Freeports Consultation

Submission by the
Centre for the Study of Corruption
at the University of Sussex

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Freeports Consultation:

Boosting Trade, Jobs and Investment Across the UK

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Summary

1. Freeports and corruption risk

The DTI consultation document does not contain any mention of corruption, indicating that corruption is not currently recognised as a risk in the creation or operation of freeports. The appropriate approach would be for a comprehensive corruption risk assessment to be undertaken so that the risks are identified.

2. The UK's experience of freeports

Overall, by accident rather than design, the UK created in the Overseas Territories the ideal conditions for corruption to thrive. The example of the Overseas Territories should act as a warning light that, by accident rather than design, in creating freeports the UK may also create ideal conditions for corruption to thrive.

3. Does it matter?

The UK government needs to ensure that its existing anti-corruption strategy is properly applied to freeports and that they are not granted a carve-out from this strategy. This will act as a safeguard against organised crime and security threats, protect the UK's reputation and demonstrate that post-

1. Freeports and corruption risk

The risks of freeports being used for money laundering are well-documented, not least by the Financial Action Taskforce[1] and, for the UK, by

> Although it is widely believed that bribery is uncommon in the UK, this does not mean that bribery does not occur. Indeed, the first prosecutions under the Bribery Act 2010, which had originally been designed to counter corporate bribe-paying overseas, all related to bribers paid or offered within the UK. The conditions of freeports might well encourage bribe-paying: for example, if there is a secure area within which certain economic conditions prevail and a controlled 'border', there could be an incentive to pay bribes to those who control the border, in order to move goods or people in or out of the freeport. Any difference of regime between one area immediately adjacent to another carries the risk of such exploitation: an example within the UK is the exploitation of farm subsidies cross-border between Northern Ireland and Ireland.
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> When the freeport is in operation, officials at all levels are likely to have a degree of discretionary power. A classic corruption analysis indicates that discretionary power in tandem with lowered levels of scrutiny or accountability increases corruption risk. Even when bribe-paying is not taking place the exchange of favours to gain an advantage, often brought about through a prior personal connection or family connection, is a plausible scenario. This is a characteristic mechanism used by organised crime.

These are illustrative examples and clearly not a comprehensive list. But precisely because the UK authorities have little experience of bribe-paying and other forms of corruption, the need to design anti-corruption mechanisms, and the best way to do so, may be overlooked.

In particular, the UK authorities and law enforcement agencies have very little experience of prevention of bribery or corruption of public officials in the face of determined attempts to corrupt them. There is therefore an additional risk that even if the corruption risk is adequately identified, the UK's standard mitigation measures will be insufficient. For example, these are often based on an assumption of the personal integrity of public officials, and that they will aim to operate in the public interest. A freeport with the wrong culture amongst officials might severely question these assumptions.

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Over time, this has been increasingly exploited by criminals, organised crime and criminal entities. The lack of accountability and scrutiny enabled this to be under the radar until the situation was firmly embedded.

At the same time, neither the UK government nor the Overseas Territories themselves have been able to develop an exit strategy from the criminality, while the increased financial clout of the Overseas Territories governments has enabled them to mount a lobbying campaign to retain the lax regime that has been financially advantageous to a small number of those in power.

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3. Does it matter?

The UK's own outlines why corruption and money laundering matter to the UK, as does the .[3] The is quoted below, as this clearly explains the threats to the UK's prosperity, security and international reputation from corruption. Moreover, the Strategy also notes the opportunities for the UK post-Brexit in clearly being an international beacon for the rule of

to learn from the Overseas Territories. For example, it should be an absolute condition that any company that has any trading relationship with or within or related to a freeport should publicly declare and register its beneficial owners. This already applies to UK companies, but should equally apply to non-UK companies.

It seems likely that the private sector will play a considerable role in creating and operating the freeports. There is a global norm of anti-corruption good practice procedures for companies, building on the Bribery Act,[4] US Foreign Corrupt Practices Act[5] and more recent guidance. All companies with significant operations or trading relationships in, or related to, the freeports should be required to have in place a high standard of anti-corruption procedures. Freeports can give economic advantages to companies without operating as a Wild West, and a simple requirement to operate to the global best practice norm would help alleviate the risk.

The related professional services infrastructure that a freeport will require can function as an important check on corrupt behaviour – or, if poorly regulated, operate as facilitators of corrupt behaviour. For example, in the Overseas Territories and Crown Dependencies, a number of professional services companies (financial services firms, law and accounting firms, trust & company services providers, etc) have played an important role in facilitating the corruption. However, good oversight and regulation of these professional actors means that they can act as a deterrent to, and brake on, corrupt behaviour. It is possible that a special licensing regime should be established for professional services companies wishing to operate in the UK's freeports that gives primacy to operating with integrity.

There should be a specific focus on building and maintaining integrity among public sector officials, learning from the UK's wide experiences ranging from the Committee on Standards in Public Life for more senior officials to the police anti-corruption units' experiences with more junior officers.

-Ends-

[4] https://www.gov.uk/government/publications/bribery-act-2010-guidance
[5] https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf
[6] https://www.agence-francaise-anticorruption.gouv.fr/files/2018-10/French_Anticorruption_Agency_Guidelines.pdf