



Northern Ireland  
Assembly

## Research and Information Service Briefing Paper

---

Paper No. 06/21

15 January 2021

NIAR 353-20

# UK Freeport policy and the Protocol on Ireland/Northern Ireland

**Aidan Stennett, with Colin Pidgeon**

This paper explores issues arising from the interaction between the United Kingdom's Freeport Policy and the "Protocol on Ireland and Northern Ireland".

This information is provided to Members of the Legislative Assembly (MLAs) in support of their duties, and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as professional legal advice, or as a substitute for it.

## Introduction

This paper has been prepared for the Committee for Finance (the Committee), seeking to assist the Committee in its scrutiny role. The paper's central focus is to examine the interaction between United Kingdom (UK) Freeport Policy<sup>1</sup> and the "Protocol on Ireland/Northern Ireland" (the Protocol).<sup>2</sup> It also provides a range of background information to provide a useful context for the analysis.

The paper begins defining the "Freeport" concept and examining key debate themes regarding its use as a tool for economic development (Section 1); before outlining the development of Freeport policy in a UK context, including how the policy is likely to interact with prevailing devolution settlements across the UK (Section 2). Next, the paper moves on to analyse the potential interaction between UK Freeport policy in Northern Ireland (NI) and the Protocol (Section 3). This background information and analysis is then used to draw some concluding remarks (Section 4).

It is worth noting at the outset that, at the time of writing, no firm policy proposals for an NI Freeport have been published by the UK Government. As such, there is limited discussion on the interaction between Freeport policy and the Protocol. As such, this paper should be viewed as a "first look" at the issues. The Committee may wish to revisit this subject as further details become available.

## 1 Background

The following section provide context to the rest of the paper. It first defines Freeports, before looking at their prevalence around the world. The section then examines some key economic benefits and issues associated with Freeports in general.

### 1.1 What are Freeports?

The UK Government define Freeports as:

*...secure customs zones located at ports where business can be carried out inside a country's land border, but where different customs rules apply. They can reduce administrative burdens and tariff controls, provide relief from duties and import taxes, and ease tax and planning regulations.<sup>3</sup>*

---

<sup>1</sup> HM Treasury and HM Government, Freeports Bidding Prospectus (November 2020)  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/935493/Freeports\\_Bidding\\_Prospectus\\_web\\_final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/935493/Freeports_Bidding_Prospectus_web_final.pdf)

<sup>2</sup> HM Government, New Protocol on Ireland/Northern Ireland (18 October 2019)  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840230/Revised\\_Protocol\\_to\\_the\\_Withdrawal\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf)

<sup>3</sup> HM Government, Freeports Consultation (February 2020)  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/878352/Freeports\\_Consultation\\_Extension.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878352/Freeports_Consultation_Extension.pdf)

In practice, Freeports tend to be located in designated areas at airports and maritime ports. Freeport arrangements mean that imports can enter the Freeport area with simplified customs documentation and without subject to tariffs. This allows business operating within the designated area to import goods for manufacturing, add value to the original import and export a final manufacturing good without the need to comply with full customs procedures or to pay tariffs. If the import moves from the Freeport into another part of the country, it is required to go through the full import process, including paying any applicable tariffs.<sup>4</sup>

According to the Institute for Government:

*Freeports are similar to free zones, or ‘enterprise zones’, which are designated areas subject to a broad array of special regulatory requirements, tax breaks and government support. The difference is that a Freeport is designed to specifically encourage businesses that import, process and then re-export goods, rather than more general business support or regeneration objectives.*<sup>5</sup>

## 1.2 Prevalence of Freeports globally

Research by the House of Commons Library has noted that the “lack of a universally-accepted definition” of Freeports ensures that it is difficult to provide a precise figure on the number of Freeports currently operating globally. Various terms are used across countries to describe areas that provide the functions of a Freeport, including: “free zones”; “special economic zones”; “free trade zones”; “export processing zones”; and, “free economic zones”. According to the United Nations Conference on Trade and Development (UNCTAD), there were over 5,000 zones providing the functions of a Freeport globally in operation as of 2019. Table 1 (below) provides a summary of broad location of these zones. As can be seen from the Table, the majority of zones operating in 2019 were located in what UNCTAD classified as “developing economies”.<sup>6</sup> It is worth noting that:

*UNCTAD classifies all target economies into developing (1200), developed (1100) and transition economies (1300). This classification has its origin in the coalitions formed during the preparation of the first United Nations Conference on Trade and Development in 1964. It primarily reflects historically formed common interests and identities of economies. It does*

---

<sup>4</sup> House of Commons Library, Freeports (16 November 2020) <https://researchbriefings.files.parliament.uk/documents/CBP-8823/CBP-8823.pdf>

<sup>5</sup> Institute for Government, Trade: Freeports and freezones (10 February 2020) <https://www.instituteforgovernment.org.uk/explainers/trade-Freeports-free-zones>

<sup>6</sup> House of Commons Library, Freeports (16 November 2020) <https://researchbriefings.files.parliament.uk/documents/CBP-8823/CBP-8823.pdf>

*not necessarily correspond with their ranking in macroeconomic or social indicators. Each category is further divided by geographical region.<sup>7 8</sup>*

**Table 1: Number and location of special economic zones, 2019<sup>9</sup>**

Region	Number
<b>Developed Economies</b>	<b>374</b>
Europe	105
North America	262
<b>Developing Economies</b>	<b>4,772</b>
Asia	4,046
Africa	237
Latin America and Caribbean	486
<b>Transition Economies</b>	<b>237</b>
<b>Total</b>	<b>5,383</b>

Source: House of Commons Library (2020)

There are currently no Freeports operating in the UK. In the past, between 1984 and 2012, seven Freeports operated in the UK. In July 2012 the prevailing Statutory Instruments underpinning five of those seven Freeports still in operation was not renewed.<sup>10</sup>

In the EU, approximately 80 Freeports currently operate,<sup>11</sup> raising the following three points of note:

1. The 80 Freeports tend to be legacies in that they pre-date the host country's EU membership.<sup>12</sup>
2. In relation to the noted Freeports, the EU countries in which they are located must meet EU state aid rules; consequently limiting the range of incentives they can offer within their countries, when compared to those offered outside EU member states.<sup>13</sup> This is explored in greater detail in Section 3 below.

<sup>7</sup> UNCTAD, Classifications (accessed 14 January 2021) <https://unctadstat.unctad.org/en/classifications.html>

<sup>8</sup>A visual representation of UNCTAD's latest ranking of world economies is available [here](#).

<sup>9</sup> House of Commons Library, Freeports (16 November 2020) <https://researchbriefings.files.parliament.uk/documents/CBP-8823/CBP-8823.pdf>

<sup>10</sup> Institute for Government, Trade: Freeports and freezones (10 February 2020)

<https://www.instituteforgovernment.org.uk/explainers/trade-Freeports-free-zones>

<sup>11</sup> European Commission, Free zones which are in operation in the customs territory of the Union, as communicated by the Member States to the Commission (6 April 2020)

[https://ec.europa.eu/taxation\\_customs/sites/taxation/files/resources/documents/customs/procedural\\_aspects/imports/free\\_zones/list\\_freezones.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/procedural_aspects/imports/free_zones/list_freezones.pdf)

<sup>12</sup> House of Commons, International Trade Committee, Oral evidence: UK Freeports, HC 258 (15 July 2020)

<https://committees.parliament.uk/oralevidence/721/html/>

<sup>13</sup> Full Fact, What's a freeport and does the EU have them? (2 August 2019) <https://fullfact.org/europe/free-ports/>

3. In April 2019, the European Parliament (EP) recommended ending Freeports in the EU. This was a result of the findings of an October 2018 EP report, including: “Money laundering and tax evasion risks in free ports”.<sup>14</sup> That report concluded:

*Freeports are conducive to secrecy. In their preferential treatment, they resemble offshore financial centres, offering both high security and discretion and allowing transactions to be made without attracting the attention of regulators and direct tax authorities.*<sup>15</sup>

The perceived pros and cons associated with Freeports are explored in more detail in subsection 1.3 below.

### 1.3 Perceived benefits of and issues with Freeports

According to the UK Government, post-Brexit UK Freeports policy will aim to recreate “the best aspects of international Freeports” in a “best-in-class” model in order to:

- Boost trade, jobs and investment;
- Encourage innovation; and,
- “Level up opportunity across the country”.<sup>16</sup>

However, available evidence on the success of Freeports as an economic development tool is mixed. This subsection provides a brief overview of that evidence.

#### 1.3.1 Freeports as drivers of economic activity

Proponents of the Freeport model argue that the incentives offered at Freeports stimulate economic activity. One of the central ways in which Freeports seek to promote economic growth is through tariff inversion. This occurs when tariffs on components are higher than those of a final product. Under these circumstances, the Freeport model enables a manufacturer to import components parts into the Freeports, process them into a final product and then export them to the domestic market – paying the lower, final product tariff.<sup>17</sup> The November 2016 Centre for Policy Studies paper, entitled “Freeports Opportunity”, notes that tariff inversion has been on the key benefits of Free Trade Zones (FTZ) in the United States. The Centre cites the example of Nissan, which has operated within a FTZ in the state of Tennessee since 1983. According to the Centre for Policy Studies:

<sup>14</sup> The European Parliament, Money laundering and tax evasion risks in free ports (October 2018) [https://www.europarl.europa.eu/cmsdata/155721/EPRS\\_STUD\\_627114\\_Money%20lauding-FINAL.pdf](https://www.europarl.europa.eu/cmsdata/155721/EPRS_STUD_627114_Money%20lauding-FINAL.pdf)

<sup>15</sup> *Ibid*

<sup>16</sup> HM Government, Freeports Consultation ( February 2020) [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/878352/Freeports\\_Con\\_sultation\\_Extension.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878352/Freeports_Con_sultation_Extension.pdf)

<sup>17</sup> House of Commons Library, Freeports (16 November 2020) <https://researchbriefings.files.parliament.uk/documents/CBP-8823/CBP-8823.pdf>

*By using tariff inversion, Nissan can elect to make customs entry on the rate of the foreign components or finished goods, whatever is lower, encouraging domestic manufacturing by making substantial savings on duty.<sup>18</sup>*

Currently:

*...the plant continues to have a huge impact on local employment, with a workforce of 8,400 who have a combined annual payroll of \$399 million. 640,000 vehicles are now produced each year, and in total \$6 billion has been invested in the site.<sup>19</sup>*

Others question the effectiveness of tariff inversion in a UK context. For example, academics at the University of Sussex concluded a July 2020 article in the UK Trade Policy Observatory blog by stating:

*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 the 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.<sup>20</sup>*

### 1.3.2 Displacement

Furthermore, detractors argue that Freeports do not necessarily create new economic activity, but rather divert existing businesses into the area “with the allure of tax breaks – at a cost to the taxpayer in the form of lost revenue”. This risk was identified by the UK Government in the Freeports consultation document, issued by the Her Majesty’s Treasury (HM Treasury) which stated:

*There is evidence in some cases that zone-based policy can have a displacement effect, leading to reduced job opportunities in area which are not Freeports.<sup>21</sup>*

---

<sup>18</sup> Centre for Policy Studies, The Freeports Opportunity (November 2016)

<https://www.cps.org.uk/files/reports/original/161109144209-TheFreePortsOpportunity.pdf>

<sup>19</sup> *Ibid*

<sup>20</sup> 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 <https://blogs.sussex.ac.uk/uktpo/2020/07/28/tariff-inversion-in-uk-freeports-offer-little-opportunity-for-duty-savings/>

<sup>21</sup> HM Government, Freeports Consultation ( February 2020)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/878352/Freeports\\_Consultation\\_Extension.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878352/Freeports_Consultation_Extension.pdf)

In its response to the consultation, the UK Government stated:

*The government's focus is to encourage business investment and create new economic activity, rather than harmful displacement. We welcome the views expressed in the consultation, which supported our ambitious Freeport policy driving additional activity. We recognise the concerns expressed by other respondents regarding displacements. As part of assessing bids [to become a Freeport] the government will consider any potential displacement impacts. Bidders will be invited to provide evidence and potential displacement mitigations as part of their bids.*<sup>22</sup>

### 1.3.3 Risk of illegal activity

As noted in subsection 1.2, above, there is some evidence that Freeports may under some circumstances encourage illegal activity. As highlighted in that subsection, the European Parliament found in 2018 report that:

*Freeports are conducive to secrecy. In their preferential treatment, they resemble offshore financial centres, offering both high security and discretion and allowing transactions to be made without attracting the attention of regulators and direct tax authorities.*<sup>23</sup>

The UK Government noted in its Freeports consultation document the risk of “illicit activity” at Freeport sites, stating:

*International organisations have previously expressed concerns about links between Freeports and a number of illicit cross-border activities, including smuggling (the illicit importation of goods) and circumvention.*<sup>24</sup>

In its response to the consultation, the UK Government stated that:

*The government does not want the introduction of UK Freeports to lead to an increase in illicit activity. It will ensure all the necessary safeguards are in place and will continue to meet international standards when considering the risks in a UK context.*<sup>25</sup>

---

<sup>22</sup> HM Government, Freeports: Response to the Consultation (October 2020)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/924644/FINAL\\_-\\_200923\\_-\\_OFF\\_SEN\\_-\\_Freeports\\_Con\\_Res\\_-\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/924644/FINAL_-_200923_-_OFF_SEN_-_Freeports_Con_Res_-_FINAL.pdf)

<sup>23</sup> *Ibid*

<sup>24</sup> HM Government, Freeports Consultation (February 2020)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/878352/Freeports\\_Con\\_sultation\\_Extension.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878352/Freeports_Con_sultation_Extension.pdf)

<sup>25</sup> M Government, Freeports: Response to the Consultation (October 2020)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/924644/FINAL\\_-\\_200923\\_-\\_OFF\\_SEN\\_-\\_Freeports\\_Con\\_Res\\_-\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/924644/FINAL_-_200923_-_OFF_SEN_-_Freeports_Con_Res_-_FINAL.pdf)

## 2 UK Government Freeport policy

The following section takes a closer look at UK Government Freeport policy, tracing its development from a Conservative Party 2019 manifesto commitment, to the launch of the bidding process in England. The section also examines the interaction between Freeport policy and devolution, as well as the UK Government's proposed way forward with respect to Freeports in the devolved regions, including Northern Ireland.

### 2.1 Freeports consultation – February 2020

In 2019, the Conservative Party Manifesto committed to the creation of up to 10 Freeports in the UK. Once in power, the UK Conservative Government published a "Freeports Consultation"<sup>26</sup> ( 9 February 2020). The consultation document set out the following objectives for the Freeports policy:

- Freeports will be national hubs for global trade and investment in the UK;
- Freeports will promote regeneration and job creation: creating high-skilled jobs in ports and surrounding areas; and,
- Freeports will be "hotbeds" for innovation.<sup>27</sup>

Introducing the policy proposals, the consultation stated:

*The Government is considering a bespoke UK Freeport model which would include multiple customs zones located within or away from a port to maximise flexibility for port operators and business as well as a SEZ-style [Special Economic Zone] zone designated over or around the customs zones, to encourage the maximum number of business to open, expand and invest in our Freeports.<sup>28</sup>*

The consultation set out and sought opinions on a range of incentives that could feature as part of a future UK Freeports. These were set out in the Government consultation response and are summarised in Table 2 below.

---

<sup>26</sup>HM Government, Freeports Consultation ( February 2020)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/878352/Freeports\\_Consultation\\_Extension.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/878352/Freeports_Consultation_Extension.pdf)

<sup>27</sup> *Ibid*

<sup>28</sup> *Ibid*



**Table 2: Potential incentives in UK Freeports<sup>29</sup>**

Incentive Area	Details
Location	The consultation proposed that Freeports could be located inland, as well as adjacent to ports. Businesses moving goods from a port to an inland Freeport would be required to secure a form of insurance known as a customs guarantee that would cover the duty that would be owed if the goods did not reach the inland destination.
Customs	The consultation proposed that good entering the Freeport from outside of the UK would not pay tariffs, import VAT or excise duty until the left the free port area and entered the UK market. Goods entering the Freeport would also be subject to simplified customs procedures and customs declarations.
Tax	The consultation stated the UK Government was considering a range of tax incentives, including: business rate discounts; stamp duty land tax; R&D tax credits; Employer National Insurance Contributions; and, Enhanced Capital Allowances.
Planning	The consultation proposed planning liberalisation within Freeports. The Government sought views on “role that planning freedoms, permitted development rights, zonal planning and National Policy Statement for Ports can play in supporting Freeports” and on additional measures that could support development in Freeports.
Regeneration	The consultation stated that Freeports would be “a key part of delivering our ambition to level up the economy across the country”. Areas applying for Freeports status will be required to show how a Freeport contribute to regeneration and complement other investment. The consultation identified four areas in which Freeports could support this “levelling up” ambition: infrastructure; business support; skills; and, housing.
Innovation	The consultation stated that a key objective of the Freeports policy is to establish such ports as “hotbeds of innovation”. To do so, the Government’s Freeport policy will “combine regulatory flexibilities, collaborative approaches and potential funding in order to target and remove key barriers to testing and delivering new technologies and processes, and to promote innovative activity by businesses.

Source: HM Government (2020)

## 2.2 Freeports in England

Subsequent to the UK Government’s consultation on its Freeport policy, the bidding process for Freeports in England opened on 16 November 2020. It is important to note, that the initial wave of Freeports is to be confined to England. The Freeports Bidding Prospectus<sup>30</sup> notes that the UK Government:

*...wants to ensure that people across the UK can share all the economic benefits associated with unleashing the potential of Freeports to rejuvenate communities across the UK.*<sup>31</sup>

However, it also notes that the UK Government is working with the devolved administrations to:

<sup>29</sup> HM Government, Freeports: Response to the Consultation (October 2020)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/924644/FINAL\\_-\\_200923\\_-\\_OFF\\_SEN\\_-\\_Freeports\\_Con\\_Res\\_-\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/924644/FINAL_-_200923_-_OFF_SEN_-_Freeports_Con_Res_-_FINAL.pdf)

<sup>30</sup> HM Treasury and HM Government, Freeports Bidding Prospectus (November 2020)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/935493/Freeports\\_Bidding\\_Prospectus\\_web\\_final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/935493/Freeports_Bidding_Prospectus_web_final.pdf)

<sup>31</sup> *Ibid*

*...develop appropriate Freeport allocation processes.<sup>32</sup>*

The Prospectus further notes:

*... that these will processes will be run jointly by the UK Government and the devolved administrations, and will be “announced as soon as possible.”*

Subsection 2.3 below explores the interaction between Freeports and devolution in greater detail.

#### Potential Scrutiny Points:

- 1) What discussions have the NI Executive, particularly the Department of Finance (DoF) and Department for the Economy, had to date with the UK Government with respect to a NI Freeport?
- 2) If such discussion has occurred, what progress has been made, including items discussed, agreements reached, subsequent planning undertaken, such as forward work programmes and related timetabling?

The Freeports Bidding Prospectus provides further detail on the types of incentives that are to be made available to Freeports in England. These follow the broad incentive areas outlined in the earlier consultation, as follows:

- **Customs:** Business operating within the Freeport customs site are to receive tariff benefits. Such benefits include, tariff deferral and tariff inversion, if the finished goods exiting the Freeport area are required to pay a lower tariff than the component parts. The Bidding Prospectus also states that “businesses may be able to take advantage on customs duty exemption on goods that are imported into a Freeport, process into finished goods and subsequently re-exported” depending on the terms UK’s Free Trade Agreement. In addition, businesses within in the Freeport area are to be able to suspend VAT on goods entering the area, and are to be authorised to use simplified import procedures.<sup>33</sup>
- **Tax:** a range of tax reliefs are to be made available to businesses within the Freeports “tax site”. These are:
  - **Stamp Duty Land Tax Relief (SDLT):** The UK Government is to offer SDLT relief on land purchases within Freeport tax sites where that property is to be used for a qualifying commercial activity. This relief is to apply from 1 April 2021 to 31 March 2026. It will be subject to clawback where the land is not used for a qualifying purpose within a three-year period, or if the land is sold at an earlier point.
  - **Enhanced Structures and Buildings Allowance (SBA):** Businesses within the Freeports area are to be offered an Enhanced SBA rate. This is to provide tax

<sup>32</sup> *Ibid*

<sup>33</sup> *Ibid*

relief for firms constructing or renovating structures and buildings for non-residential use within the tax sites. The Enhanced SBA rate is to allow firms to reduce their taxable profits by 10% of the costs of investment every year for a ten years. This is compared to the standard rate of 3% per year for a period of 33 and a third years. The enhanced relief is to be made available if the asset is brought into qualifying use between 1 April 2021 and 30 September 2026.

- **Enhanced Capital Allowance (ECAs):** ECAs are to be available to firms within the Freeport area. This is to enable firms within the area to reduce their taxable profits by the full of cost of qualifying investment in the same tax period the cost was incurred. ECAs are to be made available for investments incurred on or after the 1 October 2021, until 30 September 2026.
- **Employer National Insurance Contributions (NICs) Rate Relief:** Employers operating within the Freeport area are to be required to pay 0% NICs on the salaries of any new employees working in the Freeport site. This relief is to be made available for up to three years per employee, on earnings of up to £25,000 per year. The NICs relief scheme is to be made available for at least four years, and potentially nine years depending on a future Government review of the relief; timing not yet confirmed.
- **Business rates relief:** The UK Government is to offer up to 100% relief from business rates on certain business operating within Freeports. The relief is to be made available to new and existing businesses within England's Freeports from 1 October 2021; and is to apply for a period of five years from the date a beneficiary first receives such relief. A business must access the relief prior to the 30 September 2026. The UK central Government is to fund the cost incurred by the Local Government to provide such relief.
- **Local retention of business rates:** The Freeport model is to allow the council or councils in which the Freeport tax sites are located to retain the business rates growth for the area above an agreed baseline. This is to be guaranteed for a period of 25 years. According to the Bidding Prospectus, this is to give: "councils the certainty they need to borrow to invest in regeneration and infrastructure". The Prospectus further states that: bidders should set out a decision-making process for agreeing how retain rates should be reinvested".<sup>34</sup>
- **Planning:** Four areas of planning reform are outlined in the Freeport Bidding Prospectus, i.e.:
  - **Permitted Development Rights:** The UK Government is to amend the Town and Country Planning (General Permitted Development) (England) Order 2015, to bring seaports permitted development rights into alignment with existing rights for airports. This change is to expand the "range of development and operational activities" to be considered as "permitted development" within the seaport area.

---

<sup>34</sup> *Ibid*

The intention of the reform is to expedite planning system within seaports and enable faster development.

- **Simpler, area-based planning:** The UK Government is to: “encourage local authorities and prospective bidders to consider how certain planning freedoms – in particular Local Development Orders (LDOs) – could be used to support development in Freeport areas”. To support this, the UK Government has committed to providing “further additional assistance to successful bidders to implement LDOs in their areas and will work in partnership with local authorities to ensure successful delivery”.
- **Environmental Impact Assessments (EIA):** The threshold that requires that developers in England carry out an EIA is lower for ports than other types of similar development. This affects the ability to utilise permitted development. The UK Government is considering how the environmental assessment can be “streamlined across all forms of development while ensuring between outcomes for the environment”.
- **National Policy Statement for Ports (NPSP):** The NPSP is part of the planning system in England and Wales established by the Planning Act 2008. The NPSP sets out the framework under which decisions on proposals for new port development are made. The UK Government is to review the National Policy Statement for Ports in 2021.<sup>35</sup>
- **Regeneration:** The UK Government is to make £175 million (m) of seed capital funding available to Freeports in England. The amount made available to individual Freeports is to be determined *via* the bidder’s outline business case(OBC). It is anticipated that all Freeports that have their OBC accepted will receive similar levels of funding. The UK Government expects that that proposal will be focussed “primarily on land assembly, site remediation and small-scale transport infrastructure to connect sites within the Freeports with each other”. In “exceptional circumstances”, the Prospectus advises that proposals that seek spend seed capital on skills, digital and/or other infrastructure are to be considered. In addition, the UK Government “expects that any funding provided [is to]... be matched or part-matched by private sector investment, council borrowing and co-funding from other public sector bodies where relevant”.<sup>36</sup>
- **Local authority support:** The Bidding Prospectus notes the role Local Authority might play in supporting Freeports in their area through funding. Such funding should be for the purposes of economic generation, and could be funded through business rates growth or local authority borrowing.
- **Innovation:** The UK Government’s ambition is to establish Freeports as “hotbeds of innovation”. As such, bidders are required to set out their innovation ambitions within their proposals. The Government will assess the quality of these proposals when

---

<sup>35</sup> *Ibid*

<sup>36</sup> *Ibid*

determining whether a bid is successful or not. The Government has stated that it is “particularly interested in private sector-led innovation within Freeports, and innovation ambitions that contribute to the decarbonisation agenda or Net Zero”. The UK Government has stated that it is to announce further detail on its innovation support in spring 2021. In the interim, it is worth noting that the Bidding Prospectus notes that following features:

- **Freeports innovation funding:** The Bidding Prospectus, which was published in November 2020, noted that individual organisations which comprise Freeports may qualify for different types of innovation funding, depending on whether they are businesses, research or public sector organisation. The Prospectus also commits the Government, along with UK Research and Innovation (UKRI), to “explore opportunities to take forward UK-wide open competitions to find innovative solutions to problems faced by Freeports and Freeport businesses”.<sup>37</sup>
  - **Freeport collaboration hubs:** The Bidding Prospectus outlines the UK Government’s ambition to establish Freeports as collaboration hubs and requests that bidders set out proposals in this area. Proposals should demonstrate an understanding of the local innovation ecosystem and include a plan for engaging with local leadership to accelerate economic growth through Research and Development(R&D). Bids should also include a commitment to engage with the local innovation ecosystem and evidence of ability to build partnerships, with appropriate local, devolved and national bodies.
  - **Freeport regulatory innovation:** The UK Government has committed to funding a “Freeport Regulation Engagement Network” (FREN). The FREN is to facilitate direct engagement between Freeports and relevant regulators, with a view to ensuring regulator flexibility with respect to Freeports. Further details of the FREN are expected in spring 2021.<sup>38</sup>
- **Wider government funding:** The Bidding Prospectus notes that Freeports could be complemented by additional government funding. The UK Government has asked bidders to outline how they anticipate such funding could be used within the Freeport. Although their Freeport proposals should be viable without that additional funding source. Examples of funding streams that could be utilised within a Freeport context include:
  - The Green Energy fund, announced in October 2020 and valued at £160m;
  - The Port Infrastructure fund, announced in October 2020 and valued at £200m; and,
  - The Getting Building Fund, announced in June 2020 and value at £900m.<sup>39</sup>

---

<sup>37</sup> *Ibid*

<sup>38</sup> *Ibid*

<sup>39</sup> *Ibid*

## 2.3 Freeports in devolved regions

As noted in subsection 2.2, above, the UK Government has made a commitment to establish Freeports across the UK. That commitment was restated in the Spending Review 2020, which stated that the Government would deliver ten Freeports across the UK and that this would include “at least one in each of England, Scotland, Wales and Northern Ireland”.<sup>40</sup> As noted in subsection 2.2, the UK Government is working with the devolved administrations to develop Freeport proposals for those jurisdictions. The Government has also stated that these will be “announced as soon as possible”. With this in mind, it worth noting that there are a number of key areas of Freeport policy that interact with the prevailing devolution settlements in the UK. Table 3 below provides a summary of the areas under current devolution arrangements in Northern Ireland that are reserved and those where proposed Freeports policy overlap with devolved competences.<sup>41</sup>

**Table 3: Overview of Freeports policy levers in NI, Scotland and Wales<sup>42</sup>**

Policy	NI	Scotland	Wales
Customs	Customs policy is generally reserved with a few exceptions including sanitary and phytosanitary controls, which are mainly devolved.		
Tax	Most tax policy to be utilised within the Freeports is reserved.		
	Business Rates are devolved.	Some aspects such as Business Rates and Stamp Duty Land Tax are devolved.	Some aspects such as Business Rates and Stamp Duty Land Tax are devolved.
Planning	All planning policy is devolved.		
Regeneration	Regeneration policy is in part devolved.		
Innovation policy	Innovation policy is part-reserved, part-devolved. The Freeports innovation measures are in general reserved.		

Source: HM Government (2020)

### 2.3.1. Financial arrangements for Freeports

It was noted in section 2.2 of this paper that the UK Government’s Freeports policy may lead to a number of tax incentives for businesses, e.g.: Stamp Duty Land Tax reliefs; non-domestic rates relief; and, relief on Employers’ National Insurance Contributions. All such tax reliefs come at a cost to the public purse in terms of revenue foregone.

<sup>40</sup> HM Treasury, Spending Review 2020 (November 2020)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/938052/SR20\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938052/SR20_Web_Accessible.pdf)

<sup>41</sup> HM Government, Freeports: Response to the Consultation (October 2020)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/924644/FINAL\\_-\\_200923\\_-\\_OFF\\_SEN\\_-\\_Freeports\\_Con\\_Res\\_-\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/924644/FINAL_-_200923_-_OFF_SEN_-_Freeports_Con_Res_-_FINAL.pdf)

<sup>42</sup> *Ibid*

Under the prevailing devolution arrangements, including relevant rules, tax changes implemented at the devolved level usually are accompanied by a Block Grant reduction. The rule, including its underlying principle, for such an adjustment is stated in the November 2020 UK Treasury's *Statement of Funding Policy*:

*...where decisions taken by any of the devolved administrations or bodies under their jurisdiction have financial implications for departments or agencies of the UK government or, alternatively, decisions of UK government departments or agencies lead to additional costs for any of the devolved administrations, where other arrangements do not exist automatically to adjust for such extra costs (e.g. if the Barnett formula doesn't apply), **the body whose decision leads to the additional cost will meet that cost.***<sup>43</sup> [emphasis added]

In other words, if the NI Executive takes a decision that results in reduced revenue collected by the UK Government, the standard presumption is that NI must meet that cost.

Air Passenger Duty provides a useful example:

- The *Air Passenger Duty (Setting of Rate) Act (Northern Ireland) 2012*<sup>44</sup> was enacted, setting the rate to £0 for direct, long haul flights departing from NI;
- NI Executive empowered to adjust that rate in future;
- The NI Block Grant is adjusted annually to offset the lost-revenue cost to UK Exchequer; and,
- The cost to the NI Block Grant has been steady, at £2.2 to £2.3 million between 2016-17 and 2019-20.<sup>45</sup>

### Potential Scrutiny Points

- 1) The question arises as to whether the UK Government will absorb any Freeports-related costs incurred for revenue forgone, or will it pass them to the respective devolved administrations, including the NI Executive, *via* Block Grant adjustments?
- 2) What discussions have the Executive and/or the DoF had to date with the UK Government and/or the Treasury with respect to the funding of tax incentives in NI Freeport?
- 3) If such discussion has occurred, what progress has been made, including items discussed, agreements reached, subsequent planning undertaken, such as forward work programmes, related timetabling and other? Please detail.

<sup>43</sup> UK Treasury (2020) [Statement of Funding Policy](#), see page 7

<sup>44</sup> <https://www.legislation.gov.uk/nia/2012/5/contents>

<sup>45</sup> UK Treasury (2020) [Block Grant Transparency](#)

4) In the context of NI Freeports, have the Executive and/or the DoF had discussions with the UK Government and/or the Treasury in which the UK Shard Prosperity Fund has featured? If so, please detail.

In relation to devolved taxation in NI, the main source of self-funded expenditure is the rating system. As noted above, the UK Government's policy intention seems to include possible reductions in Non-Domestic Rates for Freeports. If this applies to any future NI Freeport, for the reasons outlined above, it certainly appears that there will be a loss in revenue in NI, as rating is devolved (as shown in Table 3 above).

### 3 Potential interactions between UK Freeport policy and the Protocol

This section examines how the UK Government's Freeport policy in NI is likely to be impacted by the implementation of the Protocol. The section first looks at the broad purpose of the Protocol and its implications for UK-wide policy development in general. The section then uses available evidence to outline two areas where it appears that the Protocol could limit the application of UK Freeport policy in a NI context.

#### 3.1 The purpose of the Protocol and implications for UK-wide policy development

The Protocol, which was ratified and entered into force on 31 January 2020, set out three objectives. First, the Protocol is to be:

*...without prejudice to the provision of the 1998 Agreement in respect of the constitutional status of Northern Ireland and principle of consent, which provides that any change in that status can only be made with the consent of a majority of its people.<sup>46</sup>*

Second, it is to respect:

*...the essential State functions and territorial integrity of the United Kingdom.<sup>47</sup>*

Third, it is to set out the:

*...arrangements necessary to address the unique circumstance on the island of Ireland, to maintain the necessary conditions for continued North-*

<sup>46</sup> HM Government, New Protocol on Ireland/Northern Ireland (18 October 2019), Article 1  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/840230/Revised\\_Protocol\\_to\\_the\\_Withdrawal\\_Agreement.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/840230/Revised_Protocol_to_the_Withdrawal_Agreement.pdf)

<sup>47</sup> *Ibid*



*South cooperation, to avoid a hard border and to protect the 1998 Agreement in all its dimensions*<sup>48</sup>.

In respect of number three, the Protocol did not alter the constitutional status of the NI within the UK; nor did it prevent the UK from developing UK-wide policy that impacts NI. Additionally, Article 4 of the Protocol provided that NI remained “part of the customs territory of the United Kingdom”.<sup>49</sup> However, in setting out the arrangements necessary to avoid a hard border on the island of Ireland, Article 12 of the Protocol placed a legal responsibility on the UK Government to apply certain aspects of EU law in NI.<sup>50</sup> The Protocol set out a range of EU law that the UK Government was responsible for implementing “in the United Kingdom in respect of Northern Ireland”. That Law includes:

- EU Customs Code;<sup>51</sup>
- EU product standards and regulations;<sup>52</sup>
- EU rules on Value Added Tax (VAT) and excise;<sup>53</sup>
- EU rules on State Aid;<sup>54</sup> and,
- A range of EU law with respect to wholesale electricity.<sup>55</sup>

Across these areas, the continued application of EU law in the UK with respect to NI may have consequences for the implementation of UK-wide policies in NI.<sup>56</sup> The available commentary on a NI Freeport suggests that this is a policy area that could be impacted by the application of EU Law in NI.

### 3.2 Potential consequence of the Protocol with respect to the application of UK Freeports policy in NI

As noted, the commentary on the interaction between the Protocol and the UK Freeports policy is limited. It is important to note too, that the UK Government has not, to date, produced any policy documents that detail how a Freeport would operate in an NI context. At the time of writing, the UK has simply stated its intention to deliver at “least one [Freeport] in each of England, Scotland, Wales and Northern Ireland”.<sup>57</sup>

---

<sup>48</sup> *Ibid*

<sup>49</sup> *Ibid* Article 4

<sup>50</sup> *Ibid* Article 12

<sup>51</sup> *Ibid* Article 5

<sup>52</sup> *Ibid* Article 5

<sup>53</sup> *Ibid* Article 8

<sup>54</sup> *Ibid* Article 10

<sup>55</sup> *Ibid* Article 9

<sup>56</sup> Institute for Government, Implementing Brexit: the Northern Ireland protocol (24 May 2020)

<https://www.instituteforgovernment.org.uk/sites/default/files/publications/implementing-brexit-northern-ireland-protocol.pdf>

<sup>57</sup> HM Treasury, Spending Review 2020 (November 2020)

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/938052/SR20\\_Web\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/938052/SR20_Web_Accessible.pdf)

That said, a limited number of information sources are available to supplement the Government's statement. These sources include evidence to the House of Commons' International Trade Committee's (ITC) ongoing inquiry into UK Freeports policy,<sup>58</sup> as well as commentary from industry bodies and think tanks. Two central issues emerge from this evidence base. These are summarised by the commentary in the Centre for Policy Studies (CPS) publication "The Freeports Opportunity".<sup>59</sup> Amongst other things, that report highlighted the difference between Freeports within EU and those outside the EU, commenting that the:

*...highly regulated environment demanded by the [European] Commission makes these Zones a pale imitation of their international counterparts and limits their ability to operate in practice.*<sup>60</sup>

The CPS cited two reasons for this: the EU Single Market regulations contained in the EU Custom Code; and, the EU's state aid laws. As noted in subsection 3.1 above, the Protocol applies both of these aspects of EU law to NI. This is not that case in the rest of the UK, which has a different post-transition period position in part set out by the terms of the UK-EU Trade and Cooperation Agreement (TCA), which was announced 24 December 2020.<sup>61</sup> The subsections that follow in this paper examine how interaction between UK Freeports policy and the Customs Code and State Aid aspects of the Protocol could result in the operation of a different form of Freeport in NI than elsewhere in the UK.

### **3.2.1 Potential interaction between UK Freeport policy and Customs Code in NI as provided for by the Protocol**

As explored earlier - in Section 1 of this paper - one of the key ways a Freeport can secure economic benefits is through tariff inversion. To recap, tariff inversion provides a benefit when the duty payable on a finished product is lower than that of its component parts. Manufacturers within a Freeport could benefit by: importing the components into the Freeport area duty free; manufacturing the final product inside the Freeport; and then, paying the lower rate of duty on the final product when enters the UK market.

According to the CPS, tariff inversion is "theoretically possible" within the provisions of the EU Customs Code (UCC). Under the UCC, companies can apply to process goods under "special Procedures for Inward Processing". This status, once secured,

---

<sup>58</sup> House of Commons, International Trade Committee, UK Freeports Inquiry (accessed 11 January 2021) <https://committees.parliament.uk/work/231/uk-Freeports/>

<sup>59</sup> Centre for Policy Studies, The Freeports Opportunity (November 2016) <https://www.cps.org.uk/files/reports/original/161109144209-TheFreePortsOpportunity.pdf>

<sup>60</sup> *Ibid*

<sup>61</sup> HM Government, Trade and Cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (24 December 2020) [EU-UK Trade and Cooperation Agreement 24.12.2020.pdf \(publishing.service.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/944209/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf)

allows a company to pay duties on the final product and therefore benefit from tariff inversion.<sup>62</sup>

Prior to the UK's exit from the EU, in order to use the Inward Processing Procedures, the UCC required UK company obtain authorisation from Her Majesty's Revenue and Customs (HMRC). Before granting that authorisation, HMRC was legally required to establish that "the essential interests of Union producers would not be adversely affected", before granting authorisation. Again, according to the CPS:

*What this means in practice is that if a single EU Member State believes that tariff inversion in the UK is likely to harm businesses in their country they are able to immediately lodge a complaint with the EU Commission. At this point the Commission establishes "an expert group, composed of the representatives of the Member States" to "advise the Commission on whether the economic conditions are fulfilled or not".*

*The reality of fulfilling these "economic conditions" is that it becomes extremely hard for manufacturers to reap the kinds of benefits enjoyed by producers based in US FTZs. After all, given the vast diversity of commercial interests across the EU – from French wine-makers to German car manufacturers – the opportunities for "adversely affect[ing]" domestic production in one of the Union's member states are almost limitless.<sup>63</sup>*

The CPS also argues that:

*...under the UCC, the specific recordkeeping, movement controls and other administrative burden are extremely numerous and potentially costly to comply with. When compared to the limited tax and other incentives under EU law, Free Zone are often not viable under a basic/benefit analysis.<sup>64</sup>*

As noted in subsection 3.1 of this paper, the Protocol requires that the UCC is applied in the UK with respect to NI. This is not the case for the UK more broadly. The arguments set out by CPS suggest that the application of the UCC in NI are likely limit the application of UK Freeport policy in NI, when compared to other regions of the UK.

### **3.2.2 Potential interaction between UK Freeport policy and State Aid rules in NI as provided for by the Protocol**

During a July 2020 ITC evidence session in support of its inquiry into the UK's Freeport policy, witness to that inquiry noted that a NI Freeport would be required to operate under EU State Aid rules, as mandated by Article 10 of the Protocol. Continuing the discussion, the Institute of Government argued at the same evidence session that NI's application of State Aid rules "does not mean that Northern Ireland cannot have a port",

---

<sup>62</sup> *Ibid*

<sup>63</sup> *Ibid*

<sup>64</sup> *Ibid*

rather that it ensured that any Freeport would need to “carefully designed”. The witness noted that Freeports operate throughout the EU, in compliance with EU State Aid regulations. The witness further noted, however, that the UK Government is seeking to “create Freeports that in some ways depart quite significantly from the kind of Freeports that are possible in the EU”. Adding, the continued application of EU State Aid regulation in NI may prevent NI from operating a Freeport “on the same scale as England”.<sup>65</sup>

This argument was echoed by the Logistics UK (formally the Freight Trade Association), the trade body for the UK freight transport industry, which stated in July 2020 that:

*While Freeports may play an important role in devolved regions, FTA [Freight Trade Association] does have some concerns over the compatibility of Freeports with the Northern Ireland Protocol. If a Freeport is considered in NI it may present a conflict with EU level playing field rules. As such, we would welcome additional clarity on the operational and legal capacity and benefits that a Freeport could deliver in NI, in comparison to a Freeport in Great Britain, which can be treated under UK unilateral rules.*<sup>66</sup>

The comments from the Institute of Government and Logistics UK (outlined above) occurred prior to TCA. As such, at the time the comments were made, it was unclear what agreement the UK and the EU would reach on so called “level playing field” issues, including business subsidies. Since the publication of the TCA, this information is now available.

There is value in comparing NI’s position as per the Protocol and the UK’s position in general, as per the TCA as this provides some insight into how the provision of subsidies in UK Freeports could differ in NI compared to the GB. The position in NI, as defined by the Protocol, and the position in the UK more broadly, as defined by the TCA outlined in Table 4 below:

---

<sup>65</sup> House of Commons, International Trade Committee, Oral evidence: UK Freeports, HC 258 (15 July 2020) <https://committees.parliament.uk/oralevidence/721/html/>

<sup>66</sup> Global Cold Chain News, Freeports welcome but plans lack clarity says FTA (22 July 2020) <https://www.globalcoldchainnews.com/freeports-welcome-but-plans-lack-clarity-says-fta/>

**Table 4: Comparison of State Aid rules applicable to NI via the Protocol and post TCA subsidy arrangements in the UK**

State Aid in NI	Post TCA Subsidy Arrangements in UK
<p>Article 10 of the Protocol provides for ongoing subsidy controls in the UK with respect to NI. Specifically:</p> <ul style="list-style-type: none"> <li>Paragraph 1 of Article 10 specifies that the provision of EU law listed in Annex 5 of the Protocol will continue to apply to NI. Provision listed in Annex 5 include: <ul style="list-style-type: none"> <li>five Articles in the Treaty on the Functioning of the EU;</li> <li>three Acts of the European Commission;</li> <li>eleven block- and sectoral-exemption, and <i>de minimis</i> regulations; and,</li> <li>eight so-called procedural rules.</li> </ul>                     In addition to these, Annex 5 also list 29 other instruments (i.e. various sectoral guidelines and criteria) which are described as “compatibility rules”.                 </li> <li>Paragraph 2 of Article 10 provides, that notwithstanding paragraph 1, UK authorities may take measure to support agricultural production and trade up to a determined limit to be agreed by the Joint Committee – the body responsible for the implementation of the Protocol. On the 8 December 2020 agreed that the level of agricultural subsidy in NI will be set at £382.2 million (m) per year. This can be raised by a further £6.8m in “exceptional circumstances”.<sup>1</sup></li> <li>Paragraph 3, Article 10 explains that the UK must be kept informed if and when the European Commission is investigating potentially unlawful aid by UK authorities under the provisions of paragraph 1.</li> </ul> <p>In addition to above, it is important to note that: It is trade in goods, nor services that is subject to the Protocol.</p> <p>Article 12(4) of the Protocol confirms the jurisdiction of the European Court of Justice (ECJ) over the UK’s application EU law in relation to State Aid. This means:  <i>...any UK public subsidy or other state for business that affects Northern Ireland goods trade with the rest of the EU may potentially captured by State Aid rules – and could be subject to challenge by the European Commission and the European Court of Justice.</i><sup>67</sup></p>	<p>Article 3 of Title XI: Level playing field for open and fair competition and sustainable development of the TCA<sup>68</sup> sets out a series of principles for managing subsidies. The Article:</p> <ul style="list-style-type: none"> <li>Defines subsidies as Government financial assistance that confers economic advantage to one or more economic actor, and which impact trade or investment.</li> <li>Paragraph 1 of Article 3.4 holds that subsidies should not be granted “where they have or could have a material effect on trade or investment between the Parties”. To ensure this occurs the same paragraph sets out common principles that will inform each sides’ subsidy control systems. For example, where granted, subsidies should meet a specific public policy objective, such as remedying market failure for example, and should be “proportionate and limited”.<sup>69</sup></li> <li>Outlines exceptions to the general “material effect” principle: natural disasters and exceptional occurrence; subsidies of social character; temporary subsidies for economic emergencies; subsidies below €383,500; and, subsidies to the audio-visual sector.</li> <li>Outlines specific rules for the subsidy of: compensation for services of public economic interest; rescue and restructuring of companies; banks, credits institutions etc.; large cross-border projects; energy and the environment; and regional airports.</li> <li>Outlines prohibited forms of subsidy: unlimited state guarantees; exports subsidies; and subsidies stipulating the use of domestic products.</li> <li>Outlines enforcement procedure. Each party is committed to maintaining a court or tribunal cases in accordance with each parties’ domestic law.</li> <li>Commits the UK to having an independent authority with “an appropriate role” in the anti-subsidy system.</li> <li>Outlines dispute procedures, whereby if the parties are unable to solve a dispute by consultation then each side can impose “remedial measures” in cases where it assesses that a subsidy has breach the rules. These measures may be assessed by tribunal. Such</li> </ul>

<sup>67</sup> Northern Ireland Assembly Research and Information Service, UK Exit from the EU Briefing Paper Series: Withdrawal Agreement, Protocol and Political Declaration - Potential implications for state aid in Northern Ireland (5 June 2020) <http://www.niassembly.gov.uk/globalassets/documents/raise/publications/2017-2022/2020/economy/2920.pdf>

<sup>68</sup> HM Government, Trade and Cooperation agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (24 December 2020), Title XI, Article 3 [EU-UK Trade and Cooperation Agreement 24.12.2020.pdf \(publishing.service.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/92422/eu-uk-trade-cooperation-agreement-24-12-2020.pdf)

<sup>69</sup> *Ibid*

	measures could include suspending other parts of the TCA. <sup>70</sup>
--	---

Source: Compiled by RaISe (2021)

Notably, the provisions set out in TCA do not amend the State Provisions of the Protocol, meaning that EU State Aid rule will continue to apply to subsidies affecting the trade in goods and wholesale electricity market between NI and the EU.<sup>71</sup>

Comparing the two subsidy regimes outlined in Table 4 above demonstrates that the TCA has allowed the UK to decouple itself from EU State Aid rules. This, however, is not the case for NI, which under the Protocol is to remain aligned to EU State Aid rules with respect to goods and wholesale trade of electricity. On the UK's new subsidy position, the Institute for Government has stated that:

*Many of the principles and definitions in the agreement [TCA] are similar to the EU's system of state aid. The UK has to include certain features in any subsidy control system it sets up. However, the UK government's analysis says it will be free to determine the precise role of any independent body so it will not have to approve subsidies in advance, as the European Commission does.<sup>72</sup>*

A key point here is that although the TCA has set the parameters of the UK's subsidy system, the system itself has not been fully developed, nor has it been "empirically tested". As noted by one academic writing in EU Law Live:

*The UK has succeeded to decouple itself from EU state aid rules. The provisions of the Agreement [TCA] are rather reasonable and could have been adopted unilaterally by any country that wishes to impose some discipline on public subsidies. Nonetheless, the UK is free to define the precise rules on its subsidies. Whether such deviations from EU rules will actually produce any substantial benefits is an issue that needs to be empirically tested.*

*It is that nature of any international agreement to bind to a certain extent its parties. In this respect, the UK has not succeeded to shield its subsidies from external scrutiny. It will be subject to the decisions of Arbitration Tribunals which replace the Court of Justice to a certain degree, and will be exposed to remedial action by the EU.*

*It remains to be seen whether the decisions of the Arbitration Tribunals will be more favourable to the UK than the judgements of the Court of Justice*

<sup>70</sup> EU Law Live, Op-Ed: "The UK is not bound by EU State aid rules: Subsidies in the Trade and Cooperation agreement between the EU and the UK" by Phedon Nicolaides (4 January 2021) <https://eulawlive.com/op-ed-the-uk-is-not-bound-by-eu-state-aid-rules-subsidies-in-the-trade-and-cooperation-agreement-between-the-eu-and-the-uk/>

<sup>71</sup> *Ibid*

<sup>72</sup> The Institute for Government, Level playing field (accessed 11 January 2021) <https://www.instituteforgovernment.org.uk/publication/future-relationship-trade-deal/level-playing-field>

*and whether any benefits from the UK's new found freedom to define specific subsidy rules will outweigh the harm from potential remedial action.*<sup>73</sup>

The academic uncertainty noted above extends to the UK's Freeports policy. Several apparent sources of such uncertainty:

- From the perspective of the policy, it is unclear whether the UK's "new found freedom" to define subsidies will result in any Freeport subsidies, which are beyond what the UK was previously able to provide under EU State Aid rules.
- It is also unclear how any deviations from EU state aid rules taken forward by the UK in respect of its Freeport policy will progress through the new arbitration and disputes processes introduced by the TCA.
- Given these uncertainties, it is unclear from a NI perspective as to the extent to which a NI Freeport could be limited by the continued application of EU State Aid law with respect to goods in the region; when compared to Freeports elsewhere in the UK, which are operating under "new found", but untested "freedoms", with respect to subsidies.

## 4 Concluding remarks

This paper provides an overview of the Freeport concept in general and how the UK Government intends to apply the concept in the UK context.

The UK Government seeks to introduce "best-in-class" Freeports in across the UK, including "at least one in each of England, Scotland Wales and Northern Ireland". These Freeports will see a range of incentives introduced to encourage economic growth and innovation. The bidding process for Freeports in England was launched in November 2020. The Bidding Prospectus reveals that successful Freeports are to offer a range of business incentives, including:

- Customs tariff inversion;
- Tax incentives;
- Simplified planning;
- Seed capital funding for regeneration;
- Funding and simplified regulation to encourage innovation;
- Local authority support; and,
- Access to wider government funding.

It must be kept in mind that there is considerable debate as to how successful Freeports are – i.e. the extent to which they successfully stimulate economic growth. Proponents argue the incentives offered within Freeport areas – particularly tariff

---

<sup>73</sup> EU Law Live, Op-Ed: "The UK is not bound by EU State aid rules: Subsidies in the Trade and Cooperation agreement between the EU and the UK" by Phedon Nicolaides (4 January 2021) <https://eulawlive.com/op-ed-the-uk-is-not-bound-by-eu-state-aid-rules-subsidies-in-the-trade-and-cooperation-agreement-between-the-eu-and-the-uk/>



inversion – encourage business activity. Others argue that rather than stimulating new economic activity, Freeport incentives divert existing activity from other areas into the Freeport area.

No firm policy proposals for a NI Freeport had been published at the time of writing this paper. This is the case of the other devolved regions. As noted in Subsection 2.3, UK Freeport policy overlaps with devolved competences in the UK. As such, the UK Government is working with the devolved administrations “to develop appropriate Freeport allocation process”. This process is to run jointly by the UK Government and the devolved administrations, and is to be “announced as soon as possible”.

Subsection 2.3 of this paper also noted questions around government funding of Freeport tax incentives in a devolved context. Specifically, whether the UK Government is to absorb any Freeports-related costs for revenue forgone, or pass them to the respective devolved administration, here the NI Executive, via Block Grant adjustments. These Block Grant adjustments could have implications for NI’s overall budget, potentially resulting in reduced funds for other priorities. If such circumstances arise, the Executive would need to balance a requirement to fund tax incentives at Freeports with its other competing demands.

The Protocol on Ireland/Northern Ireland (the Protocol), agreed by the UK Government and the EU as part of the UK’s withdrawal from the EU, adds an extra element of complexity to UK Freeports policy in a NI context. Section 3 above examined the potential interaction between UK Freeports policy and the Protocol. That section explained that in general, it appears that the Protocol does not impact the constitutional status of NI within the UK, nor does it prevent the UK from developing UK-wide policy that impacts NI. However, Article 12 of the Protocol did make the UK government responsible for applying a wide-range of EU law “in the United Kingdom in respect to Northern Ireland”. As such, the continued application of EU law in the UK with respect to NI ensures that UK-wide policies impacting on NI may have consequences for the application of EU law in NI.

UK Freeports policy appears to be an example of UK-wide policy, which may have such consequences. The available evidence – albeit limited - suggests there are two areas of EU Law applied to NI *via* the Protocol, which are likely to limit the application of UK Freeport policy in an NI context. These areas appear to include:

- The application of the EU Customs Code (UCC): According to commentary by the Centre for Policy Studies, the UCC limits the effectiveness of tariff inversion in a EU Freeports. The UCC is to continue to apply in NI, but not in the rest of the UK. As such, the UCC is likely to continue to limit the application of UK Freeport policy in NI compared to other regions.
- The application of EU State Aid Law: The Protocol ensures that EU State Aid Regulations continue to apply in NI with respect to goods and trade in wholesale electricity. This is not the case for the UK as a whole. Instead, the UK’s subsidy



regime has been defined UK-EU Trade and Cooperation Agreement (TCA), which was announced 24 December 2020. This provides the UK with the ability to diverge from the EU's rules with respect to subsidies. That freedom to diverge does not extend to NI. This could lead to subsidy differences within NI Freeports than those offered across the rest of the UK. It should be noted that UK's "new found freedom" to define subsidies has not been tested. As such, it remains to be seen if the continued application of EU State Aid regulation in NI will limit the extent of NI Freeports subsidies, when compared to the rest of the UK in practice.

The findings outlined in this paper represent a "first look" at the interaction between UK Freeports policy and the application of the Protocol in NI. As noted, a firm NI Freeport proposal is unavailable at the time of writing. Going forward, the future availability of greater policy detail should bring greater clarity as to how Freeport policy and the Protocol will interrelate. As such, the Committee may wish to keep a watching brief, with the view of re-examining the subject at an appropriate time when further information becomes available.