

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY CONTRIBUTIONS (FREEPORTS) REGULATIONS 2022

2022 No. 313

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument makes provision in relation to the zero-rate of secondary (employer) National Insurance contributions (NICs) available in freeport tax sites in Great Britain under the National Insurance Contributions Act 2022 (the “NICA 2022”). To qualify, employers must reasonably expect their employees to spend 60% of their working time in the freeport tax site. This instrument treats this condition as having been met where an employer makes an adjustment to the employee’s working pattern to accommodate a protected characteristic of disability, maternity or pregnancy. This instrument has effect from 6 April 2022.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is Great Britain.
4.2 The territorial application of this instrument is Great Britain.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 Section 3(2) of the NICA 2022 provides the power to treat the freeport 60% condition at Section 2(1)(d) of the NICA 2022 as being met where an employer makes an adjustment to the employee’s working pattern due to one of the following protected characteristics: disability, maternity or pregnancy.

7. Policy background

What is being done and why?

- 7.1 On 10 February 2020 the government published a consultation on freeport policy in respect of its plans to introduce Freeports across the United Kingdom. The

consultation documents are available at the following web link:
<https://www.gov.uk/government/consultations/freeports-consultation>.

- 7.2 Freeports are geographical areas containing at least one form of port where special tax and customs rules apply. Freeports are intended to support the policy of levelling up the towns, cities and regions of the United Kingdom.
- 7.3 The government published a consultation response on 7 October 2020, which provided initial detail of the tax reliefs it intended to offer to encourage investment and boost employment in freeport tax sites. This was followed by publication of a freeport bidding prospectus for England on 16 November 2020, which included further details of the tax reliefs to be offered in freeport tax sites in Great Britain. The freeport bidding prospectus is available at the following web link:
<https://www.gov.uk/government/publications/freeports-bidding-prospectus>.
- 7.4 At Spring Budget 2021 the Chancellor reaffirmed the government's commitment to delivering NICs relief for Freeport employers on the earnings of all newly hired employees up to £25,000 per annum from April 2022 for 36 months per employee.
- 7.5 In order to make sure the relief is effectively targeted at supporting economic activity in Freeport areas, and to limit the risks of abuse, the measure includes a condition that requires employees to spend at least 60% of their working time in the Freeport tax site.
- 7.6 There is the potential for individuals who are unable to work in the Freeport tax site for a sustained period, because of a protected characteristic, to not meet this condition. Therefore, this instrument will support employers by exempting employees from the 60% condition if an employer has made an adjustment to the employee's working pattern as a result of the following protected characteristics: disability, maternity and pregnancy. This instrument uses the references in the Equality Act 2010 to define these characteristics.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 Consolidation is not being considered at this time.

10. Consultation outcome

- 10.1 There was a public technical consultation held for this instrument from 27 January to 17 February 2022. A link to the consultation can be found on the gov.uk website at: <https://www.gov.uk/government/consultations/draft-legislation-the-social-security-contributions-freeports-regulations-2022>. Two responses were received, which were both supportive of this instrument.

11. Guidance

- 11.1 Guidance has been made available on the gov.uk website at <https://www.gov.uk/guidance/check-if-you-can-claim-national-insurance-relief-in-freeport-tax-sites>.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is relieving and the administration burden associated with the policy changes this measure delivers is minimal.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 A Tax Information and Impact Note covering this instrument was published on 12 May 2021 and is available on the website at <https://www.gov.uk/government/publications/zero-rate-of-secondary-national-insurance-contributions-for-freeport-employees/zero-rate-of-secondary-nics-for-freeport-employees>. It remains an accurate summary of the impacts that apply to this instrument.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses in so far as the business is operating within a Freeport tax site.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to publish clear guidance that allows employers to familiarise themselves with the relief. Further, there is no requirement for employers to claim this relief.
- 13.3 The basis for the final decision on what action to take to assist small business was to ensure freeport employers were provided with clear guidance to support them claiming this relief.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is to monitor through information collected from tax receipts and engagement with stakeholders. Freeports governance bodies will also need to monitor and evaluate business activity in each Freeport.
- 14.2 The instrument does not include a statutory review clause because it relates to a tax, duty, levy or other charge and therefore meets the requirements of the exemption set out in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 Muhammad Chaudhary at HMRC Telephone: 03000 534 629 or email: muhammad.chaudhary@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Edmund Hair, Deputy Director for National Insurance Policy, International and Student Finance at HMRC, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.