

Report to: Lewes District Council Cabinet

Date: 11 February 2019

Title: Strategic Implications for the Council of the UK leaving the European Union

Report of: Catherine Knight, Assistant Director of Legal and Democratic Services

Cabinet member: Councillor Andy Smith, Leader of the Council

Ward(s): All

Purpose of report: For Cabinet to note the key implications for the Council and Lewes District of the UK leaving the European Union

Decision type: Non-key

Officer recommendation(s): (1) To note the report
(2) To require the Assistant Director of Legal & Democratic Services to provide further updates as the national situation over Brexit, and its effect on the Council, becomes more certain

Reasons for recommendations: To assist the Council in preparing for Brexit

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1 Introduction

- 1.1 At the full Council meeting on 26 November 2018, the following motion was carried: that a report be written by February 2019 considering the strategic risks arising from Brexit that will affect the Council and District.
- 1.2 At the time of writing, the national situation regarding Brexit is highly fluid and unpredictable. There are a number of possible scenarios, depending on the outcome of negotiations, motions, amendments, debates and votes by MPs, and on the position adopted by the European Commission in response.
- 1.3 Officers will prepare further briefings for Cabinet as the national situation evolves.

2 **Brexit Scenarios**

2.1 Of the various possible outcomes, a no-deal Brexit would probably represent the biggest risk to the Council. A 'no-deal' is where the UK fails to reach agreement on the terms of its departure from the EU. As the law currently stands, the UK ceases to be a member of the EU at 11.00 pm on 29 March 2019, and under a no-deal scenario the UK would cut its ties with the EU overnight without a transition period that would otherwise provide UK businesses and other bodies (including local authorities) with at least 21 months in which to adapt to a post-Brexit operating framework.

Being immediately outside the EU single market and customs union, the UK would be subject to World Trading Organisation (WTO) terms on trade while at the same time attempting to negotiate new trade deals with the EU and other countries.

2.2 A no-deal Brexit is the default position if the Government is unable, by 29 March, to secure a resolution in the House of Commons approving the withdrawal agreement (whether in its original form or as amended) which it has reached with the EU.

2.3 Leaving the EU on 29 March could be delayed only if the UK requests an extension to the Article 50 process and the EU agrees to it. Such an extension would require an amendment to the European Union (Withdrawal) Act 2018, being the legislation that specifies "exit day" as 29 March.

2.4 An extension to Article 50 may be required to allow sufficient time to allow the UK to enter into fresh talks with the EU over an amended withdrawal agreement.

2.5 Similarly, a second referendum could only take place if, among other legislative changes, the Article 50 period were extended.

2.6 Officers will closely monitor the situation at Westminster as details of proposals, agreements and new/amended legislation emerge. In the meantime officers will prepare for Brexit on the basis of a no-deal, as this outcome would have the most immediate consequences from 30 March. For the same reason, most of this report focuses on the Council's position in the event of a no-deal exit.

2.7 Officers will also be guided by the technical notices issued by Government on how certain economic activities should function under a no-deal Brexit.

2.8 Leaving the EU under an agreement reached with the EU Commission is likely to have a softer impact on local authorities (and other sectors too). Although Parliament have voted against the Withdrawal Agreement reached between the UK Government and the EU Commission, it is likely that if a parliamentary consensus can be reached on an amended agreement, that deal would still feature a transition period during which the UK would move from being an EU member state to being outside the EU.

2.9 The length of transition would have to be confirmed, but if modelled on the

transition envisaged under the original withdrawal agreement, it would end on 31 December 2020, with an option to extend by up to two years.

3 National Implications of a No Deal Brexit

3.1 In October 2018 the Local Government Association (LGA) produced a 'no-deal' briefing that identifies (a) the top-line issues for councils and (b) where clarity is needed from Government. Faced with a no deal, the LGA emphasises the local government sector would need:

- clarity on the continued employment and residency for non-UK EU citizens running vital public services;
- compensation for the additional costs to councils from any new tariffs on imports from the EU;
- a guarantee for local regeneration currently funded from the EU (*N.B. Government has already responded positively in this area*);
- additional capacity and resources to fulfil our regulatory responsibilities at ports of entry or inland if there are no checks at ports and/or EU third country controls require it;
- immediate UK replacements where we rely on EU processes at the moment (e.g. procurement); and
- the opportunity to immediately reform some EU laws which constrain local economies (such as procurement and state aid).

3.2 To some extent, these issues are addressed by the Government's technical notices.

3.3 Attached to its 'no deal' briefing, and provided at Appendix 1 to this report, the LGA summarised the issues contained in the technical notices and, where relevant, indicated the impact on local government.

4 Local Implications of a No Deal Brexit

4.1 Research undertaken by 'The UK in a Changing Europe' think-tank highlights the huge difficulty in accurately predicting the short-term impacts of a No Deal Brexit, although a severe recession is a possibility. Key areas of concern highlighted include:

- A negative impact on consumer and business confidence, which could impact upon demand for goods and services (i.e. expenditure).
- Rising prices (particularly for businesses) due to a fall in value of Sterling and the need to replace components manufactured in the EU with those from elsewhere that are potentially more expensive.
- Potential for rising consumer prices as businesses are forced to pass on increased costs, but also the risk of rising inflation further impacting on the cost of living relative to real wage increases.

4.2 The South East is the most heavily engaged region in terms of cross-border trade. In 2017, the region exported £45.3 billion of goods overseas – of which 49% were destined for the EU. The potential impact on the regional economy is therefore significant. It is important to note, however, that issues related to Brexit

are national in scope. There is very little that the Council can do to influence the wider national agenda and it's important to highlight the enormous uncertainty that exists nationally at the current time.

- 4.3 Other research undertaken by the UK Trade Policy Observatory with the University of Sussex estimates that a no-deal Brexit could result in a 2.3% reduction in employment in the Lewes district. Further, any sector of the economy with a reliance on EU nationals (e.g. tourism and hospitality) may experience a shortage of suitably skilled staff if the new relationship between UK and the EU hinders the free movement of people.
- 4.4 As the Newhaven Port Health Authority, the Council is, at that point of entry into the UK, responsible for public health controls, including food safety and the control of infectious diseases.
- 4.5 At present (i.e. pre-Brexit) the Council's Port Health Authority controls in Newhaven are limited to checking manifests electronically and quarterly visits and inspections of cargo lorries entering the UK. Imports consist mainly of low risk food (not of animal origin) and, as the majority of food entering via Newhaven originates from the EU, few controls are necessary.
- 4.6 Under a no-deal Brexit, however, enhanced checks and new documentation may be required under a no-deal Brexit because the UK would no longer be part of the EU import/export regime, including the free movement of goods. This could further impact on the surrounding Newhaven economy due to increased congestion created by these further checks on entry/exit.
- 4.7 Furthermore, the nature of food imported via Newhaven may change, depending on difficulties at other ports (for example if operators experience lengthy delays there), which could mean that products of animal origin become more likely. Should this occur, the Council would have to step up its checks in order to meet its port health obligations.
- 4.8 A risk assessment associated with this Port Health Authority activity is provided at Appendix 2.
- 4.9 To co-ordinate a no-deal Brexit response at county and regional level to the possible implications for Newhaven Port, the Council is participating in taskforce meetings held with ESCC Highways, Emergency Planning, Sussex Police, Border Force, East Sussex Fire & Rescue, Newhaven Port and Properties Ltd and the ferry operator (DFDS).
- 4.10 In addition to the work of the Port Authority Task Force meetings, various other elements of joint no-deal Brexit planning is being undertaken across the East Sussex Emergency Partnership, of which this Council is a member along with Eastbourne and Hastings Boroughs, Wealden District and East Sussex County. These include addressing issues such as business continuity, emergency planning, and general risk management, with specific training exercises also scheduled.
- 4.11 Export Health Certificates will be required for exports of all animal products from

the UK to the EU. In respect of such products emanating from sites within the Lewes district, the Council's Food Safety would be responsible for issuing these certificates if satisfied, following inspection, that premises reached the required standards of food manufacture/processing and storage.

- 4.12 If the UK does leave the EU on 29 March with or without a deal, the UK will not be putting forward candidates for the European Parliament elections in May 2019. If, however, the Article 50 timescale is extended beyond May, the UK would still be part of the EU and would theoretically be entitled to return candidates for that election. Further guidance is awaited, but the Council should prepare for the possibility of having to administer that election on top of the local elections already scheduled.

5 Corporate plan and council policies

- 5.1 A no-deal Brexit could impact upon growth and prosperity across the District. The Council will work with its strategic and economic partners to mitigate as far as practicable any risk to jobs, skills and training opportunities.
- 5.2 The Council's Corporate Risk Register has been reviewed in liaison with Internal Audit in the light of potential risks associated with a no-deal Brexit.

6 Business case and alternative option(s) considered

- 6.1 The nature and timing of the UK's departure from the EU is not within the Council's control. At the time of writing, leaving the EU on 29 March remains the default position; it follows that the Council should make appropriate preparations for such an outcome.
- 6.2 If an amended withdrawal agreement is approved by Parliament and legislation passed in time for 29 March, or if the UK and EU agree a time extension to Article 50, the Council will re-appraise the local impact.

7 Financial appraisal

- 7.1 In its capacity as Newhaven Port Health Authority, the Council would face particular costs associated with a no deal Brexit, as identified in Appendix 2. The estimated amounts consist of one-off costs of £1,300 and recurring monthly costs of up to £10k.
- 7.2 Provision for these costs should be made as a contingency, to be called upon should the UK leave the EU on 29 March on a no deal basis.
- 7.3 On 28 January 2019, the Government announced funding to councils to help them "prepare for an orderly exit from the EU and do appropriate contingency planning". District councils will receive £35,000 across 2018/19 and 2019/20 (hence £17,500 in each of these years).
- 7.4 In addition, the Council may benefit from a share of extra funding (£1.5 million in total) to be allocated in 2018/19 only to local authorities "facing immediate impacts from local ports." Government is due to announce the allocation and

distribution of these specific funds shortly.

8 Legal implications

- 8.1 Under the European Union (Withdrawal) Act 2018, EU derived legislation (such as EU regulations and directives) continues to have effect in the UK after Brexit until such time as Parliament passes amending legislation.
- 8.2 To prepare for Brexit, section 8 of the Act permits a Government Minister to make regulations to ensure that existing UK legislation is amended in such a way as to render it operable and effective in a wholly domestic context.
- 8.3 Many government departments are engaged in drafting these statutory instruments. Under a no deal scenario, this amending legislation would have to come into force immediately after exit day (currently 29 March), for the UK to have a workable legal framework as a non-EU country. On the other hand, were the UK's exit to be followed by a transition period, the amending legislation could be introduced at the appropriate time within transition.
- 8.4 The Council's lawyers are tracking the publication of relevant statutory instruments, noting in particular the date they become effective (which itself is dependent on the final Brexit outcome). Lawyers will advise relevant council officers of any changes of process or procedure required under this legislation.
- 8.5 Lawyers in Local Government (LLG) has prepared a policy paper setting out their position (as at January 2019) on the more prominent legal implications of Brexit, together with an examination of the Brexit impact on local government more broadly. It also raises questions where it feels clarity from MHCLG would be beneficial. A link to the paper is provided at paragraph 12 below.

Lawyer consulted: 17.01.2019

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9 Risk management implications

- 9.1 Not keeping Cabinet informed of Brexit implications for the Council and the Lewes District would be a risk, given the impact that certain Brexit scenarios – in particular leaving the EU at the end of March without a withdrawal agreement – could have on certain Council operations.
- 9.2 This risk will be managed by continuing to keep Cabinet informed as necessary. Depending on the significance of developments in Westminster and/or Brussels, officers may need to convene an urgent Cabinet meeting at short notice.

10 Equality analysis

- 10.1 It is not considered that a no-deal Brexit would have any disproportionate impact across the Lewes district on any group with a characteristic protected under the Equality Act 2010.

11 Appendices

- Appendix 1 – LGA ‘No Deal’ briefing
- Appendix 2 – Port Health Authority risk assessment

12 Background papers

12.1 The background papers used in compiling this report were as follows:

- How to prepare if the UK leaves the EU with no deal (first published August 2018 by Dept for Exiting the European Union) - <https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal#overview>
- Brexit ‘No Deal’ briefing for Councils (LGA, October 2018) - <https://www.local.gov.uk/parliament/briefings-and-responses/brexit-no-deal-briefing-councils>
- Cost of No Deal, published by The UK in a Changing Europe - <http://ukandeu.ac.uk/wp-content/uploads/2017/07/Cost-of-No-Deal.pdf>
- The Brexit Burden: A constituency Level Analysis for Hampshire and Sussex, published November 2018 by the UK Trade Policy Observatory - <http://blogs.sussex.ac.uk/uktpo/publications/the-brexit-burden-a-constituency-level-analysis-for-hampshire-and-sussex/>
- LLG’s Policy Statement on Brexit - https://s3.amazonaws.com/lawingov_production/system/redactor_assets/documents/1922/Brexit_Position_Statement_by_LLG_for_MHCLG.pdf