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## **NORTH AYRSHIRE COUNCIL**

**17 November 2020**

### **Audit and Scrutiny Committee**

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**Title:** **UK withdrawal from the European Union (Brexit)  
Update report**

**Purpose:** To provide an update on the current position regarding the UK's withdrawal from the European Union on 31 December 2020

**Recommendation:** It is recommended that the Committee note the current position in respect of the UK's withdrawal from the European Union and consider whether it wishes a further report to be submitted to the next meeting.

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## **1. Executive Summary**

- 1.1 This report provides an update on the UK's withdrawal from the European Union. The position is still very unclear, which means that it is difficult to plan for risks. However, a significant danger is that EU-exit compounds and deepens the economic impacts of COVID

## **2. Background**

- 2.1 This provides an update to the report which was submitted to the previous Committee meeting. At that stage the deadline for conclusion of negotiations between the UK and EU was 15 October, although the final European Parliament meeting is 14 December. This deadline was extended to 15 November, although at the date of writing, there are reported to be significant areas of disagreement and it looks increasingly likely that negotiations will go the wire.

- 2.2 The deadline of 15 October was set because any deal which extends beyond fisheries, trade and competition policy, (areas where the EU has exclusive competence in Europe) will require approval not only by the EU, but by national and sub-national parliaments across the EU. Even if a comprehensive agreement is reached, it is highly unlikely this could be put into legal form and be approved by all EU states prior to the date of the UK's

departure. Thereafter, full implementation could take months or years. From that perspective, it is likely that a departure on 1 January will result in problems, regardless of whether a full deal is agreed.

2.3 In trying to identify and quantify risks, the following are the key parts of the jigsaw: -

- The Withdrawal Agreement ratified by the UK Government in October 2019;
- The Internal Market Bill currently before the UK Parliament;
- The UK Withdrawal from the European Union (Continuity) Bill 2020 currently at stage 2 before the Scottish Parliament; and
- the terms of any agreement which may or may not be struck between the UK and EU.

### **The Withdrawal Agreement**

2.4 It is important to note that the signing of the Withdrawal Agreement last year has lessened some of the impacts of a no-deal EU-exit. Article 4 says that both the agreement and any EU law applying to the UK under the agreement should have the same effect as it has in EU member states. In other words, existing EU law remains in place until changed. This includes “direct effect”, which allows private parties to invoke their rights under the withdrawal agreement before both UK courts, as well as EU member states. It gives EU law supremacy over domestic law – the courts could disapply any domestic legislation which is incompatible with EU law. It also protects the rights of UK citizens living in the EU and EU citizens living in the UK, as well as their family members, to continue to live and work there. This applies to citizens who move to the UK or the EU during the transition period. These citizens will be able to apply for permanent residence (called ‘settled status’ in the UK) if they have been living in that country for five years continuously.

### **The Internal Market Bill**

2.5 The aim of the Internal Market Bill is to standardise open market trading arrangements across the whole of the UK, by proposing to enshrine in law two principles to protect the flow of goods and services in the UK’s Internal Market: the principle of mutual recognition, and the principle of non-discrimination. The UK Government’s view is that this is required to support our international competitiveness and maintain our attractiveness for international investment.

2.6 The broad issues relating to the Internal Market Bill were detailed in the previous report to Committee. Two further updates can be provided. Firstly, the Bill proposes to standardise trading arrangements across the whole of the UK, including Northern Ireland. The implication is the Irish border becomes the customs and trade border between the UK and EU. This is contrary to both the Withdrawal Agreement and the Good Friday Agreement, both of

which are international treaties. As a result, the UK is facing EU legal action after failing to explain why it is planning to break international law over Northern Ireland. The Commission alleged that the UK had breached its obligation to act in good faith, as set out in Article 5 of the Withdrawal Agreement. The Bill is currently before the House of Lords who are expected to amend these provisions, albeit the UK Government may choose to put them back in. Not surprisingly, the Scottish Government have also refused its consent to the Bill.

2.7 Secondly, commentators have speculated that the current delay in negotiations may be partly influenced by a desire by the UK Government to know the result of the US Presidential election. While the UK Government has denied this, it is likely to be a consideration for a number of reasons. Firstly, President-Elect Biden said on 16 September that any trade deal with the UK is contingent on respect for the Good Friday Agreement and preventing the return of a hard border. Moreover, when previously serving as Vice President in the Obama administration, that administration's view was that a trade deal with the UK would not be a priority.

2.8 The background to the Internal Market Bill is also worth consideration in the context of the US election. Right-wing commentators in the UK have long complained that the sovereignty of the UK parliament was constrained by membership of the EU. In other words, the ability of a UK Parliament to legislate was constrained by social policy made in Europe on matters such as human rights, workers' right, the environment, etc. Left-wing commentators fear that the Internal Market Bill is designed to do the opposite, to enforce free-market trading policies across the UK. In turn this would pave the way for a trade agreement with the USA, binding the UK in perpetuity into US-style free market rules. In short, the EU social policy constraints previously imposed on the UK would be replaced by free-market US-style constraints. If this analysis is correct, the result of the US Presidential Election and whether there is now a real possibility of concluding a trade agreement during the lifetime of this UK Parliament is likely to be a very significant consideration.

### **European Union Continuity Bill**

2.9 The UK Withdrawal from the European Union (Continuity) Bill 2020 is currently being considered by the Scottish Parliament at stage 2 of the parliamentary process. The background to the Bill is that all the law in force that is derived from the UK's EU obligations continues in force from the end of 2020 unless and until modified by subsequent domestic legislation. This body of law is described as 'retained EU law'. However, EU law will not stand still. It is continually being added to and revised. It is the Scottish Government's view that the extent to which devolved law aligns itself with the law of the EU should be a decision for the Scottish Parliament to take, and not the UK Government. If enacted, the Bill will give Scottish Ministers the power to make secondary legislation for the purposes of maintaining alignment with EU law in devolved areas.

## **Negotiations**

- 2.10 As regards the current state of negotiations between the UK and the EU, discussions still continue. As at the date this report is written it is understood that there may be some understanding between the two sides on trade, energy, transport, and social security. The 'level playing field', competition/state aid rules, fisheries and how a deal would be enforced remain unresolved issues.
- 2.11 If a deal is not done the UK will trade with the EU according to the default rules set by the World Trade Organisation. The Prime Minister has pointed out that this is how Australia currently trades with the EU. However, unlike Australia, because of geography and recent history, the UK and EU economies are more closely linked, and 'just in time' supply chains rely heavily on free movement of goods from the EU to the UK. For example, the outgoing Director General of the CBI said in September 2020 that tariff free trade was the difference between the automotive industry staying or leaving the UK, noting that this sector was 40 times larger than the fishing sector. She also pointed out that key sectors such as financial services had been almost absent from negotiations
- 2.12 The National Audit Office have warned of "significant disruption" when the Brexit transition period ends. It advised that it was very unlikely that traders would be ready for checks the EU is due to impose at its borders. It also warned that very limited time remained for UK ports to test IT systems. Even with a deal, traders will face new hurdles, including the need to fill in customs declarations on goods being traded. HMRC estimates it may need to process 270million customs declarations, compared to 55million currently. The issue of where border checks will take place in Northern Ireland is even less clear as a result of the Internal Market Bill.

## **Risks**

- 2.13 As previously, the closer a deal is to a 'no deal', the worse the expected impacts on the UK. A full list of risks is being developed and will be published on the Council's website. As this is currently changing daily, it has not been appended to this report. The impact of the UK leaving the European Union also features in the Council's Corporate Risk Register and is subject to regular review
- 2.14 The potential economic impact remains the key risk. It looks increasingly likely that the free movement of goods between the EU and UK will face new hurdles. Some of these may be short term while new customs procedures, and business processes take time to bed in. The Government's worst-case-scenario is that 40% to 70% of lorries crossing the English Channel will not be ready. This could result in delays in getting goods into the UK, and delays in exports, some of which will result in goods perishing. Efficient supply-chains are based on 'just-in-time', rather than stockpiling and delays are likely to have

a significant impact across all sectors. Other economic impacts will be longer term, particularly if tariffs are imposed. Potential impacts include shortages and increased prices, business failure and unemployment. As usual, this would have the greatest impact on the poorest and most vulnerable in society. Scotland Excel estimate there will be a 10% increase in food costs to local authorities. They have done extensive work with suppliers to protect food deliveries to local authorities

2.15 Both COVID and EU-exit are expected to have negative economic impacts in terms of unemployment and increased levels of deprivation. Some of these are linked, such as the fact that stacking of lorries at ports will now need to consider COVID restrictions. Both will increase the demand on public services. Similarly, the increasing financial cost to Government of dealing with COVID is likely to restrict their ability to intervene to minimise the economic impacts of EU-Exit. Attempts to reduce public sector expenditure are also likely to further extend austerity at a time of greater demand. However, the Community Hubs which have been so effective in providing support during COVID provide an obvious model to continue to provide support if necessary. This is particularly so in circumstances where the impacts are likely to result from a blend of COVID and EU-exit risks.

2.16 The long-term impact of the Internal Market Bill should not be underestimated, particularly if embedded through a trade deal with the USA. Such free market provisions are likely to limit the extent to which any devolved administration can make social policy which effects economy or trade, whether the Scottish Government or the Council. Community Wealth Building is an obvious case.

2.17 In relation to immigration, regulations were recently laid before Parliament. The 'Skilled Worker' route will allow foreign nationals to work in the UK on the basis that they have been offered a skilled job, provided they meet specific requirements. The minimum skills threshold will be lowered from RQF level 6 to RQF 3 (Scottish Highers). In order to make an application, the applicant must be paid at least £26,500 or the "going rate" for the role – whichever is higher. The annual cap across the UK on restricted certificates of sponsorship which currently sits at 20,700 will be suspended. However, there are still likely to be shortages in lower paid roles. In relation to concerns about the Social Care workforce post-EU exit, COSLA has been advised by the Parliamentary Under-Secretary for State that the Migration Advisory Committee was now recommending adding residential day and domiciliary care managers and proprietors, nursing auxiliaries and assistants, and senior care workers to the UK shortage occupation list. COSLA will assess how far this might assist in resolving some of the issues identified by councils.

2.18 A previous high risk related to the fact that Environmental Health officers would be required to issue export certificates for food exports. Scottish

Government Ministers have requested an alternative approach, which involves FSS being responsible for providing the necessary staffing resource at hubs to sign Export Health Certificates (EHCs). Certification would be on the basis of attestation information from the local authority in which the exporting business is located. This approach would ensure that a sizeable proportion of seafood exports can be exported with the necessary signed certificates, thereby relieving the pressure on LAs - who would remain responsible for signing EHCs for exports to non-EU destinations and for local exporters who are unable to or choose not to use one of the hubs. However, primary products would no longer go direct to the EU, they would have to go through the approved premises. There appear to be only 3 or 4 such producers in North Ayrshire and it is hoped there be little impact on NAC.

- 2.19 The Scottish Government have confirmed that the Multi-Agency Control Centre (MACC) for EU-exit will be re-established at Bilston Glen from 7 December. The Ayrshire Local Resilience Partnership (ALRP) have now established a multi-agency EU-Exit Sub-Group chaired by Police Scotland, and have submitted a multi-agency Risk and Mitigation Plan to the MACC.

### **3. Proposals**

- 3.1 The Committee is asked to note the current position and consider whether it wishes a further report to be submitted to the next meeting.

### **4. Implications/Socio-economic Duty**

#### **Financial**

- 4.1 Officers continue to monitor the impact of the EU Withdrawal process on the Council's budget position. The increasing financial cost to Government of dealing with COVID is likely to restrict their ability to intervene to minimise the economic impacts of EU-Exit. Attempts to reduce public sector expenditure are also likely to further extend austerity at a time of greater demand.

#### **Human Resources**

- 4.2 There are no human resource implications arising from this report, other than the issues of organisational capacity referred to in the report.

#### **Legal**

- 4.3 Under the Withdrawal Act UK Courts will not be bound by new decisions of the Court of Justice of the EU (CJEU) made after the transition period ends but will still be bound to interpret retained EU law in line with existing decisions of the CJEU (retained EU case law). The Withdrawal Act, however, confers the

power on the UK Supreme Court and the High Court of Justiciary in Scotland to depart from retained EU case law if they consider it “right to do so.” Following consultation, the Government has now confirmed that, among others, that power will be extended to the Court of Appeal and Inner House of Court of Session, but not to the High Court or the Employment Appeal Tribunal (EAT).

### **Equality/Socio-economic**

4.4 There are no impacts of this report. However, both the terms of a deal and the Internal Market Bill have huge potential impacts. In particular, the UK Government has indicated its intention to ‘modernise’ and depart from the terms of the European Convention of Human Rights.

### **Environmental and Sustainability**

4.5 Again, there are huge potential impacts depending on the final terms of any deal, the Internal Market Bill and the trade deals which the UK enters thereafter. For example, the US tends to put greater weight on competition and free access to markets, rather than the precautionary principle.

### **Key Priorities**

4.6 These terms of the deal and the Internal Market Bill impact on nearly every area of the Council and on all of the priorities.

### **Community Wealth Building**

4.7 The internal market proposals have the potential to significantly restrict the Council’s ability to make social policy tailored to the needs of its communities. This includes community wealth building.

## **5. Consultation**

5.1 Officers from all services were previously consulted in assessing the risks from Eu-exit. This will continue to be the case through an EU Exit Preparedness Group

Andrew Fraser  
Head of Democratic Services

For further information please contact Andrew Fraser, Head of Democratic Services, on 01294 324125.

## **Background Papers**