



EU Exit Update: Preparing for the end of the Transition Period

Report by Executive Director Corporate Improvement and Economy

SCOTTISH BORDERS COUNCIL

17 December 2020

1 PURPOSE AND SUMMARY

- 1.1 The purpose of this report is to give Council confidence that appropriate and effective planning and preparation arrangements are in place for the end of the Transition Period following the UK's departure from the European Union (EU) on 1 February 2020.
- 1.2 The report sets out the present planning context for the end of the Transition Period on 31 December 2020. It notes that, whether or not the UK and EU reach an agreement on their future relations, come 1 January 2021, there will be significant changes. People, communities and businesses, as well as the Council, need to be prepared to address these changes.
- 1.3 The report focuses on four areas of change or potential change which the Council must address, namely: People, Procurement, Economy and Civil Contingencies. It identifies the nature of risk in these areas and sets out how the Council, in many cases working with partners nationally and regionally, plans and prepares to address those risks.

2 RECOMMENDATIONS

2.1 I recommend that Council:-

- a) **note the risk-based planning and preparation arrangements for the Council for the end of the EU Transition Period, described in the report; and**
- b) **confirm that it is satisfied that these arrangements constitute a satisfactory basis for Council planning and preparation for the end of the EU Transition Period.**

3 BACKGROUND

- 3.1 The UK formally left the EU on 31 January 2020, and entered a “Transition Period”. The Transition Period is created by the EU-UK Withdrawal Agreement (which was ratified by the UK on 29 January 2020). It effectively maintains the status quo and allows the UK to continue as if it was an EU member state, while not participating in the EU’s institutions and governance structures. But this period will end on the 31 December 2020 when the UK will leave the EU’s single market, customs union and a range of other cooperation mechanisms.
- 3.2 Negotiations between the UK and EU about their future relationship after the end of the Transition Period have been underway for around 8 months. The purpose of the future relationship negotiations is to create a framework for cooperation to continue at the end of 2020 in areas of shared interest, like trade, law enforcement, transport, and energy. The negotiations’ original timetable anticipated agreement in time for Member States’ political leaders to endorse at the European Council on 15-16 October 2020. That timetable has slipped significantly and, at the time of writing the present report, the shape and content of the future relationship between the UK and EU are yet to be resolved.
- 3.3 By the time Council considers this report, there will be 14 days until the end of the Transition Period at 2300 hours on Thursday 31 December 2020. According to the accounts of the parties themselves, negotiations between the UK and EU have proved challenging. Three issues have proved more challenging than others. These are:
 - Fishing rights
 - Competition rules
 - The arrangements for enforcing rules between the parties.
- 3.4 Whether or not agreement on future relations is reached, the end of the transition period will bring significant changes. Come January 1, 2021, the UK will no longer be part of the EU's Single Market and Customs Union, and will be free to implement trade deals struck with third countries. If there is no agreement, trade between the two will default to World Trade Organization (WTO) rules - with tariffs set to be introduced on many imports and exports, which will push up costs for firms and consumers.
- 3.5 It should be emphasised that even should agreement be reached, for example, in the form of a narrow Free Trade Agreement, this may diminish additional barriers to trade and mobility but significant barriers are likely to remain. For example, sanitary and phytosanitary checks (meaning measures for control of plant diseases, especially in agricultural crops) can be expected to be required on exports to the EU of food products, live animals, products of animal origin, animal feed as well as plants and plant products.
- 3.6 The end of the Transition Period, and the ongoing COVID pandemic combine to create an uncertain and exceptionally challenging planning environment.

- 3.7 The Council's Brexit Response Team (BRT) has led efforts within the Council to plan and prepare for the UK's exit from the UK. This draws on officers and expertise from across the Council and reports to the Corporate Management Team (CMT), and, ultimately, through CMT to members.
- 3.8 Central to our approach is the assessment of risk, based on the Council's Corporate Brexit Risk Register. The register is built around the assumption of:
 - A Reasonable Worst Case Scenario (RWCS)
 - This assumes that the UK leaves the EU without an overarching agreement

It should be emphasised that this is a standard approach with respect to Brexit Planning and the RWCS assumption is drawn:

- Directly from the Scottish Civil Contingencies Planning Assumptions
 - Derived from UK planning assumptions but developed to identify the Scotland level impacts of a no deal UK exit from the EU
- 3.9 The remainder of this report is concerned with the practical impacts of the end of the Transition Period, and what the Council plans to do in respect of a range of key potential impacts. It must be recognised that in some instances the Council has no means to address the risk in question and in others its capacity to mitigate a risk is strictly limited. An example of this is potential Border disruption affecting exports from the UK to the EU. About this, there is little the Council can do directly. However, the Council can ensure that exporting businesses are as well supported as possible in relation to the regulatory paperwork for Export which requires to be issued by the Council.
 - 3.10 A further general point should be made. In some cases, the Council will not be the exclusive owner of a risk. There may be a shared responsibility with others – typically other public bodies. An example of this is in the area of Public Disorder and Community Tensions. While the Council has an interest in supporting good community relations, the lead agency is Police Scotland.
 - 3.11 Lastly, the Brexit Response Team and related sub-groups have met over 30 times to formulate and plan the Council's response to Brexit and, now, the end of the Transition Period. There have been five presentations to Elected Members and two Council Reports, 28 March 2019 and the present report.

4 RISK PLANNING

4.1 PEOPLE

a) General

Following the UK's departure from the European Union (EU), all EU, European Economic Area (EEA) and Swiss citizens who want to live in the UK after 30 June 2021 need to apply for a new immigration status. The EU Settlement Scheme (EUSS) has been set up to grant this status. Successful applicants will be granted either 'settled status' (essentially 5 years continuous residence in the UK confers a permanent right to remain), or 'pre-settled status' (which confers a right to apply for settled status once continuous residence of 5 years has been attained).

b) Council Workforce and Live Borders Workforce

There are a very limited numbers of EU/EEA nationals within the Council's workforce (less than 15 individuals). Those individuals who may be affected by changes in UK Migration law have been identified and specific support has been offered to them. The picture is similar within Live Borders with very low numbers of potentially affected staff identified, and support offered.

c) Social Work Clients and other individuals to whom the Council has a legal duty

Local authorities have a responsibility to act in the best interests of their looked after children and care leavers, and there are certain adults who may lack capacity where the Council has a legal responsibility to make decisions to protect the individual in question. This includes ensuring that any immigration and nationality issues are addressed early and with the long-term well-being of the child, young person or adult in mind. The Council has identified less than 20 children and less than 50 adults who require to be supported in relation to their migration status. Importantly, appropriate interventions have been adopted for each individual. This may or may not include application to the EUSS, subject to the circumstances of the individual.

d) EUSS in General

- i. The EU Settlement Scheme remains open until 30 June 2021 for those resident in the UK prior to 31 December 2020. Retention of EU/EEA citizens who have made the Scottish Borders their home is an economic and community cohesion issue. The Scottish Borders has been heavily reliant on inward migration, much of it from the EU, to support workforce requirements in a region with historically low levels of unemployment. It is known that across the South of Scotland, 800 migrants are required each year for the next 10 years to maintain a stable population. Changes to UK Migration Policy from 1 January 2021 will establish a principal salary threshold

for migrants greater than the median salary in the South of Scotland making it more difficult recruit to jobs in social care, manufacturing and agriculture where migrant workers have been most needed.

- ii. Therefore, a specific risk mitigation has been seeking to increase the percentage of EU/EEA nationals resident in the Scottish Borders who successfully apply for Settled Status. This has revolved around a communications strategy intended to signpost potential applicants to the scheme, and to encourage them to apply. As well as traditional means of communication, such as through SBConnect, the Council has used its social media presence in an effort to connect with potential applicants.
- iii. Based on an ONS population estimate of 4000 EU/EEA citizens in the Scottish Borders, the number of applicants to the end of June 2020 (the last date at which figures at local authority level were available) was 2560, or 64% of those eligible to apply. This means, on the face of the statistics, 36% of those eligible to apply have not done so.
- iv. In light of the above, the Council has sought to augment uptake by working in partnership with the Citizen Advice Bureau and the South of Scotland Enterprise Agency to try and reach numbers of potential applicants at scale through employers known to employ EU/EEA nationals. It is believed that this effort is working with meaningful contact made with a number of employers. This permits communication about EUSS across the workforce, and for support to be provided to individual applicants by CAB, which has specific Scottish Government funding for that purpose.
- v. The Council has also supported the work of the Citizens' Rights Project (CRP), a Scottish Government supported project, providing information, advice and support for EU citizens in Scotland. This has included disseminating training materials for appropriate frontline workers in the Council to strengthen signposting to the individual support which the CRP and CAB can provide.
- vi. Lastly, the Council is directly responsible for supporting those who may have difficulty with the digital EUSS application process. This is called Assisted Digital Support. Applicants who receive this support require to be referred directly to the Council by We Are Digital acting on behalf of the Home Office. Numbers of applicants through the scheme have been very limited.

e) Supporting People

- i. The risks in this area are not directly linked to the EUSS, but are concerned with how the Council, working with others, protects

and supports individuals, families and communities in the context of the social and economic challenges which are expected to attend the end of the Transition Period. Some of these risks are specific to EU/EEA nationals e.g. access to benefits paid by the Council where the individual fails to apply for EUSS by the deadline of 30 June 2021, or non-qualification for central government benefits. However, most risks are of a general nature and there is a very strong overlap here both with the COVID response and with the Council's existing activity in areas, which include unemployment, poverty/child poverty, homelessness, food banks.

- ii. In a reflection of the integrated nature of the challenges being addressed, there is a particular issue around rapidly growing unemployment as a result of the coronavirus pandemic, affecting young people and those over 50. CMT has established a sub-group to lead on Employability, involving 3 directors, is building up its contribution to the Borders Skills and Learning Partnership, as well as working with Team South of Scotland partners. Working with partners, the Council also has a critical responsibility in progressing actions under its Scottish Borders Local Child Poverty Action Plan 2020-21.

4.2 Procurement

a) General - legislation

If no agreement is reached before the end of the transition period, then procurement legislation which the Scottish and UK Government has previously introduced in preparation for a no-deal exit from the EU will take effect. In effect, this new legislation replicates the existing rules.

The Council will continue to use Public Contracts Scotland (PCS) as normal to create and publish their contract notices. PCS will then automatically transfer notices to the new UK Find a Tender Service (FTS) for public contracts (above threshold) which commence on or after 11pm on 31 December 2020. This is a new service which replaces the role of Tenders Electronic Daily, the Official Journal of the EU (OJEU/TED).

b) Contingency planning

As the UK's exit from the European Union is coinciding with a second wave of the virus over the winter months, Services have been working to develop plans to mitigate any procurement risks connected with the dual impact of health and economic factors.

Our sectoral partner Scotland Excel is developing, on behalf of its members, contingency planning along with appropriate mitigation measures across key commodity groups. This approach covers PPE, Catering, and Construction & Social Care.

c) Local considerations

Our key contracted suppliers have been planning for Brexit over the last two years and are confident that mitigation measures put in place will support the initial period post transition with respect to deliveries of orders from Europe, but, owing to friction caused by new processes and procedures at the UK/EU Border, these may take longer than usual. The fixed pricing in place with key contracts should allow us, in the short to medium term, to avoid any significant price fluctuations in the market place resulting from any Brexit uncertainties, though increases of price in relation to future contracts is a clear risk.

Turning to particular areas: locally, our catering service has undertaken advance buying of food supplies and has identified alternative products should any shortages occur. This type of mitigation applies across all Councils and therefore Scotland Excel provides strong national support by undertaking regular communication with key suppliers on market trends and supply chain issues.

Regular engagement has been undertaken with our external Social Care Providers to understand any risk relating to the scale of EU nationals within their establishments. Positively, the level is very low, with those individuals taking forward the process to ensure settled status in place.

d) Financial Risk

Tariffs, export / import issues: in the medium and long term, there are likely to be inflationary impacts upon the prices of goods as result of the UK no longer being part of the EU Single Market and Customs Union. Reaching agreement with the EU over a free trade agreement, and with other countries or trading blocs should mitigate some of these impacts, but is unlikely to mitigate all of them.

If there is a depreciation of the value of sterling, together with any increased costs of imports, this could see inflation rising. Consequently, the cost of living, including interest rates could rise. This may have an impact on almost all frameworks.

Additional hygiene and safety measures related to the COVID-19 outbreak have already lengthened lead times and driven costs up for suppliers.

Ongoing communication with suppliers is crucial to ensure the potential risk of increased costs can be identified as early as possible. NHS Borders is part of the Brexit Response Team (BRT) and leads on matters relating to medicines and medical supplies.

The BRT is confident that all Services have suitable mitigation plans in place to react to external circumstances as they arise.

4.3 Economy

There are essentially three elements to the Council's risk planning around the Economy.

a) Business Support

The primary risk here is that a lack of resilience among private businesses and the local economy in the Scottish Borders may mean that many businesses fold or become less profitable resulting in loss of jobs and significant weakening of the local economy. The new trading environment with the EU is expected to impact business costs through tariffs, regulations and potential currency changes which may impact business viability. Thus, a key question is how the Council and its partners can best support businesses in the context of COVID including into the next financial year should current national support arrangements change. Business Gateway Advisers were signposting to National Brexit tool, and, through increased direct interaction, asking businesses about their preparation, and providing support. COVID has had a twofold impact: understandably for much of the last year short term survival during lockdown has been the overriding concern of businesses, and the pandemic has made practical engagement more challenging. A Team SOS approach has become increasingly important with SOSE now the principal provider of business support. However, SBC continues to input into weekly Team SOS leadership group meetings, and SDS and PACE are significantly engaged within Team SOS with respect to business failure, unemployment and employability.

b) Trading Environment

- i. Closely related to the preceding paragraph concerning Business Support, the question arises as to what the Council can do in seeking to create awareness of new post-transition rules and to facilitate the most positive trading and regulatory environment it can, as far as its responsibilities allow. When the UK leaves the transition period with the EU, a number of new processes and procedures will be required to ensure UK exports are able to make it to the EU market, including the requirement for Export Health Certificates (EHCs) to ensure continued export of animals and animal products to the EU and to Northern Ireland. EHCs will be required from the end of the transition period irrespective of the nature of the future relationship. Without knowing the content of a possible UK-EU trade deal it is impossible to be certain about which goods will require an EHC, but they potentially cover: meat, dairy, hides, eggs, pet food, blood products and even used riding boots, as well as fish and seafood for which councils are the competent authorities in relation to EHC sign off for fish and seafood. The Council

believes it should be able to cope with fish and seafood EHC's on account of the businesses in the Scottish Borders, which require EHCs, having made adjustments to their operations sufficient to negate the need for issue of multiple certificates.

- ii. In another area where there will be new post-transition requirements, the SBC Environmental Health Officers have had training to enable them to inspect fishing vessels and are confident about being able to deliver the required service.

c) Replacement of EU Funding

- i. The Scottish Borders previously benefitted significantly from EU funding: both subsidies (e.g. subsidies pursuant to the Common Agricultural Policy CAP and Common Fisheries Policy CFP) and structural funds, designed to support economic development across all EU countries. In 2016, for example, EU funding from the CAP to the farming industry in the South of Scotland amounted to 23%, almost a quarter, of the Scottish total. The Council (again with partners) has responsibility to ensure that the Scottish Borders is as well placed as possible to garner maximum benefit from the replacement of EU funding. In the last few weeks there have been developments in relation to the replacement of structural funds. Scottish Government issued details of its Scottish Shared Prosperity Fund on 19 November 2020. This details approx. £1.3bn of funding with distribution likely to be based on Regional Economic Partnerships. On 25 November, the UK Chancellor of the Exchequer referred to UK SPF in the UK Spending review, saying it will "help to level up and create opportunity for people in places across the UK" delivered through a UK wide framework matching receipts from current EU structural funds. It is understood that 2021/22 will act as a transition year with a newly established Community Renewal Fund bridging the current EU Structural Fund Programmes and the UKSPF. It is expected that a prospectus for this transition Fund will be published in late January and will likely amount to around £220 million for the whole of the UK. It is unclear how the fund will be dispersed in Scotland.
- ii. It is expected that the full fund will be rolled out in April 2022 based on a 5 year programme, but again full details are not yet available. Officers continue to monitor the position carefully.

4.4 Civil Contingencies

The Risk Register identifies a number of civil contingencies risks. These risks include, for example, 'Border Disruption' meaning delays and reduced flows of trucks carrying goods between the UK and EU. These risks are drawn UK Cabinet Office's 'Set of Reasonable Worst Case Scenario Planning Assumptions to support civil contingencies planning for the end of the Transition Period'. Marked 'officially sensitive', they have been treated

confidentially for the purposes of the report. However, officers are satisfied that arrangements are in place to respond to effectively to these risks, specifically:

- All Local Resilience Partnerships, including that in the Scottish Borders, have now completed Readiness Assessment based on UKG RWCS planning assumptions.
- Scottish Borders Emergency Planning Officers have attended EU Exit sessions facilitated by the Scottish Resilience Development Service (ScoRDS).
- The Scottish Resilience Partnership EU Exit Sub Group continues to meet fortnightly, issuing guidance to Local Resilience Partnerships as appropriate.
- An “all risks” National Co-ordination Centre (NCC) will soft-start on 7 December; becoming fully operational (0700-2300hrs) from 28 December.

5 IMPLICATIONS

5.1 Financial

It is anticipated that there may be costs impacts for the Council once the Transition Period comes to an end. Continuing uncertainty about whether there will be an agreement between the UK and EU and what the content of that agreement will be have made assessment of such costs extremely challenging. It is anticipated that additional costs will result primarily from increased demand for Council services. It is intended that all identifiable potential impacts be considered as part of the Council’s budget planning process.

5.2 Risk and Mitigations

This is a report about the risks associated with the end of EU Transition Period. Accordingly, the report describes all of the key risks that have been identified in relation to the end of the Transition Period, while the Brexit Risk Register from which this report is drawn details all elements of risk with appropriate mitigation plans.

5.3 Integrated Impact Assessment

- (a) As this report does not concern a new or revised Council Policy/Strategy/Practice, no Integrated Impact Assessment has been prepared. However, potential impacts have been identified in the report in relation to:
- employment opportunities for young people and people aged 50 and over;
 - negative consequences for EU/EEA citizens who wish to continue to reside in the Scottish Borders but fail to successfully apply for Settled Status
 - increase of the inequalities of outcome caused by socio-economic disadvantage (pursuant to the Fairer Scotland Duty).

- (b) These impacts are recorded in the report and in the Risk Register from which the report is drawn, together with appropriate mitigation actions. Projects to implement specific initiatives will be individually impact assessed.

5.4 Acting Sustainably

Potential economic, social or environmental impacts are highlighted in the body of the report with mitigation actions, where appropriate.

5.5 Carbon Management

No effects on the Council's carbon emissions have been identified in relation to this report.

5.6 Rural Proofing

This report does not concern a new or amended policy or strategy.

5.7 Changes to Scheme of Administration or Scheme of Delegation

No changes to the Schemes of Administration or Delegation are required by the recommendations in this report

6 CONSULTATION

- 6.1 The Executive Director (Finance & Regulatory), the Monitoring Officer/Chief Legal Officer, the Chief Officer Audit and Risk, the Service Director HR & Communications, the Clerk to the Council and Corporate Communications have been consulted and any comments received have been incorporated into the final report.

Approved by

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Title

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Background Papers: Previous Minute Reference:

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.

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