

## Draft legislation: The Social Security Contributions (Freeports) Regulations 2022 Response by the Chartered Institute of Taxation

### 1 Introduction and Executive Summary

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity, and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 Our response to the technical consultation on draft regulations relating to the Freeports zero-rate of secondary Class 1 National Insurance Contributions (NICs), which will exempt employees from having to meet the Freeport condition at clause 2(1)(d) of the NICs Bill that requires employees to spend 60% of their working time in the Freeport tax site for their employer to qualify for this relief, where the employee's working pattern is adjusted in protected circumstances (such as disability, pregnancy and maternity), is set out below.
- 1.3 While we consider that the draft regulations achieve their aim, we do think that the proposed 'period of maternity' should be extended from 26 weeks to 52 weeks, as it is more likely that an employee that has recently given birth would be working during the period of 'additional maternity leave' and require adjustments to their working arrangements. We also suggest that HMRC clarify in guidance the meaning of 'reasonable expectation' (per clause 2(1)(d) of the NICs Bill), when the assessment of reasonable expectation should take place and the records to be kept in this respect.

### 2 About us

- 2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 2.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

- 2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.
- 2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

### 3 Consultation Response

- 3.1 These draft regulations provide exemptions from the requirement that an employee spend 60% of their working time in a Freeport tax site where adjustments to their working patterns are made in protected circumstances, such as disability, maternity and pregnancy.
- 3.2 **Regulation 3** provides that for employees that are disabled they will qualify for the Freeports exemption if their employer has made an adjustment to their working pattern because of that disability and, had it not been for that disability, the employee would have spent 60% of their working time in the Freeport tax site.
- 3.3 We believe that Regulation 3 should achieve its intended purpose.
- 3.4 This said, we note that clause 2(1)(d) of the NICs Bill<sup>1</sup> only requires the employer to have a reasonable expectation '*at the time the qualifying period begins*' that the employee will spend 60% or more of their time in a single freeport tax site. Our understanding is that the qualifying period begins with either '*the start of the employment*' or '*a substantial change in the earner's working arrangements*' (clause 2(3)(a) of the NICs Bill), and that there is not a separate qualifying period per NICs earning period. It appears to us that this means that so long as an employer had a 'reasonable expectation' at the start of the employee's employment that he/she would spend 60% or more of their time at a single freeport tax site, or would do so but for an adjustment to the employee's working conditions due to disability (as defined in section 6(1) of the Equality Act 2010), that employee will qualify for the Freeports exemption. This is even if, in reality, once their employment is underway their working time at a single Freeport tax site does not actually meet the expected working time at the Freeport site. This being so, it would be helpful if guidance provided some indication as to the records employers should keep to confirm that their reasonable expectation was that the qualifying condition in clause 1(d) would be met at the outset of the employment (and that they do not need to keep records to show that the 60% test was actually met during the qualifying period).
- 3.5 It would also be helpful to confirm that an engagement can qualify for the Freeports exemption where an adjustment is made to accommodate an employee's disability after the employment has commenced? For example, where the employer cannot determine what adjustments are needed until after the work has commenced but there is a reasonable expectation that an employee that does not require such adjustments would meet the 60% test. Alternatively, should draft regulation 3(b) be amended from 'has made' to 'makes, is making, or has made' adjustments ... to comply with the ... Equality Act 2010, so that it is clear that the timing of the adjustments does not have to tie in with the start of the qualifying period?
- 3.6 **Regulation 4** provides that for employees who are working and are either pregnant or are within the period of maternity, will qualify for the Freeports exemption if their employer has made an adjustment to their

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<sup>1</sup> [National Insurance Contributions Bill \(HL Bill 111\) \(parliament.uk\)](https://www.parliament.uk/bills/2021-22/national-insurance-contributions-bill)

working pattern because they are pregnant or fall within the '*period of maternity*' and, had it not been for that, the employee would have spent 60% of their working time in the Freeport tax site.

- 3.7 We also believe that Regulation 4 should achieve its intended purpose but that the definition of '*period of maternity*' merits further consideration.
- 3.8 In particular, it is unclear to us why the '*period of maternity*' is defined by draft regulation 4(2)(b) as '*the period of 26 weeks beginning with the day on which the earner gives birth*' (ie the period of 'ordinary maternity leave'<sup>2</sup>), which is a period when it is less likely that a new mother would be returning to work, rather than extending to the longer post-birth period that encompasses 'additional maternity leave', which effectively can extend maternity leave to 52 weeks<sup>3</sup>? It seems to us that it is this extended period during which it is more likely that the employee would return to work with adjustments to accommodate their new circumstances and therefore we think it would be better if the regulations provided for permitted adjustments to working arrangements for this extended period.
- 3.9 It would also be helpful if in guidance HMRC could confirm that paid time off for antenatal care will fall within the Freeports exemption if a pregnant employee would otherwise meet the 60% test (ie that this is a qualifying 'adjustment' to the employee's working pattern). Similarly, for the partner taking time off to accompany a pregnant woman to antenatal appointments.
- 3.10 Similarly, can HMRC confirm that an agreed change to a pregnant employee's contract terms and conditions to make adjustments due to the pregnancy will be treated as an adjustment to the existing working arrangements rather than '*a substantial change in the earner's working arrangements*' (per clause 2(3)(a)(ii) of the NICs Bill), which would (presumably) then require a restarting of the qualifying period and reassessment of the qualifying conditions for the purposes of the Freeports exemption?
- 3.11 Also, it is unclear why Regulation 4 does not extend to include employees that work during a period of 'adoption leave' (whether 'ordinary' or 'additional' adoption leave). Similar considerations around adjustments to working patterns for employees that have recently adopted a child may apply in this situation as are proposed to apply to mother's in post-birth periods of maternity.
- 3.12 Lastly, clause 2(1)(d) of the NICs Bill provides that, to qualify for the relief, 60% or more of the worker's time must be spent at a single freeport tax site on which the employer has a business premises. As we have noted before, this does mean that if an employee splits their working time equally between two Freeport sites, on each of which the employer has a business premises, the employee may not qualify as a Freeport employee, which may not be what is intended.

#### **4 Acknowledgement of submission**

- 4.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation  
17 February 2022

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<sup>2</sup> [Returning to work after having a baby: Your maternity leave, pay and other rights - Acas](#)

<sup>3</sup> [Maternity pay and leave: Leave - GOV.UK \(www.gov.uk\)](#)