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Rt Hon. Lord Blencathra
Chair, Delegated Powers and Regulatory Reform Committee

Dear David,

NATIONAL INSURANCE CONTRIBUTIONS BILL

I am writing in response to the Delegated Powers and Regulatory Reform Committee's Eleventh Report, which addressed the National Insurance Contributions Bill. I would like to thank the Committee for its diligent care in scrutinising the Bill.

The Report makes a number of recommendations relating to the new regulation making powers in Clauses 3(1), 3(2), 3(3), 6(6) and 10(2) of the Bill, which I will now address.

Clauses 3(1) and 6(6) – powers to extend the end date of the relief for Freeport employers and employers of veterans

The Committee has recommended that the power to extend the relief for Freeport employers and employers of veterans should be subject to the affirmative procedure, rather than the negative procedure. These powers provide flexibility for the Government to extend the reliefs past their current

end date. In particular, the power in relation to the Freeports relief will allow the Government to extend the relief after a review into its effectiveness in meeting its policy intention in 2026, although no further than 5 April 2031. Before they are extended the Government will carry out an evaluation of the reliefs to ensure they are effective. Once they have been evaluated and should the Government's view be that the reliefs should be extended, the negative procedure offers the opportunity for sufficient Parliamentary scrutiny without using more of Parliament's time than is necessary.

Clause 3(2) – power to treat a condition of the Freeport relief as being met

This provides the Government with a power to stipulate in secondary legislation circumstances in which conditions are to be treated as being met. The Committee has recommended that this power is subject to the draft affirmative procedure, rather than the negative procedure.

While I understand the Committee's concerns, I believe that the power should continue to be subject to the negative procedure. As with clauses 3(1) and 6(6) the power is wholly relieving and, as set out above, where this is the case regulations are usually subject to the negative procedure. In addition, the power cannot be used to decrease the amount of relief that an employer can claim.

In terms of how the power may be used, the Department's Delegated Powers Memorandum gave an example of cases where people with certain protected characteristics are unable to meet the rule that to be eligible for the relief employees must spend at least 60% of their working time in the Freeport site. For example, a health condition which may mean an individual needs to just work from home for periods of time. In case the Committee finds it helpful I attach a draft of these regulations that are intended to take effect on 6 April 2022. The effect of these regulations is to treat the 60% as being met so that the relief applies to employees who may not otherwise qualify.

In this case, the negative procedure also allows the Government to react quickly if there are external factors that would inhibit employers qualifying for

this relief. For example, if the relief had commenced prior to April 2020, employees required to work from home during the Coronavirus pandemic would not have qualified for the relief.

Clause 3(3) – power to modify Freeport employment conditions

The Committee has recommended that this power, which may amend Part 1 of the Bill and which is subject to the draft affirmative procedure, should be restricted to specified purposes only. An example of when this power could be used is provided in the department's Delegated Powers Memorandum of ensuring compliance with the UK's international subsidy control obligations. The subsidy control landscape in this case is complicated, uncertain and difficult to predict and the power needs to be capable of dealing with a wide range of possibilities. The Government believes it would be difficult to narrow it but at the same time allowing it to be flexible enough to deal with a wide range of possibilities within the subsidy control landscape.

It may help the Committee if I also explain what in the Government's view is a precedent for this power using section 5(1)(b) of the National Insurance Contributions Act 2014. This power provides a power exercisable by the Treasury to make regulations to add, reduce or modify the cases in which a person cannot qualify for an employment allowance or in which liabilities to pay secondary Class 1 NICs are excluded liabilities. It enables the Treasury to make changes to sections 2 and 3 and Schedule 1 of that Act.

In the Department's Delegated Powers Memorandum for the NICs Act 2014, the Department's justification for the draft affirmative procedure was that the effect of regulations could limit those who are eligible for the allowance, or the amount of employer NICs that could be taken into account for the purposes of the allowance. An example provided was that it was considered that such a power was necessary to either loosen or tighten the connected person rule for the allowance, with any tightening or loosening of the rule having consequences for companies and charities and their eligibility for the allowance. The Department considered was justified. The Committee's 18th

Report of Session 2013-14 considered the delegated powers in the NICs Act 2014 but did not comment on the power in section 5(1)(b) of the then Bill.

The power in section 5(1)(b) has so far been used three times¹, including to exclude companies with employer NICs over £100,000 to focus the relief on small businesses. This policy change was not foreseen at the time the power was introduced and, if there had been a similar restriction on the face of the legislation on the use of the power, such a change would have subsequently required primary legislation. This could have risked a delay to implementing the policy as, unlike Finance Bills, NICs Bills are not guaranteed to be annual.

In view of the above and that similar powers are also included in Finance Act 2021, the Government believes the draft affirmative procedure remains appropriate.

Clause 10(2)(d) – designation of self-isolation support schemes to be exempt from self-employed NICs

The Committee has recommended that this power is subject to the negative procedure, rather than no procedure. I am grateful for the Committee's comment but the Government believe that no procedure remains appropriate.

It may help the Committee if I explain some of the context to this power. 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 scheme in England was piloted on a limited basis

¹ This power has been used to introduce The Employment Allowance (Care and Support Workers) Regulations 2015 (SI 2015/578), The Employment Allowance (Excluded Companies) Regulations 2016 (SI 2016/344) and The Employment Allowance (Excluded Persons) Regulations 2020 (SI 2020/218).

from 1 September 2020, then rolled out nationally from 28 September 2020. The schemes in Scotland and Wales began in October 2020.

Regulations have already been introduced² under existing powers in section 3 of the Social Security Contributions and Benefits Act 1992 to exempt these payments from NICs for employees and their employers. Therefore, all clauses 10(1) and (2)(a) to (c) do is specify that the schemes specified are also to be exempt from self-employed NICs, ensuring consistency.

The Government believes that power designating self-isolation support schemes to be exempt from self-employed is narrowly drawn in that such schemes have to provide support for those who cannot work due to self-isolation. In addition, the Government's intention is that it will only use this power where further regulations are made to exempt payments from possible future similar schemes from NICs for employees and their employers.

The Government is also of the view that as the power to designate is also necessary to be able to respond to the changing circumstances of the Coronavirus pandemic as quickly as possible, and therefore the current parliamentary procedure is right given the current circumstances and means that the legislation can be introduced more quickly than a statutory instrument subject to the negative procedure.

I hope that the Committee and the House as a whole find this response useful in their further consideration of the Bill. I am copying this letter to Lord Tunnicliffe and Baroness Kramer and placing a copy of this letter in the Library of the House.

*My best wishes,
James*

Viscount Younger of Leckie

² The Social Security Contributions (Disregarded Payments) (Coronavirus) (England) Regulations 2020 (SI 2020/1065) and The Social Security Contributions (Disregarded Payments) (Coronavirus) (Scotland and Wales) Regulations 2020 (SI 2020/1532).