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Dear Team

FSB Northern Ireland response to the UK Government Freeports Consultation

FSB NI is the largest business organisation in Northern Ireland with nearly 6,000 members across all sectors of industry and business.

Northern Ireland is a small business economy, with the highest concentration of SMEs in all the regions in the UK: 98% of all firms employ fewer than 20 people, while 95% employ fewer than ten. Northern Ireland SMEs provide 75% of all private sector jobs, and two-thirds of private sector turnover.

The scale of change sweeping over our businesses here is greater than any other part of the UK, as evinced by the Ireland/Northern Ireland Protocol. We have worked closely with our members to understand the implications for them, to identify concerns and opportunities, and to articulate these to policy makers and politicians. Accordingly, we have taken the unusual step of adding a Foreword and Introduction to our response to this consultation, in which we set out ways that the Freeports agenda could be greatly advanced by harnessing a number of unique opportunities that would see Northern Ireland's economy transformed.

We trust that you will find our comments helpful and that they will be taken into consideration. Please do not hesitate to contact us if you have any queries.

Yours faithfully,

Tina McKenzie

FSB Northern Ireland Policy Chair

Foreword

A verse that summarises the threat and opportunity

*There is a tide in the affairs of men.
Which, taken at the flood, leads on to fortune;
Omitted, all the voyage of their life
Is bound in shallows and in miseries.
On such a full sea are we now afloat,
And we must take the current when it serves,
Or lose our ventures.*

Julius Caesar Act 4, scene 3

Northern Ireland is at a watershed - three tides are converging, creating a political 'full sea' - with all the potential to bring either fortune on the one hand, or loss and misery on the other.

The first of these tides is the imminent conclusion of the Transition Period, after which Northern Ireland will be subject to unique arrangements arising from the Ireland/NI Protocol.

The second is the related, and much-vaunted, '*New Deal*' of which Prime Minister Johnson made much in his letter to Jean-Claude Juncker in October 2019.

The third arises from the commitment of the Government to usher in Freeports across the UK.

These three tides all have their genesis in the decision taken in the Referendum on 23 June 2016 by the people of the UK to leave the European Union. The NI Protocol, the *New Deal for Northern Ireland* and the ability to create Freeports all stem directly from that decision and some of the resultant policies adopted to deliver on it. Accordingly, in responding to this Consultation on Freeports, we do so within the reality that its focus is only on one part of the three intertwined policies, and that for maximum benefit, all three need to be seen as part of an ambitious and coherent whole.

Businesses in Northern Ireland recognise the power of these forces to do good; or to do harm. As such, it is clear that the 'tide' must be taken at the flood if we are to go forward to economic and societal fortune; but it is equally clear that failure to do so would undoubtedly see us lose many ventures - both literal and metaphorical - with financial cost being only one part of the damage done. It is incumbent upon all of us - business leaders and political leaders alike - to ensure that this vast change to our trading arrangements brings opportunity rather than damage. The application of these three 'policy tides' must be undertaken with a spirit of generosity and imagination - akin to an economic Good Friday Agreement - where the prize was so great that everyone stretched themselves well beyond their natural limits. The prize is no less important this time, as none of us can afford any of our population to spend "*the voyage of their life bound in shallows and in miseries*".

This Freeports Consultation poses a number of specific questions that we have answered, however, we have also taken the opportunity to set out first an entirely different, innovative way of viewing the overarching question that lies behind the intent to create free ports. In so doing, we propose a means to draw Northern Ireland closer together in a spirit of economic and industrial cooperation

and to sets out how to avoid the inevitable internecine proposals that will doubtless come forward in the course of the consultation. In short, our proposals set out a path to deliver on the long-held ambition of Northern Ireland's business leaders to grow our local economy, to reduce our reliance on central funding, and to become an economic powerhouse once again.

If we start from the point of view of fairness, then it is reasonable to expect that, of the ten Freeports the Government plans to create, one should be in Northern Ireland. But in such a small economy, a single Freeport would risk creating major distortion, so the fairness question starts to re-emerge, quickly tinged with deep-seated arguments around East and West/ Urban and Rural/ Unionist and Nationalist. What if, instead, each of our ports and airports were to be licensed access and egress zones for the wider pan-Northern Ireland Freeport? With our university campuses well dispersed, and our college network having a broad geographic footprint, the opportunity to link our innovation, knowledge transfer, manufacturing, agri-food and exporting businesses into the heart of a whole-NI Freeport starts to offer real potential.

In 2018, following extensive consultation with our members, FSB NI proposed that the whole of Northern Ireland should become an *Enhanced Economic Zone*, with a series of sub-regional control zones located in the seaports and airports. In essence, that the whole of NI would become a form of Freeport, but with the ability to control and regulate through the existing secure harbour and airport zones, all underpinned by a *Regulatory Compliance Certification Service – RCCS*.

There were many purposes in developing the proposal but one of the key ones was to benefit the regional economy without creating damaging local distortions. We believe that that model is not only just as valid and important today but that a number of other factors have developed to make it an even more attractive and viable end state. The Protocol relies on the ability to track and trace products moving through Northern Ireland's ports, and recent developments have brought that prospect very much closer. The development of a world-leading track and trace system for the agri food sector, using block chain technology, DNA sampling, on-farm geo-fencing and other regulatory controls, which is currently being trialled in Northern Ireland, shows that we have the capability to deliver the *RCCS* necessary to guarantee compliance to whatever standards are required, in whatever markets.

The original FSB NI proposals for an *Enhanced Economic Zone* showed ambition to harness the enormous change that Brexit has brought about, and to use our niche geographical and political position in a way that gives us a transformative advantage.

The fact that somewhere so relatively small has so many ports and airports underscored the EEZ's aspiration to make the whole of Northern Ireland a hub of trading and manufacturing, based on an ability to trade freely into the UK market and throughout Europe, incentivising EU27 and GB businesses to use our ports and airports to transfer and process goods.

The original FSB NI paper also recognised that there is no precedent anywhere in the world for what is proposed; no exactly similar set of circumstances that demand the solutions needed. Northern Ireland is unique: there are no comparable areas, regions, countries or nations anywhere else across the globe. It follows, therefore, that there are no 'off-the-shelf' solutions, so this Freeport Consultation has created the opportunity to link the ambition of the UK government to become a powerful, self-reliant independent trading nation after leaving the EU, with a pragmatic alignment of all of the interests, challenges and opportunities in Northern Ireland, to deliver that positive and unique solution.

It is widely recognised that the Protocol is going to add burdens to businesses, as the need for higher compliance in Northern Ireland than in the rest of the UK will add complexity and cost to doing

business. Accordingly, it is only reasonable that, as part of the counterbalance, these new compliance systems should be utilised to help add value to the whole Northern Ireland economy.

The efficacy of the compliance systems required to implement the Protocol should, as a corollary, mean they can underpin a new status where the whole of Northern Ireland can be designated a Freeport with high regulatory compliance standards.

The final part of the jigsaw - reducing the damage to businesses caused by implementing the Protocol - would be put in place with the enactment of the reduced rate of Corporation Tax, for which legislation has already been passed. Far from being 'state aid', this would be a recognition that the Protocol will have restrictive and detrimental impacts on Northern Ireland so, along with Freeport status for the whole of NI, the reduced corporation tax would level the playing field with the Republic of Ireland. This package of measures would then let Northern Ireland shine a beacon to attract global businesses through its portfolio of excellent market access to the UK and EU, Freeport status to facilitate easier trading, a strong manufacturing and heavy industry base, a skilled work force, excellent universities and colleges, and a competitive taxation system.

These measures, taken as a whole, would form the key ingredients of a genuinely transformative *New Deal for Northern Ireland*.

I trust you will find our responses to specific questions useful, but I also hope that you will find the alternative proposition – to make the whole of Northern Ireland a Freeport, with each of the hitherto competitor ports invited to return as participants in that greater project instead - as compelling as do our members.

Tina McKenzie

FSB Northern Ireland Policy Chair

Introduction

Small businesses across the UK are currently dealing with the pandemic. There is much uncertainty, against a parallel backdrop of new UK-EU trading arrangements and the new skills based Immigration System, commencing January 1st 2021.

The issues intertwine and in this context we wish to reiterate the potential complications in Northern Ireland where, in trading terms, small businesses will operate under the Northern Ireland Protocol. We outline how the compounding effects of such uncertain and changing times could be greater in Northern Ireland than any other part of the UK.

Therefore, given this context, it is not possible to respond in isolation the Freeports Consultation without highlighting other interrelated factors. Our FSB colleagues in Westminster will submit evidence on the various facets of the proposed UK Freeport model, while we in FSB Northern Ireland will focus on:

- The Northern Ireland context
- The Northern Protocol
- The Northern Ireland opportunity

Overall, we welcome the ambition outlined in relation to Freeports, and that they form a cornerstone of the Government's plan to 'level up' opportunity across the country. The new 'best in class' Freeport, with such a wide suite of possible economic interventions, was not previously available under membership of the EU.¹ Small businesses are of course entrepreneurial by nature, and FSB members have consistently shown ambition and an openness to opportunity since the Referendum.

The range of potential measures outlined in the consultation is highly attractive at face value, and implementation will unintended consequences that are yet to be established. However, in general a Freeports policy must be 'devolved friendly' and work for different parts of the UK. In the case of Northern Ireland, this will mean providing for conditions that are not present in any other part of the UK, and which have the potential to be detrimental.

For example, under the UK-EU Withdrawal Agreement there will be elements of EU law that still apply in Northern Ireland. It is therefore entirely possible that a Freeport policy could, and indeed should work differently in Northern Ireland, than in other parts of the UK. In this respect, FSB NI members take comfort in what is outlined from the consultation document:

"We want all the nations of the UK to be able to share in the benefits of Freeports. As much of the policy is devolved, the UK Government will work closely with the devolved administrations to develop a distinct allocation and governance process for each of Scotland, Wales and Northern Ireland."

During first-hand engagement with HMT, officials noted that 'devolved levers' should indeed be used to make Freeports work for the relevant area, and that there is an opportunity to shape this policy so it works for Northern Ireland.

Whilst the NI Assembly can take measures to mitigate the effects of the present uncertainty at a devolved level, it is at a UK Government level that changes can be designed to ensure Northern Ireland does not lose out but instead, is able to capitalise in some form.

¹ <https://www.bbc.co.uk/news/uk-48868234>

In a recent evidence session to the Northern Ireland Assembly Economy Committee, relevant Civil Service departmental officials noted the number of outstanding questions that remain on how the Freeport policy could work for Northern Ireland.²

During FSB NI engagement with HMT, it was also noted the department hopes to publish a response to the consultation in around 12 weeks, which would indicate imminent opening of the 'bidding process' thereafter.

For these reasons, beyond the closure of this consultation, we strongly recommend the UK Government engages further with the Northern Ireland Executive, Civil Service Departments and business representative groups in order to design the most ambitious and effective system possible.

Given these potential timeframes, if the Freeport policy is to be effective on a devolved basis, then rather than look at Freeports as a policy lever in isolation, it is important the government properly takes into account other factors involved. Due to the continued unique circumstances faced in Northern Ireland as part of the UK, we have outlined the following considerations for your information.

The Northern Ireland context

Given the number of intertwined moving parts in political, economic and legal spheres at present, it is extremely difficult to respond to this consultation as an isolated 'policy'. The reality for small businesses is that each intervention will have an impact, and this is reflected in the consultation document through the range of policy areas considered.

While we welcome that the scope of the consultation will 'rule in' many pieces of the Government's economic toolbox, due to the unique position of Northern Ireland we are concerned with what may be 'ruled out' of a UK-wide Freeport policy at this stage. Therefore, it is important for HMT to consider the regional context and allow for a suite of interventions that create a 'stimulatory' environment, rather than one which is inhibiting for businesses.

At around 1.9 million people, Northern Ireland is a Nomenclature of Territorial Units for Statistics (NUTS) 1 region with the smallest population across any of these regions in the UK. The region typically relies on a block grant subvention in order to maintain itself, worth around £11 Billion annually.

Northern Ireland is a small business economy, with over 99% of businesses in the SME category. In comparative terms, our dependence on small businesses cannot be overstated:

- SMEs account for over 70% of turnover in the private sector in Northern Ireland, a significantly greater proportion than in the UK as a whole, where the contribution of SMEs to private sector turnover is around 50%.
- The SME sector accounts for approximately 75% of all private sector employment in Northern Ireland, significantly more than for the UK as a whole, where SMEs employ about 60% of the private sector workforce.
- In relative terms, Northern Ireland SMEs provide a very high share of total private sector employment (76%) compared to OECD average SME employment (66%) for 2014.

² https://www.youtube.com/watch?v=hawfdskMIHA&list=PL5lnNzfEzh6-RLyRB_PfYndUNJG07J9B&index=31&t=0s

Structurally, Northern Ireland has had a somewhat starved labour market. It has long held one of the lowest rates of productivity and skills levels amongst UK regions.³ Prior to the Covid-19 pandemic, NI has historically held the highest rate of economic inactivity across the UK, 6-8% higher than the national average for a number of years.

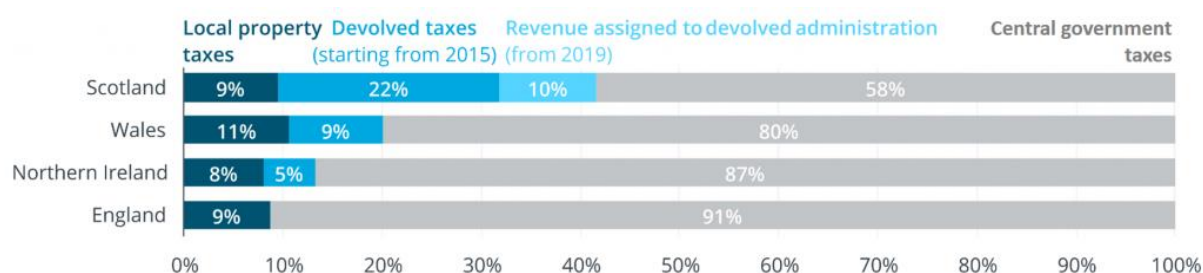
Based on results published in June 2020, the NI unemployment rate (2.3%) was below the UK rate (3.9%), the European Union (27) rate (6.6%) for March 2020 and the Republic of Ireland rate (5.4%) for April 2020.⁴

Meanwhile Northern Ireland has been the only part of the UK with a declining small business population, yet depends upon SMEs the most. UK business birth rates are as follow.⁵

%	2018	2019	+/-
United Kingdom	13.1	12.9	-0.2
England	13.1	13.1	0
Scotland	11.9	11.3	-0.6
Wales	13.7	13.3	-0.4
Northern Ireland	11.3	9.8	-1.5

In relation to tax, Northern Ireland holds the least amount of devolved powers.⁶ Therefore, the proportion of the NI Budget that comes from the UK Exchequer in the form of an annual 'Block Grant' is higher than in the other UK devolved administrations.

The figure below outlines relevant percentages across the UK nations.⁷ The proportion of devolved taxation in NI (5%) is lower than in Wales (9%), and considerably lower than in Scotland (22%). However, the 5% includes the agreement on Corporation Tax for NI and so in real terms the actual figure for Northern Ireland is even lower.



As of 2015, legislation was passed that allowed for devolution of power to the NI Assembly to set a Northern Ireland rate of Corporation Tax, however, the actual commencement of the Act did not

³ https://www.pivotalppf.org/cmsfiles/Publications/Pivotal_Covid19_Second_Report_Final.pdf

⁴ <https://www.nisra.gov.uk/statistics/labour-market-and-social-welfare/labour-force-survey>

⁵ <https://www.ons.gov.uk/businessindustryandtrade/business/activitysizeandlocation/bulletins/businessdemo-graphy/2018>

⁶ <https://www.instituteforgovernment.org.uk/explainers/tax-and-devolution>

⁷ <https://www.assemblyresearchmatters.org/2019/06/06/is-northern-ireland-underrated-examining-the-context-for-a-review-of-our-rating-system/>

occur due to a later collapse of the NI Executive and wider Assembly.⁸ The devolvment of powers was dependent on two key elements: the restoration of the NI Assembly, with the ensuing NI Executive ensuring Northern Ireland's public finances were put onto a sustainable footing.

One of the reasons tax is a key factor, is due to the open and frictionless border that Northern Ireland shares with a now EU competitor, the Republic of Ireland. The rate of Corporation Tax in the Republic of Ireland is just 12.5% for trading income, while there are also significant, longstanding differences in Tourism VAT and Air Passenger Duty (APD).⁹

Aside from the UK's temporary cut in VAT during the Pandemic, this combination of fiscal stimuli in the Republic of Ireland has seen Northern Ireland vastly 'undercut' in economic terms, with limited ability to respond. This is demonstrated by investment and tourism statistics in the Republic of Ireland, including the growth of Dublin as an international hub for air traffic.¹⁰

Despite the devolving of relevant powers and subsequent removal of APD on direct long haul flights, Northern Ireland has been unable to make significant gains on similar fronts, although NI visitor statistics show year-on-year improvements prior to the pandemic.¹¹

In addition to Tax related matters, labour supply is another key competitive issue between Northern Ireland and the Republic of Ireland. FSB NI recently responded once more to the Migration Advisory Committee's call for evidence on the UK Shortage Occupation List. Along with other organisations, we previously highlighted the risks of businesses relocating jobs to the Republic of Ireland. Regrettably, we now understand there are businesses who have chosen to do so, as noted recently in the UK Parliament.¹²

This is significant for Northern Ireland, as even as migrant numbers decreased since the Referendum, in 2018, 65% of NI migrants were from EU member states – for the UK overall this figure was just 40%. The Northern Ireland migrant worker population is now at around 40,000. This is a decrease from 56,000, while the Republic of Ireland has seen an increase from approximately 201,000 to 220,000 EU26 workers in the same period since the Referendum.

Taken in the round, the compounding impact of contemporary UK policy changes appears likely to be greater in NI than any other part of the UK.¹³ It is also evident that Northern Ireland may be suffering from displacement as businesses move operations to the Republic of Ireland. Without

intervention, there appears to be a limit as to how much Northern Ireland is able to trade its way to a position where its reliance on central funding significantly decreases.

⁸ [https://www.gov.uk/government/publications/northern-ireland-corporation-tax-regime-draft-guidance#:~:text=The%20Corporation%20Tax%20\(Northern%20Ireland,apply%20to%20certain%20trading%20income.](https://www.gov.uk/government/publications/northern-ireland-corporation-tax-regime-draft-guidance#:~:text=The%20Corporation%20Tax%20(Northern%20Ireland,apply%20to%20certain%20trading%20income.)

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/752207/VAT_APD_and_tourism_in_NI_response.pdf

¹⁰ <https://www.dublinairport.com/latest-news/2020/01/29/dublin-airport-welcomed-32.9m-passengers-in-2019#:~:text=An%20additional%201.4%20million%20passengers,performing%20sectors%20during%20the%20year.>

¹¹ <https://www.nisra.gov.uk/news/northern-ireland-annual-tourism-statistics-2018#:~:text=The%20key%20points%20are%3A,trips%20taken%20by%20local%20residents.&text=Overnight%20trips%20to%20Northern%20Ireland,estimated%20to%20be%202.8%20million.>

¹² <https://hansard.parliament.uk/Commons/2020-06-09/debates/15289EEB-6109-4D70-AAFF-7EE7C8ED11C2/FutureRelationshipWithTheEU#contribution-25DF9363-F763-4584-B50D-5CB07977C8E9>

¹³ https://www.pivotalppf.org/cmsfiles/Publications/Pivotal_Covid19_Second_Report_Final.pdf

The Northern Ireland Protocol

The Freeport Consultation states *“the government wants to establish Freeports, which have different customs rules than the rest of the country.”*¹⁴

In addition to structural issues impeding Northern Ireland prior to the pandemic, there is an additional hurdle facing its small businesses in the coming months - Northern Ireland will *already* have different customs rules from the rest of the UK.

The Northern Ireland Protocol was agreed by the UK-EU to address the unique circumstances on the island of Ireland and prevent a hard border at the official ‘land border’. The Protocol is designed to protect the 1998 Belfast (Good Friday) Agreement, which was to bring peace *and* prosperity to the people of Northern Ireland.

For example, *“..the British Government will pursue broad policies for sustained economic growth and stability in Northern Ireland...”*¹⁵

In practice, the Protocol should mean there will be no new checks or controls on goods moving within the island of Ireland, as well as no new ‘infrastructure’ along this border. However, checks and controls are still required under EU Law, and it has been agreed they will take place in Northern Ireland’s primary ports – all of which are potential Freeport locations in their own right, or secure zones within a Northern Ireland-wide Freeport.

In the recently released ‘command paper’ outlining the UK approach to implementing the NI protocol, the Government noted:

*“The economy of Northern Ireland is heavily dependent on small and medium sized enterprises. Subjecting traders to unnecessary and disproportionate burdens, particularly as we wrestle with the economic consequences of COVID-19, would not serve the interests of the people of Northern Ireland for whom the Protocol was designed.”*¹⁶

Despite this, it is important to remember Northern Ireland is now the only part of the UK to share an open land border with the EU. The nature of the Protocol means that in relation to rules and no matter what is agreed between the UK and the EU by way of its Future Relationship, Northern Ireland will diverge, at the very least, in terms of the compliance threshold it must meet.

Given the compliance regime and the threshold in question is that of the EU, we outline the most recent official communication from the EU Commission on July 9th 2020. It reiterates the EU interpretation of what the NI Protocol means in practice:

*In accordance with the Protocol, European Union rules relating to goods (including fiscal rules, i.e. indirect taxation and non-fiscal rules) and the Union Customs Code will continue to apply to and in Northern Ireland.*¹⁷

- *It provides a legally operative solution that avoids a hard border on the island of Ireland, protects the all-island economy and the Good Friday (Belfast) Agreement in all its*

¹⁴ <https://www.gov.uk/government/consultations/Freeports-consultation>

¹⁵ <https://www.gov.uk/government/publications/the-belfast-agreement>

¹⁶ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/887532/The_UK_s_Approach_to_NI_Protocol_Web_Accessible.pdf

¹⁷ https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/com_2020_324_2_communication_from_commission_to_institution_en_0.pdf

dimensions, and safeguards the integrity of the EU Single Market as well as the UK internal market.

- In accordance with this Protocol, Northern Ireland will remain aligned to a limited set of Union rules, notably related to goods, and the Union Customs Code, VAT and excise rules will apply to all goods entering or leaving Northern Ireland. This avoids any customs checks and controls on the island of Ireland.*
- Checks and controls will take place on goods entering Northern Ireland from the rest of the United Kingdom, for example on food products and live animals to ensure adherence to sanitary and phytosanitary ('SPS') requirements. All goods entering or leaving Northern Ireland must fully comply with relevant Union rules and standards.*
- EU customs duties will apply to goods entering Northern Ireland unless the Joint Committee sets out a framework of conditions under which these goods are considered not to be at risk of entering the EU's Single Market. Based on such a framework, no customs duties will be payable if it can be demonstrated that goods entering Northern Ireland from the rest of the UK are not at risk of entering the EU's Single Market.*
- Union customs formalities and procedures will apply to goods brought into Northern Ireland from the outside of the EU or exported from Northern Ireland.*
- EU VAT and excise rules apply to goods entering (or leaving) Northern Ireland from (or to) the rest of the UK.*

The Joint Committee responsible for the Protocol on Ireland / Northern Ireland has begun work to try and find a means of implementation. This includes on which goods will need to be checked, and how they will be checked, but there remain a number of outstanding questions on how the Protocol will actually work in practice.¹⁸

There will need to be a way of determining and processing tariffs that includes rules of origin certification, as well as compliance with regulatory standards. However, given the 'open' NI/ROI border, once goods are released from entry ports the key issue as outlined is determining 'risk'. By default, every good is technically at risk of either not being compliant or properly accounted for depending on its characteristics.

HMRC has started to outline information on trade in goods from GB to NI using the new Goods Vehicle Movement Service (GVMS) which is in development, but not due to be operational for testing until November 2020. This proposal does not account for the movement of all goods.

An example of a practical issue affecting small businesses that needs to be resolved in a political sphere, relates to certification of regulatory compliance to meet EU standards. The UK Government notes that the same bodies undertaking these checking functions today will continue to approve goods for the NI market.

¹⁸ <http://brc.org.uk/media/674951/implementing-the-protocol-what-business-in-ni-needs-why-nibbg-030620.pdf>

This means that the UK Government intends to verify goods based on EU regulation, on behalf of the EU. According to the Command Paper, regulatory checks on industrial goods would take place through market surveillance and on business premises.¹⁹

The following table outlines major considerations in respect of goods that will need to be addressed on the trade journey, prior to being checked in the market place.

Agreements on goods under the NI protocol, and the UK approach to implementation outlined in the UK Command Paper:		
Issue	NI Protocol	UK Command Paper
Tariffs on goods entering NI	No customs duties shall be payable for a good brought into Northern Ireland from another part of the United Kingdom by direct transport, notwithstanding paragraph 3, unless that good is at risk of subsequently being moved into the Union, whether by itself or forming part of another good following processing (para 5.1)	It enables tariffs to be collected on goods at risk of entering the EU's Single Market at ports of entry, rather than at the land border that is the legal boundary between the UK and EU's customs territories (para 16).
Goods at risk	A good brought into Northern Ireland from outside the Union shall be considered to be at risk of subsequently being moved into the Union unless it is established that that good: (a) will not be subject to commercial processing in Northern Ireland; and (b) fulfils the criteria established by the Joint Committee in accordance with the fourth subparagraph of this paragraph. (para 5.2)	Trade going from the rest of the UK to Northern Ireland: we will not levy tariffs on goods remaining within the UK customs territory. Only those goods ultimately entering Ireland or the rest of the EU, or at clear and substantial risk of doing so, will face tariffs (para 17.2).
Determining goods at risk	<p>Before the end of the transition period, the Joint Committee shall by decision establish the criteria for considering that a good brought into Northern Ireland from outside the Union is not at risk of subsequently being moved into the Union.</p> <p>The Joint Committee shall take into consideration, inter alia: (a) the final destination and use of the good; (b) the nature and value of the good; (c) the nature of the movement; and (d) the incentive for undeclared onward movement into the Union, in particular incentives resulting from the duties payable pursuant to paragraph 1. (para 5.2)</p>	<p>There should be no tariffs on internal UK trade because, as the Protocol acknowledges, the UK is a single customs territory. Tariffs should only be charged if goods are destined for Ireland or the EU Single Market more broadly, or if there is a genuine and substantial risk of them ending up there.</p> <p>If a supplier in Great Britain sends goods to a business for sale in Northern Ireland, then that is internal UK trade. Raw produce from Great Britain for agri-food processing in Northern Ireland which is then sent back to Great Britain is another good</p>

¹⁹ <https://blogs.sussex.ac.uk/uktpo/2020/01/14/determining-goods-at-risk/>

		example of trade which is internal and has no impact on the EU market. A supermarket delivering to its stores in Northern Ireland poses no 'risk' to the EU market whatsoever, and no tariffs would be owed for such trade (para 25).
Waivers and imbursements by the UK Government	<p>Customs duties levied by the United Kingdom in accordance with paragraph 3 are not remitted to the Union. Subject to Article 10, the United Kingdom may in particular:</p> <p>(a) reimburse duties levied pursuant to the provisions of Union law made applicable by paragraph 3 in respect of goods brought into Northern Ireland;</p> <p>(b) provide for circumstances in which a customs debt which has arisen is to be waived in respect of goods brought into Northern Ireland;</p> <p>(c) provide for circumstances in which customs duties are to be reimbursed in respect of goods that can be shown not to have entered the Union; and (d) compensate undertakings to offset the impact of the application of paragraph 3 (para 5.6).</p>	In any case, to ensure that trade flows freely, the Government will make full use of the provisions in the Protocol giving us the powers to waive and/ or reimburse tariffs on goods moving from Great Britain to Northern Ireland, even where they are classified as 'at risk' of entering the EU market (para 27).
Source: https://blogs.sussex.ac.uk/uktpo/2020/01/14/determining-goods-at-risk/		

Overall, it is clear that from January 1st 2020 Northern Ireland will need to meet a higher threshold of compliance than other parts of the UK. The determination of 'at risk' goods in this way has never been carried out before – but what it will mean is additional paperwork for businesses, which will take time and incur cost.

How these issues are resolved will have important implications for both the people and the economy of Northern Ireland. Furthermore, it is important to note and consider how these changes will impact on trade and relations with third countries for Northern Ireland.²⁰

The UK Government continues to stress its commitment to complying with obligations under the Protocol while protecting the 1998 Belfast (Good Friday) Agreement, and supporting businesses and

²⁰ <https://blogs.sussex.ac.uk/uktpo/files/2020/06/BP-41-final.pdf>

the Northern Ireland economy. FSB NI understands more information will be announced on the NI Protocol in the coming weeks, but it remains an issue yet to be 'solved'.²¹

The Northern Ireland opportunity

While FSB NI has continued concerns about the consequences of the Northern Ireland Protocol and wider uncertainty for small businesses, we also believe an opportunity exists for Northern Ireland to maximise its unique position and to create an environment that will boost economic activity in the region.

In research conducted by FSB ahead of the Brexit negotiations, there was an appetite expressed by growth-orientated small firms to utilise new UK Free Trade Agreements with emerging markets, such as China, India, UAE and South Africa.²² In addition, FSB NI carried out research with members who asked if there was any benefit to be had from Northern Ireland's position as a 'sticking point' in the UK-EU negotiations.

FSB NI members expressed their wish to use the period, if disruption were unavoidable, to reconfigure some elements of our economy in a way that could help Northern Ireland to generate more trading income rather than rely on subvention. As outlined previously, Northern Ireland requires a significant annual grant in order to function.

To this end, in 2018 during Brexit negotiations, FSB NI brought forward a proposal for Northern Ireland to become an 'Enhanced Economic Zone'. The full proposal, available [here](#), set out an ambitious vision to try and significantly boost Northern Ireland's economy in the midst of such generational change.²³

At that time, there were seemingly intractable 'red lines' across the political negotiating spectrum. Prior to the finalised Withdrawal Agreement that contained the Northern Ireland Protocol, FSB members noted if that goods from Northern Ireland could, in effect, be treated as a domestic good in both the UK and EU markets, this could enhance the attractiveness of Northern Ireland as an investment location.

At this time it was also clear that, in any eventuality and in line with international trends, compliance and certification was becoming an ever increasing part of world trade – in particular with the use of technology to reduce friction.²⁴

There were also other various state 'actors' who noted the unique status of Northern Ireland, and some touched upon the opportunity this should bring about. In 2017, the now Taoiseach (Prime Minister) of the Republic of Ireland, Micheál Martin, had called for Northern Ireland to be a 'special economic zone'.²⁵ Mr Martin acknowledged that an SEZ would need a mechanism to certify that Northern Ireland produced goods conform with EU standards relevant to market access.

Beyond simply trying to minimise burdens, however, FSB NI believed there was a potentially transformational economic opportunity to be garnered from the new situation - by developing a

²¹ <https://www.belfasttelegraph.co.uk/news/northern-ireland/full-detail-of-plan-for-post-brexit-irish-sea-border-due-in-weeks-39361466.html>

²² <https://www.fsb.org.uk/resources-page/keep-trade-easy---what-small-firms-want-from-brexit-pdf.html>

²³ <https://www.fsb.org.uk/resources-page/northern-ireland-as-an-enhanced-economic-zone---fsb-ni-pdf.html>

²⁴ <https://view.publitas.com/public-1/frictionless-trade-report/page/44-45> and <https://www.foodmanufacture.co.uk/Article/2020/02/28/Developments-and-innovation-in-supply-chain-software>

²⁵ <https://www.bbc.co.uk/news/uk-northern-ireland-41212220>

robust, world-leading compliance system. Although the so called ‘intractable’ red lines have since moved, the vision remains. Northern Ireland is still in need of a way to manage its economic opportunity with compliance risk of the EU Customs Union and wider Single Market.²⁶

Accordingly, in order to achieve a process of smooth regulatory compliance, in the proposal we recommended the establishment of a new Regulatory Compliance Certification Service (RCCS) in Northern Ireland. The service would operate under agreements with the territories to which it would be providing services and certification, enabling goods coming through Northern Ireland, destined for the EU, to be certified for regulatory compliance via a ‘Singapore-style’ single-window regulatory assessment.

This would not only help avoid regulatory risk, but also position Northern Ireland to become a world leader in regulatory compliance certification systems, and underpin Northern Ireland’s position as a centre for global trade. The region is already a leader in Software development including Cyber Security and Fintech compliance solutions.²⁷

In tandem with the right incentives, NI can become a global hub for regulatory assurance and compliance – using the challenges of its own domestic situation to create a solution at home and a corresponding global showcase.

In practical terms relating to the UK Freeport Policy, which envisages a bidding process between port operators, with some potential for cooperation, we believe there is a better solution for which the question has not yet been framed:

“We also believe that a credible Freeport may be based on a collaboration between two or more ports, including ports of different modalities.”

If the whole of Northern Ireland were to be designated a Freeport, in which any or all of the seaports and airports could register to become secure control zones, it would maximise potential without creating local distortions nor inequalities, and would be highly attractive.

As we have outlined, because of the Protocol, these ports will already need to manage Northern Ireland’s ‘de facto’ membership of the Union Customs Code and all associated compliance.²⁸ This will affect all goods entering Northern Ireland, from every location.

Provided this requirement is achieved, then risk to compliance around customs and regulations will already be managed through obligations within the NI Protocol. i.e. goods will need to meet a higher threshold that is not required within the rest of the UK, because Northern Ireland will operate differently.

Given this threshold, it would be feasible for certain goods and materials to be transported to businesses across Northern Ireland and manufactured or processed while temporarily avoiding any tariffs – these goods would still be ‘declared’ to the relevant system throughout the journey. Northern Ireland is vibrant in world class manufacturers who would be highly supportive of this approach.²⁹

²⁶ <https://blogs.sussex.ac.uk/uktpo/files/2020/06/BP-41-final.pdf>

²⁷ <https://www.investni.com/sites/default/files/documents/static/library/invest-ni/documents/regulatory-compliance-technology-information-document.pdf>

²⁸

<https://www.youtube.com/watch?v=ov9K9t7L3KM&list=PL5InNzfEzh6VY3KKhXlzQKDeaPybakQI&index=17&t=0s>

²⁹ <https://www.investni.com/invest-in-northern-ireland/advanced-manufacturing-and-engineering>

A regulatory compliance body such as the proposed RCCS could ensure this process operates smoothly, preventing displacement and facilitating existing businesses to gain an advantage by registering as authorised to move goods from the port to their business, thereafter declaring these onto the open market as standard.

Northern Ireland has suffered from underinvestment in the west of the region, so a NI-wide zone with the appropriate compliance certification could enable firms to remain at their existing sites and new businesses to be free to locate where they wish, without internal distortions at play.

In parallel, if Westminster, in concert with the NI Executive could reignite the previous agreement on devolving powers for Corporation Tax, the two initiatives could help kick-start the economy and allow for greater prosperity and self-reliance.

It is worth noting that we do not believe this approach would be possible across other parts of the UK - it is only because of the imposed disadvantage and additional burdens placed upon Northern Ireland through the Protocol, that it can in turn allow it to operate such a Freeport model.

Whilst we aspire to the UK Government commitments of frictionless trade and unfettered access in order to minimise the burden on small businesses, we recognise that there is also inherent value to be garnered in Northern Ireland as world-class leaders in compliance. The regulatory compliance that is required by the Protocol to give us our unique position of operating within the two huge markets of both the UK and the EU can be turned to advantage in securely facilitating an ambitious NI-wide *Enhanced Economic Zone* – a Freeport.

The future UK-EU relationship is yet to be agreed, and implementation of the Northern Ireland protocol yet to be ‘solved’ – so the *opportunity* now lies in the demonstrable compliance that Northern Ireland businesses must meet under the Protocol, as part of the Union Customs Code and other rules.

Conclusion

Although they are distinct policy strands, there is clear overlap, risk and opportunity where ‘Freeports’ meet the conditions imposed on small businesses through the ‘Northern Ireland Protocol’. This is not the case for the other parts of the UK. Given the commitments made by the EU, and in particular the UK Government on behalf of Northern Ireland, there is a now window of possibility.

A new form of ‘Freeport’ has the potential to grow existing trade, and stimulate new kinds of growth for businesses across the UK. Given the range of measures that could be possible within a UK Freeport, set across four government departments, while intertwined with reserved and devolved matters, it is essential that Northern Ireland is properly taken into account during the coming months.

Achieving this vision will be based on the goodwill of key actors, and an interpretation and implementation of the Northern Ireland Protocol which is both workable and generous – but this does not extend to compromising the EU Single Market, nor the UK Internal Market. It would also be consistent with both parties’ stated commitments to respect the Belfast (Good Friday) Agreement, which was not only about achieving peace, but also about developing prosperity.

It is worth noting that throughout this Consultation, stakeholders have not been asked the question about Northern Ireland as a whole – if the responses from individual ports are somewhat ‘self-serving’ this is understandable, but should not act as evidence on what is ‘best’ for Northern Ireland as a whole. There may be a range of levels – from a single port making the case, to a consortium that

could bring broader benefits and would be welcome; however, there is a still greater opportunity than that, if approached with ambition and vision.

We are calling on the UK Government, as part of its “*New Deal for Northern Ireland*” to look at the Freeports concept in its biggest scale and make the whole of NI an ‘Enhanced Economic Zone’ within the proposed Freeports framework.

We recognise it will be for Northern Ireland ports to see the opportunity and apply as appropriate, while it is for local politicians to cooperate around the devolved elements including the previous agreement on Corporation Tax. However, a bold and imaginative vision to deliver on the “*New Deal*” commitment could share prosperity and opportunity to all communities right across Northern Ireland. In consideration of all of the aspects of this response, FSB NI recommends:

1. The UK Government designates the whole of Northern Ireland as an Enhanced Economic Zone – *a Freeport* - and ensures the UK Freeport Policy permits and encourages individual NI air and seaports to use their secure status and compliance expertise to have key roles in this greater pan-NI EEZ. This will ensure regulatory compliance is embraced at a world-leading standard and the benefits of the Freeport are shared right across Northern Ireland
2. Develop a model of ‘Trusted Trader’ to ensure the Freeports Policy allows businesses outside of the secure port zones to avail of processing relief at zero tariff rates, drawing on the threshold of compliance already required due to the NI Protocol
3. Ensure that this ‘Trusted Trader’ status or equivalent can apply to businesses of varying size, including hauliers, in order to remove the issue of displacement while stimulating growth within Northern Ireland’s existing manufacturing belt
4. Rapid engagement with Northern Ireland officials to ensure the Freeports Policy does not exclude Northern Ireland e.g. due to conflict with the Northern Ireland Protocol
5. The UK Government fully embraces the opportunity for world class regulatory compliance by launching a Small Business Research Initiative (SBRI) to ensure businesses accelerate the development of relevant software and processes to underpin the RCCS and the Trusted Trader systems

We hope this response has been helpful and look forward to further engagement with officials.

For further information please get in contact.

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