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# UK Freeports in 2021: What are the benefits, opportunities and risks?

## Introduction

In March 2021, the UK Government announced eight successful freeport bidders, namely Felixstowe, Teesside, East Midlands Airport, Humber, Liverpool, Plymouth, Solent and Thames.

While the UK Government's announcement in March was a major milestone, this is only the start of the process for the successful bidders. The bidders are now required to (i) submit an outline business case; (ii) work with HM Treasury and HMRC to review and confirm the boundaries of the proposed tax sites prior to approval; and (iii) begin the HMRC-led authorisation process for operators to run customs sites and for businesses to operate within them.

While this work by the successful bidders is going on in the background and we wait further clarifications from the UK Government about how this freeport model will work exactly, we look at some of the major benefits that businesses can avail of in the UK's latest freeport model.

The re-creation of freeports in the UK has been the subject of significant press attention since the commitment to freeports was included in the 2019 Conservative Party Manifesto and furthermore when the freeport consultation was published in February 2020.

Seven free ports historically operated in the UK at various points between 1984 and 2012 but were ultimately discontinued. Many have therefore questioned whether or not freeports will actually bring all of the perceived benefits the UK Government claims freeports will this time round and are eagerly awaiting clarification on what exactly has changed from the last model of freeports.

The UK Government has stressed that their latest model of freeports is superior and will succeed in creating national hubs for global trade and investment.

[1] Announced in the 2021 Budget

The UK Government has outlined that there will be incentivised tax, customs, duties and planning for businesses located within a freeport. The UK Government has however not confirmed to date exactly how these incentives shall be implemented or provided much detail on the actual workings of such incentives.

This article looks at some of the benefits and potential concerns that surround the UK Government's current UK freeport model.

## What has the Government changed in the 2021 freeport model from the 1984 - 2012 freeport model?

The UK Government's latest freeport model expands the original model in several facets, namely;

- The original freeport model captured businesses located only within UK port boundaries. The latest freeport model will capture businesses that are within the 45 km outer boundary of the relevant freeport therefore increasing the size and possibilities of the freeports considerably.
- The original freeport model only offered customs benefits. There were no tax benefits to businesses located within the freeport. The latest freeport model will offer several tax incentives. The details surrounding the tax incentives have not been published but it is clear that there should be considerable savings available.
- The original freeport model did not have any streamlined or fast-tracked planning permission process. The new freeport model will have optimised planning permission processes to increase the speed businesses can grow within the freeport.
- The original freeport model did not get support from additional Government spending. The latest freeport model has confirmed £175 million expenditure to assist freeport development and growth.

The Government acknowledges that the new freeport model requires a joined-up approach across the entire spectrum of stakeholders such as local authorities, ports and investors. Mr Sunak has also made it clear that the new freeports would operate under rules that made it "*easier and cheaper*" to do business. Whether or not this will actually be the case will only become clear when further information is published by the UK Government.

## International trade and taxation benefits

Traditionally, freeports have offered protection from import/customs duties, excise duties and VAT and the new UK freeport model will be no exception. A freeport must have within its perimeter at least one designated "customs site" zone, where goods may be held and monitored without payment of duties and import VAT, as well as an area designated for temporary storage (for example it may be filled with Christmas stock that builds up during the year). Freeports should also be a convenient location for goods to be inspected or sorted before acceptance by the buyer or pending payment for the goods.

It will of course be necessary for there to be strict controls of the inventory in the customs area and these will be policed by HMRC and by Border Force. Although it seems clear that the policy is to enable duties to be deferred on goods that are destined for the mainland and to enable goods to be re-exported without triggering liability to duty, it is not yet clear how the favourable treatment will interact with anti-dumping duties or countervailing duties (which counteract subsidies which are harmful to trade). The Bidding Prospectus indicates that the freeport offer is "subject to" subsidy controls but does not say when or how this will operate in practice[1].

There is also the possibility that where materials are imported into the UK freeport, used in manufacturing, and the finished goods re-exported, the absence of duty will lead to the loss of preferential tariffs under certain Free Trade Agreements. The extent to which this will impact on the attractions of UK freeports is unclear. It seems that traders will be allowed to opt out of the duty benefits of the UK freeport if they wish to preserve the status of their goods under a relevant FTA.

The UK freeports have been selected on the basis of their ability to handle cargo and commodity shipping of significant size as well as their position on long established shipping lanes between the English Channel/North Sea and the rest of the world. Solent, Thames, Felixstowe, Humber and Teeside are therefore well placed to receive cargo in large and economical quantities for onward shipment in smaller parcels to the ports of North West Europe in smaller and more versatile ships. The UK freeports also benefit from good quality road and rail links within the UK, making them ideal for the inward distribution of multimodal cargo and bulk liquids. The Tees may also attract greater volumes of short sea shipping to and from the Baltic as a result of its new customs status.

Buyers of both generic commodities and manufactured goods are generally responsible for the payment of import duties (most INCOTERMS provide for this, with the exception of DDP – Delivered Duty Paid – which places the responsibility on the seller). One example of how both buyers and sellers might benefit from the freedom from duty offered by the Freeports is for goods to be delivered/sold into a seller-owned/controlled warehouse in the customs site zone of the freeport. The buyer would pay rent for the warehouse space, which could be offered by the seller at competitive rates due to the savings on duty. This would enable the buyer to purchase larger quantities, which would then be released from the warehouse in smaller quantities as required.

The new freeports are also to serve the purpose of Enterprise Zones and there are to be certain time-limited exemptions from certain other taxes for areas which are designated as “tax sites” within the freeport. Tax sites must be “underdeveloped” (empty or brownfield or under-occupied land) and/or in need of regeneration.

To incentivise business to move to and to build their own premises in the freeport, there will be a 5 year Stamp Duty Land Tax holiday (1 April 2021 to 31 March 2026); enhanced Structures and Building allowances (also 1 April 2021 to 31 March 2026); and enhanced Plant and Machinery allowances (1 October 2021 to 30 September 2026). The enabling legislation is not yet in place but it is hoped that, as with Enterprise Zones, it will be sufficient for the expenditure to be incurred under a contract entered into in the three year window. Business rates relief will be available for new businesses, businesses moving into the tax site and businesses expanding within the tax site.

There is also to be a limited relief from employer national insurance contributions for hiring new staff up to a limit of £25,000 earnings per employee. Ordinarily annualised earnings of £8,844 or less are subject to a nil rate of employer NIC. It seems that the intention is to raise the threshold to £25,000 for up to three years per employee implying a maximum saving of approximately £6,688 per new employee. The relief is to be on offer for a minimum period of four years and a possible maximum of nine years. The relief is available only for new employments and anti-avoidance provisions are likely to prevent existing employees being re-hired.

## Infrastructure

The freeports themselves will require a significant amount of infrastructure.

From a planning perspective, UK freeports will benefit from permitted development rights allowing for a range of developments with the need to apply for an express planning permission. As well as permitted development rights that will apply to all freeports, local planning authorities may choose to provide additional permitted development rights – particularly with respect to those types of activities that the local authority wishes to promote in that area, such as green energy production.

These developments could be financed by way of traditional borrowings, or by way of project finance where a particular development could support it – this may well be the case for green energy projects, or other projects where there is a clear income stream that lenders could rely on by way of security.

## How UK will deal with negative issues identified to date within freeports

A prominent issue identified as a concern is the potential for free ports to encourage (or at least facilitate) illicit activity. The International Trade Committee in the House of Commons cited evidence of such zones carrying elevated risks of "*trade in counterfeit goods; drug trafficking; illegal wildlife trade; smuggling; trade-based money laundering; tax evasion; and corruption*". Such concerns are mirrored in commentary from the OECD.
Existing UK legislation contains obligations on reporting certain money laundering issues which will address some of the concerns. Further, the proposed requirement for free port operators to comply with the OECD's Code of Conduct for Clean Free Trade Zones is welcome. However, there seems to be broad acknowledgement that significantly increased vigilance, policing and enforcement will be necessary to meet the risks of illicit activity.

## Conclusion

Given the challenging year businesses across the country have encountered, any development that promotes increased trade and employment is welcomed.

The major question that needs to be answered sooner rather than later is how the Government will ensure freeports achieve their objectives.

The actual outcomes and benefits achieved from the UK Government's previous freeport model are still hotly debated today.

We agree with the International Trade Committee's recommendation that the UK Government's objectives and outcomes must be measured and monitored this time round. The Government must set out clear metrics that will be used to measure freeport success against their objectives and outcomes to avoid history repeating itself.

The UK Government's announcement in May 2021 that recent post-Brexit trade agreements with 23 different countries included clauses that specifically prohibit manufacturers in freeport-type zones from benefiting from the deals is a major blow to the freeports. The UK Government will need to confirm how it shall deal with such issues when it provides further clarity on the model's workings.

We therefore look forward to the UK Government issuing further guidance and information on their latest freeport model in the near future so questions can be answered and businesses can start analysing whether or not freeports could be a possibility for their business.

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