

National Insurance Contributions Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by HM Revenue and Customs and HM Treasury, have been ordered to be published as HL Bill 48 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Viscount Younger of Leckie has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the National Insurance Contributions Bill are compatible with the Convention rights.

National Insurance Contributions Bill

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Make provision in relation to national insurance contributions.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

SECONDARY CLASS 1 CONTRIBUTIONS

Freeports

1 Zero-rate contributions for employees at freeport tax sites: Great Britain

- (1) This section applies where— 5
- (a) a secondary Class 1 contribution is payable as mentioned in section 6(1)(b) of the 1992 Act in respect of earnings paid in a tax week in respect of an employed earner’s employment by an employer other than a public authority,
 - (b) the freeport conditions are met in relation to the contribution (see section 2), and 10
 - (c) the employer (or, if different, the secondary contributor) elects that this section is to apply in relation to the contribution for the purposes of section 9(1) of the 1992 Act instead of section 9(1A) of that Act or section 6 of this Act. 15
- (2) For the purposes of section 9(1) of the 1992 Act—
- (a) the relevant percentage in respect of any earnings paid in the tax week up to or at the upper secondary threshold is 0%, and
 - (b) the relevant percentage in respect of any earnings paid in the tax week above that threshold is the secondary percentage. 20
- (3) The upper secondary threshold (or the prescribed equivalent in relation to earners paid otherwise than weekly) is the amount specified in regulations under section 8.

- (4) For the purposes of the 1992 Act a person is still to be regarded as being liable to pay a secondary Class 1 contribution even if the amount of the contribution is £0 as a result of this section.
- (5) The Treasury may by regulations make provision about cases in which this section is to be treated as applying in relation to contributions payable in respect of a tax week in a given tax year only when – 5
- (a) that tax year has ended, and
 - (b) all contributions payable in respect of a tax week in that tax year have been paid.
- (6) Regulations under subsection (5) may modify the freeport conditions in section 2(1)(c) and (d) for the purposes of cases to which the regulations apply. 10

2 Freeport conditions

- (1) The freeport conditions are that –
- (a) the employed earner’s employment is a new employment that – 15
 - (i) begins on or after 6 April 2022, but
 - (ii) does not begin later than 5 April 2026,
 - (b) the earnings –
 - (i) are paid during the period of three years beginning with the first day of the employment, but
 - (ii) are not paid after the relevant end date (see subsection (6)), 20
 - (c) the contribution is paid in respect of earnings paid in a tax week all of which is in a qualifying period of the employment, and
 - (d) at the time the qualifying period begins, the employer reasonably expects that 60% or more of the earner’s employed time during that period will be spent in a single freeport tax site in which the employer has business premises. 25
- (2) For the purposes of subsection (1)(a), an employment is new if the earner was not employed by the employer or by a person connected with the employer (within the meaning of section 993 of the Income Tax Act 2007) at any time within the period of two years ending with the day on which the employment begins. 30
- (3) For the purposes of subsection (1)(c) a qualifying period of the employment is a period –
- (a) that begins with –
 - (i) the start of the employment, or
 - (ii) a substantial change in the earner’s working arrangements, and
 - (b) that ends (subject to subsection (4)(d)) with –
 - (i) the end of the employment,
 - (ii) the relevant end date, or
 - (iii) a substantial change in the earner’s working arrangements. 40
- (4) For the purposes of subsection (1)(d) –
- (a) an earner’s employed time is time when the earner is expected to provide services to the employer under the terms of a contract of service (“working time”), together with time when the earner would have provided such services but for being on leave (of any sort); 45

- (b) it is to be assumed that the proportion of the time when an earner is on leave that is spent at any given freeport tax site is the same as the proportion of the earner’s working time that would be spent at that site if the earner were not on leave;
 - (c) it does not matter whether the earner is expected to provide services under a single contract of service or under successive contracts of service, provided that the employment does not cease; 5
 - (d) if an expectation for the purposes of subsection (1)(d) ceases to be reasonable in any given tax week, the condition in that subsection ceases to be met, and the qualifying period is taken to end, at the end of the previous tax week. 10
 - (5) If the secondary contributor in relation to the earner is not the earner’s employer –
 - (a) subsection (1)(d) has effect as if both references to “the employer” were references to “the secondary contributor”, and 15
 - (b) subsection (2) has effect as if, after both references to “the employer”, there were inserted “or the secondary contributor”.
 - (6) The relevant end date is the earlier of –
 - (a) the last day of the period of three years beginning with the day after the day for the time being specified in subsection (1)(a)(ii), and 20
 - (b) 5 April 2031.
- 3 Freeport conditions: supplementary**
- (1) The Treasury may by regulations made before the end of the day for the time being specified in section 2(1)(a)(ii) amend that subsection to substitute for that day any other day up to and including 5 April 2031. 25
 - (2) The Treasury may by regulations provide for circumstances in which a freeport condition is to be treated as being met.
 - (3) The Treasury may by regulations make such other changes in relation to the freeport conditions as they consider appropriate (including by adding, removing or altering conditions). 30
 - (4) Regulations under subsection (3) may, among other things –
 - (a) provide for circumstances in which a condition is to be treated as not being met;
 - (b) add conditions relating to accounts or other records;
 - (c) add conditions requiring a person to take steps specified in the regulations. 35
 - (5) Regulations under subsection (2) or (3) may make provision by reference to sectors of the economy or to descriptions of employer, earner or employment.
 - (6) Regulations under subsection (2) or (3) may amend, repeal or otherwise modify this Part. 40

4 Anti-avoidance

- (1) Section 1 does not apply if it would otherwise apply only as a result of avoidance arrangements.
- (2) In this section –

“arrangements” include any scheme, transaction or series of transactions, agreement or understanding, whether or not legally enforceable;

“avoidance arrangements” means 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 5
- (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.

5 **Zero-rate contributions for employees at freeport tax sites: Northern Ireland** 10

The Treasury may by regulations make provision corresponding or similar to provision made in, under or for the purposes of sections 1 to 4 in relation to Northern Ireland.

Veterans

6 **Zero-rate contributions for armed forces veterans** 15

- (1) Subsection (2) applies where –
 - (a) a secondary Class 1 contribution is payable as mentioned in section 6(1)(b) of either of the 1992 Acts in respect of earnings paid in a tax week in respect of an employment,
 - (b) the tax week is in a tax year mentioned in subsection (4), 20
 - (c) the veteran conditions are met in relation to the contribution (see section 7), and
 - (d) the employer (or, if different, the secondary contributor) elects that subsection (2) is to apply in relation to the contribution for the purposes of section 9(1) of whichever of the 1992 Acts would otherwise apply instead of section 9(1A) of that Act or section 1 of this Act. 25
- (2) For the purposes of section 9(1) of whichever of the 1992 Acts would otherwise apply –
 - (a) the relevant percentage in respect of any earnings paid in the tax week up to or at the upper secondary threshold is 0%, and 30
 - (b) the relevant percentage in respect of any earnings paid in the tax week above that threshold is the secondary percentage.
- (3) The upper secondary threshold (or the prescribed equivalent in relation to earners paid otherwise than weekly) is the amount specified in regulations under section 8. 35
- (4) The tax years are –
 - (a) 2022-23;
 - (b) 2023-24.
- (5) Any amount paid by way of secondary Class 1 contribution in relation to a tax week in the tax year 2021-22 that would not have been payable if that tax year had been mentioned in subsection (4) and an election had been made for the purposes of subsection (1)(d) in relation to the contribution is to be treated, from 6 April 2022, as not having been payable. 40

- (6) The Treasury may by regulations made before the end of the last tax year for the time being mentioned in subsection (4) (“the last tax year”) amend that subsection so as to add one or more consecutive tax years following immediately after the last tax year.
- (7) For the purposes of the 1992 Acts a person is still to be regarded as being liable to pay a secondary Class 1 contribution even if the amount of the contribution is £0 as a result of this section. 5
- (8) The Treasury may by regulations make provision about cases in which subsection (2) is to be treated as applying in relation to contributions payable in respect of a tax week in a given tax year only when – 10
- (a) that tax year has ended, and
 - (b) all contributions payable in respect of a tax week in that tax year have been paid.

7 Veteran conditions

- (1) The veteran conditions are that – 15
- (a) the earner has served for at least one day as a member of any of the regular forces,
 - (b) the employment is employment in a civilian capacity, and
 - (c) the earnings are paid during the period of one year beginning with the earner’s first day of employment in a civilian capacity since the earner last ceased to be a member of any of the regular forces. 20
- (2) For the purposes of subsection (1)(c), it is immaterial if the earner’s first day of employment in a civilian capacity was before the start of the tax year 2022-23 (or, in a case where section 6(5) applies, the tax year 2021-22).

Upper secondary threshold 25

8 Upper secondary threshold for earnings

- (1) The Treasury may by regulations provide that there is to be an upper secondary threshold for secondary Class 1 contributions for the purposes of any tax year to which section 1 or 6 relates.
- (2) The threshold for any tax year is to be the amount specified for that tax year by the regulations. 30
- (3) The regulations may specify an amount that would apply in relation to a tax year or part of a tax year before the regulations are made only for the purposes of tax years 2021-22 and 2022-23.
- (4) Subsections (4) to (6) of section 5 of both of the 1992 Acts (which confer power to prescribe an equivalent of a secondary threshold in relation to earners paid otherwise than weekly) apply for the purposes of an upper secondary threshold as they apply for the purposes of a secondary threshold. 35

*Consequential amendment***9 Consequential amendment**

In the Finance Act 2016, in Part 6 (apprenticeship levy), in section 100(6) (references to liability to pay secondary Class 1 contributions), for the words in brackets substitute “(including a case where the amount of a liability to pay a secondary Class 1 contribution is £0)”. 5

PART 2

CLASS 4 CONTRIBUTIONS

10 Treatment of self-isolation support scheme payments

- (1) A payment under a self-isolation support scheme is not to be taken into account for the purposes of computing the amount of profits in respect of which Class 4 contributions are payable under section 15 of either of the 1992 Acts. 10
- (2) For the purposes of this section, the following (and only the following) are self-isolation support schemes – 15
- (a) in relation to England, the scheme known as the Test and Trace Support Payment Scheme;
 - (b) in relation to Wales, the scheme known as the Self-Isolation Support Scheme;
 - (c) in relation to Scotland, the scheme known as Self-Isolation Support Grant; 20
 - (d) in relation to any part of the United Kingdom, a scheme corresponding or similar to the schemes mentioned in paragraphs (a) to (c) that is designated for the purposes of this paragraph by the Treasury.
- (3) This section has effect in relation to payments made in the tax year 2020-21 and subsequent tax years. 25

PART 3

DISCLOSURE OF AVOIDANCE

11 Disclosure of contributions avoidance arrangements

- (1) In section 132A(1) of the Social Security Administration Act 1992 (disclosure of contributions avoidance arrangements) – 30
- (a) after “in relation to” insert “–
 - (a) ”, and
 - (b) at the end insert “, or
 - (b) any arrangements or proposal which the Commissioners for Her Majesty’s Revenue and Customs reasonably suspect to be notifiable contribution arrangements or a notifiable contribution proposal (as the case may be).” 35

PART 4

GENERAL

12 Regulations

- (1) Regulations under this Act are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under any of the following provisions (whether alone or with other provision) may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, each House of Parliament –
 - (a) section 3(3);
 - (b) section 5;
 - (c) section 8.
- (3) Any other statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Subsections (3) to (5) of section 175 of the 1992 Act (regulations etc) apply to regulations under this Act as they apply generally to regulations under that Act.

13 Interpretation etc

- (1) Expressions which are used in the 1992 Acts have the same meaning in this Act as in those Acts (unless the contrary intention appears).
- (2) In this Act –
 - “the 1992 Act” is the Social Security Contributions and Benefits Act 1992;
 - “the 1992 Acts” are the 1992 Act and the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
 - “business premises”, in relation to an employer, means premises at or on which the employer’s business is carried on;
 - “employment in a civilian capacity” means employment other than service as a member of Her Majesty’s forces (within the meaning of the Armed Forces Act 2006);
 - “freeport tax site” has the meaning given by section 109 of the Finance Act 2021 (designation of freeport tax sites);
 - “premises” means a building or structure or part of a building or structure;
 - “public authority” includes any person whose activities involve the performance of functions (whether or not in the United Kingdom) which are of a public nature;
 - “the regular forces” has the meaning given by section 374 of the Armed Forces Act 2006.

14 Short title

This Act may be cited as the National Insurance Contributions Act 2021.

National Insurance Contributions Bill

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To make provision in relation to national insurance contributions.

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