

NATIONAL INSURANCE CONTRIBUTIONS ACT 2022

EXPLANATORY NOTES

What these notes do

These Explanatory Notes refer to the National Insurance Contributions Act which received Royal Assent on 14 March 2022 (c. 9).

- These Explanatory Notes have been prepared by HM Revenue & Customs (HMRC) in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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These Explanatory Notes relate to the National Insurance Contributions Act 2022 which received Royal Assent on 14 March 2022 (c. 9)

Overview of the Act

1 The Act deals with the following matters:

- Introduces a new zero-rate of secondary Class 1 National Insurance contributions (NICs) relief for employers of Freeport employees.
- Introduces a new zero-rate of secondary Class 1 NICs relief for employers of armed forces veterans.
- Introduces an exemption for self-isolation support scheme payments from Class 2 and Class 4 NICs.
- Widens the existing power to make regulations that impose requirements to disclose information in relation to arrangements that aim to avoid NICs.

Policy background

Overview of the structure of NICs

2 NICs are currently divided into six classes:

- Class 1 contributions are paid by both employees (primary) and employers (secondary) on the employee's earnings. Contributions are payable by employees at 12% between the Primary Threshold and the Upper Earnings Limit, and 2% above that, for the 2021-22 tax year. Employers pay 13.8% on earnings above the Secondary Threshold.
- Class 1A contributions are payable, by employers only, on most taxable benefits in kind and termination awards. Class 1A contributions are payable at a rate of 13.8% for the 2021-22 tax year.
- Class 1B contributions are payable annually by employers on items under a PAYE Settlement Agreement (PSA) for income tax. Class 1B contributions are payable at a rate of 13.8% for the 2021-22 tax year on the value of items included in the PSA and on the total tax payable by the employer under the PSA.
- Class 2 contributions are paid by the self-employed at a flat rate of £3.05 per week for the 2021-22 tax year. Class 2 NICs are mostly paid through Self Assessment. A person with profits from self-employment above £6,515 is required to pay Class 2 NICs. Payment is voluntary where profits are below this level.
- Class 3 contributions are voluntarily payable at a flat weekly rate of £15.40 per week for the 2021-22 tax year by people who are not otherwise liable to pay Class 1 or Class 2 NICs to protect their entitlement to State Pension.
- Class 4 contributions are paid annually by the self-employed on profits chargeable to tax as trading income. Class 4 NICs are payable at a rate of 9% on profits between a lower and upper profits threshold, and 2% on profits above the upper profits threshold, for the 2021-22 tax year.

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Freeports

- 3 Employers are liable to pay secondary Class 1 NICs in respect of the earnings of their employees above the Secondary Threshold (currently set at £170 per a week) except in certain cases where reliefs apply, for example, where they employ employees under 21 and apprentices under 25 years of age. The current rate of secondary Class 1 NICs is 13.8%.
- 4 The Act introduces a new zero-rate of secondary Class 1 NICs relief for Freeport employers. Sections 1 to 4 deal with Freeports in Great Britain (GB) and section 5 provides for Freeports in Northern Ireland (NI). This measure is part of the government's wider Freeport programme, and is intended to reduce the cost of hiring employees in a Freeport tax site and to incentivise employment within Freeports. The Government's intention is that freeports will be national hubs for global trade and investment across the UK. They also aim to promote regeneration and job creation as part of the Government's policy to level up communities.
- 5 In GB, this relief provides for a zero-rate of secondary Class 1 NICs on the earnings of Freeport employees for 36 months starting from the first day of employment, up to an Upper Secondary Threshold which will be set at £25,000.
- 6 A Freeport employer is a business which is operating from physical premises in a Freeport Tax Site. The Finance Act 2021 provides a power for the Treasury to designate Freeport tax sites in Great Britain by statutory instrument subject to negative procedure. NI Freeports and Freeport Tax Sites will be defined in a future Finance Bill. The Act intends that employers based in these designated sites will become eligible for the relief in respect of qualifying Freeport employees.
- 7 A Freeport employee is an employed earner of a Freeport employer who spends 60% or more of their employed time in a single Freeport Tax Site in which their employer has business premises.
- 8 This relief is available to Freeport employers in respect of new employments from 6 April 2022. In order to qualify for this relief, the Freeport employment must begin on or after 6 April 2022 and no later than 5 April 2026. If the government decides not to continue the relief after April 2026 (following a review of its effectiveness), new claims will not be permitted. Employments that start before 6 April 2026 will qualify for the relief for the full 36 months, or until termination of their employment, whichever is sooner. Freeport employers are able to claim this relief by reporting through HMRC's Real Time Information system.
- 9 Section 5 provides a power to make secondary legislation providing for an employer NICs relief in NI Freeports. For this reason, these Explanatory Notes are limited to describing the sections relating to the effect of this NICs change in GB.

Veterans

- 10 The Act introduces a new measure that would meet a government manifesto commitment to a NICs holiday for veterans by introducing a zero-rate of secondary Class 1 NICs relief for employers of armed forces veterans on their earnings for 12 months starting with the first day of a veteran's first civilian employment after leaving the regular armed forces. Subsequent and concurrent employers can benefit from this relief during this period. The aim of this measure is to reduce the cost of employing a veteran and encourage employment of veterans, to support veterans in transitioning to civilian life. The measure was subject to consultation between 21 July 2020 and 5 October 2020.
- 11 To qualify a veteran must have completed at least one day of basic training in the armed forces. This relief is available to employers from 6 April 2021 to 5 April 2024. The government will review this relief in 2023 and will have the power to extend this relief beyond the 2023-24 tax year.

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- 12 From 6 April 2022 employers are able to claim this relief through HMRC's Real Time Information system. From 6 April 2021 to 5 April 2022, transitional arrangements will be in place so that employers can claim the relief retrospectively for that period from 6 April 2022 onwards.

Self-isolation support scheme payments

- 13 Lump sum payments of £500 are available to be claimed under separate schemes in England, Wales and Scotland for people who have been asked to self-isolate by the relevant authority who cannot work from home and will suffer financial consequences as a result (subject to the eligibility criteria of the relevant scheme). Payments are intended to provide additional financial support to those on low incomes so they can self-isolate and help stop the spread of coronavirus. 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.
- 14 The schemes are administered by local authorities. Payments made under the schemes to employed people 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 schemes. This would result in administrative and cost burdens on local authorities and on employers. The Chancellor of the Exchequer therefore decided to make secondary legislation to ensure that these payments are not subject to Class 1 (employee and employer) and Class 1A (employer) NICs. The Class 1 and Class 1A NICs exemption in respect of employed people was achieved in regulations (S.I. 2020/1065 and 2020/1532) by exercise of the powers conferred by sections 3(2) and (3) and 10(9)(a) of the Social Security Contributions and Benefits Act 1992, using the existing power to disregard certain payments when calculating earnings liable to Class 1 NICs (for England in October 2020 and for Scotland and Wales in January 2021).
- 15 The Act ensures equal treatment for the self-employed by exempting payments from Class 2 and Class 4 NICs. Payments made under the self-isolation support schemes generally fall to be taxed as trading income in respect of the self-employed and are taxed under Chapter 2, Part 2 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA 05). Class 4 NICs are payable on profits chargeable to income tax under Chapter 2, Part 2 ITTOIA 05 in the same manner as any income tax is chargeable in respect of those profits. Class 2 NICs are payable in respect of profits that are chargeable to Class 4 NICs.

Disclosure of contributions avoidance arrangements

- 16 Disclosure of tax avoidance schemes (DOTAS) was introduced in 2004 and seeks to provide HMRC with early information about new tax and NICs avoidance schemes, how they work and those who use them. It creates obligations on those who promote or enable tax avoidance to disclose details of the avoidance schemes they are promoting.
- 17 The government announced in its Budget 2020 a package of measures to target those who promote and market tax avoidance schemes. A government consultation seeking views on proposals to strengthen the sanctions against promoters of tax avoidance, including draft legislation, was launched on 21 July 2020 and closed on 15 September 2020. Respondents were generally supportive of the package and the government has introduced legislation in the Finance Act 2021.
- 18 These DOTAS changes ensure that HMRC can act where promoters fail to provide information on their avoidance schemes and make taxpayers aware at an earlier stage where it suspects a tax avoidance scheme is being sold. The NICs Act replicates what is in the Finance

Act 2021 in that it provides a mechanism for ensuring there is transparency for people who are involved in NICs avoidance schemes, and to change the behaviours of those involved in promoting such schemes.

- 19 The existing legal requirements to disclose schemes aiming to avoid NICs are imposed by regulations. These regulations are made under section 132A of the Social Security Administration Act 1992.

Legal background

- 20 The legislation relating to the existing system of NICs and social security benefits is set out in a combination of primary and subordinate legislation. The relevant provisions are:

- The Social Security Contributions and Benefits Act 1992 (SSCBA 1992).
- The Social Security Contributions and Benefits (Northern Ireland) Act 1992 (SSCB(NI)A 1992).
- The Social Security Administration Act 1992 (SSAA 1992).
- The Social Security Administration (Northern Ireland) Act 1992.
- The Social Security (Contributions) Regulations 2001 (S.I. 2001/1004).

- 21 These provisions will continue to be the main legislation dealing with NICs.

Territorial extent and application

- 22 The Act extends to England and Wales, Scotland and Northern Ireland.

Scotland

- 23 The matters to which the provisions of the Act relate are not within the legislative competence of the Scottish Parliament.

Wales

- 24 The Act does not contain any provisions relating to matters within the legislative competence of Senedd Cymru.

Northern Ireland

- 25 Under the provisions of Schedule 2 to the Northern Ireland Act 1998 NICs are an excepted matter. The Act therefore applies to the relevant Northern Ireland legislation relating to NICs, where stated.

Commentary on provisions of the Act

Part 1: Secondary Class 1 Contributions

Freeports

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

- 26 Section 1(1) states that this relief applies when secondary Class 1 NICs are due from an employer other than a public authority and the conditions set out in section 2 are met. The term “public authority” is defined in section 13 of the Act. This section also specifies that an employer must elect to apply this relief in circumstances where they may also qualify for other NICs reliefs (under 21, under 25 apprentices and armed forces veterans).
- 27 Section 1(2)(a) states that the rate for this relief is 0% and applies up to the Upper Secondary Threshold (UST).
- 28 Section 1(2)(b) states that for earnings above the UST, the secondary percentage NICs rate (currently 13.8%) applies.
- 29 Section 1(3) states that the UST (or the prescribed equivalent) will be set by statutory instrument under a power at section 8.
- 30 Section 1(4) states that a person is still regarded as liable for secondary Class 1 NICs even though the amount of the contribution is nil because the secondary percentage is 0%. This provision ensures that, whilst the requirement to pay secondary Class 1 NICs in respect of relevant earnings paid to Freeport employees is removed, liability for such contributions remains. As a result, the new 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.
- 31 This relief is administered through PAYE and Real Time Information (RTI) returns, thus providing a real time relief. Section 1(5) and section 1(6) provide the Treasury with the power to make provisions about circumstances where this relief would not apply until the tax year has ended.

Section 2: Freeport conditions

- 32 Section 2(1) sets out the conditions that must be met to qualify for the relief under section 1.
- 33 Section 2(1)(a) sets out that the start date for the Freeport employment must be between 6 April 2022 and 5 April 2026.
- 34 Section 2(1)(b) provides that the relief applies for three years per earner starting from the first day of employment subject to subsection (6).
- 35 Section 2(1)(c) specifies that relief can only be claimed for contributions paid in respect of tax weeks in a qualifying period, and that the whole of a tax week must be within that period. The qualifying period is defined at subsection (3).
- 36 Section 2(1)(d) states that, at the time the qualifying period begins, a Freeport employer must reasonably expect that the earner will spend 60% or more of their employed time (defined by subsection 4(a)) in a single Freeport Tax Site in which the Freeport employer must also have business premises.
- 37 Section 2(2) stipulates that an earner cannot have been employed by the Freeport employer or a person connected with the employer in the 24 months prior to the employment. Connected person is defined by reference to section 993 of the Income Tax Act 2007.

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- 38 Section 2(3)(a) specifies that the qualifying period begins with the start of the employment, or a substantial change in the earner's circumstances. Subsection (3)(b) specifies that the qualifying period ends with either the end of the employment, a substantial change in the earner's working arrangements or the relevant end date of the relief. The effect of subsection (3) is that an employer is required to make an assessment at the start of the employment and maintain that assessment until there is a substantial change 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.
- 39 Section 2(4)(a) defines employed time as the time that an employee is expected to provide services to the employer, and that includes periods of leave.
- 40 Section 2(4)(b) has the effect of disregarding periods of leave for the 60% test.
- 41 Section 2(4)(c) clarifies that it does not matter if the earner provides services under multiple contracts provided that the employment does not cease.
- 42 Section 2(4)(d) specifies that the employment also ceases to qualify for this relief when the employer's expectation that the earner spends 60% of their employed time in the Freeport ceases to be reasonable. Note, this does not preclude the employment from qualifying for this relief in future if there is a substantial change in the earner's working arrangements.
- 43 Section 2(5) has the effect of ensuring that where the employer and the secondary contributor are not the same person, then the secondary contributor, instead of the employer, must meet the condition at subsection (1)(d) (the assessment of employed time in the Freeport, see paragraph 38). Both the employer and secondary contributor need to meet the condition at subsection (2) (connected person rule, see paragraph 39).
- 44 Section 2(6) provides that the latest date that earnings may qualify for this relief is the earlier of:
- a. The last day of the three-year period beginning with the day after the date specified in subsection (1)(a)(ii); and
 - b. 5 April 2031.

This allows for the full qualifying period to be utilised by employers if this relief is extended beyond 5 April 2026, but has the effect of not extending the qualifying period beyond 5 April 2031.

Section 3: Freeport conditions: supplementary

- 45 Section 3(1) provides the Treasury with a regulation-making power to extend the latest date (set out at section 2(1)(a)(ii)) on which an earner can begin their employment in order for their employer to qualify for the relief for Freeport employees. The Treasury may extend this date to no later than 5 April 2031.
- 46 Section 3(2) provides the Treasury with a regulation-making power to provide for circumstances in which a Freeport condition is to be treated as being met. This has the effect of making the relief available in circumstances that it would otherwise not be.
- 47 Section 3(3) provides the Treasury with regulation-making powers to make other changes in relation to the Freeport conditions in section 2, including adding, removing or altering qualifying conditions for this relief.

- 48 Section 3(4) sets out what the power at section 3(3) can, amongst other things, be used for:
- a. to make provisions about circumstances in which a condition is treated as not being met;
 - b. to add conditions relating to accounts or other records; and
 - c. to add conditions requiring a person to take steps specified in the regulations.
- 49 Section 3(5) provides that regulations made under sections 3(2) or 3(3) may make provision by reference to sectors of the economy or to descriptions of employer, earner or employment.
- 50 Section 3(6) provides that regulations made under sections 3(2) or 3(3) may amend Part 1 of the Act.

Section 4: Anti-avoidance

- 51 Section 4 states that this relief cannot be claimed if an avoidance arrangement has been used and defines what is meant by an avoidance arrangement.

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

- 52 Section 5 provides the Treasury with a regulation-making power to provide for a Freeport secondary Class 1 NICs relief in NI.

Veterans

Section 6: Zero-rate contributions for armed forces veterans

- 53 Sections 6(1), (2) and (4) provide for a new zero-rate of secondary Class 1 contributions up to a UST for tax years 2022-23 to 2023-24 if the veteran conditions in section 7 are met. Earnings above the UST are liable to secondary Class 1 NICs at the secondary percentage (currently 13.8%).
- 54 Section 6(1)(d) specifies that an employer must elect to apply this relief if the employment also qualifies for other NICs reliefs (under 21, under 25 apprentices and Freeports).
- 55 Section 6(3) specifies that the UST for this relief is the one specified in regulations under section 8.
- 56 Section 6(5) specifies that the relief is available for the 2021-22 tax year retrospectively. In practice, this means that employers need to pay secondary Class 1 NICs as if the relief did not apply, then from April 2022 they can claim the relief for the earnings in the 2021-22 tax year.
- 57 Section 6(6) provides the Treasury with regulation-making powers to add to the tax years set out in section 6(4). This allows the relief to be extended beyond 5 April 2024.
- 58 Section 6(7) states that a person is still to be regarded as liable for secondary Class 1 NICs even though the amount of the contribution is nil because the secondary percentage is 0%. This provision ensures that, whilst the requirement to pay secondary Class 1 NICs in respect of earnings paid to veterans is removed, a technical liability for such contributions continues to arise. As a result, the new 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.
- 59 This relief is administered through PAYE and RTI returns, thus providing a real time relief. Section 6(8) provides the Treasury with the power to make provisions about circumstances where this relief would not apply until the tax year has ended.

Section 7: Veteran conditions

- 60 Section 7(1) sets out the conditions that need to be met for the armed forces veterans relief.
- 61 Section 7(1)(a) confirms that, to qualify for this relief, the earner is required to have served for at least one day in the regular forces. This is defined at section 13.
- 62 Section 7(1)(b) states that only employment in a civilian capacity qualifies for this relief.
- 63 Section 7(1)(c) states that this relief is available for one year beginning with the earner's first day of civilian employment after leaving the armed forces.
- 64 Section 7(2) (in relation to section 7(1)(c)) provides that the first civilian employment for a veteran can commence before the introduction of this relief on 6 April 2021. Where this is the case, the 12-month period will commence from the first day of the employment, but the relief will only be available from 6 April 2021 for the remainder of that 12-month period.

Upper secondary threshold

Section 8: Upper secondary threshold for earnings

- 65 Section 8(1) provides that a UST for secondary Class 1 NICs specifically in relation to veterans and Freeport earners will be set for every tax year. This section allows for different USTs to be set for veterans and Freeport employees.
- 66 Section 8(2) provides the Treasury with a regulation-making power to specify the amounts of the veterans UST and the Freeports UST.
- 67 Section 8(3) specifies that the veterans UST for the 2021-22 tax year, and the Freeports and veterans USTs for the 2022-23 tax year, can be set retrospectively.
- 68 Section 8(4) applies the regulation-making power in section 5(4) to (6) of SSCBA 1992 for the purposes of prescribing equivalents to the UST for earners paid otherwise than weekly.

Section 9: Consequential amendment

- 69 This section amends section 100(6) of the Finance Act 2016 (apprenticeship levy) to make sure that where a secondary contributor does not make any secondary contributions in respect of an earner because of the Freeports or veterans relief, the earner's earnings are still taken into account for the purposes of the apprenticeship levy.

Part 2: Class 4 Contributions

Section 10: Treatment of self-isolation support scheme payments

- 70 Section 10(1) provides an exemption for payments made under a self-isolation support scheme by providing that they are not to be taken into account for the purposes of computing profits liable to Class 4 NICs for the purpose of SSCBA 1992 and SSCB(NI)A 1992. This ensures that such payments are not be taken into account for the purposes of Class 2 NICs.
- 71 Section 10(2)(a) to (c) specifies the self-isolation support schemes that are exempt.
- 72 Section 10(2)(d) provides that the Treasury may designate further schemes that correspond or are similar to schemes specified in section 10(2)(a) to (c).
- 73 section 10(3) provides that the exemption has retrospective effect for the tax year 2020-21 and has effect for subsequent tax years.

Part 3: Disclosure of Avoidance

Section 11: Disclosure of contributions avoidance arrangements

- 74 This section widens the existing regulation making power in section 132A(1) SSAA 1992 so that it imposes reporting requirements in relation to arrangements that aim to avoid NICs. This amendment enables regulations to be that mirror the amendments to the DOTAS procedures which are included in the Finance Act 2021.

Part 4: General

Section 12: Regulations

- 75 Section 12(1) provides for regulations under this Act to be made by statutory instrument.
- 76 Section 12(2) specifies that regulations made under the Act are subject to the negative procedure except for:
- a. section 3(3),
 - b. section 5, and
 - c. section 8,
- which are subject to the affirmative procedure.
- 77 Section 12(4) provides that subsections (3) to (5) of section 175 of the SSCBA 1992 (regulations etc) apply to regulations under this Act as they apply generally to regulations under that Act.

Section 13: Interpretation etc

- 78 This section defines various terms used in the Act.

Section 14: Short title

- 79 This section provides for the Act to be known as the National Insurance Contributions Act 2022.

Commencement

- 80 The Act came into force on 14 March 2022.

Related documents

- 81 The following documents are relevant to the Act and can be read at the stated locations:

- Freeports: Bidding Prospectus, November 2020.
<https://www.gov.uk/government/publications/freeports-bidding-prospectus>
- Draft legislation and technical notes for veterans, January 2021.
<https://www.gov.uk/government/consultations/draft-legislation-zero-rate-secondary-class-1-contributions-for-veterans>

- Policy consultation and government response for veterans, January 2021 and July 2021.
<https://www.gov.uk/government/consultations/supporting-veterans-transition-to-civilian-life-through-employment>
- Table 2.1 Budget 2020, March 2020.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872265/Table_2.1_Budget_2020.xlsx
- Table 2.2 Budget 2021, March 2021.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/966088/Table_2.2_2021.xlsx
- Exemption from NICs for COVID-19 Test and Trace Support Payments TIIN, October 2020.
<https://www.gov.uk/government/publications/exemption-from-national-insurance-contributions-for-covid-19-test-and-trace-support-payments/exemption-from-national-insurance-contributions-for-covid-19-test-and-trace-support-payments>
- Exemption from NICs for COVID-19 Test and Trace Support Payments for Scotland and Wales TIIN, December 2020.
<https://www.gov.uk/government/publications/exemption-from-national-insurance-contributions-for-covid-19-test-and-trace-support-payments-for-scotland-and-wales/exemption-from-national-insurance-contributions-for-covid-19-test-and-trace-support-payments-for-scotland-and-wales>
- The Social Security Contributions (Disregarded Payments) (Coronavirus) (England) Regulations 2020 (S.I. 2020/1065).
<https://www.legislation.gov.uk/ukxi/2020/1065/contents/made>
- The Social Security Contributions (Disregarded Payments) (Coronavirus) (Scotland and Wales) Regulations 2020 (S.I. 2020/1532).
<https://www.legislation.gov.uk/ukxi/2020/1532/contents/made>
- Anti-avoidance draft legislation, July 2020.
<https://www.gov.uk/government/publications/new-proposals-for-tackling-promoters-and-enablers-of-tax-avoidance-schemes>

Annex A - Hansard References

82 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	12 May 2021	First reading
Second Reading	14 June 2021	Vol. 697 Col. 46
Public Bill Committee	22 June 2021	Hansard Public Bill Committee Cols. 1 - 31
Report and Third Reading	06 September 2021	Vol. 700 Col. 84
<i>House of Lords</i>		
Introduction	07 September 2021	Vol. 814
Second Reading	01 December 2021	Vol. 816 Col. 1424
Grand Committee	10 January 2022	Vol. 814 Col. 110GC
Report	07 February 2022	Vol. 818 Col. 1306
Third Reading	22 February 2022	Third reading
Commons Consideration of Lords Amendments	01 March 2022	Vol. 709 Col. 993
Royal Assent	14 March 2022	House of Commons Vol. 710 Col. 740
		House of Lords Vol. 820

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