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## **BREXIT RESPONSE TEAM UPDATE**

**Report by Chief Executive**

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### **SCOTTISH BORDERS COUNCIL**

**29<sup>th</sup> November 2018**

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#### **1 PURPOSE AND SUMMARY**

- 1.1 This report updates Council on the activities of the Brexit Response Team (BRT) in monitoring and developing responses to the UK's exit from the European Union ('Brexit').
- 1.2 A fluid and uncertain negotiating context have made detailed assessment and scenario planning highly challenging. In response, the work of the BRT has developed around anticipated immediate and short-term impacts, principally in respect of how they affect the capacity of the Council to carry out its responsibilities, but extending our planning to include subjects where the Council has a duty of care. Accordingly, the focus of the BRT has been on:-
  - A. Procurement and Market Impacts
  - B. Funding
  - C. People (Workforce, Customers and Citizens)
  - D. Civil Contingencies
  - E. Establishing Links to Community Planning Partners
  - F. Risk Assessment

Additionally, activity has been undertaken in relation to matters relating to the Economy of the Scottish Borders under the headings of:-

- G. Private Business and Economic Resilience
  - H. Agriculture and Rural Development
- 1.3 This report considers each of these areas, providing a synopsis of the issues, together with (where appropriate) a conclusion assessing the risks/opportunities and any actions the Council is taking or should consider taking by way of mitigation or to optimise opportunities.

#### **2 RECOMMENDATIONS**

- 2.1 **I recommend that the Council:-**
  - (a) Notes the contents of this Report and the activities of the Brexit Response Team in planning for Brexit.**
  - (b) Instructs the Brexit Response Team to continue its work and to report to Council as required and, in any event, to report to Council as we approach the 'Exit Date' of 29<sup>th</sup> March 2019.**

### **3 SUBJECT MATTER**

- 3.1 On 23 June 2016, the UK voted in a national referendum to leave the EU. Subsequently, on 31 January 2017, the Council agreed to establishment of a Brexit Response Team to ensure effective monitoring of and responses 'to the wide range of changes likely to flow from the UK's exit from the European Union'.
- 3.2 Following the UK Government's triggering of Article 50 of the Lisbon Treaty on 29<sup>th</sup> March 2017, the UK is formally due to relinquish membership of the EU on 29<sup>th</sup> March 2019. Planning for the consequences of Brexit is challenging on account of a fluid and uncertain negotiating context. Moreover, the nature of the new relationship between the UK and EU is yet to be determined.
- 3.3 In light of this, the work of the BRT has developed around anticipated immediate and short-term impacts, principally in respect of how they affect the capacity of the Council to carry out its responsibilities, but extending our planning to include subjects where the Council has a duty of care. In developing its approach, furthermore, the BRT has taken account of guidance from UK Government and Scottish Government, the Convention of Scottish Local Authorities (COSLA), Local Government Association (of England), Zurich (Insurance) and professional bodies.
- 3.4 Accordingly, the focus of the BRT has been on:-
  - A. Procurement and Market Impacts
  - B. Funding
  - C. People (Workforce and Citizens)
  - D. Civil Contingencies
  - E. Establishing Links to Community Planning Partners
  - F. Risk Assessment

Additionally, activity has been undertaken in relation to matters relating to the Economy of the Scottish Borders under the headings of:-

- G. Private Business and Economic Resilience
  - H. Agriculture and Rural Development
- 3.5 A synopsis of activities in these areas is set out below, together with (where appropriate) a conclusion assessing the risks/opportunities and any actions the Council is taking or should consider by way of mitigation or to optimise opportunities.

### **4 COUNCIL ACTIVITIES**

#### **A. Procurement and Market Impacts**

##### ***Legal context***

- 4.1 Immediately after Brexit, existing national regulations on procurement (which implement EU Directives) will continue to apply. In the longer term and while there may be more freedom to set or change regulation, any change will be dependent on any other international agreement that the UK chooses to make with the EU and/or other countries. The UK Government has issued a briefing paper, Brexit: public procurement ([here](#)), which outlines the current position, future policy choices and the withdrawal agreement currently under

negotiation and intended to cover the post Brexit transition period to 31 December 2020.

- 4.2 In the event of a no deal Brexit, the UK government will build a replacement publishing platform for the EU's online Tenders Electronic Daily (TED). All contract opportunity notices over the relevant thresholds which are currently required to be advertised on TED would be published on this new UK e-notification site after 29 March 2019. A further guidance document, 'Accessing public sector contracts if there's no Brexit deal' can be found [here](#).

### **SBC Contract Register**

- 4.3 A review of the Councils contract register has been undertaken. A number of areas were considered, including; contracts where materials are imported and the associated impact of changes to tariffs and trading protocols, any impact of changes to settled status and the movement of people, and exchange rate sensitivities which could impact the cost of commodities and so contract prices. During this exercise it was identified that a significant number of overarching agreements are managed by third parties. As a result, contact has been made with Scotland Excel, the local authority shared service, and Procurement Scotland, the Scottish Government procurement service.
- 4.4 Scotland Excel has noted they are carrying out a complete and thorough framework risk analysis across their entire framework portfolio. Category specific assessments will be published as a supplement to a Scotland Excel White Paper ([here](#)) and will delve further into the likelihood of risks and explore mitigation thereto. Procurement Scotland has created a set of risk analysis tools and conducted a preliminary assessment of all collaborative agreements looking at the implications of the different Brexit outcomes on market access, tariff barriers, exchange rates, labour availability etc. For those classified as medium to high risk contingency measures will be put in place in conjunction with suppliers. As likely Brexit outcomes become clearer, these assessments will be refreshed accordingly. A forward wave plan for frameworks over the next 3 years is also in place to allow ongoing assessment of areas of risk.
- 4.5 Across all stakeholders, the key areas of direct risk noted through this work relate to food supplies, construction materials and transport and/or distribution logistics. Labour availability is noted and is covered later in this report. Some areas of risk are recognised as likely to be for the short term only to facilitate the period of change.

### **Future Contracts**

- 4.6 Along with the current contract register, future planned contracts have been reviewed to consider market impact on their delivery. As noted earlier in this report, it is likely that there will be impact on markets and related commodities. Officers will therefore consider each contract and the specific areas of risk as procurement strategies are developed prior to advertising contract opportunities or issuing invitations to tender. During this period of change, contract and supplier management will be of key importance. For high value and high risk contracts this approach will create early opportunities for dialogue with suppliers all while recognising any clarity or certainty is extremely difficult given the speculation that surrounds Brexit.

### **B. Funding**

- 4.7 In July 2018 the UK Government extended its proposed EU Funding guarantee to cover all projects, including European Regional Development

Fund (ERDF) and European Social Fund (ESF) projects that would have been funded by the EU under the 2014-2020 programme period. The extension allows the Scottish Government to continue to sign new projects after EU exit until programme closure.

- 4.8 The UK Government guarantee is intended to provide certainty to communities, businesses and local partners, by underwriting investment in regional growth (as if the UK was a member of the EU) up to the end of the current ERDF and ESF programme periods, including in the event that the UK leaves the EU without a negotiated agreement.
- 4.9 Appendix 1 provides an outline of existing EU programmes operated by Scottish Borders Council, the sums involved and the direct employment associated with operating the funds. It should be noted that, in spite of the guarantee given by UK Government in relation to the lifetime funding of existing programmes, for all practical purposes, LEADER Funding is now at an end as all contracts need to be in place by 28th March 2019.
- 4.10 Looking forward, UK Government proposes the creation of a Shared Prosperity Fund to replace EU Funding. This will include ERDF, ESF and LEADER funding. Council officers attended a UK Government seminar in Edinburgh on the Fund on Friday 2nd November 2018. It was indicated that the seminar was part of the process for developing early thinking on the structure and composition of the Fund. This would be used to develop a consultation paper which would be issued before the end of 2018.
- 4.11 Lobbying for funds from the Shared Prosperity Fund will be a principal part of any mitigation strategy in respect of the loss of EU funding. There is a need to shape the Fund in a way which is responsive to the economic challenges faced by the Scottish Borders and the South of Scotland. The South of Scotland Alliance will also have a major role supporting these efforts.

### **C. People (Workforce/Customers/Citizens)**

- 4.12 As indicated in the Report to Executive of 31<sup>st</sup> January 2017 which established the BRT, there are an estimated 3,500 EU nationals living in the Scottish Borders. A key issue is the rights of these citizens in light of the UK Government's EU settlement scheme.
- 4.13 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.
- 4.14 In order to secure rights to live and work in the UK as now, non-UK EU nationals will need to apply for settled status through the EU Settlement Scheme. The scheme will open fully by 30 March 2019. The deadline for applying will be 30 June 2021. There are four steps to a successful settlement scheme application:
- A digital application form
  - Fee of £65, or £32.50 for children (which the Scottish Government has indicated it will meet in respect of applicants in Scotland)
  - Proof of identity/nationality
  - A photo
- 4.15 If EU citizens and their families have been continuously resident in the UK for five years by December 31, 2020 – the end of the Brexit implementation period – then they will be able to apply for settled status. This is equivalent

to permanent residency.

- 4.16 Pre-settled status is for EU citizens and family who have not lived in the UK for five years on December 31, 2020. An application for pre – settled status allows them to continue to live in the UK until they reach the five years, then apply to change their pre-settled to settled status for no fee. They need to apply for pre-settled status in order to be eligible for settled status
- 4.17 Both schemes include EU citizens’ direct family members, including family members who join EU citizens in the UK before the end of 2020. They also cover family who join after that date, if the EU citizen that the family member is joining was already resident in the UK, and they had a relationship before this date which continues. Both schemes also cover future children of those with settled or pre-settled status.
- 4.18 Once a person acquires settled status, they can be away from the UK for a total of five consecutive years. After this, the status will lapse, so it’s something that needs to be maintained. As the heading of this section reflects, there are essentially three broad categories of people which the Council needs to consider in addressing potential Brexit impacts/opportunities and in particular how those individuals may be affected by the requirement to apply for settled status/pre-settled status:
- Workforce (those employed by the local authority)
  - Customers (those who have an ongoing relationship with the Council, for example looked after children.)
  - Citizens (non UK EU citizens resident in the Scottish Borders).

### **Workforce**

- 4.19 An assessment of the employees of the Council and SB Cares has been undertaken. Although a number of non UK nationals are employed, the vast majority have British citizenship. There are only 22 employees who would require to apply for settled/ pre settled status. This will be discussed with each employee on an individual basis and any assistance required to make the application will be provided. The Council is undertaking an examination of whether there are EU staffing implications arising from the potential effects of the fulfilment of contracts.

### **Customers**

- 4.20 This covers a number of different relationships between the Council and customers, some covered by a legal order and some not. The Council’s responsibility varies depending on the nature of the relationship. The main examples are as follows:

### **Children**

- 4.21 A small number of children of EU Citizens are in the care of the local authority and work is on-going to address the Council’s responsibilities to these individuals. There are several bases upon which care is provided, and the responsibilities and rights of the Council vary accordingly:

#### ***Children subject to a Permanence Order:***

In this case parental rights have been vested in the local authority under a court order. This would allow the local authority to register the child under the settlement scheme.

#### ***Children subject to a Supervision Requirement (Children’s Hearing):***

In this case the child is subject to the conditions of a supervision requirement imposed by a Children's Hearing. While the local authority would not automatically have the right to register the child under the settlement scheme, an application could be made to the Children's Hearing to vary the supervision requirement to include such a right.

***Other Looked After Children (under S.25 of the Children (Scotland) Act 1995):***

This covers children looked after by the local authority because nobody else has parental responsibility, they are lost or abandoned, or those with parental responsibility can't provide suitable accommodation or care. The Act does not say any more than that, so the exact nature of parental rights vested in the local authority is vague. In practice this isn't usually a problem because there is either nobody with parental rights around or they accept that the child should be looked after.

However, anyone with parental rights can insist on the return of the child to their care. Formal action to obtain one of the above orders would require to be taken before the local authority could proceed to register the child under the settlement scheme.

***Children not subject to any order nor registered with Social Work***

The Council has a responsibility for the education of children within the local authority area. However, that does not of itself give the authority the power to register a child under the settlement scheme. Internal discussion is taking place to develop guidance and assistance to children, and their parents in this position.

## **Adults**

- 4.22 A small number of EU Citizen adults, including older people, receive care from the local authority. Work is on-going to address the Council's responsibilities to non-UK EU clients who receive such care. As with children, care is provided on different bases and the Council's responsibilities and rights vary.

***Adults in respect of whom the Chief Social Work Officer is Welfare Guardian:***

Ordinarily the Guardian would have the power to decide where the person lives. Consequently, the Guardian could register the adult under the settlement scheme.

***Adults in receipt of care without such an order:***

Guardianship orders may only be obtained when an order is necessary for the welfare of the adult. Consequently there are a number of adults who receive care but effectively on a voluntary basis. It is suggested that the Council would have an obligation to advise and encourage those to whom care is provided to register under the settlement scheme. This is particularly the case for those who have diminished capacity, for example adults with a learning disability.

It should also be noted that, while the present position is unclear, there may be a change in the Council's responsibilities towards adults in need of care who are non UK EU nationals. While currently they broadly have the same rights as UK nationals, this position may change.

## **Citizens**

- 4.23 The Council has no legal rights nor responsibilities in relation to non-UK EU adult nationals who reside in the Scottish Borders. However, a view will require to be taken on the extent to which the Council should offer information, advice and assistance. In particular, because the registration process is digital, a number of citizens may require additional assistance.

### **D. Civil Contingencies**

- 4.24 The Council's Emergency Planning Officer advises 'emergencies' which arise as a consequence of Brexit such as delays in receiving food and fuel supplies and other key problems in the supply chain will be addressed as a business continuity issue, reflecting the response to serious, sudden or unexpected and, often, dangerous situations requiring immediate action, which characterises 'emergencies'. The Council's role in such situations is to ensure that vital services on which Scottish Borders residents rely continue to function. This includes social care, schools, waste collections and disposal.
- 4.25 In the event of an emergency, an 'incident response team' would be set up using well-established frameworks and methods to address contingencies. For example, in the event of vehicle fuel shortages, there is a Fuel Emergency Plan, which moves through the spectrum of rationing, to supply to essential workers, to the most extreme situation where Council staff may be called on to staff petrol stations. Similarly, if vulnerable citizens could not access the care they require (for example, patients requiring dialysis could not journey to hospital on their own volition), working with partners, the Council would institute measures to ensure access. The transport arrangements initiated during the severe weather in March 2018 illustrate the kind of approach that would be taken, though, in the nature of contingency/emergency planning, plans must be flexible and adjust to respond to the situation on the ground. The focus would be on assisting communities. The resilient communities in the Scottish Borders is an important resource in this respect.
- 4.26 As a Category 1 Responder, Scottish Borders Council is a member of the Resilience Partnership structure across Scotland and specifically the East of Scotland Regional Resilience Partnership (EoSRRP) and Lothians and Borders Local Resilience Partnership (L&BLRP). The EoSRRP is considering the impact of Brexit on partners around consequence management planning and the Resilience Partnerships can be activated in the event of a national or regional consequence post Brexit.

### **E. Establishing Links to Community Planning Partners**

- 4.27 The Council is working with partners on Brexit and Brexit planning will be discussed as part of Community Planning. The Chief Executive is contacting each partner to request information on any work they are doing on Brexit so that this can be linked into the Council's approach.
- 4.28 The Council is liaising closely NHS Borders and SB Cares to anticipate issues which may arise as a result of Brexit. Work is ongoing to identify, minimise and mitigate risks.

### **F. Risk Assessment**

- 4.29 All of the work outlined in this Report reflects a broad assessment of the

short-term. The Council has sought to augment these efforts in two important respects:

- (a) The Council is benefiting from the advice and guidance of the Convention of Scottish Local Authorities (CoSLA), and provided feedback to CoSLA to assist in developing local authority perspectives on issues of potential concern or opportunity. Recently, CoSLA appointed Billy McKenzie as its Brexit Co-ordinator, on secondment from the Scottish Government, assisting with Brexit preparations across Local Government. Mr McKenzie is due to meet with the Council's Brexit Response Team to further develop understanding of potential Brexit impacts and opportunities.
- (b) Council officers met with a Senior Strategic Risk Management representative from the Council's insurers, Zurich, to review the Council's approach to Brexit planning, assessment of risk and mitigation measures. The representative from Zurich has indicated that the areas covered by the Council are in line with their thinking and the Council's approach is robust.
- (c) The Council has also used the Local Government's Association list of primary and secondary impact areas to assess its approach to Brexit.

## **5 EXTERNAL ACTIVITIES**

### **G. Private Business and Economic Resilience**

- 5.1 Individual businesses will continue to receive support through the Business Gateway service. Indications to this point are showing that businesses are adopting a "wait and see" approach until a Brexit deal is achieved, or not. The outcome will affect each business differently depending on the type of business they operate. For example, those businesses relying on raw materials from within the EU and who export finished goods will be affected differently to a local service provider business.
- 5.2 A National Brexit tool has been created by Scottish Enterprise and Business Gateway advisers are signposting businesses to this tool. Each business is being asked how they are preparing but no clear actions are being identified as yet. Once it is clear what the implications are for business, Business Gateway will be providing more specific targeted advice and will ensure that it delivers an additional range of workshops and seminars as appropriate.

### **H. Agriculture and Rural Development**

- 5.3 Agriculture is a vital industry for the South of Scotland, with a significant workforce; large farms; a concentration on cereal production and on cattle, sheep; and business models based on high costs of inputs with associated profitability risks. The sector has a very high level of dependence on EU Common Agricultural in terms of Direct Payments (Pillar 1) and Rural Development support (Pillar 2) which includes payments to farmers in Less Favoured Areas.
- 5.4 The direction of future agricultural support post Brexit has been the subject of policy papers by UK and Scottish Governments. Both UK and Scottish Governments have placed strong emphasis on 'Public Money for Public Goods'. The Scottish Government's approach stresses the need to widen support for the environment into support for productivity improvement and marketing and for continued assistance to farmers in less favoured areas. Both Governments recognise the need to promote a greater efficiency in

agricultural production and to enhance business skills.

- 5.5 At its meeting on the 25 September Scottish Borders Council agreed to meet with key agricultural stakeholders to explore the contribution farming makes towards improving local prosperity and to identify potential barriers they may face. The South of Scotland Alliance is developing asks for Scottish Government in relation to future Agricultural Support and it plans to raise these at its annual meeting with the Depute First Minister in the new year.

## **6 IMPLICATIONS**

### **6.1 Financial**

- (a) Forecasting the financial impacts of Brexit across the range of the Council's activity would be difficult in any circumstance. The uncertainty of whether there will be a deal and the nature of that deal make forecasting even more difficult. However, an assessment of potential areas of impact is possible and is detailed elsewhere in this report.
- (b) With respect to EU Funding, UK Government guarantees provide a level of assurance over the short-term, but the continuation of similar activity in future will depend critically upon the replacement of funding through the UK Government's Shared Prosperity Fund and other replacement funding, including such initiatives as Scottish Government may promote. Prolonged breaks in the continuity of funding or reductions in future funding will, by their nature, have a negative impact on EU funded activity within the Scottish Borders.
- (c) The loss of Common Agriculture Policy funding is a particular concern with recent figures indicate that the area's farming community receives agriculture payments of over £61.5 million annually, representing about 3.2% of Scottish Borders Gross Domestic Product (GDP). The development of new funding measures by the Scottish Government and the development of financial operational efficiency and sustainability within the agricultural sector will be essential if the negative consequences of the loss of CAP funding are to be mitigated.
- (d) There could be impacts in the short and medium term from currency fluctuations influenced by the impact of Brexit on Council pension fund which is exposed to foreign equities. Council officers will keep this under review.

### **6.2 Risk and Mitigations**

- (a) There are significant risks inherent in the Brexit process. Through the establishment of the BRT, and its monitoring of developments, the Council is doing what it can to mitigate risks associated with its business, and with the activities of external organisations, including within Borders agriculture and the Borders economy.
- (b) Ongoing monitoring of the Council's operating context is of critical importance, particularly in relation to potential legislative change initiated by UK Government (and Scottish Government) post-Brexit. In the short term, the BRT can play a key role in identifying areas of change, but the Council as a whole will need to be highly attentive to changing legislation and consequent impacts on rules, procedures and responsibilities.

### 6.3 Equalities

The vote to leave the EU has engendered feelings of insecurity for part of the population of the Scottish Borders i.e. non-UK EU nationals. As noted in section C of this Report, the Council is looking at what steps it can take in providing information and, where appropriate, support in applying for UK settled status/pre-settled status.

### 6.4 Acting Sustainably

The UK Government has through its European Union (Withdrawal) Act 2018 transposed directly-applicable already-existing EU law into UK law. Over the course of time, it will be open to UK Government to alter legislation. The Council will need to be alert to changes in existing legislation.

### 6.5 Carbon Management

There are no direct effects on carbon emissions arising from the proposals contained in this report

### 6.6 Rural Proofing

The decision to leave the EU could have significant implications on agriculture and development support for rural areas in the Scottish Borders. The Brexit Response Team and Council officers in Policy and Economic Development will continue to monitor the position.

### 6.7 Changes to Scheme of Administration or Scheme of Delegation

There are no changes to be made to either the Scheme of Administration or the Scheme of Delegation as a result of the proposals contained in this report.

## 7 CONSULTATION

- 7.1 The Corporate Management Team, Chief Financial Officer, the Monitoring Officer, the Chief Legal Officer, the Chief Officer Audit and Risk, the Service Director HR and the Clerk to the Council have been consulted and any comments received have been incorporated into the final report

### Approved by

**Tracey Logan**  
Chief Executive

Signature .....

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**Background Papers:** Executive Committee Report 31 January 2017 – Item 6. Brexit Response Team

**Note** – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Michael Cook can also give information on other language translations as well as providing additional copies.

Contact us at the above numbers.