

Freeports and labour standards

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Freeports and labour standards

The government proposes to establish eight new freeports¹ in England covering Felixstowe and Harwich, East Midlands Airport, Humber, Liverpool City Region, Plymouth, Solent, Thames and Teesside. The freeport or free zone (FZ) model, which was initially introduced to the UK by the Thatcher government in 1984, reflects a neoliberal market-led model for growth which is associated with reducing regulatory oversight, in particular collective forms of labour regulation.

The neoliberal model has not been consistent with reducing inequalities or providing sustainable and resilient economic development, which have become clear imperatives for post-Covid economic recovery. Freeports risk exacerbating regulatory weaknesses and reproducing poor labour market outcomes. The evidence from free zones globally suggest that host States frequently adopt labour suppression strategies to attract investment to free zones. Given the government's freeport proposals have been explicitly linked to deregulation post-Brexit this is a significant concern. Despite these problems, local and regional authorities have been keen to secure freeport status as a mechanism for job creation, regeneration, and local economic development.

This report suggests the worst outcomes of the freeports approach may be mitigated through building in a strong framework for protecting and enhancing rights at work to deliver quality, well-paid jobs. Freeport models could build in transparent, democratic and accountable governance mechanisms with worker representation at all levels, which would support alignment with local and regional strategies for sustainable economic development.

Executive summary and recommendations

- Trade union density and collective bargaining coverage in the UK is low, and the UK is non-compliant with ILO standards on freedom of association, in particular the right to bargain collectively and the right to strike.² These existing regulatory weaknesses may be exacerbated and entrenched by the introduction of freeports if they are not accompanied by strong mechanisms to enforce rights at work and promote collective representation.
- Evidence from free zones globally suggests that whilst formal derogations from national employment protections are rare, administrative measures including access issues are deployed to undercut effective rights, in particular freedom of association. Access to the freeport area for worker representatives is a significant issue, given the likely stringent security measures surrounding the zones. Freeport proposals must contain clear provisions for trade union access, and provisions to promote full recognition and bargaining rights for unions.

¹ A note on terminology. This paper refers to Freeports, Export-Processing Zones (EPZs) and free Zones (FZs). All of these designations refer to areas created with special exemptions from some customs, tax or regulatory standards for the purposes of incentivising the establishment of businesses and/or foreign direct investment (FDI) within the specified area. I use 'free zone' and 'zone' as catch-all terms here, and refer to freeports and EPZs specifically where reflecting usage in the source material.

² Moretta, A. (2020) *Benchmarking freedom of association: The UK's non-compliance with international standards*. Institute of Employment Rights

- Due to the increased risk of health and safety and labour rights abuses, freeport proposals should establish mechanisms that ensure regular visits from independent, union-recognised labour and health and safety inspectors.
- It is clear that a significant proportion of jobs created in free zones are not new but the result of transfers of business activity from other areas into the zone area, implying a zero-sum competition between workers and regions. Robust mechanisms within the application and eligibility process to prevent this are essential, including clear 'public benefit' criteria on job creation and mitigation strategies where relocation occurs in order to justify the public subsidy offered by the freeport.
- Union representation within free zone governance, and strong rights at work are associated with 'high-road' strategies and high value-added activity. Integrated policy approaches which build in worker representation, rights and skills development attract higher quality investment and job creation. Activist State strategies are associated with the development of zone linkages with local economies.
- New economic activity in the Freeport areas will inevitably have climate and environmental impacts. These may include impacts from new patterns of commuting and goods transit, increased food miles, and other production and supply chain emissions. Freeport proposals must show how these impacts will be monitored and controlled as part of local and regional and national carbon reduction commitments.
- Unions should campaign for representation at all levels of freeport governance including freeport boards; plan organising efforts for the freeport areas, starting with existing firms in the zone areas; and develop plans to monitor activity in the new zones, including data gathering on proposed relocations and the employment impacts of this.

Rights at work and social dialogue

Concerns have been raised that the territorial status of freeports may affect applicability of rights at work and regulatory standards.³ The territorial status of free zones is crucial to ensuring their customs oversight, and applicability of UK law and regulation. The customs status of FZ's is dealt with in Chapter 2 of Annex D of the WCO Revised Kyoto Convention, which provides a definition of a FZ which indicates that a FZ itself falls within the customs territory. It is the goods within the zone which are temporarily considered to be 'outside' the customs territory. Some countries, however, regard the FZ as being outside the customs area: an "extraterritorial free-area" limiting the role of customs and expanding the risks of illegal trade.⁴ It should be clearly established in legislation that the freeports are regarded as within the UK customs territory.

The ILO Seventh Survey for the reporting period 1996-2000 examined labour practices in EPZs. Most governments, employers and workers organisations stated labour laws were the same as elsewhere in the country, though some stated that labour laws applicable in EPZs differed in some way.⁵ Free zones in the US are required to be fully compliant with all national legislation on employment rights.

³ Unite, *Unite Submission to Freeports Consultation*, 2020.

⁴ World Customs Organization, (*Draft*) *Practical Guidance on Free Zones*, 2020, p. 5.

⁵ ILO (2002) p.8

Some countries have restricted Freedom Of Association (FOA) rights in EPZs in hope of attracting investment, limited the right to organise, or placed severe limitations on the exercise of this right (Pakistan, China, Nigeria).⁶ The Committee of Experts on the Application of Conventions and Recommendations (CEACR) note rare instances of exemptions of EPZs from generally applicable legislation on occupational health and safety (Kenya granted temporary exemptions).

EPZs in many developing countries are associated with labour and human rights abuses and suppression of attempts to improve standards.⁷ Academic research has identified that regulation of EPZs is frequently characterised by “labour subordination” through legislative and administrative measures to limit labour activism.⁸

ILO supervisory bodies (CEACR) have commented on discrepancies between formal rights at work and practice within EPZs concerning FOA. The CEACR have noted discrepancies regarding the right to organise and join organisations, the right to strike, and on collective bargaining rights within EPZs across multiple countries.⁹ Measures impacting upon FOA include restricting access to zones for trade union representatives, dismissal for TU activity, suspension, transfer and blacklisting. These problems are accentuated where law enforcement in zones is inadequate.¹⁰ Many countries face difficulties enforcing legislation in EPZs as elsewhere due to weak labour inspectorates.¹¹ The most frequent observations made by workers’ organisations regarding EPZs have related to freedom of association and effective recognition of the right to collective bargaining.¹² Workers’ organisations pointed out that even where there are no legislative barriers, they faced great practical difficulties in gaining access to fenced-off zones and the workers employed there.¹³ The Kenyan government noted it was ‘very common’ for MNEs in EPZs not to allow their workers to join trade unions despite legal protections on freedom of association.¹⁴

Unions have reported high levels of surveillance, intimidation and abuse of workers in numerous free zones around the world, in relation both to union organising activity and unions seeking redress for health and safety breaches.¹⁵

Working time violations including enforced overtime (frequently in violation of home countries’ legislation) are common in many EPZs.¹⁶

Gender-related barriers have been noted in some EPZs regarding hiring, wages, benefits and career development. The CEACR has asked several governments to provide information on how the principle of equal remuneration is applied in EPZs.¹⁷ The impacts of poor labour rights in EPZs disproportionately affect women. Women are the majority workforce in EPZ and are typically

⁶ ILO (2008) p.33

⁷ Milberg, W. and Amengual, M. Economic development and working conditions in export processing zones: A survey of trends. International Labour Office, Geneva: ILO 2008

⁸ Caspersz, D. (1999) Export Processing Zone Style Developments and the Regulation of Australian Women's Labour. *International Review of Women and Leadership*, Special Issue, 1999 pp.54-63

⁹ ILO (2002) p.7

¹⁰ ILO (2008) p.33

¹¹ Ibid p.8

¹² ILO (2002) p.8

¹³ ILO (2002) p.8

¹⁴ Ibid p.8

¹⁵ Unite.

¹⁶ ILO (2008) p.33

¹⁷ ILO (2002) p.9

already disadvantaged regarding subordination: wage differentials, access to institutional mechanisms such as collective bargaining, or access to training.¹⁸

EPZs are frequently characterised by a lack of social dialogue between employers and worker representatives, an absence of adequate mechanisms for information sharing, consultation, negotiation and dispute settlement. This is further complicated by often foreign management of many zone enterprises who are unfamiliar with country working practices.¹⁹

Freeports and rights at work post-Brexit

Freeports have been promoted by figures on the conservative right as part of a deregulatory agenda post-Brexit aiming to attract foreign investment and boost exports.²⁰ The wording of the post-Brexit Trade and Cooperation Agreement gives significant scope for downgrading employment standards despite the level playing field commitments. The agreement affirms the rights of parties to set policies and priorities regarding labour and social protection and allows for the removal of specific protection if 'the levels of protection overall' are not affected. Dilution of standards will not invite a response unless it is done 'in a manner that has an effect on trade or investment'.²¹

It appears unlikely that the UK government would exempt freeports from UK-wide legislation on employment protections. However, the possibility remains that attracting inward investment to boost freeports becomes a rationale for wider deregulation after Brexit.

One area of protection considered at risk from downgrading is working time (48 hour limit, holiday pay and breaks/minimum periods off between shifts). As noted above, working time abuses are common to many EPZs globally. Other areas of possible divergence include business restructuring (Acquired Rights Directive, Collective Redundancies Directive), posted workers provisions, and Information and Consultation rights. Effective voice at work and strong protections for overseas and migrant workers are essential to ensure freeports do not lead to a two-tier labour market.

Climate change

Freeports will have climate and environmental impacts, both due to the nature of production activities, and arising from worker commutes.

The way in which companies structure production and supply chain activities in relation to the freeport has implications both for jobs and climate and environmental impacts. Food processing is an important example. Where customs arrangements within the freeport encourages the export of food goods for processing and re-import to take advantage of comparative labour costs (such as the

¹⁸ Caspersz, D. (1999) Export Processing Zone Style Developments and the Regulation of Australian Women's Labour. *International Review of Women and Leadership*, Special Issue, 1999 pp.54-63 p.55

¹⁹ ILO (2002) p.11

²⁰ Britannia Unchained

²¹ <https://www.ier.org.uk/comments/how-the-brexit-deal-threatens-your-rights-at-work/>

case of UK-caught fish sent to China for processing), unnecessary food miles and offshoring of labour may be incentivised by the model.²²

Multinational corporations operating in areas designated for freeports have been linked to environmental degradation. US agribusiness Cargill's Port of Liverpool plant has been linked to large scale deforestation in Brazil.²³

Economic dimensions of freeport policy

Job additionality

The results of a 2017 systematic review synthesising 59 studies into the impact of EPZs in developing countries suggest that there is no robust evidence that the employment created in the zones is additional: employment 'gains' therefore imply transfers into zones. The review also showed that in most cases, EPZs pay higher wages and do not contribute to increases in the gender wage gap.²⁴

The UK Enterprise Zones programme of the 1980s did produce some net employment gains but also led to job and firm displacement. Of the estimated 125,000 increased jobs in the zone areas 58,000 were estimated to be 'additional'. Yet many of these additional jobs were relocated from elsewhere: 24% of firms relocated from within the region and 17% from elsewhere in the UK. The real number of 'additional jobs' is likely far less than 58,000.²⁵ The public sector cost per additional job created in the zone (including relocations) is estimated at £26,000 (in 2010-11 prices).²⁶

The zone goals were mismatched with incentives: reducing cost of capital expenditure likely reduced demand for labour by causing firms to substitute labour with capital inputs.²⁷ The balance of capital/productivity investment and job creation/retention is a major consideration for design of incentives.

Many of the benefits of the zones were captured by property owners (major landowners and developers constructing commercial property). Many companies invested in upgrading office space rather than investing in business growth.²⁸ Rates relief was captured through landlords through higher rents.²⁹

²² Unite.

²³ <https://www.theguardian.com/environment/2020/nov/25/revealed-uk-supermarket-and-fast-food-chicken-linked-to-brazil-deforestation-soy-soya>

²⁴ Cirera, X. and Laksham, R. W. D. (2017) The impact of export processing zones on employment, wages and labour conditions in developing countries: systematic review. *Journal of Development Effectiveness*. 9 (3) 2017 pp344-360

²⁵ Kieran Larkin, *What Would Maggie Do ? Why the Government 's Policy*, 2011, p. 5 <<http://www.centreforcities.org/research/2011/02/28/enterprisezones/>>.

²⁶ Larkin, p. 5.

²⁷ Ibid

²⁸ Ibid

²⁹ Larkin, p. 5.

Sectoral dimensions and low-road strategies

The limited gains for companies operating in the zone may lead to downgrading and the pursuit of 'low-road' strategies in order to generate activity and profitability within the zones. Freeports may attract sectors with poor track records and risk exacerbating existing problems.³⁰

A 2019, a Centre for Cities report found that existing UK free zones have primarily generated employment in low-skilled, low value-added local services such as warehousing and retail.³¹

It is anticipated that contemporary dynamics in the global economy are driving the 'onshoring' or 'reshoring' of manufacturing jobs such as garment production. This risks the 'onshoring' of poor labour practices in these industries as well. The prolific labour abuses in the Leicester garment sector in recent years are a case in point.

Freeports may attract food supply chain companies which process and package food drinks and other produce. These sectors have a poor record on pay, working conditions, safety, skills and training, and labour and human rights abuses including human trafficking and modern slavery.³²

Linkages and local economic gains

The economic gains for host nations are conditional on the development of linkages with national economies. Many EPZs have failed to build significant links with local economies. Both forward (sales of products in domestic markets) and backward (purchase of inputs and subcontracting to domestic firms) linkages are important.

If zones predominantly attract MNEs to the exclusion of domestic firms, FZs can put domestic firms at a disadvantage as they cannot benefit from tariff-free inputs. The zone in effect then acts as an import subsidy disadvantaging domestic production and discouraging creation of backward linkages.

In the case of the Port of Liverpool the previous freeport status may have encouraged a 'hub' role for trans-shipment onto Ireland and parts of continental Europe and discouraged spill over into local manufacturing. Freedom from import duties, VAT levies, taxes and quotas so long as cargoes are retained within freeport area may encourage 'hub' usage and constrain leakage of economic activity to outside of the zone.³³

Most studies find backward linkages to be minimal, with domestic orders remaining at a low level and technological spill-overs rare. South Korea is a notable exception maintaining a 30% share of domestic inputs during the late 1970s-80s even with 80% foreign ownership of EPZ firms (domestic orders are more typically 3-9%). The South Korean State role was key to this through its 'equal footing policy' providing duty drawbacks to non-EPZs and imposing performance standards on firms in exchange for subsidies (it should be noted that the South Korean State-led policy also included suppressing labour rights).³⁴

³⁰ Ibid

³¹ Centre for Cities, *In the Zone ? Have Enterprise Zones Delivered the Jobs They Promised?*, 2019 <<https://www.centreforcities.org/publication/in-the-zone-have-enterprise-zones-delivered-the-jobs-they-promised/>>.

³² Unite.

³³ Meegan, R. (2013). *Urban Regeneration, Politics and Social Cohesion: The Liverpool Case*. In *Reinventing the City?* (pp. 53–79). Liverpool University Press. p.68

³⁴ ILO (2008) pp.20-22

Stronger backward linkages occur when the State is more activist in industrial policy and manages development and linkages within FZs.³⁵

Governance and local industrial strategy

The 1984 freeport strategy adopted by the Thatcher government reflected the wider shift from State and local government-led industrial strategy to market mechanisms and private governance.³⁶

Research suggests zones are most effective when they form part of an integrated economic strategy that includes fiscal incentives, investments in infrastructure, technology and human capital, and the creation of linkages into the local economy. Countries that have successfully used EPZs to generate growth and quality employment (Ireland, Malaysia, Singapore, Mauritius) have pursued strategies that combine high-value products and services with labour market policies on training, and social dialogue with government and social partners.³⁷ EPZs can contribute to human capital if foreign investors engage in training. But many EPZs have developed around low value-added activity and found it difficult to escape the low value-added trap.³⁸ A 2002 UNCTAD report stated that:

“successful EPZs should not be judged solely on their capacity to attract FDI or increase exports and foreign-exchange earnings. They should also be assessed by the extent to which they help meet broader economic and social objectives. Countries that pursue more integrated policy approaches for attracting export-oriented FDI – for example by encouraging tripartite representation (employers, workers and public authorities) on EPZ committees, guaranteeing workers’ rights (including freedom of association and collective bargaining), and upgrading skills and working conditions – have tended to attract higher quality FDI [citing Ireland and Singapore as examples].”³⁹

Some zone authorities have included trade unions on their boards (Philippines, Singapore, Trinidad and Tobago).

³⁵ Ibid

³⁶ Richard Meegan, ‘Urban Regeneration, Politics and Social Cohesion: The Liverpool Case’, *Reinventing the City?*, 2013, 53–79 <<https://doi.org/10.5949/liverpool/9780853237976.003.0004>>.

³⁷ ILO (2002) p.12

³⁸ UNCTAD: World Investment Report 2002: op. cit., pp. 214-217.

³⁹ Ibid