EXPLANATORY MEMORANDUM TO

THE NATIONAL INSURANCE CONTRIBUTIONS (APPLICATION OF PART 7 OF THE FINANCE ACT 2004) (AMENDMENT) REGULATIONS 2017

2017 No. 1174

1. Introduction

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

2. Purpose of the instrument

2.1 These Regulations amend 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 (c. 12) and to section 98C of the Taxes Management Act 1970 (c. 9) by the Finance Act 2015 (c. 11).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of special interest to the House of Commons

3.2 As this instrument is subject to negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 Part 7 of the Finance Act 2004 (FA 2004") (sections 306 – 319) provides for the notification ("disclosure") of certain arrangements and proposals for arrangements ("schemes") to HMRC. This is known as the Disclosure of Tax Avoidance Schemes ("DOTAS") regime.

4.2 Sections 308, 309 and 310 of FA 2004 require certain persons to provide information about schemes falling within certain descriptions. This requirement usually falls on a person within the meaning of a promoter in section 307 of FA 2004. The promoter must explain how the scheme works within 5 days of the earliest to occur of the scheme being marketed, of the scheme being made available for implementation, or of the promoter becoming aware that the scheme is being implemented.

4.3 Section 311 of FA 2004 provides that HMRC may issue a scheme reference number (SRN) to the person who made the disclosure. Section 312 of FA 2004 requires a promoter to issue a SRN to a client whom the promoter becomes aware has entered into a transaction forming part of the scheme. Section 312A of FA 2004 imposes a similar obligation on the client to pass the SRN to other persons who are party to the scheme. Any person who receives a SRN must report it to HMRC unless exempted by Regulations.

4.4 Different rules apply where the client is an employer whose employees are party to the scheme. The employer must pass the SRN to each relevant employee but only the

employer is required to report the SRN to HMRC, both in respect of the employer's own involvement with the scheme and that of each relevant employee.

4.5 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.

4.6 Section 117 of the Finance Act 2015 ("FA 2015") made amendments to Part 7 of FA 2004 and section 98C of TMA. These amendments are set out in Schedule 17 to FA 2015.

4.7 Section 132A of the Social Security Administration Act 1992 (c. 5) provides for the Treasury to make Regulations to apply the rules in Part 7 of FA 2004 to arrangements involving National Insurance contributions ("NICs").

4.8 DOTAS is 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.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

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

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

7.1 DOTAS is designed to give HMRC early information about tax avoidance schemes, giving it the opportunity to consider changes to the law to close loopholes or challenge schemes that it believes do not work. DOTAS requires a person, usually the person who designs or sells the tax avoidance scheme, to provide details to HMRC of the scheme and how it is intended to work.

7.2 DOTAS is applied to schemes 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. These replicate the provisions in Part 7 of FA 2004 and ensure that the various Regulations that form part of the overall DOTAS regime also operate as intended where the arrangements involve NICs.

7.3 FA 2015 and subsequent Regulations (including S.I. 2015/948) extended and strengthened DOTAS.

7.4 These regulations replicate those changes for NICs with immediate effect, other than in relation to the rules that require an employer to report an SRN to HMRC where the scheme relates to one or more of their employees. This requirement comes into effect from 6 April 2018, meaning the first report will be for 2018/19 and must be made by 19 April 2019. The reason for this is to avoid employers having to submit employee details relating to only part of a NICs year.

Consolidation

7.5 This is the third time that the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012 have been amended to reflect changes made to the DOTAS regime. There are currently no plans to consolidate these Regulations.

8. Consultation outcome

8.1 The Government published a consultation document on 31 July 2014 entitled 'Strengthening the Tax Avoidance Disclosure Regimes'. That consultation led to the changes made to the DOTAS legislation by the Finance Act 2015 and associated amendments to the DOTAS Regulations. This instrument replicates those changes for the purpose of applying DOTAS to arrangements that seek an advantage in relation to NICs.

8.2 The draft regulations were shared with key representative bodies to ensure the regulations accurately replicate what is in the main DOTAS primary legislation. HMRC received very few comments and none of them required this instrument to be changed.

9. Guidance

9.1 Relevant guidance will be updated.

10. Impact

10.1 The impact on business, charities or voluntary bodies is limited to those that engage in tax avoidance schemes.

10.2 There is no impact on the public sector.

10.3 A Tax Information and Impact Note covering this instrument was published on 10 December 2014 and can be found at www.gov.uk/government/publications/disclosure-of-tax-avoidance-schemes. It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The legislation applies to small business in so far as businesses of any size can develop, market or use tax avoidance schemes. The Government expects this measure to have little, if any impact on small businesses.

11.2 Businesses of any size can develop, market, and use tax avoidance schemes. The Government expects this measure will have little, if any, impact on small businesses.

12. Monitoring & review

12.1 HMRC routinely monitors the information it receives under DOTAS and uses that information to evaluate this measure and any future policy developments.

13. Contact

13.1 Gary Coombs in the Counter-Avoidance Directorate of HM Revenue and Customs Tel; 03000 589577 or email: gary.coombs@hmrc.gsi.gov.uk,can answer any queries regarding the instrument.