,

by reason of any failure to include in any return or account any reference number or other information required by virtue of paragraph (3)(a) (but see section 98C of the Taxes Management Act 1970 for the penalty for failure to comply with this section).

## PART 3

### Provisions corresponding to section 98C of the Taxes Management Act 1970 and related provisions

**13.—**(1) A person who fails to comply with any of the provisions of regulations 4 to 12 mentioned in paragraph (2) below shall be liable—

- (a) to a penalty not exceeding £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).

(2) Those provisions are—

- (a) regulation 7(1) and (3) (duty of promoter in relation to notifiable contribution proposals and notifiable contribution arrangements),
- (b) regulation 8(1) (duty of person dealing with promoter outside United Kingdom),
- (c) regulation 9 (duty of parties to notifiable contribution arrangements not involving promoter), or
- (d) regulation 11(1) (duty of promoter to notify client of reference number).

(3) A person who fails to comply with regulation 12(1) shall be liable to a penalty of the relevant sum.

(4) In paragraph (3) “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,

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(a) 1970 c.9. This section applies by virtue of paragraph 7(1) of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (c.4).

- (b) in relation to a person who has previously failed to comply with regulation 12 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 12 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).

(5) In paragraph (4) above “scheme” means any notifiable contribution arrangements.

**14.**—(1) Part 10 of the Taxes Management Act 1970 so far as it relates to a penalty under section 98C of that Act shall apply in relation to a penalty under regulation 13 with the following modifications.

(2) In section 100(a) (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 13(1)(a) of the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2006.”.

(3) In section 100C(b) (penalty proceedings before Commissioners) for subsection (1A) substitute—

“(1A) In its application to a penalty under regulation 13(1)(a) of the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2006, subsection (1) above has effect with the omission of the words “General or”.”.

## PART 4

### Modification of Regulations under Part 7

#### **Modification of the Tax Avoidance Schemes (Prescribed Description of Arrangements) Regulations 2006**

**15.**—(1) The Tax Avoidance Schemes (Prescribed Description of Arrangements) Regulations 2006(c), apply to contribution avoidance arrangements and proposals with the following modifications.

(2) In regulation 5(1) (prescribed description of arrangements) for “income tax, corporation tax and capital gains tax ” substitute “national insurance contributions”.

(3) In Part 3 of for “tax advantage” wherever it occurs substitute “advantage”.

(4) In regulation 10 (Description 5: standardised tax product), in the heading and paragraphs (1) and (3) for “tax product” substitute “national insurance contributions product”.

(5) In regulation 11(1)(b) (arrangements excepted from Description 5) for “1st August 2006” substitute “[date]”.

(6) Omit regulations 12 to 18.

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(a) 1970 c.9.

(b) Section 100C was inserted by section 167 of the Finance Act 1989 (c.26), subsection (1A) was inserted by sections 315(3) and 319 of the Finance Act 2004(c. 12).

(c) S.I. 2006/1543.

## **The Tax Avoidance Schemes (Information) Regulations 2004**

**16.**—(1) The Tax Avoidance Schemes (Information) Regulations 2006(a) (“the Information Regulations”) apply to contribution avoidance arrangements and proposals with the following modifications.

(2) Omit regulation 1(2).

(3) In regulation 2(b)(interpretation)—

(a) insert—

“contributions” means national insurance contributions;”;

(b) for the definition of “notifiable arrangements” and “notifiable proposal” substitute—

““notifiable contribution arrangements” has the meaning given by section 132A(3) of the Social Security Administration Act 1992;

“notifiable contribution proposal” has the meaning given by section 132A(3) of the Social Security Administration Act 1992;”;

(c) Omit the definition of “the prescribed taxes”.

**17.** In regulation 3 wherever the words appear—

(1) for “prescribed taxes” substitute “contributions”;

(2) for “tax advantage” substitute “advantage”;

(3) for “notifiable arrangements” substitute “notifiable contribution arrangements”.

**18.** In regulation 4—

(1) Omit paragraph (5ZA).

(2) Omit paragraph (8).

**19.** Omit regulations 5 and 6.

**20.**—(1) In regulation 8—

(a) for “notifiable arrangements” and “notifiable proposals” wherever the words appear, substitute “notifiable contribution arrangements” and “notifiable contribution proposals” respectively;

(b) for “prescribed taxes” wherever the words appear, substitute “contributions”;

(c) for “tax advantage” wherever the words appear, substitute “advantage”;

(d) except in the instance referred to in paragraph (e) for “corporation tax”, wherever the words appear, substitute “national insurance contributions”;

(e) in paragraph (6) for “income tax, corporation tax or capital gains tax” substitute “national insurance contributions”.

(2) For paragraph (1)(a)(ii) substitute—

“(ii) the earnings period in which the person making the notification expects an advantage to be obtained; and”.

(3) for paragraph (9) substitute—

“(9) For the purposes of paragraph (7) “the appropriate date” is the date by which he would first have had to provide the Board with the PAYE return relating to the earnings period in which the advantage is first expected to arise.”.

(4) Regulation 8(6) shall not apply to persons who have notified the Board and provided prescribed information in accordance with regulation 4(5) of the Information Regulations 2004 in relation to notifiable arrangements or proposals as they relate to income tax.

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(a) S.I. 2004/1864. These Regulations were amended by S.I. 2004/2613, 2005/1869, 2006/1544.

(b) Regulation 2 was itself amended by regulations 2 and 3 of S.I. 2005/1869.

21. In regulation 10—

(a) in paragraph (2)—

(i) for sub-paragraph (a) substitute—

“(a) it is authorised by virtue of Part 7A of the Social Security (Contributions) Regulations 2001(a); and ”;

(ii) in paragraph (b) for “section” substitute “Part”.

(b) In paragraph (3)(a) for “regulations under section 132 of the Finance Act 1999” substitute “Part 7A of the Social Security (Contributions Regulations) 1991”.

### **The Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004**

22.—(1) The Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004(b) apply to contribution avoidance arrangements and proposals as they apply to income tax with the following modification.

(2) For regulation 1(2) of those Regulations substitute—

“(2) In these Regulations—

“notifiable contribution arrangements” and “notifiable contribution proposal” have the meanings given by section 132A(3) of the Social Security Administration Act 1992.”.

(3) In regulation 6 (legal professional privilege) for “section 314” substitute “section 132A(6) of the Social Security Administration Act 1992”.

*A. Commissioner*

*A. N. Other*

2006

Two of the Lords Commissioners of Her Majesty’s Treasury

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These 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. They are made in consequence of the enactment of section 7 of the National Insurance Contributions Act 2006 (c. ).

Part 1 deals with introductory matters.

Part 2 contains provisions corresponding to Part 7 of the Finance Act 2004, other than section 314, which cannot be replicated because of section 132A(6) of the Social Security Administration Act 1992 (c. 5), inserted by section 7 of the 2006 Act.

Part 3 makes provisions 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 so far as it relates to a penalty under that section.

Part 3 deals with the modification of the Tax Avoidance Schemes (Prescribed Description of Arrangements) Regulations 2004 (S.I. 2004/1863), the Tax Avoidance Schemes (Information) Regulations 2004 (S.I. 2004/1864)(“the Information Regulations”) and the Tax Avoidance Schemes (Promoters and Prescribed Circumstances) Regulations 2004 (S.I. 1865) insofar as they relate to national insurance contribution avoidance schemes and proposals.

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(a) S.I. 2001/1004. Part 7A was inserted by regulations 2 and 23 of the Social Security (Contributions, Categorisation of Earners and Intermediaries)(Amendment) Regulations 2004 (S.I. 2004/770).

(b) S.I. 2004/1865.