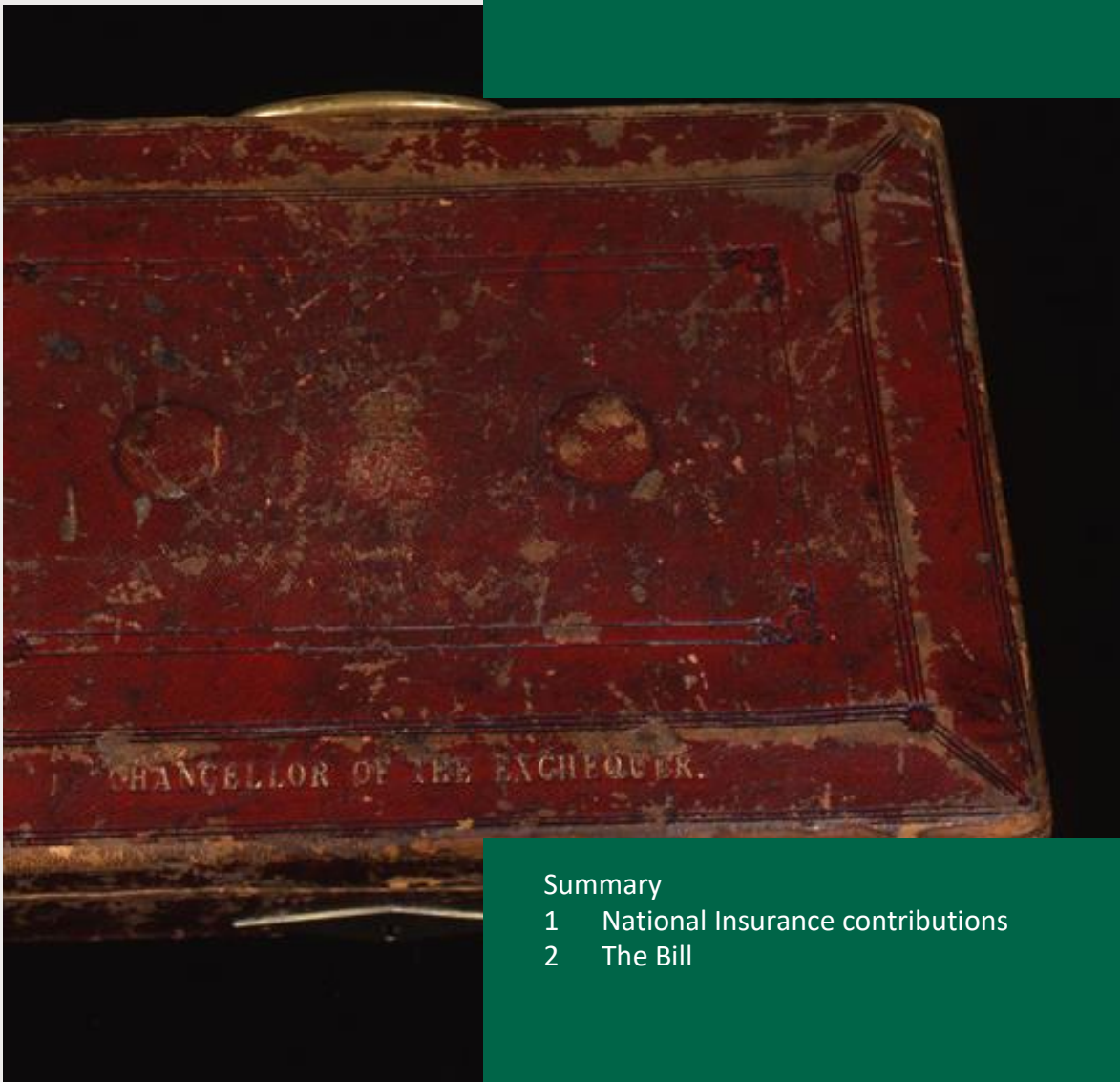


By Antony Seely
21 March 2022

National Insurance Contributions Bill 2021-22



Summary

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Summary

The [National Insurance Contributions Bill 2021-22](#) was introduced on 12 May 2021. The Bill, with its explanatory notes, is published on [the Bill's page on Parliament.uk](#), which also provides details of its parliamentary progress to date. Further information on the Bill is [collated on Gov.uk](#).

The Bill received a second reading [on 14 June](#). It was considered in Committee [in a single session on 22 June](#), when it was [agreed, unamended](#). The Bill completed its remaining stages in the Commons [on 6 September](#), when the House agreed a Government amendment to correct a small drafting error. The Bill received its second reading in the House of Lords on 1 December, and completed its scrutiny on 22 February 2022. A series of amendments were agreed at [the Bill's Report stage on 7 February](#). These were approved by the Commons on 1 March, with the exception of two amendments that had been tabled by the Opposition and agreed on division. In turn this legislation received Royal Assent on 15 March 2022.

This briefing provides a short overview of the National Insurance system, before discussing the content of the Bill.

The Bill

The Bill would introduce four measures:

- a new zero-rate of secondary Class 1 National Insurance contributions (NICs) for employers taking on employees in a Freeport.

Employers would be able to claim relief on the earnings of eligible employees up to £25,000 per year, for three years. The zero rate would apply from April 2022.

- a new zero-rate of secondary Class 1 NICs for employers who hire an armed forces veteran during their first year of civilian employment after leaving the armed forces.

Employers would be able to claim relief on the earnings of an eligible employee up to the NICs Upper Secondary Threshold. Employers would be able to claim the relief from April 2022 and transitional arrangements will allow retrospective claims for the 2021/22 tax year.

- an exemption for Covid-19 Test and Trace Support Payments for Class 4 and Class 2 NICs, which are paid by the self-employed.

An exemption already applies for Class 1 and Class 1A NICs – paid by employees and employers – and this measure would be formally retrospective for the 2020/21 tax year.

- a provision to allow changes to the Disclosure of Tax Avoidance Schemes (DOTAS) regime as it applies to NICs avoidance schemes.

These changes would mirror amendments to the DOTAS regime as it applies to other tax avoidance schemes, made by provisions included in the Finance Bill 2021.

These measures would [extend and apply to the whole of the UK](#).

Clauses 1 to 11 of the Bill cover these four measures. The remaining clauses (12-14) set out how regulations under this legislation are to be introduced, the definition of various terms used, and the title of this legislation.

Statutory provisions regarding NICs [are not included](#) in the annual Finance Bill. Over the last few years changes to NICs have been made by the introduction of relatively short bills similar to this one (for example, the [National Insurance Contributions Act 2014](#), and the [National Insurance Contributions Act 2015](#)

The cost of the NICs measures in the Bill

The new NICs relief for employers engaging employees in Freeports is [anticipated to decrease NICs receipts](#) but to date the Government has not published a detailed estimate of the impact it will have on tax revenues – its ‘Exchequer impact’. The new NICs relief for armed forces veterans is [estimated](#) to cost £15m in 2021/22, rising to £20m in 2022/23. The two other measures in the Bill – relating to [Test and Trace Support Payments](#) and the [DOTAS regime](#) – are not expected to have an Exchequer impact.

Further reading

Several other Library briefings are relevant to the four measures in the Bill:

- [UK Government policy on freeports, Commons Library briefing CBP8823](#), 14 February 2022
- [Support for UK Veterans, Commons Library briefing CBP7693](#), 9 November 2021.
- [Coronavirus: Test and Trace Support Payments, Commons Library briefing CBP9015](#), 19 January 2022

- [Tax avoidance: a General Anti-Avoidance Rule - background history \(1990-2010\), Commons Library briefing CBP2956](#), 16 January 2020 (section 2.1 discusses the introduction of the DOTAS regime).
- [Tax avoidance and tax evasion, Commons Library briefing CBP7948](#), 24 November 2021 (sections 5.6-5.7 cover the development of the Government's strategy to address tax avoidance scheme promoters, and the provisions in Finance Bill 2021 to amend the DOTAS regime).

1

National Insurance contributions

National Insurance contributions – NICs, for short – are paid by employees, employers and the self-employed, and are used to fund contributory benefits: the state pension, contributions-based jobseeker’s allowance, contributory employment and support allowance, maternity allowance, and bereavement benefits. In turn entitlement to contributory benefits is based on someone’s National Insurance payment record.¹ The majority of receipts from NICs are paid into the National Insurance Fund, which is separate from all other revenue raised by taxation. The Fund operates on a 'pay as you go' basis; broadly speaking, this year’s contributions pay for this year’s benefits. Retirement pensions account for over 90% of benefit expenditure from the Fund.² The Government has no powers to use NICs to fund anything else.³

The current structure of NICs

Class 1 NICs rates for employees and employers for 2021/22

Earnings ^a £ per week	Employee NIC rate (per cent)	Earnings £ per week	Employer NIC rate (per cent)
Below £120 (LEL)	0%	Below £120 (LEL)	0%
£120 to £184 (PT)	0%	£120 to £170 (ST)	0%
£184 to £967 (UEL)	12%	Above £170	13.8%
Above £967	2%		

^a The limits are defined as LEL - lower earnings limit; PT - primary threshold; ST - secondary threshold; and UEL - upper earnings limit.⁴

Employees are liable to primary Class 1 NICs on their earnings if they exceed the lower earnings limit (LEL). The LEL is set at £120 per week for 2021/22.

A zero rate of NICs is charged on earnings between the LEL and the primary threshold (PT), which is set at £184 per week. In effect those earning between these two thresholds do not pay any tax, but they are treated as if they have made a contributory payment, which maintains their entitlement

¹ For details see, HMRC, [What National Insurance is for](#), retrieved February 2022

² GAD, [Report by the Government Actuary on: The draft Social Security Benefits Up-rating Order 2021](#), January 2021 ([Table 2.2](#))

³ Part XII of the Social Security Administration Act 1992 contains the statutory authority for the Fund; section 163 specifies that payments out of the Fund may only be made to finance a list of specified benefits.

⁴ HM Treasury, [Budget 2021: overview of tax legislation and rates](#), March 2021 ([Annex A: Rates and Allowances](#)). These thresholds are set by Order ([SI 2021/157](#)).

to contributory benefits. Earnings above the PT are charged NICs at a rate of 12%, subject to a cap at the upper earnings limit (UEL), which is set at £967 per week. Earnings **above** the UEL are charged NICs at a rate of 2%.

Employers pay secondary Class 1 NICs on employee earnings at a rate of 13.8% on earnings above the secondary threshold (ST). The ST is set at £170 a week for 2021/22. Employers are also liable to pay Class 1A NICs on benefits provided for employees, and Class 1B NICs on PAYE Settlement Agreements (PSAs) at a rate of 13.8%.⁵

Employers may be entitled to one of three tax reliefs on their payment of employer NICs.

- The Employment Allowance, which was announced in the 2013 Budget, to apply from April 2014.⁶ This provides a flat rate deduction for businesses and charities against their annual employer NICs bill. Initially the Allowance was set at £2,000, but was increased to £3,000 from April 2016, and to £4,000 from April 2020.⁷ From April 2020 the Allowance may only be claimed by employers with an employer NICs below £100,000 in their previous tax year, a change announced in the 2018 Budget.⁸ Further details on the operation of the Allowance are published by HMRC.⁹
- An Upper Secondary Threshold (UST) for under 21s, which was announced in the 2013 Autumn Statement.¹⁰ From April 2015 a zero rate of secondary Class 1 NICs has been charged on earnings up to the UST set in line with the UEL (which, as noted above, is £967 per week for 2021/22). In effect employers only pay secondary Class 1 NICs for employees under 21 on earnings above this threshold.¹¹
- An Apprentice Upper Secondary Threshold (AUST), which was announced in the 2014 Autumn Statement.¹² From April 2016 a zero rate of secondary Class 1 NICs has been charged on earnings up to the AUST, which is also aligned with the UEL. In a similar fashion to the UST

⁵ A PSA is an agreement an employer may make with HMRC to pay tax on a lump sum on certain expenses and benefits in kind provided to employees (for details see, [HMRC, Employer further guide to PAYE and National Insurance contributions 2020/21](#), 12 May 2021).

⁶ [Budget 2013, HC 1033, March 2013 para 2.41](#). Statutory provision for the new allowance was made by [ss1-8 of the National Insurance Contributions Act 2014](#).

⁷ These increases in the Allowance were made by Order: [SI 2016/63](#), and, [SI 2020/273](#)

⁸ [Budget 2018, HC 1629, October 2018 para 3.11](#). This change was made by Order : [SI 2020/218](#). See also, HMRC, [Employment Allowance: excluded persons regulations 2020](#), 24 January 2020

⁹ HMRC, [Employment Allowance](#), ret'd February 2022

¹⁰ Autumn Statement, Cm 8747, December 2013 [para 1.195](#). Statutory provision for the UST by [s9 of the National Insurance Contributions Act 2014](#).

¹¹ HMRC, [Employer National Insurance contributions for under 21s](#), December 2014

¹² Autumn Statement, Cm 8961, December 2014 [para 2.53](#). Statutory provision for the AUST was made by [s1 of the National Insurance Contributions Act 2015](#).

for under 21s, employers only pay secondary Class 1 NICs for apprentices aged under 25 on earnings above this threshold.¹³

HMRC publishes estimates of the cost of these NI reliefs as part of its wider statistical survey of tax reliefs.

In 2019/20 it is estimated that the Employment Allowance cost £2.2 billion, the UST for under 21s cost £630 million, while the AUST cost £190 million.¹⁴

In 2018 HMRC published a [research report](#) on the impact of the UST for under 21s and the AUST on the hiring of young people and apprentices. The research gathered feedback from businesses that have claimed NICs reliefs, and a few of those that are eligible but not claiming. A short extract from its executive summary is reproduced below:

Significance of NICs reliefs

In terms of their significance to businesses, the two reliefs were viewed similarly. For both reliefs, approximately a third of claimants said they viewed the savings as very or fairly significant. The proportion of the workforce made up of eligible employees had a far greater impact on the perceived significance of the relief than the total value. Smaller businesses were more likely than larger businesses to view the savings from NICs reliefs as significant, and it was also found that they were more likely to claim the reliefs for a greater proportion of their workforce.

Larger businesses, whose employees eligible for the relief were found to make up a smaller proportion of their total workforce, were less likely to view the relief as significant. Turnover was also a factor: smaller businesses¹⁵ perceived the relief they received to be of greater significance than larger businesses despite the disparity in the value of relief received. To an extent this can be explained by the difference in the value of the reliefs in relation to turnover.

While the value of the relief for larger businesses was greater, the turnover for larger businesses also tended to be much higher than that of small businesses meaning savings made up a smaller proportion of total turnover.

Reported impact of NICs reliefs

In isolation neither relief has had a significant impact on workforce planning or decisions about hiring. Few employers identified financial incentives as important considerations when making hiring decisions or planning for the future. Instead, when asked about their motivations in general for hiring young people and taking on apprentices, a quarter of employers pointed to a desire to help young people to enter the job market. During the qualitative interviews, employers also pointed to more practical reasons for hiring young people, including characteristics or needs of their business. The majority

¹³ HMRC, [Employer National Insurance contributions for apprentices under 25](#), February 2021

¹⁴ HMRC, [Estimated cost of tax reliefs](#), October 2020 p32, p30, p47

¹⁵ In this report business size is defined by number of employees: 'micro' businesses are those with 1-9 employees, 'small' those with 10- 49 employees, 'medium' those with 50-249 employees, and large businesses are those with over 250 employees. 'Smaller' here refers to micro and small businesses, so those with less than 50 employees.

(80%) of employers said they absorb the savings they make through NICs relief into the general revenues of their business.¹⁶

Self-employed people pay a weekly flat rate Class 2 NIC (set at £3.05). They may apply for exemption from paying Class 2 contributions if their annual profits are less than the level of the 'small profits threshold' (SPT), set at £6,515. In addition they may be liable to pay a separate Class 4 profits related contribution. Class 4 NICs are charged at a rate of 9% on profits between a lower annual profits limit (£9,568) and an annual upper profits limit (£50,270). All these thresholds are for 2021/22. Profits above the upper limit are charged NICs at a rate of 2%.

Further to these categories, individuals may be entitled to make voluntary Class 3 contributions to ensure that they qualify for the state pension and bereavement benefits. Class 3 NICs are charged at a weekly flat rate, set at £15.40 for 2021/22.

NICs are charged on earnings from employment and self-employment only. By comparison income tax is charged on a person's total income which includes savings and investment income, state and occupational pensions as well as earnings-replacement benefits. UK residents in the UK and others with income in the UK are liable to pay income tax, whereas only people over 16 and under state pension age working in the UK are liable to pay NICs. An employer's liability to pay secondary Class 1 NICs in respect of earnings paid to or for the benefit of an employed earner is **unaffected** by the employed earner's attainment of pensionable age. In effect, employers continue to pay NICs on earnings of employees who have reached this age.

Employees' contributions entitle them to the range of contributory benefits, including contributions-based jobseeker's allowance, incapacity benefit, retirement pensions and bereavement benefits. The flat rate Class 2 NICs paid by the self-employed entitle them to all benefits apart from jobseeker's allowance, though Class 4 contributions do not count towards benefit entitlement.

Finally, it is worth adding that on 7 September 2021 the Prime Minister gave a [statement](#) to the House announcing a major reform to NICs, through the introduction of a new tax – the Health and Social Care Levy.¹⁷ The purpose of the Levy is to substantially increase funding for health and social care over the next three years.¹⁸ It is to be based on National Insurance contributions, and introduced in two stages:

¹⁶ HMRC, [Employer National Insurance contributions \(NICs\) reliefs for apprentices under 25 and employees under 21: HMRC Research Report 514](#), December 2018 p2

¹⁷ HC Deb 7 September 2021 cc153-5. See also, Prime Minister's Office press notice, [Record £36 billion investment to reform NHS and Social Care](#),

¹⁸ The Levy is forecast to raise between £12.4bn and £13bn a year for health and social care over the next five years: [Autumn Budget & Spending Review](#), HC 822, October 2021 (Table 5.1 – item 10).

- In 2022/23 the rate of primary Class 1 NICs for employees charged on their earnings, the rate of secondary Class 1 NICs for employers charged on their employees' earnings, and the rate of Class 4 NICs for the self-employed charged on their trading profits, will be increased by 1.25 percentage points.
- In 2023/24 a separate Levy set at 1.25% will be introduced, replacing this temporary increase in NICs rates. Liability to the Levy will be extended to individuals in employment who are over State Pension age. At present pensioners are not liable to pay NICs on any earnings they receive from employment.¹⁹

Further details on the Levy are set out in [Health and Social Care Levy Bill 2021-22](#), Commons Library briefing CBP9310, 16 November 2021.

Further background on the development of the National Insurance system is given in, [National Insurance contributions: an introduction, Commons Briefing paper CBP4517](#), 16 December 2019.

¹⁹ HM Government, [Build Back Better: Our Plan for Health and Social Care](#), CP 506, September 2021 para 80, para 91-92

NICs receipts: size, composition & the NI Fund

National Insurance contributions (NICs) are forecast to raise £157.0 billion in 2021/22. This compares with forecast Exchequer receipts of £213.2 billion from income tax, and £131.9 billion from VAT.²⁰

A majority of the receipts from NICs are paid into the National Insurance Fund, which is separate from all other revenue raised by taxation. The Fund is used exclusively to pay for contributory benefits.

A single portion of the income from NICs is not paid into the Fund, but goes to the National Health Service. For example, in the case of Class 1 NICs, the NHS allocation is 2.05% of earnings between the primary threshold and UEL, and 1% of earnings above the UEL. In January 2021 the Government Actuary's Department estimated that NICs would raise £138 billion in 2020/21, of which £112 billion would go into the NI Fund and £26 billion would go to the NHS.²¹

Great Britain, £ million		2020-2021	2021-2022
National Insurance Fund			
Class 1 ¹	Primary	43,377	45,148
	Secondary	64,049	65,551
	Total	107,426	110,699
Classes 1A and 1B		1,688	1,563
Class 2		350	416
Class 3		111	111
Class 4		2,146	2,145
Total National Insurance Fund contributions^{2,3}		111,721	114,934
National Health Service			
Class 1	Primary	10,123	10,560
	Secondary	15,057	15,333
	Total	25,181	25,894
Classes 1A and 1B		269	250
Class 2		64	76
Class 3		20	20
Class 4		818	831
Total National Health Service contributions³		26,352	27,071
All contributions			
Class 1 ¹	Primary	53,500	55,708
	Secondary	79,106	80,884
	Total	132,607	136,592
Classes 1A and 1B		1,957	1,813
Class 2		414	493
Class 3		132	132
Class 4		2,964	2,976
Total contributions³		138,073	142,006

Notes: ¹ All figures are gross of recoveries by employers of Statutory Maternity Pay, Statutory Paternity Pay including Additional Statutory Paternity Pay, Statutory Adoption Pay, and Statutory Shared Parental Pay. ² These figures appear in Table 2.1 in the main report. ³ Figures may not sum to totals shown due to rounding.

²⁰ OBR, [Economic & Fiscal Outlook, CP 545](#), October 2021 p99 (Table 3.4)

²¹ GAD, [Report by the Government Actuary on: The draft Social Security Benefits Up-rating Order 2021](#), January 2021 (Table F.1)

2

The Bill

The [National Insurance Contributions Bill 2021-22](#) was introduced on 12 May 2021. The Bill, with its explanatory notes, is published on [the Bill's page on Parliament.uk](#), which also provides details of its parliamentary progress to date. Further information on the Bill is [collated on Gov.uk](#).

The Bill received a second reading [on 14 June](#). It was considered in Committee [in a single session on 22 June](#), when it was [agreed, unamended](#). The Bill completed its remaining stages in the Commons [on 6 September](#), when the House agreed a Government amendment to correct a small drafting error.

The Bill received its second reading in the House of Lords on 1 December, and completed its scrutiny on 22 February 2022. [Twelve amendments](#) were agreed at [the Bill's Report stage on 7 February](#). HM Revenue & Customs has published explanatory notes to these amendments;²² ten of these were Government amendments, three of which followed concerns raised by the Delegated Powers and Regulatory Reform Committee.²³ The remainder were technical amendments, to clarify the upper secondary threshold for the provisions in the Bill, given the proximity of the start of 2022/23 tax year.²⁴ Two amendments were tabled by the Opposition, and agreed on division:

- To require the governance body of a Freeport to maintain a public record of beneficial ownership of businesses operating in the freeport tax site (tabled by Baroness Kramer, Liberal Democrats); and,
- To enable the Treasury to extend the one-year eligibility period for the zero-rate relief for veterans, introduced by the Bill (tabled by Lord Tunncliffe, Labour).²⁵

The Bill was considered by the Commons on 1 March. On this occasion all of the Government's amendments to the Bill were agreed, while the two amendments that had been tabled by the Opposition in the Lords were

²² HMRC, [Bill 259 EN 2021-22 \(Lords Amendments to the Bill\)](#), 23 February 2022

²³ Delegated Powers and Regulatory Reform Committee, [National Insurance Contributions Bill, HL Paper 102](#), 25 November 2021

²⁴ For more details see the comments made by the Minister, Viscount Younger, and the responses from Opposition spokespersons, at the Report stage of the Bill ([HL Deb 7 February 2022 cc1035-8](#)).

²⁵ [HL Deb 7 February 2022 cc1309-1316](#); [HL Deb 7 February 2022 cc1316-1322](#)

negotiated on division.²⁶ In turn the [National Insurance Contributions Act 2022](#) received Royal Assent on 15 March 2022.²⁷

2.1

Freeports

Background

In its manifesto for the 2019 General Election the Conservative Party stated that it would “create up to ten freeports around the UK, benefiting some of our most deprived communities ... we believe that there are many places across the United Kingdom that have the opportunity to be successful innovative hubs for global trade.”²⁸ There is no single definition of a freeport and they operate in different ways in different countries, though common features include various concessions on customs, other tax and planning advantages and reduced bureaucracy.²⁹

The Government launched a [consultation on freeports](#) in February 2020, and as part of this asked for stakeholder views on the use of tax incentives to boost investment, encourage employment and stimulate clusters of innovation while minimising “any routes whereby tax avoidance or evasion could take place.”³⁰ The consultation asked for views on utilising reliefs that are currently provided in English Enterprise Zones (discounts for business rates, and enhanced capital allowances), as well as the case for new reliefs for research and development, stamp duty land tax, VAT and excise duties, as well as employer NICs.

The consultation closed in mid-July, and in October the Government published its summary, and how it would take this initiative forward. Responses from local authorities, businesses and business groups, as well as port operators, were all generally positive as to the proposal to provide tax incentives. Notably respondents were split on whether such incentives were the deciding factor in investment:

Many respondents, including from some port groups, argued that, although tax incentives can be a significant driver behind businesses investing within an area, they were not usually the sole determinant. Many respondents from local authorities emphasised their experiences of businesses placing heavy emphasis on the tax regime available when deciding to invest in local areas. A few respondents specifically cited successful international examples of Free Trade Zones (FTZs) and Special Economic Zones (SEZs) to highlight how tax

²⁶ [HC Deb 1 March 2022 cc993-1008; Votes & Proceedings No.126, 1 March 2022](#)

²⁷ [Votes & Proceedings No.133, 14 March 2022 p5](#). Prior to this the Lords had not insisted on either of these amendments, bringing the proceedings on the Bill to a close ([HL Deb 14 March 2022 cc31-4](#)).

²⁸ [The Conservative and Unionist Party Manifesto 2019](#), December 2019 p57, p44

²⁹ UK in a Changing Europe, [Freeports](#), 2 March 2021

³⁰ HMG, [Boosting Trade, Jobs and Investment Across the UK: Freeports Consultation](#), CP 222, February 2020 p17

incentives are paired with a wider industrial strategy. Some respondents also indicated the success of tax incentives was partially dependent on local factors, especially the quality of transport infrastructure and the skills and availability of local labour.³¹

By contrast respondents agreed that it would be important to ensure these incentives were not exploited for tax avoidance purposes:

Many respondents emphasised the UK's positive international reputation in matters of tackling tax avoidance and evasion. They recommended that the UK continue its adherence to the OECD's international tax standards and encouraged further cooperation within international frameworks.

Many responses from port operators highlighted their view that avoidance and evasion could be effectively combatted by enhanced coordination between government organisations (particularly HMRC) and private entities.

In citing international examples of free zones, a few respondents pointed out they have obtained a negative reputation by enabling tax evasion through the storage of high-value goods. These respondents suggested that disabling this capacity would reduce the risks of tax evasion within UK Freeports.

A few respondents made suggestions as to how the government might combat avoidance and abuse of tax incentives. Suggestions included the use of sunset clauses on the proposed tax measures, as well as introducing clawback mechanisms on reliefs being used improperly.³²

To combat abusive tax practices the Government proposed the creation of a 'tax site' within any UK Freeport, to "support and facilitate a robust system of monitoring to ensure the available reliefs are claimed legitimately":

Freeports will also include a single contiguous defined site within which Freeport tax reliefs ... will apply, building on the approach taken for existing Enterprise Zones in England and Wales. The tax site will likely be located on primarily underdeveloped land to generate new, additional productive activity in Freeport locations. The upper limit of the size of these Freeport tax sites will be between 300-600 hectares, and further details on this will be provided in the Bidding Prospectus. The tax site could encompass all or part of the primary customs site and may include any customs subzones, but will not have to. Only customs sites located within the Freeport tax site will benefit from the Freeport tax reliefs.³³

A minority of respondents addressed the specific proposal for an employer NICs relief, although those who did were generally supportive:

Of the 164 responses to [the question of new tax reliefs] ... a few respondents (18%) to this question discussed National Insurance Contributions relief. A majority of local authorities and port groups were supportive in their responses about the potential for an Employer National Insurance

³¹ HMG, [Freeports: response to the consultation](#), CP 302, October 2020 para 4.36-7

³² [op.cit.](#) para 4.40-3

³³ [op.cit.](#) para 4.45, para 1.11

Contributions (ER NICs) relief to create a highly attractive business environment within a local area.

Many of these 30 respondents supported the prospect of an ER NICs relief within Freeports, with a few arguing it would represent a beneficial relief to the costs to businesses, providing significant boosts to investment and employment within Freeport spaces.

Some business groups highlighted the administrative complexities that can be associated with claiming tax reliefs; they emphasised that, in order for small businesses to gain maximum benefit from such a relief, the government should consider how to make the process which businesses go through to claim the relief as simple as possible.³⁴

In the light of this, the Government proposed that it would “offer an ER NICs relief to businesses located in a Freeport tax site, on eligible employees who are based in that site ... claimable for a limited time period.”³⁵

In November 2020 the Government [opened the bidding process](#) in England, which set out the geographical parameters for the size, shape and location of any UK Freeport, and the tax site within it. The prospectus gave details of the tax incentives it intended to offer, including details of the new NICs relief for employers:

The government intends to enable employers operating in a Freeport tax site to pay 0% employer NICs on the salaries of any new employee working in the Freeport tax site. This 0% rate would be applicable for up to three years per employee on earnings up to a £25,000 per annum threshold.

An employee will be deemed to be working in the Freeport tax site if they spend 60% or more of their working hours in that tax site.

The relief is intended to be available for up to 9 years from April 2022. Partway through, the government intends to review this relief and decide whether it should be continued up to its end-date in 2031. The relief would end no earlier than April 2026 and would therefore be available for a minimum of four years. The government will provide further detail on timings in due course. The government will ensure it has the power to prevent access to the relief for those employers found to be abusing this relief by manipulating their employment practices, for example dismissing staff specifically to benefit from it.

To claim this relief employers will have to be registered with the Freeport Governance Body and operating in the Freeport tax site. Employers will be able to claim the relief through the existing Real Time Information returns, and the government will work with payroll software providers to facilitate this. Employers will be required to notify HMRC when an employee is no longer eligible due either to the three year per-employee eligibility period

³⁴ [op.cit.](#) para 4.31-4

³⁵ [op.cit.](#) para 4.34

coming to an end, or to the employee or employer ceasing to meet the eligibility criteria..³⁶

The deadline for bids was 5 February 2021, and the Chancellor announced eight UK Freeport locations in England in the Spring 2021 Budget: East Midlands Airport, Felixstowe & Harwich, Humber, Liverpool City Region, Plymouth and South Devon, Solent, Teesside and Thames. The Budget report noted that discussions “continue between the UK Government and the devolved administrations to ensure the delivery of Freeports in Scotland, Wales and Northern Ireland as soon as possible.”³⁷

The Spring Budget report also confirmed the Government would introduce legislation to enable the creation of ‘tax sites’ within UK Freeports, and the range of tax reliefs that businesses in these sites would benefit from:

Tax sites in Freeports – The government will legislate for powers to create ‘tax sites’ in Freeports in Great Britain; it will bring forward legislation to apply in Northern Ireland at a later date. Tax sites within Freeports will need to be approved and confirmed by the government.

Businesses in these tax sites will be able to benefit from a number of tax reliefs.

- An enhanced 10% rate of Structures and Buildings Allowance for constructing or renovating non-residential structures and buildings within Freeport tax sites in Great Britain, once designated. This means firms’ investments will be fully relieved after 10 years compared with the standard 33 ¹/₃ years at the 3% rate available nationwide. This will be made available for corporation tax and income tax purposes. To qualify, the structure or building must be brought into use on or before 30 September 2026.
- An enhanced capital allowance of 100% for companies investing in plant and machinery for use in Freeport tax sites in Great Britain, once designated. This will apply to both main and special rate assets, allowing firms to reduce their taxable profits by the full cost of the qualifying investment in the year it is made, and will remain available until 30 September 2026.
- Full relief from Stamp Duty Land Tax on the purchase of land or property within Freeport tax sites in England, once designated. Land or property must be purchased and used for a qualifying commercial purpose. The relief will be available until 30 September 2026
- Full Business Rates relief in Freeport tax sites in England, once designated. Relief will be available to all new businesses, and certain existing businesses where they expand, until 30 September 2026.

³⁶ HMG/HMT, [Freeports: Bidding Prospectus](#), CP 315, November 2020 para 3.5.12-15. Other proposed reliefs were for stamp duty land tax on land purchases within sites, enhanced Structure & Building Allowance and Capital Allowances for eligible investment, as well as business rates relief on business premises within sites.

³⁷ [Budget 2020](#), HC 121, March 2020 para 2.113-4

Relief will apply for five years from the point at which each beneficiary first receives relief.

- Subject to Parliamentary process and approval, the government also intends to make an employer National Insurance contributions relief available for eligible employees in all Freeport tax sites from April 2022 or when a tax site is designated if after this date. This would be available until at least April 2026 with the intention to extend for up to a further five years to April 2031, subject to a review of the relief.³⁸

Provision for the designation of UK Freeport tax sites, and the introduction of the first three of these tax reliefs (from stamp duty land tax) was included in the [Finance Bill 2021](#) introduced after the Budget (specifically [clauses 113-5 & Schedules 22-23](#)). Further details of each of these measures were set out in four tax information & impact notes.³⁹ Notably the Budget report did not provide any cost estimates of these measures. In its Economic & Fiscal Outlook, published alongside the Budget, the Office for Budget Responsibility noted, “In its November 2020 Bidding Prospectus for ‘Freeports’, the Government sought bidders for up to ten potential freeport locations, with the successful locations to be announced in Spring 2021. Further details have been announced in the Budget but came too late to be incorporated into our forecast. We will return to this in our next EFO.”⁴⁰

The issue was raised when these provisions were debated, and agreed, by the Committee of the Whole House on 19 April.⁴¹ In response to a question from Abena Oppong-Asare about the expected revenue for freeports, the Financial Secretary, Jesse Norman, said, “as she will be aware, it is not really appropriate to comment on that at the moment. These tax sites have not yet been agreed. The revenues, or at least the associated tax costs, are very much site-specific. I am therefore not in a position to comment on that, but of course once the sites have been agreed, the appropriate estimates will be brought forward.”⁴²

Following the launch of the Government’s consultation on UK Freeports in early 2020, the International Trade Committee started [an inquiry on this issue](#), and on 20 April 2021 published its report. In its summary the Committee commended “the Government’s ambition to increase trade and investment across the UK through its freeport policy”, though it went on to add “it remains to be seen how successful freeports will be at achieving this objective.”⁴³

³⁸ [Budget 2020](#), HC 121, March 2020 para 2.115

³⁹ HMRC, [Designation of Freeport tax sites, Enhanced capital allowance for plant and machinery in Freeports, Enhanced Structures and Buildings allowances in Freeports](#), and, [Stamp Duty Land Tax relief for Freeports](#), 3 March 2021.

⁴⁰ OBR, Economic & Fiscal Outlook, CP 387, March 2021 p204

⁴¹ [HC Deb 19 April 2021 cc 774-806](#)

⁴² [HC Deb 19 April 2021 c797](#)

⁴³ International Trade Committee, [UK freeports](#), HC 258, 20 April 2021 p3

The Committee looked at the package of incentives to accompany UK Freeports, noting that this distinguished the Government's approach "from the traditional freeports model" and welcomed "the range of measures the Government has committed to. Freeports focused solely on tariff benefits would be unlikely to be successful in the UK."⁴⁴ In this section of the report the Committee discussed the range of reliefs to apply in freeport tax sites, although it did not discuss the proposed zero-rate of secondary NICs in any detail:

The Government's proposals included a range of tax reliefs to "incentivise business investment in capital assets and employment within Freeports to increase productive activity and achieve the Freeport policy objectives" ...

The bidding prospectus confirmed that the tax offer would only be available within a tax site. It indicated that bids should aim for a single site but that up to three sites would be considered where there was an economic case to do so. The Government's criteria included that the sites should be located in areas with below national average GDP per head and above average national unemployment rates.

The Government said its tax offer intended to build on the approach to enterprise zones in England and Wales. The Chief Secretary to the Treasury told us that the tax offer went "to the heart of how we see the freeport sites operating as drivers of regeneration and innovation". He explained the Government's approach: "[...] often sites around ports that may well become, or are likely to become, freeports are areas that need levelling up. What you want is businesses investing in those areas, in things like site acquisition. When they have the land, they need to invest in the buildings and the plant and machinery, and they also need to recruit, and that is the tax package that has been put together."

The Chief Secretary to the Treasury did not say what the change in revenue to the Exchequer would be from these measures but responded that "Ultimately, and as always within the Treasury, the real prize on offer is increased productivity."

The Aberdeen Harbour Board felt that tax incentives would be "vital" in attracting investment to support the development of infrastructure for new business opportunities. Further, it said that Enhanced Capital Allowances would also attract new businesses and support the development of green energy and alternative fuel technologies. UKMPG referenced the need to retain flexibility in the financial offer to recognise different local needs and cost bases of different industries. Further, it said different levers would have differing effects, using the example of business rate relief which "might have a low incentive effect for some potential occupiers"⁴⁵

As noted above, the Spring 2021 Budget did not include estimates of the cost of the tax reliefs to apply in Freeport tax sites. The Chancellor presented the Autumn Budget on 27 October 2021, and the Budget report stated that taken together the new reliefs - for stamp duty land tax, enhanced capital allowances, structures and buildings allowance, business rates, and NICs –

⁴⁴ [op.cit.](#) p4

⁴⁵ [op.cit.](#) para 50-52

would cost £25m in 2022/23, rising to £75m by 2025/26.⁴⁶ The Budget report also confirmed that the first Freeport tax sites would be “in Humber, Teesside and Thames, and those Freeports will be able to begin initial operations from November.”⁴⁷

In its Economic & Fiscal Outlook published alongside the Autumn Budget, the OBR noted that there were several reasons why the uncertainty rating of this estimate was high:

Freeports are expected to cost an average of £50 million a year from 2022-23 onwards, with the largest costs associated with employer NICs and business rates relief.

All three aspects of the costings that underpin this figure are uncertain:

- **Data uncertainty.** This is relatively high despite the costing using administrative data. There is uncertainty around the applicability of the data to the specified reliefs and the aggregated nature of much of the underlying information. The quality of available data is also uneven across the different tax aspects of the policy.⁴⁸
- **Modelling uncertainty.** The approach used builds the costing up tax-by-tax rather than by individual freeport. This made best use of the available data, but made ensuring consistency in results across freeports and assessing the interactions across tax reliefs challenging. The modelling applies lessons learned from the initial estimates of the costs of business rates relief in enterprise zones introduced across England over the past decade to reflect the revealed optimism bias in past costings (see Chart A.1).
- **Behavioural uncertainty.** This is the most important and most uncertain aspect of the costing. Freeports are designed to alter businesses behaviour in terms of the location of activity, and – it is hoped – the overall volume of activity too. Costs associated with different tax reliefs will be determined by the degree to which they are taken up. This is subject to uncertainties in respect of each relief (the value of which differs) and each location (where geographical context will differ⁴⁹).

It is also uncertain how the behavioural response to the package of reliefs in aggregate might differ from the sum of its parts when viewed individually. There is also broader uncertainty around how much of the economic activity that takes place within a freeport will have been displaced from other UK regions and how much is genuinely additional.⁵⁰

The OBR went on to assess what impact the introduction of Freeports would have on economic activity, concluding that “given historical and international

⁴⁶ [Autumn Budget and Spending Review 2021](#), HC 822, October 2021 p136 (Table 5.1 – item 48)

⁴⁷ op.cit. para 5.27

⁴⁸ For example, SDLT data on properties and transactions is both geolocated and precise, while that associated with tariffs and customs is highly aggregated and less precise.

⁴⁹ For example, in respect of the availability of similar schemes in other parts of the country, such as inward processing relief.

⁵⁰ OBR, [Economic & Fiscal Outlook](#), CP545, October 2021 para A23

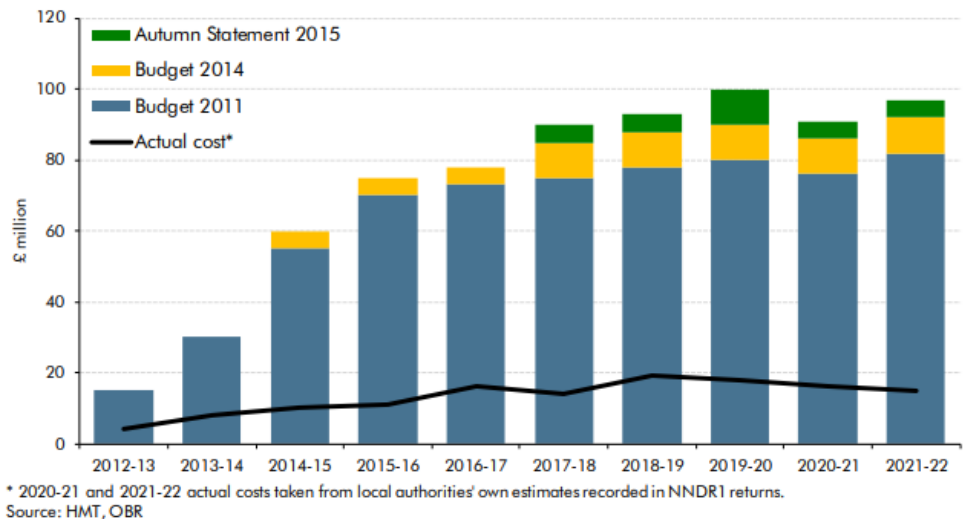
evidence, we have assumed that the main effect of the freeports will be to alter the location rather than the volume of economic activity, so the costs have been estimated on the basis of activity being displaced from elsewhere.”⁵¹

An extended extract from the report is reproduced below:

Freeports and additionality

A.24 The impact of freeports on economic activity depends on the degree to which tax reliefs are taken up, and the degree to which that take-up is additional to the activity that would have taken place in the absence of those reliefs (either in the freeport zone or elsewhere in the country). On the former, Chart A.1 compares the estimated costs of the different enterprise zone announcements between 2011 and 2015 with the actual cost.⁵² The costs are around a quarter of the original estimates, suggesting much smaller impacts than initially hoped. As noted, the costing has tried to learn the lessons from this past under-performance.

Chart A.1: Estimated cost versus actual cost for enterprise zones



A.25 As regards additionality, an evaluation of the number of jobs created by enterprise zones carried out by the Centre for Cities found that “jobs growth has been underwhelming”, that a significant number were displaced from local areas and from elsewhere in the UK, and that “the jobs created were mainly in low-skilled local service activities.”⁵³

A.26 More broadly, experience of enterprise zones around the world points to little difference in performance between cities with zones and those without, with stronger determinants of performance being existing infrastructure and transportation links.⁵⁴ This suggests that it is those other factors rather than the enterprise zone reliefs themselves that are key to

⁵¹ op.cit. para A29

⁵² These enterprise zones were initially launched in the Coalition Government’s March 2011 Plan for Growth, with the promise of “superfast broadband, lower taxes and low levels of regulation and planning controls” to support investment across the regions.

⁵³ Centre for Cities, *In the Zone: Have enterprise zones delivered the jobs they promised?*, 2019

⁵⁴ UN, *World Investment Report 2019: Special Economic Zones: Key Messages and Overview*, 2019

determining levels of activity and that the reliefs act more as a reward than an incentive.

A.27 International evidence also suggests that enterprise zones tend to be more effective in developing countries, where tariff and non-tariff barriers to trade tend to be higher, making the potential gains greater.⁵⁵ Tariff rates in the UK are relatively low, with free-trade agreements covering two-thirds of goods imports (including via the new Trade and Cooperation Agreement with the EU) and low rates applied to other imports under the new UK Global Tariff. This means there is little scope to benefit from tariff inversion.⁵⁶ Furthermore, the UK scores highly on international comparisons of the performance of trade logistics, suggesting limited scope for gains on that front too.⁵⁷

A.28 Nevertheless, the tax incentives available within England's freeports are more generous than those in the enterprise zones over the past decade, which did not include either stamp duty land tax or employer NICs reliefs, increasing incentives for both displacement of activity from other locations and for truly additional activity. In this context, the Treasury has taken steps to try to reduce displacement through the bidding process, requiring bidders to demonstrate how they would generate additionality and minimise displacement from other locations.

A.29 But given historical and international evidence, we have assumed that the main effect of the freeports will be to alter the location rather than the volume of economic activity, so the costs have been estimated on the basis of activity being displaced from elsewhere. To the extent that activity is genuinely additional, it will be revealed in GDP and receipts data over time, though given the small scale relative to the whole economy, such effects would probably be difficult to discern even in retrospect.⁵⁸

Clauses 1-5 of the Bill

Clause 1 provides for an employer to qualify for a zero rate of secondary Class 1 NICs on the earnings of an employee at a UK Freeport tax site, when a series of 'freeport conditions' – set out in Clause 2 – are met. Public authorities – as defined by clause 13 – are excluded from the scope of this relief.

If the employer is in a position where they may also qualify for other NICs reliefs (that is, the UST for under 21s, the AUST, or the zero rate for veterans), and they wish to claim the zero-rate for freeport employees, they are required to elect to apply it – Clause 1(1)(c).

Clause 1(3) specifies that the zero rate is to apply to earnings up to an Upper Secondary Threshold (UST). The Treasury is to have the power to set the UST to apply in these circumstances by regulations - under Clause 8. As noted

⁵⁵ UN, World Investment Report 2019: Special Economic Zones: Key Messages and Overview, 2019

⁵⁶ Holmes and Larbalestier, Two key things to know about Freeports, UK Trade Policy Observatory, 2021

⁵⁷ The UK ranked 9th out of 160 countries in the World Bank's Logistics Performance Index, which is a worldwide survey of operators on the logistics 'friendliness' of countries.

⁵⁸ OBR, [Economic & Fiscal Outlook](#), CP545, October 2021 pp211-3

above, the Government has stated that the UST for this zero rate is to be £25,000.⁵⁹

A person will still be regarded as liable to pay secondary Class 1 NICs, even if the zero rate has the effect that they are paying a zero amount – Clause 1(4). This is to ensure that the zero rate does not affect other legislation which relies on the existence of a secondary contributor, including the obligation to make statutory payments to employees such as Statutory Sick Pay and Statutory Maternity Pay.⁶⁰

Clause 1(5)-(6) allows for the Treasury to specify, in regulations, cases where the zero rate does not apply until the tax year has ended. Class 1 NICs is administered in real time through [PAYE and Real Time Information returns](#). Employers use NICs category letters that apply the relevant rates of NICs against earnings. In a very small number of cases HMRC may be unable to provide for this relief in real time when the earner qualifies for multiple NICs categories. Employers would pay secondary Class 1 NICs as normal during the year, and then claim the relief they were entitled to at the end of that year.⁶¹ Regulations made under this provision may modify two specific ‘freepoint conditions’ – set out in Clause 2(1)(c)-(d) – to ensure relief can be claimed at year end. The Treasury’s memorandum to the Delegated Powers and Regulatory Reform Committee notes this power to make regulations would be subject to [the negative procedure](#) “as it does not affect the calculation of relief nor the total amount an employer can receive.”⁶²

Clause 2 sets out the conditions to apply for an employer with premises in a UK Freeport tax site to qualify for the zero rate on the earnings of a new employee. Employers must have taken on the new employee at some point between 6 April 2022 and 5 April 2026 – Clause 2(1)(a). Relief may cover up to three years, from the employee’s first day of employment – Clause 2(1)(b).

The zero rate applies over a ‘qualifying period’ that will start either when the employee starts work or sees ‘a substantial change’ in their ‘working arrangements’. The ‘qualifying period’ ends when either the employment ends, or if there is a substantial change in the employee’s working arrangements – Clause 2(3). Employers will be required to make an assessment at the start of the employment and maintain that assessment until there is a substantial change of circumstances in the earner’s working arrangements at which point, an employer must reassess. This assessment must be made each time there is a substantial change in the earner’s working arrangements.⁶³ The explanatory notes to the Bill do not provide any further details or case studies of what a ‘substantial change’ in ‘working

⁵⁹ HMRC, [Zero-rate of secondary NICs for Freeport employees](#), 12 May 2021

⁶⁰ [Bill 10-EN](#), 12 May 2021 para 31

⁶¹ [Bill 10-EN](#), 12 May 2021 para 32

⁶² HMT, [National Insurance Contributions Bill: Memorandum from HM Treasury to the Delegated Powers and Regulatory Reform Committee](#), 12 May 2021 para 5

⁶³ [Bill 10-EN](#), 12 May 2021 para 39

arrangements' would consist of in these circumstances. The end point of the 'qualifying period' is also subject to provision made by Clause 2(6), discussed below. All tax weeks in which contributions are paid must be in the qualifying period – Clause 2(1)(c).

At the start of the 'qualifying period' the employer must 'reasonably expect' that 60% of the employee's working time over the 'qualifying period' will be in the freeport's tax site, where the employer must have business premises – Clause 2(1)(d). The purpose of the 60% test is to "to make sure the relief is effectively targeted at supporting economic activity in Freeport areas, and to limit the risks of abuse." Specific provision is to be made for individuals who might be unable to meet this test because of a protected characteristic, as HMRC's information note goes on to explain:

To support employers of employees with certain protected characteristics the government will make regulations specifying circumstances in which this condition is treated as met. This will facilitate exemptions for individuals who would otherwise be located in a Freeport tax site for at least 60% of their working time, were this not made impossible over a sustained period due to a protected characteristic. The clearest examples of this, which the government intends to lay regulations for, are disability, pregnancy and maternity.⁶⁴

Employment ceases to qualify for relief should the employer's expectation that the 60% test is met "ceases to be reasonable in any given tax week" – Clause 2(4)(d).

Employers will not be eligible to claim relief for a new employee if that person had either worked for them, or had been 'connected' with them⁶⁵, up to 2 years before the start of their engagement – Clause 2(2).

Clause 2(6) specifies the latest date that earnings may qualify for relief, as the end of the three-year period over which relief may be claimed, or 5 April 2031 – whichever is the earlier. HMRC's information note provides the context to this provision ...

The government intends to make this relief available for up to 9 years from 6 April 2022. The use and effectiveness of the relief will be monitored and reviewed to allow a decision on whether to continue the relief beyond its earliest end date of 5 April 2026. All new eligible hires on or before 5 April 2026 will be eligible for this relief for their full eligibility period (up to 36 months), regardless of the government's decision on whether to extend access to the relief for new claims beyond this date.

Subject to the findings of the review, the government intends to extend this relief for new hires up to a future 5 years to its latest end date of 5 April 2031,

⁶⁴ HMRC, [Zero-rate of secondary NICs for Freeport employees](#), 12 May 2021. **Clause 3** of the Bill makes provision for this regulation making power.

⁶⁵ The term 'connected person' is a basic concept in income tax law ([s993 of the Income Tax Act 2007](#)); spouses, relatives, and individuals in a partnership would all be examples.

after which point employers will no longer be able to access this relief, including for those employees partway through their eligibility period.⁶⁶

... and, on the impact of the new relief, states, “we are not currently able to determine whether the impact on business’ administrative burdens will be significant, or how many businesses will be affected. The scale of the impact on businesses will be assessed as the policy develops and the size and locations of Freeports are confirmed.”⁶⁷

Clause 3 provides for a number of regulation-making powers with regards to this relief:

- to extend the latest end date for the relief, up to 5 April 2031
- to make provision about circumstances in which a condition is treated as met (for example, to ensure the 60% test did not exclude individuals with protected characteristics)
- to modify the ‘freeport conditions’ set out in Clause 2.

In the last case, regulations made under this provision would be subject to [the affirmative procedure](#). The Treasury’s memorandum to the Delegated Powers and Regulatory Reform Committee discusses the circumstances under which the Government might wish to amend these conditions, including the possibility that aspects of the relief might be found to be non-compliant with international obligations regarding state aid:

The Government may wish to specify additional criteria that an eligible freeport employer may need to satisfy in order to claim the relief. The effect of specifying additional criteria could be to reduce the amount of relief that employers may qualify for or the number of employers that may qualify for the relief. The eligibility criteria are set against the background of current economic considerations and the Government may wish to amend the criteria to reflect changing circumstances.

Following its departure from the EU, the UK has international subsidy control obligations under the UK-EU Trade and Co-operation Agreement (TCA) and the Northern Ireland Protocol (NIP). The Department for Business, Energy & Industrial Strategy is currently designing the domestic subsidy control regime that will apply in the UK, which will need to be compliant with the UK’s international obligations. This power will also enable the Government to amend the Freeport conditions should that be necessary to make the relief compliant with the future subsidy control regime or the NIP. An example could be additional record keeping requirements for employers.⁶⁸

⁶⁶ HMRC, [Zero-rate of secondary NICs for Freeport employees](#), 12 May 2021

⁶⁷ HMRC, [Zero-rate of secondary NICs for Freeport employees](#), 12 May 2021

⁶⁸ HMT, [National Insurance Contributions Bill: Memorandum from HM Treasury to the Delegated Powers and Regulatory Reform Committee](#), 12 May 2021 paras 17-18

Further details on the subsidy provisions of the UK-EU Trade and Cooperation Agreement (TCA) are set out in the text box overleaf.⁶⁹

Subsidy provisions under the TCA and UK domestic control

The UK-EU Trade and Cooperation Agreement (TCA) requires that the UK and EU have an effective domestic system of subsidy control.¹ Subsidies include grants, tax waivers, loans and other types of benefits to businesses.

The TCA aims to prevent subsidies that can have negative “material affect” on UK-EU trade or investment. The UK and EU have agreed to apply the following “broad principles”:

- subsidies pursue a specific public policy objective to remedy an identified market failure or to address an equity rationale such as social difficulties or distributional concerns (“the objective”)
- subsidies are proportionate and limited to what is necessary to achieve the objective
- subsidies are designed to bring about a change of economic behaviour of the beneficiary that is conducive to achieving the objective and that would not be achieved in the absence of subsidies being provided
- subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy
- subsidies are an appropriate policy instrument to achieve a public policy objective and that objective cannot be achieved through other less distortive means
- subsidies’ positive contributions to achieving the objective outweigh any negative effects, in particular the negative effects on trade or investment between the Parties.²

Government [Technical guidance](#) on the UK’s international subsidy control commitments explains how these principles are applied in practice.

The TCA contains mutual mechanisms for the UK and EU to monitor the other’s subsidies. This includes an option to introduce “remedial measures” such as tariffs, if either party considers that the other’s individual subsidy presents a “serious risk” of causing “a significant negative effect on trade or investment.” Indirectly referring to the UK Government’s freeports programme, the European Parliament recalled in its [Resolution of consent with the TCA](#) that the Agreement’s provisions on subsidy control apply

⁶⁹ For further information see, [The UK-EU Trade and Cooperation Agreement: Level playing field, Commons Library briefing CBP9190](#), 20 May 2021

widely, including in so-called special economic zones.³ At the same time, under the TCA, the EU will have to consider the effect of its own subsidies on the UK to a much greater extent than it would have to consider it in respect of any other third country.

The TCA does not amend the state aid provisions of the Withdrawal Agreement Protocol on Ireland and Northern Ireland. Under the Protocol, EU state aid rules apply to subsidies affecting trade in goods between Northern Ireland and the EU.

The Government is working on further development of domestic subsidy provisions. The UK Internal Market Act ([Section 52](#)) reserves to the UK Parliament the exclusive ability to legislate for a subsidy control regime. A [consultation](#) about the design of a bespoke approach to domestic subsidy rules ran in February and March 2021. The Government announced in the [Queen’s Speech](#) on 11 May that it will bring forward a [Subsidy Control Bill](#).

Notes

¹ Foreign, Commonwealth and Development Office, [UK/EU and EAEC: Trade and Cooperation Agreement](#), CP 426, 30 April 2021 (‘TCA’) Part 2, Title XI, Chapter 3

² HMG, [Technical Guidance on subsidy control](#), 30 December 2021

³ European Parliament, [Resolution of 28 April 2021 on the outcome of EU-UK negotiations](#), para 18

The Treasury’s memorandum to the Committee goes on to note, “were this power not included in the Bill, the effect would be that the relief could not be operated in compliance with the UK’s subsidy control obligations until the changes are implemented through primary legislation in a future Bill”:

Implementation of the relief may need to be delayed which would cause disruption to businesses who have prepared for implementation in April 2022. As the power may add to or alter the applicable conditions, it is considered that the affirmative procedure is appropriate. This provides the appropriate level of parliamentary scrutiny and affords each House of Parliament the opportunity to debate the statutory instrument. A broadly similar power is included in section 5 of the National Insurance Act 2014 (power to amend the Employment Allowance) and has been used to amend that Act.⁷⁰ Equivalent

⁷⁰ This power has been used to introduce The Employment Allowance (Care and Support Workers) Regulations 2015 (SI 2015/578), The Employment Allowance (Excluded Companies) Regulations 2016 (SI 2016/344) and The Employment Allowance (Excluded Persons) Regulations 2020 (SI 2020/218).

powers are also included in Finance Bill 2021.⁷¹ for the Freeports capital allowances and stamp duty land tax measures⁷²

Following concerns raised by the Lords Delegated Powers and Regulatory Reform Committee in their report on the Bill,⁷³ the Government tabled amendments at the Bill's Report Stage in the Lords to provide that regulations made under two provisions of the Bill would be subject to the draft affirmative procedure: the first of these covers the provision made by clause 3(1) to allow regulations to extend the end date of this relief.⁷⁴

Clause 4 provides that the relief cannot be claimed if the employer only meets the eligibility criteria by using a tax avoidance scheme. The legislation uses the term "avoidance arrangements", and defines these as follows:

Any arrangements which it is reasonable in all the circumstances—

(a) to conclude are, or include steps that are, contrived, abnormal or lacking a genuine commercial purpose, or

(b) to regard as circumventing the intended limits of the application of section 1 or otherwise exploiting shortcomings in that section or in provision made in or under sections 2 and 3.

Clause 5 would give the Treasury a regulation-making power to provide a similar secondary Class 1 NICs relief in Northern Ireland. In the 2021 Budget the Government announced eight UK Freeport locations in England, while confirmed that it would continue discussions with "the devolved administrations to ensure the delivery of Freeports in Scotland, Wales and Northern Ireland as soon as possible."⁷⁵

In its report on UK Freeports published in April the International Trade Committee noted that it was clear "that the Northern Ireland Protocol will impact the terms on which a freeport can be established in Northern Ireland", quoting evidence from Professor Catherine Barnard (Professor of European Union and Labour Law, University of Cambridge):

As you know, under the Northern Ireland Protocol the EU state aid regime applies, certainly to Northern Ireland where there is an effect on trade between Northern Ireland and the rest of the EU. You should also bear in mind that the protocol is probably wide enough to catch any freeport legislation that applies throughout the United Kingdom. Any UK legislation that has an effect on Northern Ireland trading goods, and thus an effect on interstate trade, will have to be notified to the Commission under the state aid regime as laid down in the Northern Ireland Protocol. I realise that is quite

⁷¹ Parts 1 and 2 of Schedule 21 to the Finance Bill 2021 include new sections 45P and 270BNC to be inserted into the Capital Allowances Act 2001. Schedule 22 to the Finance Bill 2021 includes new Schedule 6C, Part 5 to be inserted into the Finance Act 2003.

⁷² [op.cit.](#) para 19

⁷³ Delegated Powers and Regulatory Reform Committee, [National Insurance Contributions Bill, HL Paper 102](#), 25 November 2021

⁷⁴ HMRC, [Bill 259 EN 2021-22 \(Lords Amendments to the Bill\)](#), 23 February 2022 para 14

⁷⁵ [Budget 2020](#), HC 121, March 2020 para 2.113-4. See also, [PQ3165](#), 24 May 2021.

a mouthful, but the bottom line is that as a result of the Northern Ireland Protocol the EU state aid regime will continue to be relevant to not just Northern Ireland but the rest of the United Kingdom.⁷⁶

When the Committee took evidence from the then Chief Secretary to the Treasury, Steve Barclay, the Minister “acknowledged that the freeport offer would have to be adapted to comply with the UK’s obligations under the Northern Ireland Protocol”:

Nonetheless, he said there was flexibility in the Government’s agreement with the EU. He cited the example of customs where he said that changes, other than minor, technical ones, were unlikely to be required. He indicated that discussions with the Northern Ireland Executive to agree the model to be used were ongoing.⁷⁷

For its part the Committee recommended that, “the Government should set out, in its response to this Report, its view on how the freeports model will need to be adapted in Northern Ireland to comply with the terms of the Protocol.”⁷⁸

As noted above, the Chancellor presented the Autumn Budget on 27 October 2021, and the Budget report confirmed that the Government “remains committed to establishing at least one Freeport in Scotland, Wales and Northern Ireland.”⁷⁹

The Treasury’s memorandum to the Delegated Powers and Regulatory Reform Committee set out the Government’s case for intending to use secondary legislation to introduce a similar zero-rate relief for any UK Freeports established in Northern Ireland ...

The Government believe it is suitable to take powers in this Bill that will allow it to legislate for this relief so that it is available as soon as possible to employers setting up in Northern Ireland Freeports, whilst allowing the Government to establish the details of policy design once there is sufficient clarity on the most appropriate approach to delivering Freeports policy in Northern Ireland.

... while any regulations made under this provision would be subject to the affirmative procedure:

The Government’s intention is that the employer NICs relief for Freeports employers is in place by 6 April 2022 throughout the UK. The power is circumscribed in that it can only make provision corresponding to or similar to the provisions that will apply to Great Britain. As the power may add to or alter the applicable conditions should the Government’s international

⁷⁶ International Trade Committee, [UK freeports](#), HC 258, 20 April 2021 para 90. For more background on the Northern Ireland Protocol see, [The movement of goods between Great Britain and Northern Ireland, Commons Library briefing CBP9140](#), 18 February 2021.

⁷⁷ [op.cit.](#) para 91

⁷⁸ [op.cit.](#) para 92

⁷⁹ [Autumn Budget and Spending Review 2021](#), HC 822, October 2021 para 5.27

obligations require or for any other reason, it is considered that the affirmative procedure is appropriate.⁸⁰

2.2

Veterans

Background

In its manifesto for the 2019 General Election the Conservative Party stated that it would bring in a range of measures to “support former and current Service personnel”, including a reduction in NICs for employers “if they employ ex-Service personnel.”⁸¹ Subsequently, in the 2020 Budget the Government confirmed it would “introduce a National Insurance holiday for employers of veterans in their first year of civilian employment” and consult on the design of the relief:

National Insurance holiday for employers of veterans in first year of civilian employment – To support the employment of veterans, the government is meeting the commitment to introduce a National Insurance holiday for employers of veterans in their first year of civilian employment. A full digital service will be available to employers from April 2022; however, transitional arrangements will be in place in the 2021-22 tax year which will effectively enable employers of veterans to claim this holiday from April 2021. The holiday will exempt employers from any NICs liability on the veteran’s salary up to the Upper Earnings Limit. The government will consult on the design of this relief.⁸²

At the time the Government estimated that the relief would cost £15m in 2021/22, rising to £20m in 2022/23.⁸³

The Government’s [consultation exercise](#) ran from 21 July to 5 October 2020. The consultation asked for stakeholders’ views on the scope of the relief – how ‘veterans’ should be defined for this purpose – on the employment periods that should qualify, and how the relief should be administered. The consultation document also provided some context for this proposal; an extract is reproduced below:

Stable and fulfilling employment is a vital part of a successful transition from the Armed Forces to civilian life. The Government provides an effective career transition package to service personnel leaving the Armed Forces which supports 86%⁸⁴ into employment. The training, experience and resources available to service personnel ensure that veterans have a valuable skill set to

⁸⁰ HMT, [National Insurance Contributions Bill: Memorandum from HM Treasury to the Delegated Powers and Regulatory Reform Committee](#), 12 May 2021 paras 21-2

⁸¹ [The Conservative and Unionist Party Manifesto 2019](#), December 2019 p52

⁸² [Budget 2020](#), HC 121, March 2020 para 2.179

⁸³ [Budget 2020](#), HC 121, March 2020 p66 (Table 2.1 – item 16); HM Treasury, [Budget 2020: policy costings](#), March 2020 p13. This costing is unchanged: [Budget 2021 : Table 2.2](#), March 2021 (item h).

⁸⁴ MoD, [Career Transition Partnership ex-service personnel employment outcomes statistics](#), 27,02,2020

offer employers. However, 6% of veterans using this service remain unemployed up to a year after leaving the Armed Forces ...

The Government wants to support those who have served in the Armed Forces transition to civilian life and for businesses to utilise the valuable skillset veterans have to offer. A wide range of employers already realise the benefit of employing former members of HM Armed Forces, and the Government hopes to encourage more to do so. The Government intends to achieve this by reducing the cost of employing veterans from April 2021 with a 12-month Employer NICs relief. This will provide an added incentive for employers to hire more veterans and to benefit from the exceptional, and often unique, experiences and skills that a veteran can bring to the workplace.

The Government believes that the guiding principle of this should be that as many veterans as possible should be eligible, and that these conditions should be as simple and straightforward as possible to reduce the administrative burden on employers...⁸⁵

The Government published its summary of responses in January 2021. HMRC received 37 written submissions from a variety of stakeholders including veteran representative groups, tax firms and accounting bodies, payroll organisations, charities, local councils and councillors, employers, and individuals. Overall “a significant number of respondents agreed that this relief is a positive step towards supporting the recruitment of veterans and could help break down the barriers and negative perceptions surrounding veterans.”⁸⁶

Initially the Government proposed that the relief would apply to someone who was previously a member of HM Regular Armed Forces, regardless of when they left, provided that they had completed at least one day of basic training. Respondents were strongly in favour of this approach, although there was a division of opinion as to whether relief should be extended to ex-members of the Reserve Forces:

Several responses pointed out that they considered the challenges faced by some Reservists when transitioning into civilian life to be similar to those faced by Regulars, particularly Full Time Reservists and Reservists who are mobilised, who perform similar roles to members of HM Regular Armed Forces. On the other hand, a number of stakeholders highlighted that it was appropriate to exclude Reservists, pointing out that, on the whole, Reservists do not face the same barriers to a successful transition into civilian life as veterans of the Regular Armed Forces, and therefore that their inclusion would not fit with the policy intent of this measure.

In light of this, the Government proposed that it would not extend the scope of this relief this way, but provision would be made to cover the situation

⁸⁵ HMRC, [Supporting veterans’ transition to civilian life through employment: consultation](#), 21 July 2020 p6, p8

⁸⁶ HMRC, [Supporting veterans’ transition into civilian life through employment: Summary of Responses](#), January 2021 p5

where Regulars who first joined the Reserves before taking up civilian employment were not disadvantaged:

The government recognises the overlap between the Reserve and Regular Armed Forces, however it is also the case that many Reservists (87%⁸⁷) hold civilian employment alongside their reserve duties. This suggests that the challenges which Reservists may face in transitioning to civilian life are not typically focused on securing employment.

Additionally, including them within the definition would make administering the relief more complicated for employers. Furthermore, the government already provides a range of support and legal protections for Reservists. A Reservist's job is protected if they are mobilised, and both the Reservist and their employer receive financial support to ensure they do not lose out as a result of mobilisation.⁸⁸

The government considers the support already available to Reservists and their employers to be sufficient for supporting a Reservist's transition into civilian life. Therefore, for the purpose of this relief, the government does not consider it necessary to extend the definition of a veteran to include those who have served in the Reserve Forces only. ...

The government will set its proposed definition of 'civilian employment' as all employments not part of HM Armed Forces, rather than all employments not part of HM Regular Armed Forces. The consultation document set out a proposed approach that would have classified employment with the Reserve forces as "civilian employment". This meant that those who serve in HM Regular Armed Forces and go directly into an employment with the Reserves would have triggered their eligibility period.

However, the government recognises that many Regulars⁸⁹ join the Reserves as part of their transition into civilian life. Making this change to the definition of 'civilian employment' will ensure that those who serve in the Regular Armed Forces and go directly into the Reserves preserve their 12-month qualifying period. This will ensure these individuals can also benefit from the support that this relief can provide in transitioning into civilian employment.⁹⁰

Respondents were generally supportive of the approach the Government had taken to define 'civilian employment' for this purpose – using the definition of 'employment' already established in NICs legislation, but to extend it to employment outside Great Britain and Northern Ireland, as "moving into civilian employment abroad is just as viable a means of transitioning into civilian employment as is getting a civilian job in the UK." The majority of respondents also agreed that the relief "should be capped at the Upper Secondary Threshold both to ensure fairness to other taxpayers

⁸⁷ [Excluding Full Time Reservists and those in full time education. Source: MoD, Tri-service reserves continuous attitude survey: 2020](#)

⁸⁸ Rights and responsibilities for reservists and employers. Source: [GOV.UK](#)

⁸⁹ 56% - source: [MoD Quarterly Service Personnel Statistics](#)

⁹⁰ HMRC, [Supporting veterans' transition into civilian life through employment: Summary of Responses](#), January 2021 p7, pp9-10. **Emphasis** in original.

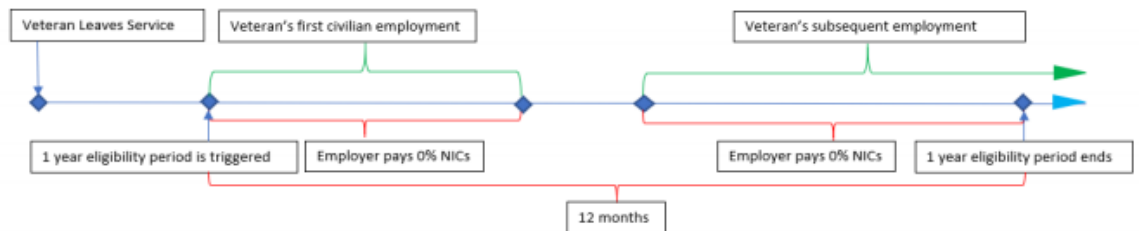
and to align with NICs reliefs for apprentices under 25 and employees under 21.”

The consultation document set out three options for providing NICs relief to cover the first year of someone’s civilian employment:

- To be available for 12 months starting from a veteran’s first day of civilian employment
- To be available for 12 months of civilian employment, so that subsequent breaks in employment would not ‘use up’ the relief
- To be available for a veteran’s ‘first civilian employment for 12-months’. In this case NICs relief would only apply for someone’s first job, even if they left that for another before 12 months had elapsed.

The Government’s preferred option was the first of these, on the grounds that it would strike a balance between minimizing administrative burdens for employers, while not unduly disadvantaging those veterans whose first employment happened to be temporary and short-term in nature.

- The consultation document provided a diagram of how this option would work, and a worked example:



Worked example

Brenda is a veteran and leaves HM Armed Forces on 12 December 2020.

On 5 May 2021, Brenda enters her first civilian employment as a mechanic. Her employer is eligible to claim this relief. On 5 August 2021, Brenda first employment finishes. On the 5 October 2021, Brenda enters her second civilian employment as an engineer. This second employer will qualify for this relief from 5 October 2021 to 4 May 2022. If Brenda also worked at a pub from 5 June 2021 to 5 September 2021, the pub would also be eligible for this relief.⁹¹

Respondents were generally in favour of the Government’s preferred option, and although some responses “indicated a preference for option 2 ... they

⁹¹ HMRC, [Supporting veterans’ transition to civilian life through employment: consultation](#), 21 July 2020 pp13-14

acknowledged the administrative burden that this approach would have on employers.”⁹²

However there were concerns that the Government had proposed to restrict the relief “to once in a lifetime”, and in light of this the Government confirmed a second change to this aspect of the scheme:

A number of stakeholders indicated that restricting this relief to once in a lifetime would increase administrative burdens. In addition to verifying that an individual qualifies as a veteran for the purposes of this relief, employers would need to determine if that veteran had left HM Armed Forces on a previous occasion. Others highlighted the challenges faced by veterans who served in HM Armed Forces multiple times over their lifetime, and that restricting this relief fails to support individuals who may have re-enlisted because they were unable to transition to civilian life ...

The government recognises that in some cases a veteran may re-enlist because they were unable to transition to civilian life. In addition, a key principle of this relief is that it is as simple and straightforward to administer, therefore the government will ensure that veterans are not restricted from qualifying for this relief if they had previously served in the Armed Forces and subsequently re-joined. The relief will be available to all qualifying veterans for their first 12 months of civilian employment each time they leave HM Armed Forces.⁹³

Finally, the Government had proposed that the legislation to introduce the relief would have a three-year sunset clause to “allow the Government to monitor the number of employers that take up this relief and analyse the relief’s impact on veterans’ employment.”⁹⁴ In addition the legislation would allow the relief to be extended beyond its initial three years through a Statutory Instrument. Most stakeholders agreed that it was good practice to include a sunset clause when introducing new reliefs, and in light of this the Government confirmed “legislation for this relief will include a 3-year sunset clause from April 2021.”⁹⁵

Further to this consultation exercise, HMRC had a technical consultation on draft legislation to give effect to this measure, from 11 January to 8 March 2021.⁹⁶

At this time HMRC confirmed the relief would be available from April 2021. For 2021/22 employers have been advised to pay the associated secondary

⁹² HMRC, [Supporting veterans’ transition into civilian life through employment: Summary of Responses](#), January 2021 p9

⁹³ [op.cit.](#) p9. **Emphasis** in original.

⁹⁴ HMRC, [Supporting veterans’ transition to civilian life through employment: consultation](#), 21 July 2020 p19

⁹⁵ HMRC, [Supporting veterans’ transition into civilian life through employment: Summary of Responses](#), January 2021 p12

⁹⁶ HMRC, [Draft legislation: zero-rate secondary Class 1 contributions for veterans](#), 11 January 2021

Class 1 NICs as normal, and then claim it back retrospectively. From April 2022 they will be able to apply the relief in real time through PAYE.⁹⁷

Clauses 6-9 of the Bill

Clause 6 would enable an employer to qualify for a zero-rate of secondary Class 1 NICs on the earnings of a new employee, provided a series of ‘veteran conditions’ – set out in Clause 7 – are met.

Clause 6(3) specifies that the zero rate is to apply to earnings up to an Upper Secondary Threshold (UST). The Treasury is to have the power to set the UST to apply in these circumstances by regulations - under Clause 8. Initially the Government had proposed that the UST for these purposes would be the same that applies with the UST for under 21s and the AUST, and the majority of responses to the consultation exercise agreed. In its summary of responses the Government noted that, “employers of veterans will still benefit from this relief on the proportion of the veteran’s salary up to the UST, and therefore save over £5,000 in NICs through this relief. Whilst the government wants to incentivise further employment of veterans, it must balance this with fairness to other taxpayers. Furthermore, aligning this relief to the UST is in keeping with other reliefs of this nature.”⁹⁸

The employer must elect to apply the veterans zero rate, if the employment also qualifies for other NICs reliefs (that is, the UST for under 21s, the AUST, and the zero-rate for freeport employees) – Clause 6(1)(d).⁹⁹ A person will still be regarded as liable to pay secondary Class 1 NICs, even if the zero rate has the effect that they are paying a zero amount – Clause 6(7).¹⁰⁰

To ensure that employers will be eligible to claim this relief from April 2021, Clause 6(5) specifies that it is to be available for the 2021/22 tax year retrospectively. Clause 6 also includes a sunset provision – Clause 6(4) – withdrawing the relief from the end of 2023/24. Clause 6(6) would allow the Treasury to make regulations to extend the relief by one or more years. Clause 6(8) would allow the Treasury to make regulations to define cases where this relief did not apply until the tax year had ended.¹⁰¹ In both cases regulations would be subject to the negative procedure.

At the report stage of the Bill on 6 September 2021 the Government tabled an amendment to Clause 6, which was agreed.¹⁰² On this occasion the then

⁹⁷ HMRC, [National Insurance contributions relief for employers who hire veterans](#), 10 February 2021. See also, HM Treasury press notice, [Tax cut for employers of veterans brought in](#), 6 April 2021

⁹⁸ HMRC, [Supporting veterans’ transition into civilian life through employment: Summary of Responses](#), January 2021 p16

⁹⁹ A similar provision is made for the zero rate for freeport employees by **Clause 1(1)(c)**.

¹⁰⁰ A similar provision is made for the zero rate for freeport employees by **Clause 1(4)**, to ensure the relief does not affect employers other statutory responsibilities as a secondary contributor ([Bill 10-EN](#), 12 May 2021 para 59).

¹⁰¹ A similar provision is made for the zero rate for freeport employees by **Clause 1(5)**.

¹⁰² House of Commons, [National Insurance Contributions Bill \(Report Stage Decisions\)](#), 6 September 2021

Financial Secretary to the Treasury, Jesse Norman, explained, “The policy intent here is that the veterans’ measure should apply to the whole United Kingdom. This amendment corrects a small drafting error by replacing reference to the Social Security Contributions and Benefits Act 1992 with a reference to that Act and the Social Security Contributions and Benefits (Northern Ireland) Act 1992, reflecting the original policy intent. I trust that Members will agree that this is a minor and technical amendment and should be included as part of the Bill.”¹⁰³ No other amendments were made to the Bill during its scrutiny in the Commons.

As noted above, followings concerns raised by the Lords Delegated Powers and Regulatory Reform Committee in their report on the Bill,¹⁰⁴ the Government tabled amendments at the Bill’s Report Stage in the Lords to provide that regulations made under two provisions of the Bill would be subject to the draft affirmative procedure. The second of these is the provision made by clause 6(6) to allow regulations to extend the end date of this relief.¹⁰⁵

Clause 7 sets out the conditions to be met for employers to claim the zero rate on earnings paid to an employee:

- That the individual employee has served for at least one day “as a member of any of the armed forces” – Clause 7(1)(a)
- That their employment is in a “civilian capacity” – Clause 7(1)(b). This is defined as “employment other than service as a member of Her Majesty’s forces” – Clause 13.
- That the earnings are paid within a year of the employee taking up their first civilian employment – Clause 7(1)(c).

Employers may claim the relief even if the employee had left the armed forces and started civilian employment *before* 6 April 2021 – Clause 7(2). In these cases, the 12-month period begins from the first day of employment, but the relief is only available from 6 April 2021 for the remainder of that 12-month period.¹⁰⁶

Clause 8 provides for an Upper Secondary Threshold (UST) for the secondary Class 1 NICs relief for Freeport employees, and for armed forces veterans, to be set by Order. These regulations would be subject to the affirmative procedure. The Treasury’s memorandum to the Delegated Powers and Regulatory Reform Committee notes, “as the level of an upper secondary threshold will be used to determine to what extent the zero rate will apply to the earnings of freeport employees or veterans, the Government may wish

¹⁰³ [HC Deb 6 September 2021 c92](#)

¹⁰⁴ Delegated Powers and Regulatory Reform Committee, [National Insurance Contributions Bill, HL Paper 102](#), 25 November 2021

¹⁰⁵ HMRC, [Bill 259 EN 2021-22 \(Lords Amendments to the Bill\)](#), 23 February 2022 para 14

¹⁰⁶ [Bill 10-EN](#), 12 May 2021 para 65

to alter the level at which a threshold is set to reflect changing circumstances”:

The Government believes this is an appropriate use of secondary legislation rather than requiring primary legislation each time the threshold is changed. In so far as it represents a decrease to an upper secondary threshold previously set, the use of the power will limit the amount of earnings to which the zero-rate for freeport employees or veterans will apply and mean that employers will be liable to pay the higher secondary percentage rate on more earnings.

It is therefore considered that the draft affirmative procedure provides the appropriate level of parliamentary scrutiny, affording each House of Parliament the opportunity to debate the level at which an upper secondary threshold is set.¹⁰⁷

Clause 9 would make a consequential amendment to the primary legislation which underpins the [apprenticeships levy](#) – the charge on employers’ annual pay bills used to fund apprenticeship training.¹⁰⁸ For the purposes of the levy, the employer’s annual pay bill constitutes all payments to employees that are subject to employer Class 1 secondary NICs.

As HMRC’s [Manual on the levy](#) explains, “although employers do not pay Class 1 secondary NICs on the earnings up to the UST, of employees under the age of 21, or apprentices under the age of 25, they remain liable for the payment of Class 1 secondary NICs on those earnings even though the rate at which they would pay is 0%. As a result, these earnings should be included in the pay bill for Apprenticeship Levy purposes.”¹⁰⁹ This clause provides that where a secondary contributor does not make any secondary contributions because of the zero rate for freeport employees or for veterans, the earner’s earnings are still taken into account for the purposes of the apprenticeship levy.¹¹⁰

2.3

Test and Trace Support Payments

Background

In September 2020 the Government announced a new scheme – [Test and Trace Support Payment](#) – for those individuals required to self-isolate, either because they had tested positive for COVID-19 or had been informed by NHS Test and Trace that they have been in close contact with a person who has tested positive. Local authorities would provide a £500 lump sum payment

¹⁰⁷ HMT, [National Insurance Contributions Bill: Memorandum from HM Treasury to the Delegated Powers and Regulatory Reform Committee](#), 12 May 2021 paras 35-6

¹⁰⁸ For more background see, [Apprenticeships and skills policy in England, Commons Library briefing CBP3052](#), 7 September 2020.

¹⁰⁹ Apprenticeships Levy Manual [para 07000](#), ret’d May 2021

¹¹⁰ [Bill 10-EN](#), 12 May 2021 para 70

for those on low incomes, if they could not work during their self-isolation period and suffered financial consequences as a result.¹¹¹

The scheme would only apply in England, but following this the Welsh and Scottish Governments announced similar schemes – the [Self-Isolation Support Scheme](#) (Wales), and the [Self-Isolation Support Grant](#) (Scotland).¹¹² The English scheme was piloted on a limited basis from 1 September 2020 then rolled out nationally from 28 September 2020. The Scottish and Welsh schemes began in October 2020.¹¹³

Details on the circumstances under which individuals have been required to self-isolate, and the eligibility criteria for each of these schemes, is provided in, [Coronavirus: Test and Trace Support Payments, Commons Library briefing CBP9015](#), 26 July 2021.

Although these payments are subject to income tax,¹¹⁴ the Government has introduced secondary legislation to exempt payments from Class 1 (employer and employee) and Class 1A (employer) NICs, for England in October 2020 ([SI 2020/1065](#)), and for Scotland & Wales in January 2021 ([SI 2020/1532](#)).¹¹⁵

The purpose of this exemption was set out in the explanatory memorandum to the first of these SIs, as follows:

Payments made under the scheme are earnings and liable to employee and employer Class 1 NICs. This means that local authorities would have to account for and potentially deduct the value of employee NICs from any payments made. Additionally, the employer would have to deduct Class 1 NICs on the gross value of the payment received by their employees under the scheme. This would result in a cost burden on local authorities who administer the scheme and on employers. The regulations are being introduced to ensure that these payments are not subject to NICs to prevent these administrative costs from arising.¹¹⁶

In turn the Bill would provide that these payments would be exempt from Class 4 and Class 2 NICs “to ensure equal treatment for the self-employed.”

¹¹¹ Prime Minister’s Office press notice, [New package to support and enforce self-isolation](#), 20 September 2020

¹¹² [Statement by the First Minister: Keeping Wales Safe from Coronavirus](#), Senedd Cymru/Welsh Parliament, 23 September 2020; Scottish Government press notice, [New grant for those self-isolating](#), 30 September 2020

¹¹³ [Bill 10-EN](#), 12 May 2021 para 12

¹¹⁴ [PQ116404](#), 23 November 2020. These lump sum payments will be made without any tax being deducted at source. For guidance on the way income tax will be collected see, Low Incomes Tax Reform Group (LITRG), [Coronavirus: £500 Test and Trace Support Payment](#), 25 March 2021.

¹¹⁵ These regulations were made under existing regulation making power – provided by the Social Security Contributions and Benefits Act 1992 - to disregard certain payments when calculating earnings liable to Class 1 NICs. Both regulations were approved under the negative procedure, and were not debated

¹¹⁶ [Explanatory Memorandum to SI 2020/1065](#), September 2020 para 7.3-4

The measure is formally retrospective for the tax year 2020/21, and it is not expected to have an Exchequer impact.¹¹⁷

Clause 10 of the Bill

Clause 10(1) provides that a payment made under a self-isolation support scheme is not to be taken into account for computing profits liable to Class 4 NICs. This ensures payments are also exempt for the purpose of Class 2.¹¹⁸ Clause 10(2)(a)-(c) specifies that the three current schemes would qualify for this exemption, though, as initially drafted, Clause 10(2)(d) would allow the Treasury to designate further schemes “corresponding or similar” to these three as meeting this test. The Treasury’s memorandum to the Delegated Powers and Regulatory Reform Committee underlined the point that “the power is not subject to any Parliamentary procedure and does not require the making of a statutory instrument.

The justification for this is that the power is wholly relieving and that the schemes to be designated must correspond or be similar to those specified in clause 10(2)(a) to (c). This limits the powers to corresponding or similar schemes which would need to make payments to people who cannot work as a result of self-isolation.¹¹⁹

This was also a concern raised by the Lords Delegated Powers and Regulatory Reform Committee in their report on the Bill:

We were disappointed that no information is provided in the memorandum explaining why this power is needed or the circumstances in which the Treasury expect it to be used. Nevertheless, the memorandum does explain why the Treasury consider it appropriate for the power not to be subject to parliamentary scrutiny and not to require the making of a statutory instrument. The Treasury rely on the fact that the powers are limited so that the only schemes which can be designated are those which correspond to, or are similar to, the schemes listed on the face of the Bill.

We find this reason unconvincing. In our view, the Government should not be able to change the effect of legislation—in this case changing the schemes to which the exemption in clause 10(1) applies—without enacting further legislation. As we have previously noted,¹²⁰ all primary and secondary legislation is published in a consistent manner which facilitates access to legislation by members of the public. This contrasts with the position under clause 10 which is silent as to the form in which a designation is to be made and how designations are to be published, leaving both matters wholly to the discretion of the Treasury.

Also, we do not agree with the Treasury’s reasons for excluding parliamentary scrutiny. The fact that a designated scheme may be “similar” to one of the

¹¹⁷ HMRC, [Exemption from Class 2 and 4 National Insurance contributions for COVID-19 Test and Trace Support Payments](#), 12 May 2021

¹¹⁸ [Bill 10-EN](#), 12 May 2021 para 72

¹¹⁹ HMT, [National Insurance Contributions Bill: Memorandum from HM Treasury to the Delegated Powers and Regulatory Reform Committee](#), 12 May 2021 para 38

¹²⁰ See [31st Report](#), Session 2017–19 (HL Paper 177), para 12, on the Ivory Bill.

schemes specified on the face of the Bill, suggests that its provisions will not necessarily be identical to those of the other schemes. That being so, we consider that the designation of a scheme should be subject to parliamentary scrutiny.¹²¹

Although the Government initially took the view that “no procedure remains appropriate”,¹²² at the Bill’s Report Stage the Government tabled an amendment to make this power subject to the negative procedure.¹²³

2.4 Promoters of tax avoidance

Background

In recent years concerns as to the scale of mass marketed tax avoidance schemes have led to three major initiatives to undermine this market and encourage a sea change in attitudes: the Disclosure of Tax Avoidance Schemes (DOTAS) regime; the General Anti-Abuse Rule (GAAR); and the system of follower notices & accelerated payments notices.¹²⁴

The DOTAS regime was introduced by the then Labour Government in its 2004 Budget.¹²⁵ Under DOTAS accountants, financial advisers and other 'promoters' selling tax avoidance schemes are required to notify the tax authorities of any new scheme they are to offer to taxpayers. Each scheme is given a reference number which, in turn, taxpayers have to use in their tax return, if they have used it. HMRC have used this information to track the take-up of avoidance schemes, challenge individual schemes in the courts if HMRC have assessed that they do not work in the way the promoter claims, or to address unintended loopholes in the law that some schemes seek to exploit.¹²⁶

In the 2020 Budget the Government announced that it planned to introduce legislation to tackle the promoters of tax avoidance schemes, including provision to “enable HMRC to act promptly where promoters fail to provide information on their avoidance schemes. In particular, these changes will help HMRC obtain the information needed to bring a scheme into the DOTAS regime and empower HMRC to act faster where avoidance schemes are being promoted.”¹²⁷ This followed widespread concerns that legislation to

¹²¹ Delegated Powers and Regulatory Reform Committee, [National Insurance Contributions Bill, HL Paper 102](#), 25 November 2021

¹²² Delegated Powers and Regulatory Reform Committee, [19th Report of Session 2021–22, HL Paper 155](#), 3 February 2022 pp6-7

¹²³ HMRC, [Bill 259 EN 2021-22 \(Lords Amendments to the Bill\)](#), 23 February 2022 para 13.

¹²⁴ For more details see, HMRC, [Tax avoidance: an introduction](#), September 2016.

¹²⁵ [Budget 2004, HC 301, March 2004, p202](#)

¹²⁶ Guidance on DOTAS [is on Gov.uk. On the initial impact of the DOTAS regime see](#), National Audit Office, [Tax avoidance: tackling marketed avoidance schemes](#), HC 730, 21 November 2012 (Part 2)

¹²⁷ Budget 2020, HC 121, March 2020 para 2.256. see also, HMRC, [Tackling promoters of mass-marketed tax avoidance schemes](#), March 2020

frustrate ‘disguised remuneration’ schemes – schemes seeking to ‘disguise’ income paid to employees or contractors in the form of a non-redeemable loan – had imposed significant financial burdens on individuals who had invested in such schemes, but **failed** to stop promoters marketing new schemes.¹²⁸

Further details were published in July 2020,¹²⁹ as well as a [consultation exercise](#) on the Government’s strategy. The outcome of this consultation was published alongside the 2021 Budget, when the Government confirmed it would go ahead with this package of measures.¹³⁰ The Government’s summary of the consultation gives a summary of the proposed amendment to the DOTAS regime ...

The proposals would enable HMRC to obtain information at a much earlier stage than it can now about tax avoidance schemes which have not been notified under Disclosure of Tax Avoidance Schemes (DOTAS) or Disclosure of Tax Avoidance Schemes for VAT and other Indirect Taxes (DASVOIT). HMRC would be able to issue an initial notice to those they suspect are promoters or otherwise involved in the supply chain of the scheme, giving them the opportunity (within 30 days) to explain why the scheme is not notifiable.

In the absence of a response or of a response that satisfies HMRC that the scheme is not notifiable, HMRC would be able to issue a Scheme Reference Number (SRN) to the promoter and those involved in the supply chain of the scheme, and will be able to publish details of the recipients of the notices and the scheme (often referred to as “naming”).

... and its decision to proceed with this, in light of the responses it had received:

Respondents to the consultation were broadly supportive of the proposals, although there were some concerns that compliant advisors giving genuine advice might be caught inadvertently by the proposals, and some respondents considered that the naming of those involved in the promotion and marketing of avoidance schemes should apply to promoters only. Respondents were keen to see strong internal governance processes adopted by HMRC when deploying the proposals.

The government believes that the 30 day time limit to reply to an initial notice under the new power provides a suitable balance between giving recipients sufficient time to satisfy HMRC that the scheme is not notifiable, while not providing an opportunity for promoters or those involved in the supply chain of schemes to delay or avoid receiving an SRN. The government will proceed with the proposed time limit of 30 days in which to respond to a notice.

It is possible for some businesses to be unknowingly caught up in the supply chain of advisers and promoters that leads to an avoidance scheme being developed and marketed. Where that happens HMRC would still need

¹²⁸ The controversy surrounding the impact of the Government’s approach, particularly on taxpayers unaware of the financial risks of using these schemes, is discussed in, [The 2019 Loan Charge](#), [Commons Library briefing CBP8811](#), 15 February 2022.

¹²⁹ HMRC, [New proposals for tackling promoters and enablers of tax avoidance schemes](#), 21 July 2020

¹³⁰ HMT, [Overview of Tax Legislation & Rates](#), March 2021 para 1.61

information from those involved in that supply chain to help tackle the promoter. Nobody involved in the supply chain of an avoidance scheme would be named automatically and anyone HMRC is considering naming would have the opportunity to make representations and explain to HMRC why they believe they should not be named. The government agrees that HMRC should not be able to name those involved until after an SRN has been issued.

The government agrees with respondents about the need for strong governance and will ensure HMRC applies robust governance processes to ensure these powers are used appropriately. HMRC will publish guidance setting these out.¹³¹

Provision for this measure was included in the [Finance \(No.2\) Bill 2019-21](#), which was introduced after the Budget: specifically, [clause 122 & Schedule 31 of the Bill](#). The clause was one of a series in the Bill related to tax avoidance and tax evasion that were debated, and agreed, by the Committee of the Whole House on 20 April,¹³² although it was not the subject of any detailed comment on this occasion.

Clause 11 of the Bill

Statutory provision to introduce DOTAS was made by Part 7 of the [Finance Act 2004](#). The DOTAS regime was extended to cover NICs by the [National Insurance Contributions Act 2006](#).¹³³ Section 7 of this legislation introduced a regulation-making power, to enable the Government to introduce regulations for the application of DOTAS to NICs schemes. This is consolidated in section 132A of the [Social Security Administration Act \(SSAA\) 1992](#).¹³⁴ Clause 11 would amend this regulation making power, to enable regulations to be made in relation to NICs schemes that mirror the amendments to DOTAS included in Finance Bill 2021. It is not anticipated that this will have an Exchequer impact.¹³⁵

Regulations to be made under this provision would be subject to the negative procedure (under clause 12(3) of the Bill). The Treasury's memorandum to the Delegated Powers and Regulatory Reform Committee notes the following:

Clause 11 amends section 132A(1) of the SSAA 92 to extend the Treasury's power to obtain disclosure of information in relation to 'notifiable contributions arrangements' or 'notifiable contributions proposals' (both as defined in s132A(3)) to cover arrangements which HMRC reasonably suspect

¹³¹ [Tackling Promoters of Tax Avoidance: Summary of responses](#), 3 March 2021 para 1.16-20

¹³² [HC Deb 20 April 2021 cc893-923](#)

¹³³ For more background see, [National Insurance Contributions Bill \(Bill 53 2005-06\)](#), [Commons Library briefing RP05/67](#), 28 October 2005.

¹³⁴ Two principal sets of regulations have been introduced: [SI 2007/785](#) & [SI 2012/1868](#). For further details see, HMRC, National Insurance Manual, [para NIM58000-58250 \(NICs Avoidance: DOTAS\)](#)

¹³⁵ HMRC, [Proposals for tackling promoters and enablers of National Insurance contributions avoidance schemes](#), 12 May 2021

are notifiable contributions arrangements or notifiable contributions proposals. ...

Section 132A(2) of the SSAA 92 restricts the scope of the power provided by subsection (1). The regulations can only operate by applying to NICs (with or without modification) or making provision for NICs corresponding to primary or secondary legislation relating to the disclosure of information in relation to income tax avoidance arrangements in Part 7 Finance Act 2004. The existing power is subject to the negative procedure. In view of the restriction described above we consider the negative procedure remains appropriate.¹³⁶

¹³⁶ HMT, [National Insurance Contributions Bill: Memorandum from HM Treasury to the Delegated Powers and Regulatory Reform Committee](#), 12 May 2021 para 39, paras 41-2

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