National Insurance Contributions Bill

HL Bill 48 of 2021–22

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The National Insurance Contributions Bill is a government bill that would introduce new measures around national insurance contributions. The bill would:

- introduce national insurance relief for employers based within a freeport tax site;
- introduce national insurance relief for employers of ex-service personnel for 12 months after their start date;
- create a national insurance exemption for those receiving payments under the Covid-19 test and trace support payments scheme; and
- create anti-tax avoidance provisions to allow national insurance avoidance schemes to be brought into the disclosure of tax avoidance schemes (DOTAS) system.

The bill is separate from the recent 1.25 percentage point increase in national insurance contributions to fund the new health and social care levy announced by the Government on 7 September 2021. This will be covered in a separate Lords Library briefing on the Health and Social Care Levy Bill.

The National Insurance Contributions Bill completed its House of Commons stages on 6 September 2021. One minor drafting amendment from the Government was made during its Commons stages. The bill received broad support in the House of Commons. However, some MPs raised concerns around the details of the freeport provisions within the bill, whether the national insurance relief for employers of ex-service personnel should last for longer than 12 months, and whether the existing employment allowance relief scheme aimed at small and medium-sized businesses should be extended.

The Government has said this bill would support regional growth, while also protecting those on low incomes from the financial impacts of Covid-19. It also argues that the bill would strengthen the Government's powers to tackle promoters of tax avoidance schemes.

The bill received its first reading in the House of Lords on 7 September 2021. At the time of writing no date for second reading of the bill has been announced.

1. National insurance

National insurance is a tax on earnings. It is paid by employees, employers and the self-employed. It is used to fund certain contributory benefits, including:

- basic state pension (which accounts for the majority of national insurance spending);
- contribution-based jobseeker's allowance; and
- maternity allowance.

The majority of national insurance contributions (NICs) from Great Britain are paid into the National Insurance Fund and kept separate from all other revenue raised by taxes. A separate fund exists for Northern Ireland, with a system of parity payments acting as "a safeguard against serious imbalances between the Great Britain and Northern Ireland funds".[1] A small proportion of NICs receipts are also used for NHS funding. NICs were forecast to raise £146.8 billion in 2021/22.[2]

1.1 Current rates of NICs

2021/22 rates of NICs are set out in the tables below. No national insurance is paid on earnings below the lower earnings limit (LEL). A zero percent rate is charged on earnings between the LEL and a primary threshold of £184 per week. No actual tax is paid between the LEL and the £184 threshold, but the employee is treated by HMRC as if they have made a contributory payment, which maintains their entitlement to benefits, such as the state pension. Earnings above £184 per week are charged to the employee at 12%, and earnings above the upper earnings limit (UEL) are charged at 2%.

Employer contributions are often referred to as secondary contributions. It is these secondary contributions that are the subject of the freeport and ex-service personnel provisions within the bill. Employers pay 13.8% on earnings above the upper secondary threshold (UST). Employers also pay NICs on expenses and benefits they give to their employees, as well as on some other lump sum payments, for example redundancy payments.

For an employee earning £1500 per week, they would pay zero percent on their earnings below £184;12% on their earnings between £184 and £967; and 2% on all earnings above £967 per week. Their employer would pay 13.8% on all earnings above £170 per week.[3]

Table 1: Employee NIC rates 2021/22[4]

Earnings per week	Employee NIC rate
Below £120 (lower earnings limit)	0%
£120 to £184 (primary threshold)	0%
£184 to £967 (upper earnings limit)	12%
Above £967	2%

Table 2: Employer NIC rates 2021/22[5]

Earnings per week	Employer NIC rate
Below £120	0%
£120 to £170 (secondary threshold)	0%
Above £170 (upper secondary threshold)	13.8%

[1] HM Revenue and Customs, *Northern Ireland National Insurance Fund Account 2019 to 2020*, 21 January 2021, HC 1101 of session 2019–21.

[2] House of Commons Library, *National Insurance Contributions Bill 2021–22*, 25 June 2021, p 10.

[3] HM Revenue and Customs, 'National insurance rates and categories', 2021.

[4] House of Commons Library, *National Insurance Contributions Bill 2021–22*, 25 June 2021, p 6.

[5] ibid.

Employers may be entitled to one of three NI relief schemes. These are:

- **Employment allowance**: allows eligible employers[6] to reduce their annual secondary NICs by up to £4,000. Eligible businesses or charities must have NICs that were less than £100,000 in the previous tax year.[7]
- **Upper Secondary Threshold (UST) for under-21s**: allows employers of those under the age of 21 to pay zero percent secondary NICs on earnings up to the UST set in line with the UEL (currently £967).[8]
- **Apprentice Upper Secondary Threshold (AUST)**: allows employers of certain apprentices who are under the age of 25 to pay zero percent secondary NICs up to the AUST, set in line with the UEL (currently £967).[9]

Self-employed people also pay NICs. In 2021/22, they are charged £3.05 a week if profits are over £6,515 per year, and 9% on profits between £9,569 and £50,270. On profits above £50,270 per year, the self-employed pay a rate of 2%.[10]

1.2 Health and social care levy

On 7 September 2021, the Government announced plans to increase the funding of health and social care through a new tax: the health and social care levy.[11] This levy would be applied from April 2022 initially via a 1.25 percentage point increase in NICs for both employees and employers. From 2023/24, the levy will be separated from NICs, and will appear as a separate row on pay slips as the health and social care levy. The National Insurance Contributions Bill is separate from this proposed rise in NICs. The Health and Social Care Levy Bill will be covered in a separate Lords Library briefing.

2. What would the National Insurance Contributions Bill do?

The National Insurance Contributions Bill would introduce four broad provisions around NICs. The bill would:

- introduce NICs relief for employers based within freeport tax sites (clauses 1–5);
- introduce NICs relief for employers of ex-service personnel (clauses 6–7);
- bring self-employed people into the NICs relief system for the test and trace support payment scheme (clause 10); and
- make changes to the disclosure of tax avoidance schemes (DOTAS) related to avoidance of NICs (clause 11).

The majority of the bill would extend to England, Wales and Scotland, with the exception of clause 5,

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[6] This relief is aimed at small and medium sized businesses with NICs of less than £100,000 in the previous tax year.

[7] HM Revenue and Customs, 'Employment allowance', 2021.

[8] HM Revenue and Customs, 'Abolition of employer national insurance contributions for under 21s: employer guide', 5 December 2014.

[9] HM Revenue and Customs, 'Rates and allowances: national insurance contributions', 6 April 2021.

[10] HM Revenue and Customs, 'Self-employed national insurance rates', 2021.

[11] HC *Hansard*, 7 September 2021, col 153.

which would only apply to Northern Ireland. All but the first three clauses of the bill would extend to Northern Ireland.[12]

2.1 Freeports

In the Queen's Speech on 11 May 2021, the Government said it would create eight new freeports that would be "hubs for trade and help regenerate communities".[13] The Institute for Government defines freeports as:

> Special kinds of port (airports as well as seaports) where normal tax and customs rules do not apply. Imports [may] enter with simplified customs documentation and without paying tariffs.[14]

In its 2021 budget, the Government said that it would legislate to create "tax sites" in freeports.[15] Among the tax relief measures available in these sites would be NICs relief detailed in clauses 1 to 5 of this bill.

The sites that have been successful in the freeports bidding process for England are East Midlands Airport, Felixstowe & Harwich, Humber, Liverpool City Region, Plymouth and South Devon, Solent, Teesside, and Thames. The Government has said that "discussions continue [with the] devolved administrations to ensure the delivery of freeports in Scotland, Wales and Northern Ireland as soon as possible". [16]

Clause 1 of the bill would allow 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. Public authorities would be excluded from this relief.[17] This relief would be zero percent NICs up to the UST. Above the UST, the secondary percentage (currently 13.8%) would apply.[18] Clause 1(3) would allow the Government to set the UST by statutory instrument. The Government has said that the UST will be £25,000 per annum.[19]

Clause 2 sets the conditions that would have to be met for employers to be eligible for the NICs relief in freeport tax sites. The start date for the freeport employment would have to be between 6 April 2022 and 5 April 2026. The relief would cover up to three years from the employee's first day of employment.[20] A freeport employer must "reasonably expect" that the earner will spend 60% or more of their employed time in a single freeport tax site in which the freeport employer must also have business premises.[21] Clause 2(6) sets 5 April 2031 as the latest date that earnings may qualify for

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[12] Explanatory Notes, p 14.

[13] Prime Minister's Office, 10 Downing Street, 'Queen's Speech 2021', 11 May 2021.

[14] Jeremy Mills-Sheehy and James Kane, 'Trade: freeports and free zones', *Institute for Government*, 22 July 2021.

[15] HM Treasury, *Budget 2021: Protecting the Jobs and Livelihoods of the British People*, 3 March 2021, HC 1226 of session 2019–21, p 58.

[16] ibid.

[17] Explanatory Notes, p 6.

[18] ibid.

[19] HM Revenue and Customs, 'Zero-rate of secondary NICs for freeport employees', 12 May 2021.

[20] Explanatory Notes, p 6.

[21] ibid, p 7.

relief.[22] The Government has said it will review whether to continue the scheme past its earliest end date of 5 April 2026.[23]

Clause 3 would create regulation-making powers around altering the end date of the relief (no later than 5 April 2031); the power to alter the circumstances in which a condition is to be treated as met; and the power to modify the freeport conditions set out in clause 2. The last of these would be subject to the affirmative procedure (approval required by both Houses). In its written submission to the Delegated Powers and Regulatory Reform Committee, the Government said this power may be necessary to meet subsidy control obligations under the UK-EU Trade and Co-operation Agreement and the Northern Ireland Protocol.[24]

Clause 4 would prevent employers shown to be using tax avoidance methods from accessing the freeports NICs relief scheme.[25]

Clause 5 would create a regulation-making power to allow the Government to create a similar NICs relief scheme for freeports in Northern Ireland.[26] This power would be subject to the affirmative procedure.

2.2 Reduction in NICs for employers of ex-service personnel

In the 2021 Queen's Speech, the Government announced plans to introduce NICs relief for employers of ex-service personnel.[27] This is covered in clauses 6 and 7 of this bill.

Clause 6 would allow an employer to qualify for a zero rate of secondary class 1 NICs on the earnings of ex-service personnel. This would apply on earnings up to the UST. Earnings above the UST would be taxed at the secondary percentage (currently 13.8%).[28] The Treasury would have the power to set the UST. Clause 6(5) would allow for this relief to be available for employer's to claim back for the 2021/22 tax year retrospectively by paying their tax in full, and then submitting a claim to HMRC.[29]

Clause 7 sets out the conditions that would have to be met by an employer to claim the relief. Clause 7(1)(a) clarifies that to qualify, an employee would have to have served for at least one day as a member of any of the regular forces.[30] Clause 7(1)(c) states this relief would be available for one year beginning with the employee's first day of civilian employment after leaving the armed forces.[31]

Clause 8 would create regulation-making powers allowing the Government to set the UST for the

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[22] Explanatory Notes, p 7.

[23] HM Revenue and Customs, 'Zero-rate of secondary NICs for freeport employees', 12 May 2021.

[24] HM Treasury, 'Memorandum from HM Treasury to the Delegated Powers and Regulatory Reform Committee', 12 May 2021.

[25] Explanatory Notes, p 8.

[26] ibid.

[27] Prime Minister's Office, 10 Downing Street, 'Queen's Speech 2021', 11 May 2021.

[28] Explanatory Notes, p 8.

[29] ibid.

[30] ibid, p 9.

[31] ibid.

freeport and the ex-service personnel NICs relief schemes. These powers would be subject to the affirmative procedure.

Clause 9 would make a consequential amendment to the section 100(6) of the Finance Act 2016, often known as the apprenticeship levy. The levy is paid by companies with an annual pay bill of more than £3 million at a rate of 0.5% of their total pay bill.[32] Clause 9 would take into account the zero rate for freeport employees or for ex-service personnel for the purposes of the apprenticeship levy.

2.3 Test and trace support payment scheme

The test and trace support payment scheme was launched in England in September 2020. It allows those on low incomes and who are unable to work from home to claim a £500 payment if they have been instructed to self-isolate.[33] Similar schemes also exist in Scotland and Wales. These payments are subject to income tax. However, the Government has introduced secondary legislation to provide exemptions for class 1 (employer and employee) and class 1A (employer) NICs for these payments.[34] Similar delegated legislation was also introduced for Scotland and Wales.[35]

Clause 10 would bring the self-employed into the NICs relief for these payments. The measure would be formally retrospective for the tax year 2020 to 2021, meaning that those affected can submit a claim to HMRC after having been taxed in full.[36]

2.4 Disclosure of tax avoidance schemes

Disclosure of tax avoidance schemes (DOTAS) was introduced in the Finance Act 2004. Under DOTAS, any financial adviser or accountant is required to notify the tax authorities of any new tax avoidance scheme they offer to taxpayers. These schemes are then given a reference by HM Revenue and Customs (HMRC), which has to be used in tax returns if the scheme has been utilised.

The Social Security Administration Act 1992 and the National Insurance Contributions Act 2006 provide regulation-making powers to apply DOTAS to NICs avoidance schemes.[37] Clause 11 of this bill would "widen the existing regulation making power in the Social Security Administration Act 1992 so that it may impose reporting requirements in relation to arrangements that aim to avoid NICs".[38] This would also align with measures included in the Finance Act 2021.

3. Bill stages in the House of Commons

The bill received broad support in the House of Commons. One minor drafting amendment from the

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[32] House of Commons Library, *Apprenticeships and sSkills Policy in England*, 7 September 2020.

[33] Department of Health and Social Care, 'Claiming financial support under the test and trace support payment scheme', 16 August 2021.

[34] The Social Security Contributions (Disregarded Payments) (Coronavirus) (England) Regulations 2020, SI 2020/1065.

[35] The Social Security Contributions (Disregarded Payments) (Coronavirus) (Scotland and Wales) Regulations 2020, SI 2020/1532.

[36] HM Revenue and Customs, 'Exemption from Class 2 and 4 national insurance contributions for Covid-19 test and trace support payments', 12 May 2021.

[37] House of Commons Library, *National Insurance Contributions Bill 2021–22*, 25 June 2021, p 36.

[38] Explanatory Notes, p 10.

Government was made during its Commons stages. However, concerns were raised by opposition parties about several issues, including:

- Why the Government has proposed to set the UST for the freeport scheme at £25,000 per annum, when the UST for other relief schemes, such as the under-21 scheme and the apprentice scheme, is set at over £50,000.
- Why the NICs relief for employers of ex-service personnel is only designed to last 12 months, while the freeport scheme is designed to last three years.
- Whether obligations should be placed on businesses benefitting from freeport tax site benefits, such as environmental commitments and assurances that no goods passing through freeports are associated with slave labour.

3.1 Second reading

The bill received its second reading in the House of Commons on 14 June 2021.[39]

The Financial Secretary to the Treasury, Jesse Norman, said that the bill:

> Supports regional growth and, with it, the Government's levelling-up agenda. [It] boosts employment while helping to protect those on low incomes from the financial impacts of Covid-19; and strengthens the Government's powers to tackle promoters of avoidance schemes.[40]

The Shadow Financial Secretary, James Murray, said that Labour supported the intention behind many of the bill's measures, and would not oppose it. However, Mr Murray raised some objections to the details of the freeports NICs relief scheme. On the power to set the UST (above which an employer pays NICs), and on the Government's proposals to set the UST at £25,000 per annum for freeports, Mr Murray questioned why this threshold was so much lower than the threshold for under-21s and apprentices, which is set at £50,270. Mr Murray said:[41]

> According to the Office for National Statistics, the median income in all those local authority areas where the eight freeport sites are located is greater than £25,000, with the figures ranging from £25,200 in Kingston upon Hull, within the Humber freeport, to £33,200 in Thurrock, within the Thames freeport. I therefore ask the Exchequer Secretary to explain why the relief for freeport employers is set below median pay in all freeport areas and why this rate is half of that for those employing under-21s and apprentices.

The Exchequer Secretary to the Treasury, Kemi Badenoch, replied:[42]

> Unlike other NICs reliefs that are available to employers nationally and generally are targeted at specific groups of employees with particular characteristics, businesses operating in a freeport are likely to be able to claim the relief on almost all of their new hires. To balance generosity of

[39] HC *Hansard*, 14 June 2021, col 46.

[40] ibid.

[41] ibid, col 49.

[42] ibid, col 70.

> support with the need to consider the public finances, this broader eligibility has been balanced by limiting the amount of salary that can be relieved. We have chosen to set this limit at £25,000 per annum, which is approximately the average salary in the UK.

The NICs relief for ex-service personnel included in clauses 6 and 7 of the bill received broad support. However, James Murray questioned why the measure was only designed to last for 12 months, compared to the freeports relief which would last for three years.[43]

Opposition parties also supported clause 10 provisions bringing self-employed people into NICs relief from the test and trace support payment scheme. Mr Norman said clause 10 would "ensure that [self-employed] workers are treated consistently with their employed counterparts and do not have to pay NICs on support payments".[44]

Clause 11 measures around DOTAS and NICs avoidance were broadly supported by opposition parties. Shadow Scottish National Party (SNP) Deputy Spokesperson Richard Thomson questioned whether the measures went far enough in tackling tax avoidance, arguing that "what is really needed is a workable set of general anti-avoidance rules that tackle tax avoidance in all its forms".[45]

3.2 Committee stage

The House of Commons public bill committee considered the bill on 22 June 2021.[46]

One amendment was defeated at division during committee stage.

Amendment 1 was moved by Shadow SNP Deputy Spokesperson Richard Thomson. The amendment would have placed obligations on businesses within freeport tax sites, including the publication of "a strategy on how the freeport will contribute to the target for net UK greenhouse gases emissions", and "a strategy ensuring no goods passing through the freeport are products of slave labour".[47] In response to the amendment, Financial Secretary to the Treasury Jesse Norman said that the amendment would add "complexity to what is a well-established and rapidly moving process, and create potential delay".[48]

The amendment was defeated by 9 to 1.

One new clause was defeated at division during committee stage.

New clause 8 was moved by Richard Thomson. It related to the payment of tax on £500 "thank-you bonus"[49] payments made by the Scottish Government to health and social care workers. Mr Thomson argued that it was "unfair" that the UK Government did not provide tax exemptions for these

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43 HC *Hansard*, 14 June 2021, col 52.

44 ibid, col 47.

45 ibid, col 57.

46 HC *Hansard*, 22 June 2021, col 1.

47 House of Commons, *National Insurance Contributions Bill (Amendment Paper)*, 22 June 2021, p 2.

48 HC *Hansard*, 22 June 2021, col 11.

49 ibid, col 28.

payments. New clause 8 sought to "ensure that clarity is provided and that any future payments for health and social care workers [in Scotland] can be exempt from national insurance contributions".[50] In response to the new clause, Jesse Norman said that:

> We fully recognise the hon. Member's concern, but we do not believe the new clause is the appropriate way to proceed. Payments made in connection with an employment are chargeable to income tax and NICs. They also count as income for the purposes of calculating entitlement to certain benefits. The £500 payments made by the Scottish Government to health and social care workers function as a top-up to wages. We therefore consider that those payments are taxable as earnings under normal rules.

The new clause was defeated on division by 10 to 1.

3.3 Report stage and third reading

Report stage of the bill took place on 6 September 2021.[51]

One government amendment was agreed to without division. Amendment 3 corrected an error by adding a 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.[52]

One new clause was defeated on division. New clause 4 was moved by the Liberal Democrat Spokesperson for Business, Energy and Industrial Strategy, Sarah Olney. This new clause would have increased the employment allowance (the existing NICs relief scheme for small and medium businesses) from £4,000 to £16,000 for two years. On the new clause, Ms Olney said:

> I propose new clause 4 because instead of a selected NICs cut for companies in freeports, I would prefer that we target the cut at [small and medium sized businesses], at this urgent time when we want to stimulate economic growth and support employment.[53]

In response to new clause 4, the Financial Secretary to the Treasury, Jesse Norman, argued that an increase to the employment allowance would be "expensive and unnecessary". He also said that "the Government only recently raised the [employment] allowance from £3,000 to £4,000 in April of last year in order to help small businesses and boost employment levels."[54]

New clause 4 was defeated on division by 309 to 15.

The bill's third reading took place directly after its report stage.[55]

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[50] HC *Hansard*, 22 June 2021, col 28.
[51] HC *Hansard*, 6 September 2021, col 84.
[52] ibid, col 96.
[53] ibid, col 89.
[54] ibid, col 92.
[55] ibid, col 96.

4. Read more

- Jeremy Mills-Sheehy and James Kane, 'Trade: freeports and free zones', *Institute for Government*, 22 July 2021.

This article provides an overview of freeports, including the UK Government's policy, whether being a member of the EU prevented the UK from creating freeports, and whether freeports are likely to stimulate economic growth.

- Royal British Legion, *Deployment to Employment: Exploring the Veteran Employment Gap in the UK*, September 2016.

Research from the Royal British Legion into the employment gap experienced by some veterans in the UK. It found that, in 2016, working age veterans in the UK were nearly twice as likely to be unemployed as their civilian contemporaries.