

REPORT TO: East Lothian Council

MEETING DATE: 27 October 2020

BY: Chief Executive

SUBJECT: East Lothian Council's Brexit Preparations and Response

1 PURPOSE

- 1.1 The purpose of this report is to provide an update on the current status of EU-UK 'Brexit' negotiations, the key risks to East Lothian Council, the status of current internal preparations to mitigate and manage the risks and further action required in the lead up to the end of the transition period on 31 December 2020.

2 RECOMMENDATIONS

- 2.1 It is recommended that Council:
- i. Notes our current position in regard to preparations for the UK leaving the EU at the end of the transition period on 31 December 2020.
 - ii. Notes and supports the continued work of the Brexit Working Group in identifying risks to East Lothian Council and the management and mitigation of these risks to minimise impacts on service delivery.

3 BACKGROUND

Current Status

- 3.1 The UK officially left the EU on 30 January 2020 and entered a transition period to complete negotiations. The option to extend the transition period was not pursued by the UK Government and so the transition period will end on 31 December 2020 meaning that on the 1 January 2021, all EU laws and policies will cease to apply to the UK. If an agreement is reached

before that date then a framework will be put in place for trade and other relations. However, if an agreement is not reached then EU-UK relations will be mainly based on international law although many areas will have no legal basis for cooperation.

3.2 The negotiations on the future EU-UK relationship started in March 2020 and are now entering their final phase. It was the aim of the UK Government to have negotiated a trade deal with the EU by 31 July 2020; however, negotiations have become protracted due, in part, to the COVID-19 pandemic and also a number of outstanding issues which include:

- access to UK Fisheries;
- governance, and;
- maintaining EU requirements to enable free trade (the level playing field).

3.3 Secondary issues such as data protection and human rights also remain outstanding; however, the EU and UK are keen for an agreement to be reached by the end of October 2020, leaving two months for preparations to be put in place. However, it is possible that negotiations could continue past the transition date as indicated by the UK and EU at the end of the last round of negotiations.

3.4 The timetable for leaving the EU is fixed and the transition period will end on 31 December whether a deal is reached or not. The impacts of Brexit will be further compounded by the ongoing COVID-19 pandemic already taking its toll on trade and business sustainability making economic recovery more challenging than previously thought. It is now imperative for national and local agencies to plan and prepare for the reasonable worst case scenario of a 'no deal' or 'limited deal' Brexit.

UK Government Preparations

3.5 On 11 September 2019, the UK Government published 'Planning Assumptions for a No Deal EU Exit' (known as Operation Yellowhammer). In parallel with the ongoing negotiations, the UK Government has also released a number of documents and information to assist with preparations, including:

- a Border Operating Model detailing how border controls will function at the end of the transition period;
- a Global Tariff Scheme specifying which tariff rate will apply to imported goods;
- negotiating trade deals with other countries such as the US but ultimately not able to lower standards to enable trade with the EU;
- in July, the UK Government launched a publicity campaign to encourage businesses, services and citizens to prepare for the end of the transition period;

- the Immigration Bill is currently making its way through Parliament; however, the UK Government has provided further information on the points-based system which will end the free movement of EU citizens on the 31 December 2020;
- the Internal Market Bill, which is currently making its way through the legislative process, sets out the UK government's intentions for managing the economy once outside the EU. Its aim is to establish foundational economic principles for the whole of the UK and where these principles clash with the policies and decisions of the devolved administrations of Scotland, Wales or Northern Ireland, the UK-wide approach will as a rule prevail.

Scottish Government Preparations

3.6 The Scottish Government also has been preparing for the impact of the EU exit and in particular, plans have been developed to mitigate the impacts of a 'No Deal' Brexit through a 'Ministerial Group on EU Exit Readiness' which is supported by a 'No Deal Planning Board'. Most preparations have been based on the UK planning assumptions but have been further developed by the Scottish Government to identify impacts on Scottish businesses and communities.

3.7 The Scottish Government preparations include:

- minimising disruption to supplies of food and medicines if there are significant delays at ports;
- providing online information for EU Citizens on Settled Status;
- establishment of a £7M Rapid Poverty Mitigation Fund;
- ensuring legislation impacted by leaving the EU has been updated and consented;
- providing information to businesses to assist in managing trade and economic impacts;
- working with farmers and crofters to ensure financial payments will remain in place;
- reserving 300 Police Officers to deal with any issues arising at ports, borders or possible civil unrest.

COSLA

3.8 COSLA is supporting Scotland's 32 councils to ensure local government is prepared for the end of the transition period and in particular, the impacts on services should there be a 'No Deal' scenario.

3.9 COSLA has been holding monthly meetings with representatives from all local authorities to provide updates and identify issues from a local authority perspective.

Police Scotland

- 3.10 Police Scotland has issued information to Regional Resilience Partnerships, signalling its intent to formulate multi-agency arrangements at a national level to prepare for a no deal.
- 3.11 The intention is to stand up a National Coordination Centre (NCC) in December 2020. Within the NCC will be a Police Operation Coordination Centre (POCC) and a Multi-Agency Coordination Centre (MACC) to support the Scottish Government and Resilience Partnerships. Key to information sharing will be the continued use of the national Resilience Direct information system as the main reporting tool.

East Lothian Council Brexit Impacts

- 3.12 East Lothian Council has a statutory obligation to deliver a range of core public services. The Council also provides valuable place leadership and therefore has an important role in supporting its communities and businesses.
- 3.13 Leaving the EU without a deal differs from other types of incidents the Council responds to because of the level of uncertainty surrounding what the impacts will be, how severe the impacts will be and when they will be experienced.
- 3.14 This means that the arrangements for responding to leaving the EU without a deal must have a great degree of flexibility to allow for the response to be both effective and proportionate.
- 3.15 Although there are a number of uncertainties, it is important to refresh scenario planning to identify likely impacts, the duration of the impacts and mitigation measures that can be put in place to manage and minimise them.
- 3.16 Most of the services in East Lothian Council will be impacted but some services will be affected more than others and it must be recognised that some impacts will cross service provision and can be broadly categorised into the following;
- *Our Finances and Funding*
 - *Our Supply Chains*
 - *Our Workforce*
 - *Our Statutory Compliance*
 - *Our Capacity to Respond to Unplanned Events*
 - *Our Capacity to Maintain Service Provision*
 - *Our Local Communities*
 - *Our Local Economy*

Our Finances and Funding

- 3.17 EU funding streams fall into three main categories:
1. From the EU via the Government, e.g. the European Structural and Investment Fund (ESIF).
 2. Direct from the EU, e.g. research and innovation programmes such as Horizon 2020 and ERASMUS+.
 3. Strategic investment funding and support from the European Investment Bank.
- 3.18 Loss of funding is expected to have a significant impact on local authorities in terms of funding gaps and loss of investment in local development programmes.
- 3.19 In the event of 'No Deal', the UK Government has committed to guarantee EU programme funding until 2023, including the European Regional Development Fund (ERDF) and European Social Fund (ESF) 2014 to 2020.
- 3.20 After the conclusion of this programme, the UK Government intends to operate a domestic replacement fund - the UK Shared Prosperity Fund (UKSPF). There is little more detail on these plans at the moment and public consultation on this is expected once the terms of EU withdrawal are confirmed.
- 3.21 The Scottish Government issued a consultation in November 2019 to identify opportunities to influence and shape the UK proposals for a prosperity fund and ensure that Scotland as a devolved nation has a fair share of the funding available. The consultation closed in February 2020 and more information is anticipated.

Our Supply Chains

- 3.22 East Lothian Council currently depends on a number of suppliers for products and services. There is a risk that a 'No Deal' Brexit could have a knock-on effect on the Council's ability to sustain statutory and non-statutory services that depend on supply chains.
- 3.23 It should be assumed that there will be some interruption to food and fuel supplies thereby impacting on meal provision in schools and care settings and the ability of some services to carry out activities which are reliant on vehicles and transport. East Lothian Council has representative participation at the Scottish Government Public Sector Food Forum to raise any related concerns and to share information across the sectors such as resilience planning.
- 3.24 The Council and its suppliers currently purchase EU goods tariff free. In a No Deal scenario, the UK will revert to World Trade Organisation (WTO) rules meaning that the UK would have to treat the EU the same as other trading nations. This means that if the UK continued to apply tariffs to

countries outside the EU (such as the US), there would have to be the same tariffs to pay on imported goods supplied to the Council from the EU.

- 3.25 Budgetary pressures may be experienced by the Council as a result of price increases for example, ICT costs associated with the production and import of digital technology products are typically priced in Euros or US Dollars but sold in Sterling. As such, any exchange rate fluctuations resulting from the EU Exit process could have an impact on manufacturing and selling prices.
- 3.26 Property maintenance and facilities management may also see significant increases in costs of goods, supplies and labour or panic buying may mean materials are in short supply.
- 3.27 Suppliers in the care and food industry have been warned about expected workforce shortages which in turn will decrease service and production capacity
- 3.28 Other indirect impacts may include increases in the cost of borrowing, leading to costs in excess of budget resources available and economic impacts may increase existing pressures in relation to rental income, council tax revenues and business rates.

Our Workforce

- 3.29 The UK Government has reached an agreement with the European Union on citizens' rights. This agreement will protect the rights of EU nationals living in the UK after the UK leaves the EU. The purpose of the scheme is to enable non-UK EU nationals to continue to live their lives in the UK as they do now. The scheme also covers their direct family members.
- 3.30 In order to continue to secure rights to live and work in the UK, non-UK EU nationals will need to apply for settled status through the EU Settlement Scheme. The scheme opened 30 March 2019. The deadline for applying is 30 June 2021.
- 3.31 Although direct employment of EU nationals by East Lothian Council is relatively low, there will be EU nationals working for local businesses and service providers who may deliver services on behalf of the Council. The implications of 'settled status' have been communicated directly to all affected East Lothian Council employees, and information and guidance has been provided to the East Lothian business community.
- 3.32 A 'No Deal' exit will impact the availability of both high skilled and entry level workers across a range of sectors. In February 2019 the Scottish Government report '*No Deal Exit – Economic Implications for Scotland*' highlighted that net migration into Scotland, currently +13,000 a year, will fall and could even become negative as a result of depreciation in Sterling and wider economic slowdown.
- 3.33 If there is a knock on effect of EU nationals leaving posts or not migrating to Scotland, there may be opportunity to focus on the development of the

local workforce particularly young people through the financial support of the Scottish Government's Job Guarantee fund.

Our Statutory Compliance

- 3.34 There are numerous statutory duties placed on East Lothian Council which are set out in various Acts, Regulations and Statutory Guidance such as procurement, waste management, environmental protection and trading standards.
- 3.35 Legislation currently underpinned by EU standards has been retained by the UK under the terms of the Withdrawal Act until the end of the transition period. The agreement also includes 'non-regression' requirements to prevent the UK introducing lower legislative standards in relation to social, environmental and employment law.
- 3.36 There are risks that statutory duties pertaining to services such as Social Care, Environmental Health and Trading Standards are at risk if resource is not available to maintain existing duties or absorb additional responsibilities in relation to import and export requirements.
- 3.37 There is also a risk that procurement services will lose access to the Official Journal of the European Union; however, the UK Government has confirmed that a UK specific e-notification service will be made available.
- 3.38 The UK will also bring GDPR requirements into national law. However, in the event of a 'No Deal', UK legislation will not be enough to permit the free flow of personal data between the EU and UK. The implication of this for local authorities is uncertain. The free flow of information between the EU and Third Countries rests on 'adequacy decisions' that provide assurances regarding a country's data protection standards. In the absence of an adequacy decision for the UK by 31 December 2020, the flow of data from the EU into the UK will require additional safeguards. While a recent high-level survey of Council services shows that there is not currently a high flow of information to the Council from outwith the UK, the full impact on the Council's data sharing remains uncertain.
- 3.39 In the event of a 'No Deal', the UK would no longer have access to the Trade Control and Expert System (TRACES), the EU system that underpins the controls on imports of animals, animal products and high risk food and feed not of animal origin from third countries and the EU. The UK would no longer have access to other EU systems, networks and agencies that assess and track food safety.

Our Capacity to Respond to Unplanned Events

- 3.40 As a Category 1 responder under the Civil Contingencies Act, the Council has a responsibility for emergency planning and responding to sudden, serious incidents and ensuring care for people and continuity of critical services. This is delivered through established and tested arrangements with Local and Regional Resilience Partnerships, devising and implementing local solutions to mitigate, as far as possible, the impacts

from a potential 'No-Deal'. The Local Authority Resilience Group (LARGs) disseminate information and facilitate knowledge sharing amongst the partners.

- 3.41 The Scottish Government has published planning assumptions which present the reasonable worst case scenario in the event of a 'No Deal' EU Exit. These planning assumptions are derived from the UK planning assumptions and attempts to ensure as far as possible that the civil contingency response to Brexit is based on a shared situational awareness.
- 3.42 The assumptions are not predicted outcomes but act as an aid to planning for the more challenging situations that may arise at the end of the transitions period. It is recognised that the Brexit response will have a local context due to the variation in impacts experienced in different areas of Scotland and the UK.
- 3.43 As the resilience team is currently responding to the COVID-19 crisis and preparing for Brexit implications, it will become more difficult to respond to other unplanned events and emergency situations.

Our Capacity to Maintain Services Provision

- 3.44 East Lothian Council provides a wide range of services to the local community. The COVID-19 pandemic is currently stretching resource, and additional demand on these services from a 'No Deal' Brexit may increase the risk that some services cannot be delivered.
- 3.45 Having robust business continuity plans, taking into account the identified and anticipated risks associated with both a 'No-Deal' Brexit and trade agreement, are essential to ensure all services can maintain their critical activities. This system has worked well in informing Council risks associated with COVID – 19.
- 3.46 All ELC service managers and strategic staff have been and will continue to be engaged with reviewing the corporate and service risk registers to ensure they reflect the possible effects of Brexit. Risk registers have been kept updated and a specific Brexit risk created.

Our Local Communities

- 3.47 The negative economic impacts of Brexit are likely to lead to an increase the number of people in poverty, reduction in employment opportunities and potential increased demand on essential council services.
- 3.48 Increased costs of goods and services are likely to impact low income households and families with children, disabled people, and older people, and they will find the costs of living more challenging.
- 3.49 Food security may become a major issue for vulnerable communities. The EU accounts for 30% of UK imports and 70% of fruit and vegetables, particularly in the winter months. Disruption to the food supply chain increases risks to food availability, affordability and safety.

- 3.50 Should food insecurity become an issue within our communities, there may be a requirement to stand up community resilience networks for a short period should there be disruption to food, medicine and fuel supplies. Similar to maintaining ELC services provision the COVID-19 pandemic has stretched the resilience of communities and may increase the risk of resilience networks being unable to meet the full scale of the ask of them.

Our Local Economy

- 3.51 Studies suggest that a No Deal or Limited Deal Brexit will lead to further economic shock at a time when the ongoing response to the COVID-19 pandemic has created a fragile economic recovery and perhaps longer term impacts.
- 3.52 It is anticipated that there will be further disruption to supply chains, trade, logistics, market confidence and ultimately investment and consumer confidence. Further economic downturn will also exacerbate current issues relating to unemployment, underemployment, job insecurity and reduction in development opportunities.
- 3.53 Local businesses need to have plans in place to adapt to anticipated changes relating to customs, tariffs, imports, exports, price changes and additional administration. Information for businesses is available on both the UK and Scottish Government websites. Local authorities are working alongside Business Gateway and Scottish Enterprise to provide local support on preparedness.
- 3.54 Rural areas are at risk particularly where there is a reliance on EU investment such as the Common Agricultural Policy. High Tariffs on lamb and beef as well as the need for Export Health Certificates will impact those who export goods. Work is being undertaken by Protective Services Environmental Health Officers to register and inspect local fishing vessels to ensure they meet the requirements to export to the EU after the transition date.
- 3.55 There has been discussion with the Scottish Government and Food Standards Scotland in relation to the development of a temporary (2 year) Export Hub potentially at the former Cockenzie site.

East Lothian Council Brexit Response

- 3.56 There is now just over two months until the end of the transition period. Although both the UK Government and the negotiators agree that issues can be resolved, there is risk of a 'No Deal' scenario and a 'limited deal' being the most likely outcome.
- 3.57 In light of this, preparations should consider current planning assumption recommendations of reasonable worst case scenario allowing the Council's response to be scaled appropriately when the outcome of the negotiations are agreed.
- 3.58 Key actions:

- East Lothian Council Brexit Working Group (BWG) has been reconvened led jointly by the Service Managers for Protective Services and Economic Development and attended by Service Managers and other key officers. Council Management Team oversees the BWG, which is sponsored by the Heads of Service for Development and Communities and Partnerships.
- Members of the BWG remain engaged with external agencies and networks such as Scottish Government, Resilience Partnerships, COSLA, Community Groups and business and trade associations.
- A survey has been carried out of Service Managers to advise the BWG of current situational awareness of Brexit impacts and ensuring Corporate and Service Risk Registers are up to date.
- The Council's Brexit preparations will become a standing item on the Connected Economies Group (CEG) as means of involving Elected Members and local businesses. The Rural Recovery Sub Group will focus on issues raised in 3.54 and the weekly meeting of the cross-party members and officers group will also cover Brexit as a standing item.
- Currently developing our 'Category 1 Response' by establishing a Single Point of Contact, internal communication procedures via dedicated mailbox and Resilience Direct as well as reporting arrangements to the Multi-Agency Co-ordinating Centre.
- The BWG will undertake a further Service Impact Analysis at the start of November. It is anticipated that the outcome of negotiations will be known. If not, governmental planning assumptions will be used to update Corporate and Service Risk Registers and identify any mitigating actions by way of a Brexit Workplan.
- Internal Audit will conduct an assurance review of our Brexit preparedness and report to the Audit and Governance Committee in November 2020.
- The date for ratification of a deal by the European Council is 26 November and it is anticipated that after that date, East Lothian Council will prepare to stand up the Brexit Response by mid-December in the lead up to the end of the transition period on 31 December and will remain in place for at least a 12-week period from 1 January 2021.
- A timeline of the Brexit progress is given in Appendix 1.

4 POLICY IMPLICATIONS

- 4.1 There are no new policy implications arising from this report; any that do arise subsequent to the refreshed Service Impact Analysis and Brexit Workplan will be reported separately.

5 INTEGRATED IMPACT ASSESSMENT

- 5.1 The completed Brexit Workplan, informed by the Service Impact Analysis currently underway, will be subject to the Integrated Impact Assessment process in due course.

6 RESOURCE IMPLICATIONS

- 6.1 Financial: Forecasting the full impacts of Brexit on Council finances and budgets is challenging due to ongoing negotiations. Known potential impacts have been outlined in general terms within *Our Finances and Funding* section of this report.
- 6.2 Personnel: Impacts of Brexit on the Council's workforce is expected to be minimal in the short term; however, the longer term impacts of the UK Government's immigration policy are unclear but have the potential to impact on lower paid / skilled workforce such as those involved in Facilities Management and Social Care. There may also be increased workloads for some services, e.g. Environmental Health and Trading Standards in relation to changes to Exports and Imports.
- 6.3 Other – As part of the ongoing analysis carried out by the Brexit Working Group, other resource impacts will be identified.

7 BACKGROUND PAPERS

- 7.1 Appendix 1: Brexit Timeline
- 7.2 [UK Government Brexit Transition Website](#)
- 7.3 [Scottish Government 'Prepare for Brexit' Website](#)

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APPENDIX 1: Brexit Timeline

