

EM Freeport FAQ

What is a Freeport?

Put simply, it is an area within the UK's borders where different economic regulations apply.

How does it work in practice?

The government designates certain areas centred around one or more “ports” (this could be sea, rail or airports) and these zones are able to benefit from a number of measures, including tax reliefs, relaxed customs procedures, business rates retention, planning, regeneration and trade and investment support.

Aside from the potential support for regeneration, which could assist with the development of capital or infrastructure projects, these measures are designed to incentivise businesses to open, expand and invest in the Freeport area, with the view to boosting employment and encouraging economic growth.

Why do we need a Freeport?

Freeports are not a new concept, and have existed in various forms in the EU and the world for many decades. However, as part of the government's Levelling Up policy it committed to establishing a number of new Freeports in the UK.

The East Midlands Freeport is one of the successful bids to establish a new Freeport.

The establishment of a Freeport in the East Midlands has the potential to create a number of opportunities which could benefit the region.

How will it be funded?

The Freeport's day-to-day working capital and expenditure is to be funded by capacity funding provided by the Department for Levelling Up, Housing and Communities (DLUHC), a loan provided by the accountable body (Leicestershire County Council) and retained business rates.

There is no requirement for other members to contribute to the day-to-day working capital and/or expenditure of the Freeport.

How will this impact on council funding /and the money we receive from Business Rates?

The government has proposed a mechanism by which 100% of business rates growth above a particular baseline can be retained in the Freeport area. This will be guaranteed for 25 years. This income has to be used to promote the Freeport's objectives.

Retention of business rates by the Freeport will be governed by an agreement between the Freeport and the billing authorities which will include a “no detriment” mechanism which will seek to ensure they are not worse off as a result of the arrangements.

It is expected that establishment of the Freeport will provide an opportunity to access additional funding rather than reduce that funding that would otherwise be available to the Council.

What if the projected business rates do not materialise, who will pick up the deficit?

There is no obligation on the members of the company to plug any deficit in funding. Should the business rates projections not accord with reality a further conversation between the Freeport

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partners and, potentially, wider stakeholders will need to be undertaken to decide what action is appropriate in the circumstances.

Ultimately, if the Freeport is not sustainable then the company will be wound up. In this instance, unless the Council has committed to provide funding under any additional agreements or arrangements (for example, in respect of a capital or infrastructure project), then its liability will be limited to the value of its guarantee to the company, which is £1.

Who runs the Freeport and how are decisions made?

The Freeport has an Executive Delivery Team (**EDT**) which will be tasked with the running of the Freeport on a day-to-day basis. The EDT's functions will be delegated to it by the board who ultimately have oversight of the Freeport's activities. The EDT will be required to report to the board on a regular basis and certain decisions will need to be taken or authorised at board level before the Freeport can undertake certain activities.

There will also be a number of other subcommittees and advisory groups that will support the board in its decision making process and make recommendations.

The board's power, and by extension the EDT and other subcommittees and advisory groups powers, will be limited and a number of matters will require prior consent of the Freeport's membership before the Freeport (i.e., the board, EDT etc.) can undertake those actions.

Who are the parties and how will any changes to the parties be managed?

The Freeport will have 12 members on incorporation, which will be known as the Founding Members. These are currently as follows:

- Leicestershire County Council (accountable body);
- Nottinghamshire County Council;
- Derbyshire County Council;
- North West Leicestershire District Council;
- Rushcliffe Borough Council;
- South Derbyshire District Council;
- East Midlands International Airport Limited;
- SEGRO Properties Limited;
- Maritime Transport Limited;
- Goodman EMIP (UK) Limited;
- Etwall Land Limited; and
- Uniper UK Limited.

Changes in the membership are governed by the Freeports constitutional documents – the articles of association and members' agreement. Within these documents there are a number of mechanisms which, firstly, seek to preserve the membership of the Founding Members and, secondly, ensure the ongoing engagement and lock-in for those members which are deemed to be more fundamental to the Freeport's operation and success (e.g., the Tax Site Owners and billing authorities).

In certain situations, the board and/or members of the company will be required to consent to changes in the membership or the admission of new members, although automatic transfers of membership may occur in the event that a local authority member is replaced by a successor body (e.g., as a result of a restructuring) or if a private sector member undergoes a genuine corporate

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restructure. In respect of the latter, additional controls are in place and certain criteria must be met before membership automatically transfers.

How will the Council's interest be protected by decisions made by the Freeport?

The Council, as a Founding Member of the Freeport, will have the right to appoint a director to the board. Therefore, it will be involved in the decision making process and governance of the Freeport at board level.

One of the subcommittees which will be established is the Public Sector Directors Group, which the Council's appointed director will also be a member of. This group will be involved in decisions relating to the approval of tax sites for the Freeport area and retained business rates expenditure.

For any matters requiring member consent, the Council will be engaged in the decision making process and be entitled to vote on such matters through its representative which will attend general meetings of the Freeport.

The Council will also have a representative in the s151 Sub-Group. The s151 Sub-Group is responsible for: (i) assessing whether each Tax Site Occupier meets the applicable criteria and make recommendations to the Public Sector Directors Group; (ii) assess whether to impose any consequences under the TSO Code of Conduct, Tax Site Occupier Code of Conduct, the TSO Deed of Undertaking or the Occupier Undertaking and making recommendations to the Board whether to impose consequences; (iii) work with the Billing Authorities regarding mechanisms/proposals for pooling and accessing EMF RBR Funds and assessing whether any application for an allocation of EMF RBR Funds adheres to the RBR Strategy (set by the Board) and make recommendations to the Public Sector Directors Group.

What if the Freeport does not work as anticipated, can we withdraw our membership?

Yes. Unlike some other founding members of the Freeport (such as the billing authorities) the Council's membership is not locked in for any particular period. The Council will be able to withdraw its membership on the giving of 6 months' written notice.

Are there any negative implications by withdrawing?

Withdrawing from the Freeport could have negative implications – it could potentially damage relations with other local authority partners and may also invite negative publicity for the Council in the press/media.

From a financial perspective, unless the Council has committed to fund any capital or infrastructure projects, then it will be able to walk away from the Freeport without incurring any liabilities of a financial nature.

How does this impact on delivery of projects and funding for EM Devco, which the Council is also a member of?

As set out in the Report to Cabinet, there is some potential overlapping between EM DevCo and the EMF. At the moment it is unclear as to how the relationship between them will operate and Government is clear that there will need to be streamlined and governance arrangements.

In EMF's governance documents, there are some provisions in respect of EM DevCo. Any bids for infrastructure funding from RBR will need to be submitted for formal approval to the Public Directors' Group (consisting of a member of each public sector body). Each public sector member has one vote in terms of its approval (or not) to support bids. The EM DevCo will be able to submit plans for

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infrastructure in respect of those EM Freeport sites where it has an interest, alongside all other parties involved in the EMF. Whilst this represents a possible risk to some projects and funding, with particular reference to the Ratcliffe on Soar site, the EMF has sought to mitigate this risk by giving EM DevCo certain rights such as observer status representation on sub-committees and advisory groups – further details are provided in the Exempt Appendix.

The company will start with a loan, how will this impact its viability and future?

The terms of the loan and its proposed repayment schedule has been considered alongside financial modelling based on projected retained business rates secured from the Freeport area. Repayments will not be required in the first year of the Freeport and there may also be potential to further delay the first loan repayments if the projected retained rates do not materialise in the early years of the Freeport.

What happens if the Freeport breaks any international laws (i.e. tax site owners)? Who has liability for that?

Tax Site Owners will be directly responsible for adherence to relevant regulations and laws governing their operation. They will assume liability for their own actions.

The Freeport does play a role in the oversight of the Tax Sites/Tax Site Owners which operate within their designated area and will be answerable to government in respect of the monitoring and compliance of their operations. The potential sanctions which could be taken against the Freeport for any material non-compliance with these obligations would mainly relate to a clawback on funding provided or limitations imposed on the availability of future funding. However, it is unlikely that such sanctions would be imposed in these circumstances. Nonetheless it will be important for the Council to keep an active role though its position on the board in the oversight of the activities of the Freeport.

There is the potential of negative publicity and reputational damage for the Freeport and, by extension, its membership, if such situations were to occur.

What are the liabilities for the Freeport, for the Council?

In the first instances, the liabilities of the Freeport will mostly be financial in nature. For example, they will relate to the initial funding and any repayment of that funding which may be required. There will be ongoing operation costs throughout the life of the Freeport. It may also acquire additional liabilities through contractual arrangements it may decide to enter into.

It is the intention that, once the Freeport is fully established, these liabilities will be met by the retained business rates.

These liabilities will be separate from the Council. The chosen vehicle to act as the governing body of the Freeport, a company limited by guarantee, offers a limit on liability to its members. As explained above, unless the Council enters into additional agreements as a result of its involvement or takes its own decision to fund a capital or infrastructure project, its liability will be limited to the guarantee it provides to company (which is £1).

How will insurance be managed?

The Freeport will be required to acquire and maintain insurance to cover its own activities and any potential liabilities.

Is the EMF required to comply with any standards?

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All directors appointed to it whether by the public sector or the private sector, are required to comply with their directors' duties as set out in the Companies Act 2006.

In addition, the Members' Agreement provides that:

- the Lead Authority (LCC) has a role to ensure that the Board operates in line with appropriate levels of transparency, propriety and inclusivity and abiding by the Nolan principles.
- the EMF will adhere to the Nolan Principles and the EMF's Operating Manual is to set out how it will do this.