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Government policy on freeports

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The 2019 Conservative Party Manifesto included a commitment to create up to ten freeports around the UK. According to the Government, freeports are intended to be national hubs for global trade and investment across the UK. They aim to promote regeneration and job creation as part of the Government's policy to level up communities. In addition, the Government sees them as hotbeds for innovation.

The March 2021 Budget announced eight freeports in England: East Midlands Airport, Felixstowe & Harwich, Humber, Liverpool City Region, Plymouth & South Devon, Solent, Teesside and Thames. Five have received final government approval (Plymouth, Solent, Teesside, Felixstowe and Liverpool).

Freeports benefit from incentives relating to customs, tax, planning, regeneration, infrastructure and innovation. English freeports which have been given final government approval will each receive up to £25 million in seed funding plus significant sums in locally-retained business rates.

Freeports in Scotland, Wales and Northern Ireland

The UK Government wants freeports in all four countries of the UK. The relevant policy areas are a mixture of reserved and devolved powers.

The UK and Scottish Governments have reached agreement that there will be two green freeports in Scotland. In January 2023, the two governments announced that bids from Inverness and Cromarty Firth, and the Firth of Forth had been successful.

The Welsh and UK Governments have also agreed that one or more freeports will be established in Wales. Three bids have been submitted and the outcome is expected to be announced in Spring 2023.

No freeports have been announced for Northern Ireland so far.

Subsidy control

The new UK subsidy control regime, set up by the Subsidy Control Act 2022, is fully operational from 4 January 2022. It sets out the requirements and principles public authorities must follow when providing financial assistance to businesses. The UK is also bound by World Trade Organization rules on subsidies and its commitments under free trade agreements, including the Trade and Cooperation Agreement with the EU. The state aid provisions in the Northern Ireland Protocol may have implications for freeports in Northern Ireland.

Criticisms of freeports

Critics of freeports point to the risk that they will simply transfer business away from other areas of the UK without increasing the overall size of the economy. There have also been concerns about risks relating to money laundering and tax evasion.

1 Introduction

1.1 Background

Boris Johnson referred to freeports in his first speech as Prime Minister:

> as we prepare for a post-Brexit future it is time we looked not at the risks but at the opportunities that are upon us
>
> so let us begin work now to create freeports that will drive growth and thousands of high-skilled jobs in left behind areas.[1]

The 2019 Conservative Party Manifesto included a commitment to create "up to ten" freeports:

> Freeports: We will aim to ensure that our new freeports benefit the people in each of the four nations. We believe that there are many places across the United Kingdom that have the opportunity to be successful innovative hubs for global trade.
>
> [...]
>
> As part of our commitment to making the most of the opportunities of Brexit, and levelling up the nation, we will create up to ten freeports around the UK, benefiting some of our most deprived communities.

While there are freeports in the EU (and were freeports in the UK until 2012), advocates of freeports argue that their effectiveness was limited by EU state aid rules. For example, in 2016, Rishi Sunak argued that EU rules on state aid and the single market "have ensured that modern EU Free Zones amount to little more than storage and warehouse facilities with simpler customs formalities".[2]

1.2 What are freeports?

There is no single definition of a freeport and they operate in different ways in different countries. Common features of freeports include various concessions

1 Boris Johnson's first speech as Prime Minister in Downing Street, 24 July 2019
2 Rishi Sunak, The Free Ports Opportunity, Centre for Policy Studies, November 2016, p18

on customs, other tax and planning advantages and reduced bureaucracy.[3] As a report by the UK in a Changing Europe think tank noted:

> Nowadays freeports can range from secure warehouses, as in Luxembourg and Geneva, to sites where considerable added-value manufacturing occurs before the goods are re-exported.[4]

In the UK, freeports are designated areas where a range of economic incentives are available. These include incentives related to tax, customs, business rates, planning, regeneration, innovation and trade and investment support.[5]

Goods imported into the freeport customs site benefit from simplified customs documentation and can delay paying tariffs. Businesses operating in designated areas can make products using these imports and export them without paying tariffs and again benefit from simplified customs procedures.[6]

1.3 Examples of freeports

Freeports in the UK 1984-2012

A number of freeports operated in the UK at various points between 1984 and 2012. In 2012, the Statutory Instruments that set up the remaining five freeports (Liverpool, Southampton, Port of Tilbury, Port of Sheerness and Prestwick Airport) expired.[7]

It is worth noting that other schemes are available to help with customs. As recently as 2018, the Government noted the availability of alternative ways of securing the customs advantages of freeports, as shown by this PQ:

> Andrew Rosindell: To ask the Chancellor of the Exchequer, what assessment the Government has made of the potential merits of introducing free port schemes across the UK.
>
> Mel Stride: The Government has been clear that it is open to ideas that deliver economic advantages for the UK. Section 100A of the Customs and Excise Management Act 1979 (CEMA) provides the legal basis for the designation of free zones by HM Treasury and will continue to do so following UK withdrawal from the EU. Applying for designation as a free zone will be a commercial decision to be taken by private port operators. It is worth noting that many of

3. There are some similarities with Enterprise Zones – see Commons Library Briefing Paper Enterprise Zones
4. Freeports, UK in a Changing Europe, 2 March 2021, p3. This paper also describes freeports in the UAE (p6) and in Serbia (p8).
5. Department for Levelling Up, Housing and Communities, Freeports, 27 October 2021
6. Department for Levelling Up, Housing and Communities, Freeports, 27 October 2021
7. Ilona Serwicka and Peter Holmes, What is the extra mileage in the reintroduction of ‘free zones’ in the UK? (PDF), UK Trade Policy Observatory Briefing Paper 29, February 2019

> the customs-related benefits of free ports are already available through existing customs facilitations, for example inward processing relief.[8]

Freeports in the EU

There are a number of free zones in the EU (PDF). It has been argued, however, that the operation of these zones is limited by EU state aid rules.[9] Professor Catherine Barnard and Emilija Leinarte of Cambridge University have written:

> Approvals for FZ [free zones] are also subject to EU state aid rules. Under EU law, it is illegal for member states to give financial help to some companies and not others in a way which would distort fair competition. State aid must be approved by the European Commission, which effectively holds a monopoly on the decision for the creation of FZ.
>
> The difficulty of obtaining an FZ status can be illustrated by the Shannon FZ in the Republic of Ireland. The Shannon FZ was successfully launched in 1958 but, upon Ireland's accession to the EU in 1973, the incentives in the Shannon FZ were limited in order to comply with EU state aid rules (e.g. the 0% corporate income tax was increased to 10%).[10]

Having left the EU, the UK has set up its own subsidy regime and EU state aid rules no longer apply.[11] The UK is also bound by the World Trade Organization's rules on subsidies and its commitments under free trade agreements, including the UK-EU Trade and Cooperation Agreement (TCA) (see section 2.6 below).

[8] PQ 190815 [on Freeports], 21 November 2018

[9] For more on state aid, see Commons Library Briefing Paper, EU State aid rules and WTO Subsidies Agreement

[10] Catherine Barnard and Emilija Leinarte, Free Zones, 7 October 2018

[11] Under Article 10 of the Northern Ireland Protocol, EU state aid rules continue to apply to the UK in respect of state aid which affects trade in goods and the wholesale electricity market between NI and the EU.

2 Government policy on freeports

Timeline

February 2020: Government consultation on Freeports

October 2020: Government response to the consultation

November 2020: Publication of bidding prospectus: bidding process opens in England

3 March 2021: Announcement of 8 freeport locations in England in 2021 Budget

14 February 2022: UK and Scottish Governments announce that there will be two green freeports in Scotland.

25 March 2022: publication of bidding prospectus for Scotland

12 May 2022: UK and Welsh Governments announce agreement on establishing one or more freeports in Wales

1 September 2022: publication of bidding prospectus for Wales

24 November 2022: deadline for submission of bids in Wales

7 December 2022: first freeports in England receive final government approval (Plymouth, Solent and Teesside)

10 January 2023: Freeport East and Liverpool City Region receive final government approval

13 January 2023, UK and Scottish Governments announce two locations for green freeports in Scotland at Inverness & Cromarty Firth and at Firth of Forth

Early spring 2023: announcement of location of freeport(s) in Wales expected

2.1 Objectives

The Government's Bidding Prospectus described Freeports as:

> … a flagship government programme that will play an important part in the UK's post-Covid economic recovery and contribute to realising the levelling up agenda, bringing jobs, investment and prosperity to some of our most deprived communities across the four nations of the UK with targeted and effective support.[12]

The policy has three objectives:

- establish freeports as national hubs for global trade and investment across the UK
- promote regeneration and job creation – the lead policy objective
- create hotbeds for innovation.[13]

2.2 The Government's consultation

The Government published its Freeports consultation in February 2020.[14] This put forward proposals for freeports. The consultation was originally due to close on 20 April. On 8 April, the Government announced an extension to 13 July due to Covid-19.

On 7 October 2020, the Government published its response to the consultation. This said:

> Overall, respondents welcomed the ambition of the proposals, the emphasis on local economic geography and regeneration, the flexibility of the customs model, and the focus on innovation. Ports and businesses shared how Freeports could contribute to their sector's success and future growth potential, while many local authorities and public-sector bodies were optimistic about the potential of Freeports to help transform local economies.[15]

Other respondents drew attention to risks associated with freeports, including port security, safety, workers' rights, the environment, economic displacement, tax evasion and money laundering.[16]

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12 HM Treasury, Freeports: Bidding Prospectus (PDF), CP 315, November 2020, para 0.0.3

13 HM Treasury, Freeports: Bidding Prospectus (PDF), CP 315, November 2020, para 2.0.1. Sections 2.1, 2.2 and 2.3 of this document provide more information on these objectives.

14 See also Written Statement HCWS103 [on Freeports] 10 February 2020

15 HM Government, Freeports: Response to the Consultation, CP 302, October 2020, p7

16 As above

The Government opened the bidding process for freeports in England on 16 November 2020. The deadline for bids was 5 February 2021. Details were set out in Freeports: Bidding Prospectus.

The Bidding Prospectus said:

> These proposals will be assessed via an open, competitive process to determine winners by Spring 2021. Successful bidders will then be granted some seed funding to support governance set-up costs and will work with the government to develop detailed business cases for their spending plans associated with the regeneration funding offered to Freeports.[17]

2.3 Budget 2021: announcement of freeport locations in England

The 2021 Budget announced the locations of eight freeports in England. 18 bids had been received.[18] The locations are:

- East Midlands Airport
- Felixstowe & Harwich
- Humber
- Liverpool City Region
- Plymouth and South Devon
- Solent
- Teesside
- Thames.

More detail on each of these sites is available on the Department for Levelling Up, Housing and Communities' website.[19] A map of each site is also available.[20]

2.4 Final government approval for five freeports

All freeports in England have had their outline business cases approved. Five have received final government approval and are described by the

17 HM Treasury, Freeports: Bidding Prospectus (PDF), CP 315, November 2020Para 0.0.5
18 PQ 164433 [on Freeports] 15 March 2021
19 Department for Levelling Up, Housing and Communities, Freeports, 27 October 2021
20 HMRC, Maps of Freeports, Freeport customs sites and Freeport tax sites, 27 October 2021

Government as “fully up and running”. These five – Plymouth, Solent, Teesside, Freeport East and Liverpool – will each receive up to £25 million in seed funding plus significant sums in locally-retained business rates. The other three freeports in England – East Midlands, Humber and Thames are expected to receive final government approval soon,[21]

2.5 Freeport incentives

A range of benefits are available to freeports in England in the following policy areas:

- Customs
- Tax, including measures on:
  - Stamp Duty Land Tax (SDLT) Relief
  - Enhanced Structures and Buildings Allowance
  - Enhanced Capital Allowances
  - Employer National Insurance Contributions Relief
  - Business rates relief and retention
- Planning
- Infrastructure: each freeport will receive up to £25 million of seed capital funding to be used primarily to address gaps in infrastructure
- Innovation.[22]

Asked how the new policy differed from the pre-2012 freeports, Steve Barclay MP, then Chief Secretary to the Treasury, told the International Trade Committee:

> The pre-2012 freeports were located within UK port boundaries. That did not mean that they were particularly attractive locations in terms of the investments on innovation that we are targeting now, particularly compared, as I say, with those inland sites that are within the 45 km outer boundary. The new freeport model permits multiple sites. Those sites can interact with one another. The pre-2012 freeport sites only offered customs benefits; there was no tax. The tax offer that we covered earlier included the employer NICs, business rates, stamp duty and so forth. There was no spending, so that seed money we have just been covering—the £175 million—was not part of the pre-

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21 Department of Levelling Up, Housing and Communities, UK Freeports Programme Annual Report 2022, 16 December 2022, HCWS418 [on English Freeports: Final Government Approval], 7 December 2022 and HCWS487 [on English Freeports Update], 10 January 2023

22 Department for Levelling Up, Housing and Communities, Freeports, 27 October 2021

> 2012 offer. There was no planning within that pre-2012 freeport offer, and there was no innovation offer in terms of the regulator.
>
> If one looks at those pre-2012 freeport sites, they were very much designated within ports and for ports, which is a completely different proposition to what the new model is doing. What the new model is doing is it is asking local authorities, ports and investors to come together and develop a vision in terms of regenerating a particular area. I think it is a very helpful issue to draw out through your question because there is sometimes confusion between the 2012 position, which in essence was just a copy and paste of what EU freeports do, and what we have now designed, which is a much more bespoke and wider offer.[23]

In October 2021, the Office for Budget Responsibility (OBR) said freeports are expected to cost around £50 million a year from 2022/23. The largest costs are those arising from the employer national insurance contribution and business rates incentives. The OBR note that this cost estimate is uncertain for a number of reasons including the extent to which the various tax reliefs will be taken up and how much freeport activity will be additional rather than displaced from other parts of the UK.[24]

2.6 Subsidy control

The Government's freeports policy has to comply with various requirements on subsidy control:

- The UK's domestic subsidy control regime;
- The UK's subsidy control obligations at the WTO;
- Subsidy control provisions negotiated in the UK's free trade agreements including the Trade and Cooperation Agreement (TCA) with the EU; and
- State aid obligations in the Northern Ireland Protocol.[25]

The UK's subsidy control regime

The Subsidy Control Act 2022 sets the framework for public authorities for giving financial assistance to businesses. The new UK subsidy control regime, which has replaced the previous, EU law-based state aid regime, is fully operational since 4 January 2023.[26]

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23 Steve Barclay MP, Oral evidence to the International Trade Committee, UK Freeports, 24 February 2021, Q233. The Bidding Prospectus says "unless a very strong case is made … the furthest permitted distance between any two sites within the same Freeport is 45km and the largest area a Freeport Outer Boundary can cover is a circle of diameter 45km" (para 3.1.7)

24 Office for Budget Responsibility, Economic and fiscal outlook, CP 545, October 2021, para A.23

25 HM Treasury, Freeports: Bidding Prospectus, CP 315, November 2020, para 3.2.1.

26 Subsidy Control Act 2022

Public authorities – including local authorities and devolved administrations – must follow key requirements under the Act, before granting financial assistance to businesses and other organisations engaged in economic activity. These requirements include:

- Assessing whether the offered support is 'a subsidy' and needs to comply with the subsidy control requirements;
- Ensuring the subsidy respects subsidy control principles. To be compliant, subsidies must be proportionate and necessary, and be the right means to achieve the objectives. A subsidy must stimulate change in behaviour of the beneficiary and not compensate for expenses that would be funded anyway. Authorities must design subsidies in a way that minimises any negative effect on competition and investment within the UK. The benefits of a subsidy must outweigh any negative impact on competition and investment in the UK and internationally. Certain subsidies must be referred to the Subsidy Advice Unit for independent evaluation. This generally applies to larger subsidies and support to certain sensitive sectors such as manufacturing of steel, vehicles or shipbuilding;
- To ensure transparency, authorities must publish information about the subsidy (scheme) on the subsidy database.

Statutory guidance for the UK Subsidy Control Regime explains these requirements further.[27]

In November 2021, the Government published two subsidy schemes for tax reliefs to be offered in freeports:

- First-year allowances for expenditure on plant and machinery in Freeport tax sites; and
- Enhanced structures and buildings allowances in Freeport tax sites.

Public authorities may design further support to businesses in freeports, complying with the subsidy control requirements.

Guidance and Streamlined Routes

The Subsidy Control Act does not have specific provisions concerning freeports. The government has power to issue guidance detailing, for example, how subsidies might be given to support disadvantaged areas.[28]

The government can also design Streamlined Routes – a certain type of 'template' subsidy schemes, which are pre-assessed allowing public authorities to award subsidies more quickly. In January 2023, the Government

27 BEIS, Subsidy Control rules: quick guide to key requirements for public authorities, 11 November 2022; BEIS, UK subsidy control statutory guidance, 11 November 2022

28 Subsidy Control Act, Explanatory Notes (PDF), para 234

published three streamlined subsidy schemes authorities can use to provide financial assistance more easily:

- Streamlined Routes for research, development and innovation
- net zero and
- local growth.

Relocation subsidies

In order to protect competition in the UK market, the Subsidy Control Act 2022 generally bans subsidies which require a beneficiary business to relocate from one area in the UK to another, where this relocation would not have occurred without the subsidy. However, relocation subsidies are permitted, provided they effectively reduce the social or economic disadvantages of a specific area, within the UK generally, or lead to more or other economic activities. The Statutory Guidance explains the circumstances in which relocation support is permitted.[29] This rule may impact subsidy provision in freeports.

International obligations

UK subsidy provision is also bound by World Trade Organization rules on subsidies and the UK's commitments under free trade agreements, including the Trade and Cooperation Agreement with the EU.[30]

International trade and customs experts Peter Holmes, Anna Jerzewska and Guillermo Larbalestier note that goods made in freeports could face some obstacles when exported to countries which have a preferential trading relationship with the UK.[31]

The experts explain that tax breaks, labour subsidies and other forms of financial support in freeports may lower the overall cost of producing goods for exports and may be viewed as export subsidies. Under World Trade Organization rules, export subsidies can invite countermeasures by trading partners if, in the view of these partners, these subsidies unfairly distort trade. Such countermeasures may include unilateral withdrawal of preferences (eg. favourable import duties) on subsidised goods, meaning higher import tariffs. Countries can also introduce WTO-compliant

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29 Subsidy Control Act 2022, Section 18; BEIS, Subsidy Control rules: quick guide to key requirements for public authorities, 11 November 2022; BEIS, UK subsidy control statutory guidance, 11 November 2022, paras 5.22-5.32

30 HM Government, Guidance on the UK's international subsidy control commitments, updated 24 June 2021

31 Peter Holmes, Anna Jerzewska, Guillermo Larbalestier, Exporting from UK Freeports: Duty Drawback, Origin and Subsidies, UK Trade Policy Observatory, September 2022

countervailing duties on imports, to compensate for damage to trade, or rely on specific provisions in free trade agreements.[32]

The Trade and Co-operation Agreement (TCA)

Under the TCA, both the EU and UK have agreed broad common principles which prevent authorities giving businesses subsidies (grants, tax waivers, loans and other types of benefits), that have "material effect" on trade or investment.[33] The TCA contains a rebalancing mechanism, which allows both parties to take "remedial" or "rebalancing" measures if they believe trade is being damaged by subsidy measures taken by the other Party.[34]

The TCA does not have specific provisions on freeports. It includes a separate Joint declaration on subsidy control policies (PDF):

- for the development of disadvantaged areas
- for transport (airports, roads and ports), and
- for research and development.

The Joint declaration provides non-binding guidance on what "appropriate subsidy policies" in these areas would entail. For example, beneficiaries of subsidies for disadvantaged areas should provide a substantial contribution to the investment costs of a project. The main purpose of subsidies for these areas should not be to give businesses incentives to relocate from the EU to the UK or vice versa. Subsidies should be limited to the minimum amount necessary to commence the project.[35] State aid expert George Peretz QC assesses:

> The value of these latter declarations is largely to make it clear that the UK government, committed to major investment in both transport and R&D, can do so within the framework of the Agreement – though it will be observed that it could also have done so within the framework of EU State aid rules.[36]

At the end of 2022, during meetings of the UK-EU trade committees established under the TCA, the EU raised concerns and asked for clarification about the UK freeports programme.[37]

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32 Peter Holmes, Anna Jerzewska, Guillermo Larbalestier, Exporting from UK Freeports: Duty Drawback, Origin and Subsidies, UK Trade Policy Observatory, September 2022

33 UK-EU Trade and Cooperation Agreement, 30 December 2020, CP 426, Article 366

34 UK-EU Trade and Cooperation Agreement, 30 December 2020, CP 426, Articles 374, 411

35 Joint declaration on subsidy control policies (PDF) accompanying the Trade and Cooperation Agreement, p2527

36 George Peretz, Monckton Chambers, in The subsidy control provisions of the UK-EU trade and cooperation agreement: a framework for a new UK domestic subsidy regime, 28 December 2020

37 Cabinet Office, Foreign, Commonwealth and Development Office, Minutes: Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development under the EU-UK Trade and Cooperation Agreement: second meeting, 12 October 2022; Minutes:

Several trade and subsidy experts note, the "remedial" or "rebalancing" mechanisms of the TCA would allow the EU to introduce tariffs on some UK goods in response to UK subsidies in freeports. However, they doubt the impact of these subsidies on trade would be significant enough to justify such countermeasures.[38]

Northern Ireland

Under Article 10 of the Northern Ireland Protocol, EU state aid rules continue to apply to the UK in respect of state aid which affects trade in goods and the wholesale electricity market between Northern Ireland and the EU. Consequently, subsidies to Northern Ireland freeports may need prior European Commission approval. Differences between UK and EU regulation could lead to subsidy differences within Northern Ireland freeports compared to those offered across the rest of the UK.[39]

The UK regime introduced by the Subsidy Control Act 2022 does not change the status of subsidies in scope of Article 10 of the Protocol, as it does not apply to them.[40]

In July 2021, the Government published a Command paper that set out proposals to replace the Protocol, including a plan to replace Article 10 provisions. The Command paper says that the "comprehensive and robust commitments" introduced by the TCA, and the UK Subsidy Control Bill, mean that the Article 10 provisions are "redundant in their current form". To address EU concerns about any market distortions caused by UK subsidies, there could be "enhanced referral powers or consultation procedures for subsidies within scope" of the Protocol.[41]

Setting out its position on the Protocol in June 2022, the Government said the continued application of EU state aid rules under the Protocol creates "significant uncertainty and a two-tiered system in the UK". It said this limits

second meeting of the Trade Partnership Committee under the UK-EU Trade and Cooperation Agreement, 1 December 2022; EU to raise concerns over UK's freeports scheme, Financial Times, 30 November 2022

38 Peter Holmes, Anna Jerzewska, Guillermo Larbalestier, Exporting from UK Freeports: Duty Drawback, Origin and Subsidies, UK Trade Policy Observatory, September 2022; EU to raise concerns over UK's freeports scheme, Financial Times, 30 November 2022

39 NI Assembly Research and Information service, UK Freeport policy and the Protocol on Ireland/Northern Ireland, Paper No. 06/21, 15 January 2021, p25; Steve Barclay, then Chief Secretary to the Treasury said that the GB freeport model will need to be adapted in order to comply with the UK's obligations under the NIP. See HC International Trade Committee, Oral evidence: UK Freeports, 24 February 2021, Q249

40 Subsidy Control Act 2022, Section 48(3)(a)

41 HM Government, Command paper on the NI Protocol 21 July 2021, paras 63-65; Commons Library Briefing Northern Ireland Protocol: Implementation, grace periods and EU-UK discussions (2021), section 5

the level of support that may be granted in Northern Ireland, or who is eligible to receive it, without approval from the EU.[42]

The Northern Ireland Protocol Bill currently going through Parliament would empower ministers to disapply the state aid provisions of the Protocol. This would allow Northern Ireland to follow the UK's subsidy regime and not the EU's State Aid rules. The EU has reacted negatively to the Bill and said it would "respond with all measures at its disposal".[43]

The UK and EU discussions about the implementation of the Protocol are ongoing. So far, the EU has not put forward proposals to replace the Protocol's state aid provisions.[44]

The Government said in its Autumn Budget and Spending Review (2021) it may, when appropriate, introduce further guidance for businesses claiming freeport tax reliefs, "to reflect the outcome of ongoing discussions between the UK and EU about the Northern Ireland Protocol".[45]

2.7 Legislation

In February 2021, Ministers were questioned by the International Trade Committee on the need for legislation to implement freeports:

> Mick Whitley: What legislation will be brought forward to support the establishment of freeports in the UK? When will it be introduced?
>
> Steve Barclay: Luke Hall [Minister for Regional Growth and Local Government, MHCLG] may want to come on this as well. On legislation, the first point to make is that the policy sits under a combination of existing and new powers. To the extent that there will be new powers, we will need to put the relevant legislation in place. We will need to do that this year.
>
> I do not envisage any sort of freeports Bill. There are a number of areas of legislation already in place. For example, I previously mentioned that we do tax decisions through the Finance Bill, so you would not need to have separate legislation. Some of the legislation, for example around customs and excise, is already in place. We already have the power to designate areas for customs purposes. On the MCHLG side of things, there is the matter of legislation for

42 Foreign, Commonwealth and Development Office, Northern Ireland Protocol: The UK's solution, 13 June 2022.

43 Northern Ireland Protocol Bill 2022-23; House of Commons Library, Northern Ireland Protocol Bill 2022–23, 24 June 2022, para 2.4; House of Lords Library, Northern Ireland Protocol Bill HL Bill 52 of 2022–23, 5 October 2022, pp27-30; European Commission, Protocol on Ireland/Northern Ireland: Statement by Vice-President Maroš Šefčovič following today's announcement by the UK foreign secretary, 17 May 2022

44 European Commission, Protocol on Ireland/Northern Ireland: Commission proposes bespoke arrangements to benefit Northern Ireland, 13 October 2021

45 HM Treasury, Autumn Budget and Spending Review 2021, HC 822, October 2021, para 5.27

> changes to the permitted development rights for ports, but that is something that Luke Hall could speak to.
>
> Luke Hall: Shall I jump in on that question, Chair? The Chief Secretary has summed it up pretty well. There might not be a freeports Bill; this is about a number of individual changes to be made to existing legislation. On permitted development rights, we have committed to amending the regulations by the end of this calendar year. Also under our Department there will be separate changes to business rates. We aim to implement business rates designated areas as part of the freeports package through regulations by 1 April 2022. We expect that to be delivered through a negative SI procedure and be implemented in early 2022.[46]

2.8 Freeports in Scotland, Wales and Northern Ireland

Freeports policy in Scotland, Wales and Northern Ireland is complicated by the fact that it involves some policy areas which are reserved to the UK government and some which are devolved:

- Customs: this is generally reserved but with some exceptions such as checks on animal, food and plant products (Sanitary and Phytosanitary – SPS checks) which are mainly devolved.
- Tax: generally reserved with some exceptions such as business rates which are devolved in Scotland, Wales and Northern Ireland and Stamp Duty Land Tax which is devolved in Scotland and Wales.
- Planning: all devolved
- Regeneration: partly devolved
- Innovation: part reserved, past devolved.[47]

The UK Government has said that it would like to see freeports established in Scotland, Wales and Northern Ireland and is working with the devolved administrations to achieve this. The Government's consultation response said:

> The UK Government is working with the devolved administrations on establishing at least one Freeport in each of Wales, Scotland and Northern Ireland. [...] The location of the Freeports in Wales, Scotland and Northern Ireland will be determined collectively by both the UK Government and the devolved administration and should align objectives, processes and timescale where possible.[48]

46 Oral evidence to the International Trade Committee, UK Freeports, 24 February 2021, Q219
47 Government response to the Freeports consultation, Table 2.1, p13
48 HM Government, Freeports: Response to the Consultation (PDF), CP 302, October 2020, para 1.7

Scotland

In February 2022, the UK and Scottish Governments announced that they had reached agreement that two green freeports would be established in Scotland.[49]

The announcement of the green freeports in Scotland followed a period of disagreement between the UK and Scottish Governments. Differences had centred on payment of the real living wage, net zero commitments, set-up funding and branding.[50]

The bidding prospectus was published in March 2022.[51] Bids were considered jointly by the UK and Scottish Governments. Bidders had to demonstrate how they would regenerate local communities, deliver decarbonisation, establish hubs for global trade and foster an innovative environment to support levelling up.[52]

In January 2023, the two governments announced that Inverness and Cromarty Firth and the Firth of Forth had been successful. They will each be granted up to £26 million in funding, subject to the development and approval of a business case. The Scottish Government said the two successful bids would "benefit from tax reliefs and other incentives through a combination of devolved and reserved powers."[53] The Scottish green freeports are expected to be operational by the end of 2023.[54] Bids from North East Scotland, Orkney and Clyde were unsuccessful.[55]

The Forth Green Freeport aims to attract £6 billion worth of investment and create 50,000 jobs. The Inverness and Cromarty Firth Green Freeport aims to create 25,000 jobs and generate £4.8 billion in investment.[56]

John Swinney MSP, Deputy First Minister and Cabinet Secretary for Covid Recovery, told the Scottish Parliament that green freeports in Scotland would be different to those in England. He said the Scottish Government:

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49 Scottish Government, Deal agreed to establish Green Freeports, 14 February 2022, Department for Levelling Up, Housing and Communities, Ground-breaking deal to establish two new Green Freeports in Scotland, 14 February 2022

50 Scottish Government, Progressing Green Ports, 17 September 2021, Scotland set to have competing freeports, BBC News, 1 October 2021

51 Scottish Government, Green Freeports prospectus published, 25 March 2022

52 Department for Levelling Up, Housing and Communities and Office of the Secretary of State for Scotland, Joint cooperation to deliver two new Green Freeports in Firth Of Forth and Inverness and Cromarty Firth, 13 January 2023; Scottish Government, Green Freeports, 13 January 2023

53 Scottish Government, Green Freeports, 13 January 2023

54 Department for Levelling Up, Housing and Communities and Office of the Secretary of State for Scotland, Joint cooperation to deliver two new Green Freeports in Firth Of Forth and Inverness and Cromarty Firth, 13 January 2023

55 BBC News, Cromarty Firth and Forth to host first green freeports, 13 January 2023

56 Department for Levelling Up, Housing and Communities and Office of the Secretary of State for Scotland, Joint cooperation to deliver two new Green Freeports in Firth Of Forth and Inverness and Cromarty Firth, 13 January 2023

> had negotiated a distinctively Scottish approach, building on our own green ports model to modify the English freeports to suit Scotland's needs and priorities. In particular, he emphasised how the approach would give top priority to regeneration and high-quality job creation, how it would support our journey to net zero, and how it would embed our fair work agenda at its heart.[57]

The Scottish Greens – the SNP's partners in government – are opposed to freeports. Green MSP Ross Greer said there was nothing green about them and that the EU had highlighted the risk of illegal activity.[58]

For Labour, Shadow Cabinet Secretary for Net Zero, Energy and Rural Affairs, Colin Smyth MSP said the freeports were a "drop in the ocean" compared to the needs of the Scottish economy and pointed out that there was no extra funding for the unsuccessful bids.[59]

Alex Cole-Hamilton MSP of the Liberal Democrats welcomed the freeports but raised concerns about the displacement of economic activity and asked Mr Swinney to report back on this in the future.[60]

An article by the think tank, the UK in a Changing Europe, was sceptical about the capacity of green freeports to bring about significant economic improvement. It suggested that freeports could attract investment but "on their own they are unlikely to bring the sort of benefits that the Scottish or UK governments are hoping for."[61]

Wales

In May 2022, the Welsh and UK Governments announced they had agreed on the establishment of one or more freeports in Wales.

The Welsh Government agreed to support the freeports policy on a number of conditions:

- UK Ministers would provide at least £26 million in funding for any Welsh freeport – the same as English freeports receive
- The two Governments will act on the basis of a "partnership of equals"
- The Welsh freeport meets the Welsh Government's policies on fair work and environmental sustainability.[62]

The announcement said a multi-site freeport would be considered. It also said that the 45km boundary limit could be relaxed, provided a good case could be made. This was in recognition of Wales' "unique economic geography" and

57 SP OR 18 January 2023 c80 (PDF)
58 SP OR 18 January 2023 c88 (PDF)
59 SP OR 18 January 2023 c84 (PDF)
60 SP OR 18 January 2023 c89 (PDF)
61 David Bailey and Ivan Rajic, Scotland's freeports, UK in a Changing Europe, 18 January 2023
62 Welsh Government, Welsh and UK governments agree to establish freeports in Wales, 12 May 2022

the Welsh Government's economic development objectives. In addition, it might be possible for there to be more than one freeport in Wales if an exceptional case could be made.[63]

The Welsh Government had previously voiced reservations about freeports. In a written statement in July 2021, it said it recognised the potential benefits of freeports and remained open to supporting their establishment in Wales. However, it also had concerns about displacement of economic activity and risks that employment and environmental standards could be undermined. It would need to be reassured the freeports offered value for money and would not be a risk to Welsh tax revenue.[64]

On 1 September 2022, the Welsh and UK Governments jointly published the Prospectus for the Freeports programme in Wales.[65] Bids were to be submitted by 24 November. Three bids were received from ports in Wales.[66] These are from Anglesey, Celtic freeport (with sites in Neath Port Talbot and Pembrokeshire) and a bid involving Newport City Council and Cardiff Airport.[67]

The UK and Welsh Governments will have an equal say on deciding the winning bid(s). The winner will be announced in "early spring 2023" with the freeport being established by summer 2023.[68]

Senedd Cymru/Welsh Parliament debated freeports in Wales on 8 February 2023.[69]

Northern Ireland

The Northern Ireland Protocol, agreed as part of the Withdrawal Agreement between the UK and the EU, has implications for freeports in Northern Ireland (see section 2.6 above).[70] Negotiations between the UK and EU on the Protocol are ongoing.

In its April 2021 report on UK freeports, the International Trade Committee called on the Government to set out its view on whether freeports would need to operate differently in Northern Ireland to comply with the Protocol.[71]

63 Welsh Government, Welsh and UK governments agree to establish freeports in Wales, 12 May 2022
64 Welsh Government Written Statement, Freeports in Wales, 15 July 2021
65 Department for Levelling Up, Housing and Communities and Welsh Government, Freeport Programme in Wales: bidding prospectus, 1 September 2022
66 Office of the Secretary of State for Wales, Wales Freeport bidding process closes, 25 November 2022
67 BBC News, Celtic Freeport bid could create 16,000 jobs, say backers, 30 January 2023
68 Welsh Government Written Statement: Freeports Prospectus published for Wales, 1 September 2022, Department for Levelling Up, Housing and Communities, New Freeport in Wales will deliver regeneration and high quality jobs, 1 September 2022
69 Plenary (8 February 2023), Welsh Conservatives Debate: Free ports
70 See also Northern Ireland Assembly Research and Information Service, UK Freeport policy and the Protocol on Ireland/Northern Ireland, Paper No. 06/21, 15 January 2021
71 International Trade Committee, UK freeports, 20 April 2021, HC 258, 2019-21, para 92

In its response, the Government said that it remained committed to establishing a freeport in Northern Ireland as soon as possible. It said that it was working with the Northern Ireland Executive to make sure that a Northern Ireland freeport would comply with the international legal obligations of the Protocol and also support businesses in Northern Ireland.[72]

In January 2023, Baroness Hoey asked about the delay in setting up a freeport in Northern Ireland. The Government replied that freeports depended on a partnership between the UK and the devolved government and that it was continuing to work with stakeholders.[73] There are currently no Northern Ireland Executive Ministers as the DUP has refused to nominate a deputy first Minister in protest over the Northern Ireland Protocol.

72 International Trade Committee, UK Freeports: Government Response to the Committee's Fourth Report of Session 2019–21, 25 June 2021, HC 453, 2021-22, page 9

73 PQ 4711 [on Freeports: Northern Ireland], 26 January 2023

3 Issues

3.1 Displacement

One of the main criticisms of freeports is that they risk moving economic activity from one place to another rather than increasing growth overall. This risk is referred to in the Government's consultation document which says:

> There is evidence in some cases that zone-based policy can have a displacement effect, leading to reduced job opportunities in areas which are not Freeports. We welcome your views on the risk of this, and ways to mitigate it.[74]

Peter Holmes, Emeritus Reader in Economics at Sussex University and the author of a 2019 report on freeports, said that the main effect of freeports was to divert business into the port from the surrounding area, rather than creating new jobs.[75]

In its October 2021 Economic and fiscal outlook, the OBR noted that the Government had required bidders for freeports to show how they would try to reduce displacement of economic activity.

Nevertheless, the OBR assumed, on the basis of historical and international evidence, that the main effect of freeports "will be to alter the location rather than the volume of economic activity".[76]

The OBR further noted that if freeports did generate additional economic activity, this would be likely to be small relative to the economy as a whole and such effects "would probably be difficult to discern even in retrospect."[77]

In its response to the International Trade Committee's report on freeports, the Government said that freeports were designed to encourage new economic activity, not harmful displacement. It pointed out that the tax measures had been designed with this in mind. For example, employer National Insurance relief is only available for new employees. Furthermore, those bidding for freeports were required to explain how they would minimise displacement.[78]

74 HM Government, Freeports Consultation, CP222, February 2020 (PDF), p31
75 Experts sceptical on Johnson's plans for regional freeports, Financial Times, 5 July 2019
76 Office for Budget Responsibility, Economic and fiscal outlook, CP 545, October 2021, para A.29
77 As above
78 International Trade Committee, UK Freeports: Government Response to the Committee's Fourth Report of Session 2019–21, 25 June 2021, HC 453, 2021-22, page 6

In May 2022, the UK Government published a Monitoring and Evaluation Strategy for freeports in England.[79] This will provide evidence to assess the impact of the freeports policy and provide accountability to Parliament and the public. The strategy will run for an initial period of five years which may be extended. Trade experts at the University of Sussex commented that "Government M&E [Monitoring and Evaluation] documentation offers very little clarity on how the Freeports scheme would actually create benefits."[80]

3.2 Tariff inversion

Freeports are often thought to be of particular benefit when tariffs are higher on components than on finished products. Under these circumstances, there is an advantage in importing components tariff-free into the freeport, processing them into the final product and then exporting to the domestic market, paying the lower tariff on the final product. This situation, where tariffs are higher on components than the finished article is known as "tariff inversion". An article by Peter Holmes and Julia Magntorn Garrett of Sussex University said:

> The above analysis takes three different approaches to investigate the potential for duty savings from introducing Freeports in the UK. They all tell the same story: introducing Freeports in the UK is unlikely to generate any significant benefits to businesses in terms of duty savings. Tariffs on intermediates tend to be low in the UK, typically lower than tariffs on final goods, which rules out duty savings in most cases. In addition, in those sectors for which we have been able to identify any inversion, the benefits are small and would not have any material impact on the UK economy.[81]

3.3 Risk of illegal activity

The Guardian reported that the EU had introduced new rules to clamp down on free ports "after identifying that their special tariff and duty status has aided the financing of terrorism, money laundering and organised crime."[82]

This followed a 2018 report by the European Commission which said:

> Free-trade zones may pose a risk as regards counterfeiting, as they allow counterfeiters to land consignments, adapt or otherwise tamper with loads or associated paperwork, and then re-export products without customs

79 Department for Levelling Up, Housing and Communities, Freeports monitoring and evaluation strategy, 6 May 2022

80 Peter Holmes and Guillermo Larbalestier, Freeports: why the sudden excitement?, UK Trade Policy Observatory blog, 22 August 2022

81 Peter Holmes and Julia Magntorn Garrett, Tariff inversion in UK Freeports offers little opportunity for duty savings, UK Trade Policy Observatory blog, 28 July 2020. See also "Freeport advantages for business are 'almost non-existent'", Financial Times, 2 August 2020

82 EU clamps down on free ports over crime and terrorism links, Guardian, 10 February 2020

> intervention, and thus to disguise the nature and original supplier of the goods.
>
> The misuse of free-trade zones may be related with infringing intellectual property rights, and engaging in VAT fraud, corruption and money laundering.[83]

The Government's consultation noted that there had been concerns about links between freeports and illicit cross-border activities such as smuggling.[84] Its response to the International Trade Committee's report on freeports set out a number of measures the Government is taking to address these concerns. These include:

- A requirement for bidders to demonstrate how they will secure the customs site
- Businesses operating in a freeport customs site will need HMRC authorisation
- Freeport customs site operators will be required to support government agencies such as HMRC and Border Force in ensuring compliance.
- HMRC and Border Force customs checks

In addition, the Government pointed out that the UK must adhere to international obligations including its commitment to the OECD Code of Conduct for Clean Free Trade Zones.[85]

3.4 Impact of free trade agreements

Some of the UK's free trade agreements (FTAs) may limit the extent to which companies can take advantage of freeports.

Freeports allow businesses to import components without paying import duties. This is known as "duty drawback". However, a number of the UK's free trade agreements, rolled over from previous EU agreements, contain a prohibition on duty drawback. The UK has over 20 such FTAs.[86] The trade agreement with the EU does not include such a prohibition.[87]

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83 European Commission, Report from the Commission to the European Parliament and the Council: on the assessment of the risk of money laundering and terrorist financing affecting the internal market and relation to cross-border activities, 24 July 2019, p5

84 HM Government, Freeports: Response to the Consultation, CP 302, October 2020, p30

85 International Trade Committee, UK Freeports: Government Response to the Committee's Fourth Report of Session 2019–21, 25 June 2021, HC 453, 2021-22, pp6-7

86 Peter Holmes, Anna Jerzewska and Guillermo Larbalestier, Exporting from UK freeports: duty drawback, origin and subsidies, UK Trade Policy Observatory Briefing Paper 69, September 2022

87 UK freeports blow as exporters face tariffs to 23 countries, Financial Times, 9 May 2021

As a result, businesses exporting to countries where the UK has an FTA containing these provisions will need to choose between benefiting from the duty drawback or from preferential tariffs for their exports under the FTA.

Labour described this as "a catastrophic blunder". An article in the Guardian quoted a Government spokesperson as saying "It is not uncommon for free trade agreements to have these provisions. Businesses will not be shut out of markets we have negotiated free trade deals with."[88]

This is a complex and technical issue. A paper by the UK Trade Policy Observatory at Sussex University said:

> The question is: how do these provisions relate to UK Freeports and would removing them have indeed made it possible for goods manufactured in a Freeport to enjoy preferential treatment?
>
> In short – not necessarily. It's complicated. It is widely accepted that goods processed in a free port tend to lose originating status due to a combination of factors such as territoriality and drawback (this is further explained below). However, that largely depends on how free ports are established in the national legislation and on the agreement between contracting parties. There is much more to consider than whether or not duty drawback prohibition is included in the trade agreement.
>
> The absence of a duty drawback provision in the text of a trade agreement does not by itself mean that goods produced in a free port could be considered originating. So, removing them wouldn't necessarily automatically mean goods manufactured in a free port would be eligible for preferences. Equally, even when an agreement does not specifically exclude duty drawback, like the UK-EU TCA, this by itself might not be enough.[89]

3.5 Crustacean mortality in the North East

There were a large number of dead crabs and lobsters washed up along the Teesside coast between October and December 2021, and a number of further incidents throughout 2022. The unexplained deaths raised concerns locally, including amongst the fishing industry in the area, that the deaths could be linked to the Teesside freeport works. The North East Inshore Fisheries and Conservation Authority worked with a number of Government agencies to carry out sampling and testing to determine the cause of death. Possible causes suggested included chemicals released during port works, pathogens and algal blooms.

In response to the continued concerns raised, Defra commissioned an independent assessment which aimed to explain: the mortality of crustaceans over a sustained period and along at least 70km of coastline; the unusual

88 Post-Brexit trade deals mean firms will miss out on freeport benefits, Guardian, 10 May 2021

89 Peter Holmes, Anna Jerzewska and Guillermo Larbalestier, Exporting from UK freeports: duty drawback, origin and subsidies, UK Trade Policy Observatory Briefing Paper 69, September 2022

twitching observed by dying crabs in many locations; the dominant mortality of crustaceans rather than a wider range of species.[90]

The Independent Expert Assessment of Unusual Crustacean Mortality in the North-east of England in 2021 and 2022 (PDF) was published in January 2023. The assessment concluded, after considering several issues (including the lack of mortality in any other species) that releases of chemicals from dredging, an algal bloom or contamination from the chemical pyridine, as suggested by a study at Newcastle University, were not likely to be the cause of the deaths. The most likely explanation, although there was no direct evidence found in any samples, was an unknown pathogen not previously present in the area. The assessment concluded that it was "about as likely as not, that a pathogen new to UK waters caused the unusual crustacean mortality".[91] The assessment did not rule out the deaths being caused by a combination of factors.

The Environment Food and Rural Affairs Committee wrote to the Secretary of State Thérèse Coffey MP on 31 January 2023 asking her to refer the matter to the Centre for Environment, Fisheries and Aquaculture Science (Cefas) for further study. The Secretary of State did not agree, highlighting no long-term impact on crab and lobster landings in the area, and that:

> Given the extent of the analytical work already undertaken, and further advice, I have decided that it is highly unlikely that we will find the cause and so no further analysis will be undertaken by the government.[92]

90 Defra, Independent Expert Assessment of Unusual Crustacean Mortality in the North-east of England in 2021 and 2022 (PDF), 17 January 2023, Summary

91 Defra, Independent Expert Assessment of Unusual Crustacean Mortality in the North-east of England in 2021 and 2022 (PDF), 17 January 2023, Summary

92 Efra Committee, Report of the independent Crustacean Mortality Expert Panel, from the Secretary of State, dated 7 February 2023

4 Consideration by UK Parliament

4.1 Westminster Hall debates

11 October 2018

There was a Westminster Hall debate on freeports on 11 October 2018.

21 February 2023

There was a Westminster Hall debate on Freeports in Wales on 21 February 2023.[93]

4.2 International Trade Committee

The International Trade Committee launched an inquiry into freeports on 1 April 2020. Its report was published on 20 April 2021.[94] The Government's response was published in June 2021.[95]

In addition, the International Trade Committee held a one-off oral evidence session on freeports on 4 September 2019.

4.3 Welsh Affairs Committee

The Welsh Affairs Committee published a report, Freeports and Wales, on 8 May 2020.[96]

The Government's response was published on 22 July 2020.[97]

93 HC Deb 21 February 2023 cc1-20WH
94 International Trade Committee, UK freeports, 20 April 2021, HC 258, 2019-21
95 International Trade Committee, UK Freeports: Government Response to the Committee's Fourth Report of Session 2019–21, 25 June 2021, HC 453, 2021-22
96 Welsh Affairs Committee, Freeports and Wales, 8 May 2020, HC 205, 2019-21
97 Welsh Affairs Committee, Freeports and Wales: Government Response to the Committee's Second Report of Session 2019-21, 22 July 2020, HC 667, 2019-21

5 Further reading

Catherine Barnard and Emilija Leinarte, Free Zones, UK in a Changing Europe, 7 October 2018

Congressional Research Service, US Foreign-Trade Zones: Background and issues for Congress, 19 December 2019 (R42686)

Department for Levelling Up, Housing and Communities, Information and guidance on Freeports operating within England

Department for Levelling Up, Housing and Communities, UK Freeports Programme Annual Report 2022, 16 December 2022

European Parliamentary Research Service, Money laundering and tax evasion risk in free ports, October 2018

European Parliamentary Research Service, Public economic support in the EU: State aid and special economic zones, February 2020

Great.gov.uk, Freeports in the UK

Peter Holmes, Free ports – preparing to trade post-Brexit, UK Trade Policy Observatory blog, 26 September 2019

Peter Holmes and Julia Magntorn Garrett, Tariff inversion in UK Freeports offers little opportunity for duty savings, UK Trade Policy Observatory blog, 28 July 2020

Peter Holmes and Guillermo Larbalestier, Two key things to know about Freeports, UK Trade Policy Observatory blog, 25 February 2021

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House of Commons Library Briefing Paper, EU State Aid Rules and WTO Subsidies Agreement

House of Commons Welsh Affairs Committee, Freeports and Wales, 8 May 2020, HC 205, 2019-21; Freeports and Wales: Government Response to the Committee's Second Report of Session 2019-21, 22 July 2020, HC 667, 2019-21

Jeremy Mills-Sheehy and James Kane, Trade: freeports and free zones, Institute for Government, 22 July 2021

Anton Moiseienko, Alexandria Reid and Isabella Chase, Free Ports, Not Safe Havens: Preventing Crime in the UK's Future Freeports, Royal United Services Institute (RUSI), 27 April 2020

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Abbas Panjwani, What's a free port, and does the EU have them? Full Fact, 2 August 2019

Ilona Serwicka and Peter Holmes, What is the extra mileage in the reintroduction of 'free zones' in the UK? UK Trade Policy Observatory Briefing Paper 29, February 2019

Rishi Sunak, The Free Ports Opportunity, Centre for Policy Studies, November 2016

UK in a Changing Europe, Freeports, 2 March 2021

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