

Title: **Brexit Risks Update**

Purpose: **To respond to a request from the Audit and Scrutiny Committee for an update on the work the Council is doing in preparation for Brexit.**

Recommendation: It is proposed that the Audit and Scrutiny Committee (a) notes the contents of this report; and (b) agree to receive a quarterly update report on Brexit development.

1. Executive Summary

- 1.1 At the meeting of the Audit and Scrutiny Committee on 29 May 2018 members asked that a report be provided on the findings of the Brexit Officers' Group. This report presents an update of the work that is going on across the Council in preparation for Brexit and to mitigate real and perceived risks.

2. Background

- 2.1 Following the UK's vote to leave the EU, the UK Government triggered Article 50 in March 2017, starting a two year negotiation on a Withdrawal Agreement. On 29 March 2019 the UK will leave the EU and all EU law will transfer into UK law. The UK Government will then decide whether to keep, amend or discard each law. The UK can leave the EU in March 2019 without an agreement, but an 'orderly withdrawal' is the stated desired outcome for all parties.
- 2.2 A phased approach has been taken to the UK/EU negotiations. In December 2017 the focus was on citizens' rights, the UK's contribution to the EU budget and participation in EU programmes and the Ireland/Northern Ireland border arrangements. The next phase concluded in March 2018, with agreement for a 21-month transition period until December 2020 where current arrangements will continue. The UK/EU negotiations are now focused on the future relationship including customs, security, criminal justice, economic co-operation, and a science, research and innovation partnership. The impact of the customs union on Ireland and Northern Ireland still remains a key issue. The aim is to have an agreed Withdrawal agreement between the UK and EU by October 2018 for ratification.
- 2.3 A number of pieces of legislation will implement the UK's withdrawal from the EU. These include the European Union (Withdrawal) Bill, a Trade Bill which would allow the UK to operate its own trade policy after Brexit, a Taxation (Cross-border Trade) Bill which will replace EU customs rules and allow the UK to impose its own tariffs after Brexit, and an Immigration Bill. Several of these bills have
- 2.4 The UK Government published their Brexit White Paper on 12 July 2018. It sets out the sort of
- 2.5 There remains significant uncertainty as to what form Brexit arrangements will take and what specific impacts or opportunities this may have for North Ayrshire. Both the UK and EU have stated that

the potential for the UK to leave the EU in March 2019, moving to World Trade Organisation (WTO) rules, without an implementation period.

- 2.6 Whilst the Government is negotiating with the EU and taking legislation through Parliament to enable Brexit, the Council is engaged through appropriate national, regional and local partnership channels. We are also monitoring developments closely to consider the impact for the area. Currently, there is a lack of detailed information about the implementation plans which will affect North Ayrshire and our residents.
- 2.7 The Council has a strategic leadership role on behalf of the residents and businesses of North Ayrshire. We have taken a proactive, co-ordinated approach to support preparations for Brexit. We have closely monitored national and local developments, and established a cross-council working group to collate our collective cross-service knowledge, producing key reports for the executive leadership team. The continued uncertainty about the nature of the future UK/EU relationship has meant we have been unable to develop detailed impact assessments of specific issues or services. However, we have continued to be proactive in identifying the range of issues and risks that we have considered and the action we have and are taking. Appendix One details these risks. The main concerns for North Ayrshire are around the following areas. These are also detailed in Appendix
- EU citizens / workforce
 - Funding
 - Trade
 - Legislation
- 2.8 The Council recently hosted a Scottish Government Brexit event targeted at EU residents, to provide up to date information on their immigration status post-Brexit. The meeting was a collaborative event with the Scottish Government, and the three Ayrshire Councils. It was well attended, with an extremely engaged audience. A number of Council staff who are potentially impacted by the changes also attended. Appendix Two is the handout provided at the meeting detailing EU citizens rights in the withdrawal agreement. A further event was subsequently held on Arran.
- 2.9 The coming months will bring greater clarity in terms of finalising negotiations, before moving into the transition period. At that point, we will be in a position to begin preparations for the scenario we know will be happening.
- 2.10 Before then we are planning to bring together all Council staff who we know are EU nationals (or may have family members who are EU nationals) to pass on the information provided by the Scottish Government. This will also give us an opportunity to listen to their concerns and use this to inform the work COSLA and the Scottish Government are doing in this area.

3. Proposals

- 3.1 It is proposed that (a) Audit and Scrutiny Committee notes the contents of this report and (b) agree to receive a quarterly update report on Brexit development.

4. Implications

Financial:	There is not enough clarity to know what the financial implications are.
Human Resources:	There is not enough clarity to know what the human resources implications are.

Legal:	There is not enough clarity to know what the legal implications are.
Equality: Children and Young People:	There is not enough clarity to know what the Equality or Children and Young People implications are.
Environmental & Sustainability:	None are currently known.
Key Priorities:	
Community Benefits:	There are no community benefit implications.

5. Consultation

5.1 The Brexit working group contributed to the production of the Appendix.



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For further information please contact Margaret Davison, Senior Manager, Democratic Services on **01294 324138**.

Background Papers

Appendix One - Issues, Potential Impacts and Council Actions

Appendix Two - EU citizens' rights in the withdrawal agreement

APPENDIX A

Issue	Changes, challenges, risks and opportunities	Actions by Council
Council Workforce	<ul style="list-style-type: none"> Impact on non UK EU Nationals within current workforce Impact on members of the workforce who are married to EU Nationals (no data is held on this). 	<ul style="list-style-type: none"> People Services undertook an evaluation of the workforce to identify Non UK EU nationals. 30 were identified covering a mix of professional, clerical and manual roles. Based on numbers there will be no significant impact to the Council's ability to provide services. City of Edinburgh are finalising letters and guidance for their workforce (with input from an immigration lawyer the council has retained) the material will be shared with other Councils so they can determine if they are of benefit to use. The Scottish Government has asked if all Heads of HR can undertake and share an impact assessment of Brexit on Scottish Council employees. The purpose of this is to understand the total number of EU/EEA nationals employed by each Council who will potentially be affected. In order to provide a collective view of the likely impact of Brexit, each Council has undertaken an assessment of their workforce and returned a survey to COSLA. COSLA will collate responses to inform an action plan to address risks and offer support to employees impacted by Brexit. The Scottish Government will utilise this information to inform their strategy for supporting EU Citizens across Scotland. Attendance at Home Office Session on EU Settlement Scheme Further profiling on Non UK EU Nationals will be undertaken to assess continuous employment with North Ayrshire Council to support applications for 'settled status' enabling individuals to stay indefinitely in the UK.
Workforce	<ul style="list-style-type: none"> Loss of employees from EU27 countries may affect the Council's ability to commission services from the private sector - especially in areas such as construction and social care. Loss of employees from EU27 countries may affect partner organisations such as the NHS. Potential for reduction in workers terms and conditions 	<ul style="list-style-type: none"> Keep up to date with developments in this area and be prepared to respond once there is greater clarity.
EU Migrants	<ul style="list-style-type: none"> EU foreign nationals employed by the Council, NHS and local businesses are facing an uncertain future. Changes to UK Government immigration policy as a result of Brexit may result in fewer EU nationals living locally, with consequential impacts on service demand, local business and population levels. With population in North Ayrshire projected to continue to decline over the coming years, any reduction in immigration into the area could have a significant impact. There are currently around 2000 EU Nationals living in North Ayrshire. 	<ul style="list-style-type: none"> The Council responded to a Scottish Parliament Committee Inquiry into immigration post Brexit. Evidence was submitted to COSLA as part of a joint response to the UK Government's Migration Advisory Committee call for evidence on the economic and social impact of the UK's exit from the EU. A workshop with EU migrants was held on Arran as part of Scottish Government funded research into Scottish immigration policy post Brexit (January 2018). The Council hosted an engagement event for EU citizens in Ayrshire involving the three Ayrshire Council Leaders, COSLA and Scottish Cabinet Minister Mike Russell. The event was well attended and key actions were identified for Governments and Councils. The Council will be coordinating follow up activity with other Ayrshire Councils and COSLA. The Council is also involved in a depopulation group with a number of other local authorities who are concerned about reducing population projections within their areas.

EU Structural & Investment Funds (ESIF)	<ul style="list-style-type: none"> • For almost four decades North Ayrshire has secured support for a range of activity from EU Structural & Investment Funds (ESIF). Current 2014-20 Scottish programmes support employability, social and financial inclusion initiatives. The Council is also leading an Ayrshire wide intervention on support to businesses. (A report of EU funds was presented to Cabinet on 19 June 2018). • UK-EU negotiators agreed in December 2017 that ESIF programmes in the UK could run as normal to end 2020. Scottish Government has, however, decided to set October 2018 as the final date for ESIF applications in Scotland. The aim is to ensure funds are fully committed by 29 March 2019 in order to meet the earlier UK Treasury guarantee of co-finance for projects agreed prior to Brexit. With all UK-EU negotiations caveated by the phrase 'nothing is agreed until all is agreed', the adoption of the earlier date was considered a lower risk, reducing likelihood of unspent funds being returned to the EU. • Despite the earlier application deadline, Scottish Government has advised applicants that it may be possible to extend the timeframe for delivery of approved ESIF projects to 2022-23. • After ESIF, UK government has spoken of a successor domestic funding programme - the UK Shared Prosperity Fund. Little detail is yet available, though a consultation exercise is anticipated in autumn 2018. • There is a potential £8.4bn UK-wide funding gap for local government if EU funded activity is not matched from 2020. 	<ul style="list-style-type: none"> • Work through Scottish Local Authority Economic Development Group (SLAED) to create a strong local authority voice on ESIF policy and technical issues. • Developing funding applications to secure further benefit to North Ayrshire from ESIF's final years in the UK. • Work with COSLA's Brexit Strategic Stakeholder Group to understand issues and how the public sector and communities can best prepare. • Engagement in debates around EU funding replacement(s), including developing and delivering lobby activity at Westminster and Holyrood. • Participation in a range of strategic external partnerships to reflect North Ayrshire's diverse needs: Highlands & Islands European Partnership (HIEP); West of Scotland European Forum (WoSEF); Industrial Communities Alliance (ICA)(ICA has 60+ local authority members in Scotland, England and Wales.). • Responded to UK and Scottish Parliament Inquiries, stressing: <ul style="list-style-type: none"> - the need for successor policy and funding frameworks to target support to where it is most needed - support should be set at a level, and over a time frame, to drive the change needed to address challenges to sustainable competitiveness - economic, demographic and social needs vary considerably across Scotland and this needs to be reflected. Governments ought to move away from a centralist, controlling framework to design successor programmes which will deliver inclusive economic growth. This can be done by giving flexibility at the regional level to determine right mix of aid to businesses, people and investment in economic infrastructure - governments' need to engage soon on the main features of successor programmes to allow planning to ensure opportunities are maximised. • Lobby papers are being taken forward with UK and Scottish Ministers in collaboration with Industrial Communities Cross Party Group at Holyrood and the new Industrial Communities All Party Parliamentary Group at Westminster. Similar connections are being made via the Highlands & Islands European Partnership, with active engagement with Scottish Ministers and UK Government Scottish Office Minister, Lord Duncan.
Post Brexit access to selected EU Programmes	<ul style="list-style-type: none"> • Scottish local government is seeking access to certain EU cooperation and funding programmes post Brexit. The transnational dimension to Horizon innovation projects, Interreg Cross Border initiatives, and Erasmus' educational exchanges. The European Commission proposes UK local authorities should be eligible to participate in EU transnational programmes like other non-EU Member States e.g. Norway, Iceland, Switzerland, Liechtenstein, Andorra, Monaco. 	<ul style="list-style-type: none"> • The Council is engaging alongside West of Scotland, Highlands & Islands, Scotland Europa and COSLA partners, to press the case for continued access to Horizon, Erasmus and Interreg programmes. • The case for continued UK access to these programmes has been included in Council submissions to Scottish Parliament Inquiries. • Erasmus plays an important role in North Ayrshire's 1+2 modern languages programme. The case for continued access post Brexit is also being pressed via Education networks.
State Aid	<ul style="list-style-type: none"> • EU State Aid rules limit public financial support to companies and define places where aid can be offered. This targets support to post-industrial areas like North Ayrshire, and provides a legal basis for support to projects that create or protect jobs. In Scotland, Regional Selective 	<ul style="list-style-type: none"> • Council held a training session in August when officials from Scottish Government's State Aid Unit gave advice on the regulatory framework up to Brexit and what may happen beyond. A report will be considered by ELT in the autumn.

	<p>Assistance (RSA) awarded £44 million to North Ayrshire businesses, creating/ safeguarding 4,000 jobs in the decade to 2014.</p> <ul style="list-style-type: none"> • UK Government has confirmed that existing rules and map will remain in force until end 2020 and may be frozen for a period thereafter. On- going role for EU State Aid rules in the UK is subject to discussion and negotiation. The default situation is for the UK to set up its own UK-wide State Aid framework, with the Competition & Markets Authority established as the UK's independent State Aid Authority. • It is probable that Councils will have to monitor the development of future EU legislation closely if the UK decides to broadly shadow it to ensure 'regulatory equivalence' beyond 2020. 	<ul style="list-style-type: none"> • Key Council State Aid concerns were raised via the ICA to the House of Lords Committee 2017 Inquiry into the future of State Aid. This included European Commission proposals to significantly restrict Councils' ability to support development, investment and innovation by larger businesses. • ICA has a strong track record in influencing the shape of State Aid regulations and is likely to be an effective route for engaging in the development of post-2020 regulations. • Issues specific to island and mainland communities are being raised in conjunction with the Highlands & Islands European Partnership and the West of Scotland European Forum.
Trade	<ul style="list-style-type: none"> • Lack of clarity on issues such as future customs systems, tariff and non-tariff barriers, harmonisation of regulations, etc. • Despite this, North Ayrshire businesses continue to export and to look for new markets. • A US trade deal may be conditional on US companies being able to take direct court action against government for interference with trade. This may impact on proposed government innovative social proposals. • If the pound continues to be weak, this may make the UK more attractive in terms of tourism. It is also good for exports, but will have an impact on this cost of imports. This could push up the cost of purchasing for the Council. 	<ul style="list-style-type: none"> • The Council is investigating potential development of an export partnership in Ayrshire and consideration of an export hub. Recent joint visit to France by the Council and Ayrshire Chamber showed taste for engagement and appetite for Scottish products. • The Council maintains strong commitment to 'Team North Ayrshire' connection with business, regional and strategic partners, and key decision makers. • Our Business team is working with Ayrshire Chambers of Commerce to promote Brexit related information to local businesses. We are also jointly working on a Brexit preparation event for local businesses in October. It will adapt the preparation advice developed by the Chambers at UK level to an Ayrshire context. • Scottish and Irish Chambers of Commerce are campaigning for a new fund to provide a buffer for business post 2019 if the UK withdraws from the EU without agreeing a deal. • Given the size and scale of much of our local business base, there is concern that a 'no deal' Brexit could have a particularly strong local impact especially in the immediate aftermath. • All advisers in the Business team will participate in a workshop with Scottish Development International (SDI) to increase skills and knowledge to enable them to assist local business with action planning. • The UK Government has created an Employer Toolkit with information on the Settlement Scheme for EU employees and this will be promoted through Business Bites https://www.gov.uk/government/publications/eu-settlement-scheme-employer-toolkit • Keep up to date with developments in this area.
Intellectual Property and Copyright	<ul style="list-style-type: none"> • It is anticipated that Public Lending Right will continue under its UK banner. However copyright, which affects print and digital publishing across the board, has been negotiated at EU level and legal frameworks are based on the EU zone. The Council's library service is concerned about plans to protect copyright and to provide public access post Brexit. For ebooks and digital licences an agreement is needed which sees the UK included in the European zone. If the zone is 	<ul style="list-style-type: none"> • Working with COSLA, library and other networks to identify issues of joint concern and to coordinate action on target topics, such as copyright.

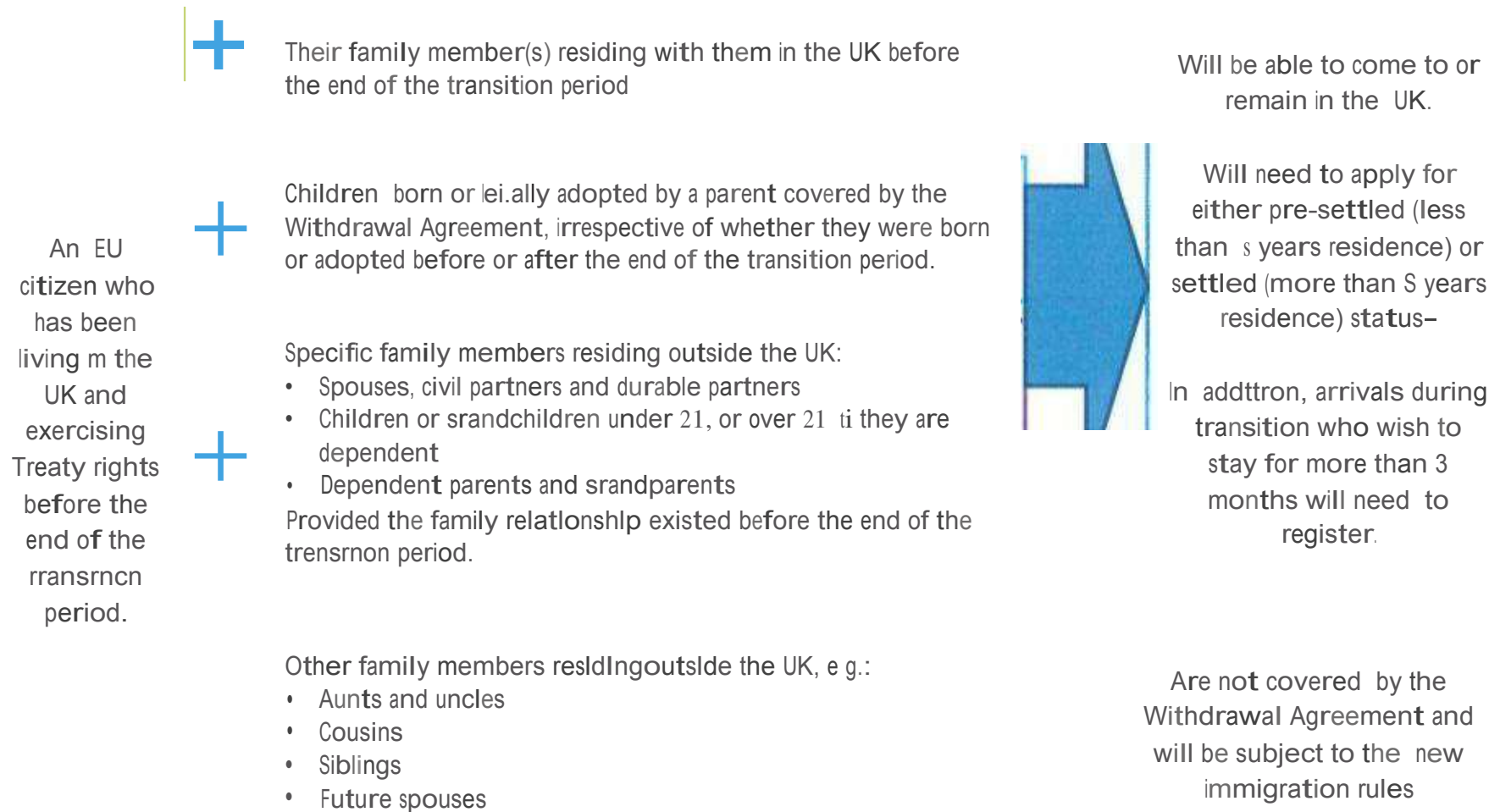
	EU Member States only, this would affect £10,000s worth of ebooks, digital magazines, software licences, online reference resources, CDs, DVDs and music streamlining services.	
Powers	<ul style="list-style-type: none"> • Whilst EU law may no longer apply, in light of strong commitments made by Scottish Government that they will ensure Scotland's environmental policies are advanced, it is anticipated that local versions of EU directives on Environmental Impact Assessment, Strategic Environmental Assessment will be maintained. • UK Government has agreed to create a Brexit consultative mechanism with local government. COSLA has identified 64 returning powers of interest to local government. • Legal uncertainty - for 40 years our law has increasingly aligned with EU Law and Directives. It is unclear to what extent this will continue if European cases are no longer binding. • If the European Convention on Human Rights is abolished it is unclear how it will be replaced. • The uncertainty around future sharing of intelligence across states may make us more vulnerable to terrorist attack. 	<ul style="list-style-type: none"> • Working with COSLA and other networks to monitor and inform proposals related to key areas of environmental legislation. • Working with COSLA to seek extension of consultative mechanism to include free trade and other international negotiations, and for the proposed UK consultative mechanism to be replicated at a Scottish level.
Regional Policy	<ul style="list-style-type: none"> • UK spend on regional support is less, as proportion of GDP, than most other EU countries. Regional disparities in productivity are wider in the UK than in other western European countries. CBI (2016) • EU Structural & Investment Funds and EU State Aid rules have set the framework for much of the UK's domestically-funded regional policy for the past forty years. They are key tools in the EU efforts to promote economic and social cohesion across all Member States. They have also forced UK and Scottish governments to target regional state aid to businesses in designated Assisted Areas. • Council support for regional economic growth is made in the context of tight local authority budgets. Any national economic slow-down or reduction in national tax receipts would impact on Council financial settlements, leading to further reductions in available funding. This would impact on service provision at a time of increasing demand. 	<ul style="list-style-type: none"> • 'Economic Strategy for North Ayrshire' and 'Fair for All' strategy both aim to secure inclusive economic growth in North Ayrshire. • The Council is also engaging more widely to influence future programmes and deliver positive outcomes for our businesses and communities. We are working with government, national and regional partners to explore potential for an Ayrshire Regional Partnership to support regional inclusive growth and an Ayrshire Growth Deal to support development and investment. • Via COSLA, the Council is linked to discussions with Local Government Associations covering England and Wales. • Through the West of Scotland European Forum (WoSEF) and ICA, the Council aligns with industrial and regional policy agendas which target support to (post) industrial areas like Ayrshire. The Alliance also provides a strong link to academics with considerable international experience and reputation on economic and EU regional policy programmes. Scottish Ministers, MSPs and MPs have indicated interest in working with ICA, with the organisation described as being 'ahead of the game' and 'setting the agenda' in its publications eg on post Brexit regional policy. North Ayrshire Council contributions to the ICA's Policy Group and papers have been warmly welcomed by partners. We submitted a response to the National Council of Rural Advisers consultation on future rural economy strategy, stressing the need for a supportive policy framework and high level engagement of island and rural communities, social enterprises and businesses. • Council submissions to policy funding and regulatory consultations have been shared with external strategic partners including Ayrshire Councils, COSLA, SLAED, Highlands & Islands European Partnership, West of Scotland European Forum, Industrial Communities Alliance (GB and Scotland).

Land Use/Spatial Planning	<ul style="list-style-type: none"> • Creation of Development Plans and processing of planning applications is carried out in fulfilment of statutory duties prescribed in devolved regulations, some of which transpose EU law. At this stage it is not known what will happen to the elements related to EU law, though it is anticipated that much would be retained in domestic law in light of the match with policy aspirations of Scottish Government. It is not expected that Brexit will substantially affect the Local Development Plan - primary land use strategy - because it already aligns to local and national economic and community priorities which relate to economic and community resilience. 	<ul style="list-style-type: none"> • Scottish Government and COSLA are monitoring for impact on land use and spatial planning. • Action required will be organised collectively through COSLA.
Community impact	<ul style="list-style-type: none"> • As there are still so many unknowns around Brexit, it is difficult to have any certainty around community impacts. This could include <ul style="list-style-type: none"> ◦ An increase in unemployment - increasing demand for Council services and reducing income from Council Tax and rates. ◦ A rapid increase in the cost of food due to a weaker pound, longer border delays on imports and increased tariffs (Kent County Council estimate that the number of vehicle subject to inspection at Dover port could increase from 100,000 to two million per annum). • Food shortages 	<ul style="list-style-type: none"> • The Council has developed a food strategy to reduce local food poverty. It is also supporting a range of local grower initiatives. • Keep up to date with developments in this area and be prepared to respond, once there is greater clarity. • We hosted a Brexit engagement event on Arran, including Q&A session with Cabinet Minister Mike Russell MSP and workshop discussion facilitated by Scottish Rural Action. (The issues discussed were not specific to Arran). The event also included the launch of a new SG funded Brexit project aimed at developing a strong Scottish island and rural message to forward to EU-UK negotiators.
Regulatory Standards and Consumer Protection	<ul style="list-style-type: none"> • Businesses will require significant regulatory expertise and guidance from the Council as an enforcing authority. There will be an increased demand to carry out surveillance, checks and inspections to satisfy bodies inside and outside the EU that our products, businesses etc. meet relevant standards. 	<ul style="list-style-type: none"> • Working with COSLA, regulatory and other networks to monitor developments, identify and pursue preparatory actions required by local authorities.
International Engagement on Sustainable Economic Development	<ul style="list-style-type: none"> • Whilst UK and Scottish Governments have found difficulty in agreeing devolved powers, these discussions could have implications for Council powers on environmental, sustainable and economic development policy and require Councils to engage in wider international arenas. • National economic slow-down likely to be magnified locally. Many sectors have not returned to pre-recession levels (housing) or have seen a continuation of slow, structural decline that started pre-recession (industry). • UK and Scottish Governments discussion on devolved powers could have implications for Council powers, for example on environmental, sustainable and economic development policy. • Ayrshire work in developing regional partnership approach has potential to transform the regional economy • Potential to learn from experience of broad range of international partners, beyond the EU, on successful ways of delivering sustainable economic development. 	<ul style="list-style-type: none"> • Working closely with COSLA to monitor developments and to identify, and pursue, joint local authority opportunities as required. • Through COSLA the Council is investigating potential engagement with non-EU bodies dealing with local economic development, employment, skills, social inclusion (Organisation for Economic Co-operation and Development, Council of Europe), and is also examining the potential for joint engagement in international bodies and in international commitments dealing with sustainable economic development. • Exploring potential to engage with non-EU European bodies dealing with local economic development, employment, skills and social inclusion (Organisation for Economic Co-operation and Development, Council of Europe). • Examining potential for joint engagement in international bodies and voluntary international commitments dealing with sustainable economic development. • Working closely with COSLA to monitor developments and to identify, and pursue, joint local authority action as required.
Council Finances	<ul style="list-style-type: none"> • Even the most optimistic estimate of the economic impact of Brexit on the economy presents a negative picture. If this occurs this will lead to 	<ul style="list-style-type: none"> • The Council continues to monitor the financial situation and the long-term financial outlook produced by the Council set out a number of scenarios.

	a reduction in tax receipts - impacting negatively on funding for public services and the local government financial settlement	
Northern Ireland Border	<ul style="list-style-type: none"> • Potential destabilising effect of any border deal on the Northern Ireland peace process, impacting on sectarian tensions in North Ayrshire 	<ul style="list-style-type: none"> • Keep up to date with developments in this area and be prepared to respond, once there is greater clarity.
Environmental Health	<ul style="list-style-type: none"> • There will be issues around food safety standards for food exported to and imported from Europe and elsewhere. 	<ul style="list-style-type: none"> • Environmental Health are working with Food Standard Scotland to improve our understanding of the issues and to ensure we are prepared.
Protecting the UK financial markets	<ul style="list-style-type: none"> • The economic success of London and the South is based firmly on the success of our financial markets. It is likely that the government will look to secure a deal with the EU to protect them. Any such deal would involve compromise in other areas. Already an interim agreement is in place around our fishing rights, which maintain the status quo. Other areas may be traded off in any future negotiations. 	<ul style="list-style-type: none"> • Keep up to date with developments in this area and be prepared to respond, once there is greater clarity.

EU citizens' rights in the Withdrawal Agreement

Summary: everyone residing in the UK in accordance with the EU rules *before* the end of the transition period (31 December 2020) will be able to stay in the UK *after* the end of the transition period, irrespective of when they arrived. They will need to apply for legal status from the UK Government (either pre-settled or settled status).



*Applications for pre-settled and settled status will be open on a voluntary basis during the transition period (29 March 2019— 31 December 2020) and possibly earlier, and will be mandatory 6 months after the end of the transition period. Applications can only be made through new online system, currently in development. All applications will be subject to criminality checks.