

REPORT TO: POLICY AND RESOURCES COMMITTEE - 24 APRIL 2023

REPORT ON: BREXIT UPDATE AND PROPOSED MAINSTREAMING OF ONGOING POST-BREXIT WORK

REPORT BY: CHIEF EXECUTIVE

REPORT NO: 122-2023

1. PURPOSE OF REPORT

1.1 This report updates members on the latest issues arising from the UK's departure from the European Union, and also proposes that ongoing issues should now be mainstreamed into the work of specific services and governance structures.

2. RECOMMENDATIONS

2.1 It is recommended that members:

- (i) note the updates on various issues arising from the UK's departure from the EU;
- (ii) note that the issues arising from Brexit are increasingly part of the mainstream work of specific services and agree that responsibility for ongoing work should be devolved to the relevant services and governance structures on the basis set out in Appendix 1.

3. FINANCIAL IMPLICATIONS

3.1 It has been increasingly difficult to separately identify Brexit-specific financial impacts, as the financial issues caused by COVID-19, other world events such as the invasion of Ukraine and the cost of living crisis will have compounded these.

3.2 Inflation generally remains high, partly driven by supply issues leading to scarcity, which is impacting on Council budgets. Pressures on the Council's Capital Plan have been noted previously, while there will be increasing pressure on revenue budgets as contracts are renewed and prices rise more frequently.

3.3 Impacts will continue to be assessed and reported to the relevant Committees as further information on the consequences of the UK's new relationship with the EU becomes known.

4. UPDATE ON KEY ISSUES

4.1 FUNDING

4.1.1 Dundee's investment plan for the UK Shared Prosperity Fund was approved in 2022 and funding has been transferred, although clarification is required on what information needs to be provided on outputs and outcomes. The external funding team has issued opportunities for challenge funding and is assessing the bids. There is a focus on economic development across the three themes of the UKSPF – Communities & Place, Local Business Support and People & Skills. Further work is to be done to assess the implications of new subsidy control arrangements. Funding has also been provided for the Multiply programme, focused on adult numeracy, details of which will be provided in report 117-2023 to Neighbourhood Services Committee on 24 April 2023.

- 4.1.2 It was announced on 18 January 2023 that Dundee will be one of 111 areas awarded funding from the second round of the UK Government's Levelling Up Fund. The city will receive £14.4 million towards redeveloping the Bell Street multi-storey car park into a sustainable transport hub, creating 350 electrical vehicle charging points, car share spaces, and an e-bike hire scheme, connected to a network of pedestrian and cycle routes. The UK Government also confirmed that there will be a further round of the Levelling Up Fund.
- 4.1.3 A Horizon Europe project has been approved, although with funding coming from the UK Government rather than the EU as full participation has yet to be agreed pending agreement on Northern Ireland, the latest update on which is set out in section 4.4 below.
- 4.1.4 Despite the allocations noted above, the resources available for Dundee fall short of what would have been expected from the EU. For example, Dundee & Angus College estimate a drop of £1 million, affecting the courses they can offer, while there are limits on the funding the Council would have liked to provide through Business Gateway. There is also uncertainty about funding beyond March 2025, affecting medium term planning. A letter has been sent to the UK and Scottish Governments about the distribution formulas used for the allocation of new funding streams to replace EU funding, saying these take insufficient account of deprivation.

4.2 CITIZENS' RIGHTS

- 4.2.1 The latest statistics on the EU Settlement Scheme were published in February 2023 and cover applications made up to 31 December 2022. By that date, 10,380 applications had been made by EU citizens resident in Dundee. 10,190 of these applications had been determined, with 5,370 people being given settled status, 4,190 pre-settled status and 640 applications recorded as refused, withdrawn, void or invalid (these figures are rounded to the nearest 10, which is why the breakdowns don't exactly match the total) We are now well past the original application deadline, and although late applications can still be made they are now more likely to be refused (40% refusal rate in December 2022 across all applications).
- 4.2.2 The Council has continued to promote information on its website and social media platforms about what those with pre-settled status need to do to protect their rights to continue to live and work in the UK by applying for full settled status once they qualify. Council Advice Services have become aware of some complex issues involving EU citizens and are gathering information on the extent of this caseload as well as cases being dealt with by the CAB, which will inform partnership working with the Ethnic Minorities Law Centre about any support they can provide. The Citizens Rights Project also continues to offer support.
- 4.2.3 The High Court has ruled that the EU settlement scheme breaches the Brexit Withdrawal Agreement in relation to the rights of those people who have "pre-settled status" which is due to expire if they do not re-apply for full settled status after the qualifying period. The Independent Monitoring Authority, the post-Brexit watchdog for EU citizens' rights, challenged these arrangements in the High Court, arguing that huge numbers of people could become illegal immigrants overnight if they did not apply for full status on time. Around 2.2 million people currently have "pre-settled status" and there is particular concern about around 200,000 of those, who were part of the scheme's pilot in 2018 and had been required to register for full settled status by August 2023 or they could lose their right to live, work or study in the UK and their access to health services. The IMA's lawyers argued that the risk of that happening had never been intended in the Withdrawal Agreement, and the High Court agreed, ruling that the scheme created so much uncertainty that it breached the deal with the EU. The judge said that people who had not secured full settled status would be at the mercy of the Home Office's decision-making. The Home Office initially said it would challenge the ruling, claiming the EU Settlement Scheme goes above and beyond the UK's obligations under the Withdrawal Agreement, but announced in mid-February that it would not go ahead with the appeal. This ruling appears to reduce the potentially negative consequences for people who do not apply for full settled status when their qualifying period is up, but advice is still that they should do so pending any more formal guidance on the scheme.

4.3 TRADE

- 4.3.1 A recent report from the British Chambers of Commerce says that businesses are still grappling with new trading arrangements and additional administrative work two years after post-Brexit trading began. More than half of the firms surveyed said they were struggling with new forms, checks or other processes.
- 4.3.2 A separate report from the Centre for European Reform suggests Brexit may have reduced UK trade by around 7% last summer - and damaged investment by even more, meaning that UK economic output is 5.5% smaller than it would otherwise have been. That is a bigger impact than assumed by the UK Government's official forecaster, the Office for Budget Responsibility, which estimated there would be a 4% loss to productivity. An external member of the Bank of England's monetary policy committee suggested in February 2023 that the UK had "suffered much more" of a productivity slowdown than other large economies because of Brexit, with a loss of investment estimated at £29 billion or £1,000 per household. The Treasury said it did not recognise these figures and the Bank of England declined to comment.
- 4.3.3 Another study from researchers at the London School of Economics found that the range of goods being exported to the EU has shrunk, suggesting that the extra bureaucracy may have deterred some smaller companies from exporting altogether. HM Revenue and Customs data shows the number of UK firms classed as exporters fell from 149,443 in 2020 to 126,812 in 2021. This is supported by anecdotal evidence from local companies, although some have managed to adapt by changing the way they export goods (e.g. exporting frozen rather than fresh produce to reduce the impact of delays at ports) Scottish Development International (Scotland's trade and inward investment agency) suggested, at a recent presentation to the Tay Cities International Trade Group, that they are looking to provide additional support to small and medium exporters.
- 4.3.4 The UK Government maintains that Brexit opens new opportunities for UK businesses and that the trading agreement with the EU was "the world's largest zero-tariff, zero-quota free trade deal". They also point out that exporters have been provided with practical support with post-Brexit trading arrangements and point to evidence of trade's recovery post-pandemic - the International Trade department said exports were "bouncing back" after the pandemic and had reached £748bn in the last 12 months, an increase of £132bn. The International Trade Secretary told a House of Commons committee in December that "the full impact of what we're going to see post-Brexit and all of the free trade agreements is yet to be seen". However, the UK Government missed its target for securing post-Brexit trade agreements covering 80% of UK trade by the end of 2022. Estimates suggest coverage of 63% - a trade deal with the US had been crucial to meeting the target, but this has not been prioritised by the Biden administration. Deals have been signed with the EU and with 71 countries including Australia, New Zealand, and Japan, although some of these have been criticised for giving too much away and not being good deals for the UK. Talks are still taking place with India and members of a trans-Pacific pact. They are taking longer than previous Ministers had hoped, but analysts have suggested that taking things more slowly may actually lead to more beneficial agreements. Trade deals with some of the biggest economies, such as the US and China, remain elusive.
- 4.3.5 Research published in December by the Centre for Economic Performance at the London School of Economics found that leaving the EU added an average of £210 to household food bills over the two years to the end of 2021, costing UK consumers a total of £5.8 billion. Since low-income households spend a greater share of their income on food than better-off families, these rises had a proportionately greater impact on the poorest people. The study focused on the impact of non-tariff barriers on consumer prices. While the Trade and Co-operation Agreement ensures that trade between the UK and the EU remains tariff-free, there are now more non-tariff barriers between the UK and the EU, including new customs checks, rules of origin requirements and sanitary and phytosanitary measures for trade in animals and plants. The study found it is these non-tariff barriers that have affected prices, suggesting that EU exporters and/or UK importers face higher costs due to these new barriers and that between 50% and 88% of these costs have been passed on to consumers. The changes have benefitted domestic producers of food, who now face less competition from European imports, but the

study says these gains to domestic firms were outstripped by the loss to domestic consumers by more than £1 billion. Additionally, unlike financial tariffs, non-tariff barriers do not generate any revenue for the government.

4.4 NORTHERN IRELAND – THE WINDSOR AGREEMENT

- 4.4.1 The Prime Minister has agreed a deal with the European Union to replace the Northern Ireland Protocol. The new deal has been named the Windsor Framework, as that was where it was finalised and announced following discussions with the head of the European Commission.
- 4.4.2 At the heart of the Framework is the concept of green and red lanes. British goods intended to stay in Northern Ireland will use the green lane at Northern Ireland ports, meaning they face minimal paperwork and no routine physical checks. The red lane will be for goods destined for the Republic of Ireland, an EU member state in the single market, meaning those goods will be subject to inspections and customs processes. The Prime Minister promised that all items available in British supermarkets will also be sold in Northern Ireland, while medicines approved by the UK's regulator will no longer be held back from the Northern Irish market. New data-sharing and labelling arrangements will be used to oversee the new system.
- 4.4.3 The new deal was subject to approval by the UK Parliament. When it was debated in the House of Commons on 22 March, Northern Ireland's Democratic Unionist Party voted against it, along with some Conservative MPs, but support from other parties meant the deal was overwhelmingly approved. It will still take several years to take full effect, with businesses given months to adjust to the updated regulations.
- 4.4.4 The new agreement replaces the Northern Ireland Protocol which led to a regulatory border being set up between Great Britain and Northern Ireland, meaning inspections on some goods – such as meat, milk, fish and eggs – from England, Scotland and Wales had to take place at Northern Irish ports. This complicated trade between Northern Ireland and Great Britain, with critics arguing it weakened Northern Ireland's place in the UK. As part of the new deal, the EU will still have some power over Northern Ireland. EU law will still apply to some industries, particularly on food and animal products, and the European Court of Justice will remain the arbiter of how it operates. However, the agreement includes what is being called the 'Stormont Brake', which will allow the Northern Ireland Assembly to stop any new EU legislation applying if 30 members of the Assembly, from two or more parties, sign a petition to challenge the legislation, which could only then be applied if the UK and EU agree jointly, essentially giving Westminster a veto over new EU laws applying in Northern Ireland. This veto comes with strings attached, including tough conditions for its use and the possibility of the EU retaliating by suspending single market access. The Brake should be used only as a last resort if the Assembly members can show the EU law in question would have a "significant impact specific to everyday life". Unionist parties like the DUP object to the EU having any power in Northern Ireland, and it remains to be seen whether they will support the deal once they have fully examined the detail.
- 4.4.5 The UK Government has confirmed it is dropping the Northern Ireland Protocol Bill. This controversial legislation, introduced under former Prime Minister Boris Johnson, would have given the UK the power to scrap the previous Protocol deal.
- 4.4.6 The dispute over Northern Ireland has held up the UK's association with the EU's €100bn Horizon research programme, which involves some of Europe's leading institutions and businesses investigating cutting-edge fields in medical science, computing and energy. The UK's exclusion for the past two years has meant that British science has lost ground. The EU President has said that work on associating the UK with Horizon will start "immediately" once the Windsor Framework is implemented. But there is likely to be further negotiation ahead - the original deal was for the UK to pay £14bn to participate in the seven-year programme, and the UK government will hope to agree a cheaper deal because it has been unable to participate for two years, and another year may go by while the new arrangement is being set up.

4.5 RETAINED EU LAWS AND REGULATIONS

- 4.5.1 EU laws were copied into domestic law after Brexit and, while there have been moves away since in some areas such as immigration, thousands of regulations - known as retained EU law - are still in force in the UK.
- 4.5.2 The Retained EU Law (Revocation and Reform) Bill, currently being considered at the Committee stage in the House of Lords, contains a "sunset clause" that means that, by the end of 2023, some laws could expire automatically. Concerns have been expressed that the task of reviewing thousands of pieces of legislation by 31 December 2023 will put extreme pressure on the civil service, create uncertainty for business, and risk harm to vital legal protections. The UK Environmental Law Association has highlighted a "significant risk that the substance as well as the coherence of environmental law and policy will be undermined and weakened" while concerns have also been expressed about the impact on employment rights.
- 4.5.3 On 31 January, the Scottish Parliament passed a motion on 'Three Years On - Brexit and Workers' Rights' which said that the Parliament acknowledges that the Retained EU Law Bill poses a significant risk to workers' rights; further acknowledges that this is further compounded by anti-trade union legislation, such as the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2022, and the new Strikes (Minimum Service Levels) Bill; agrees that a progressive approach to industrial relations along with greater, not fewer, protections for workers is at the heart of a fairer and stronger economy; recognises trade unions as key social partners in delivering economic and social aspiration, and as vital for ensuring that the voices of workers are heard; calls on the UK Government not to erode the hard-won rights of workers, and confirms it is committed to continuing to work in partnership as it responds to the current crisis posed by UK Government legislation post-Brexit.
- 4.5.4 A UK Government spokesperson said they were "committed to taking full advantage of the benefits of Brexit, which is why we are pushing ahead with our Retained EU Law Bill". They say they are continuing to engage with the devolved administrations on the progress and policy of the Bill, supporting them as they review any retained EU laws that fall within their devolved powers, and there are no plans to change the 31 December deadline. The Bill was given approval by the House of Commons in mid-January, but is likely to face significant opposition in the House of Lords where it is currently being scrutinised. Amendments suggested by Labour in the House of Commons to extend the 'sunset' deadline to 2026, and to exempt swathes of environmental and employment legislation, were defeated. A cross-party attempt to give MPs a bigger say over which laws are scrapped was also defeated, although a small number of rebel Conservative MPs backed it. There is speculation that the House of Lords will amend the Bill, perhaps extending the "sunset clause" by as much as three years.
- 4.5.5. In a further debate on the Bill in the Scottish Parliament on 23 February 2023, the Cabinet Secretary for the Constitution highlighted three key concerns – the 'cliff-edge' sunset provision, the risk of divergence from the standards that the people of Scotland benefited from while the UK was a member of the EU and the uncertainty this would create for business and trade, and the powers the Bill would give UK Ministers to act in areas of devolved responsibility without the consent of Scottish Ministers or the Scottish Parliament. The Parliament (voting 84 for and 30 against) approved a motion 'That the Parliament agrees with the recommendation in the Scottish Government's Legislative Consent Memorandum to withhold consent for the UK Government's Retained EU Law (Revocation and Reform) Bill'.

5. MAINSTREAMING OF POST-BREXIT WORK

- 5.1 The Brexit Advisory Team was established in early 2018 to advise on a strategy to mitigate the impact of Brexit on Dundee and take advantage of any opportunities which may arise. The remit of the Team included monitoring developments on Brexit; ensuring the Council was kept informed of, and influenced, the work of those representing local government; considering the impact of the ending of EU funding; monitoring the impact on Council finances; considering the impact on the local economy; considering the impact on the Council workforce as well as local businesses; and working with partners to develop a deeper understanding of the impact of

Brexit on them. The Team has met regularly since 2018 and has continued to meet during 2022/23 in response to the recommendation in 2021's audit review of the Council's preparations for the consequences of Brexit.

- 5.2 While there are still ongoing issues arising from the UK's departure from the EU, it has become clear that these are increasingly part of the mainstream work of specific services and are also wrapped up with a range of other issues including recovery from the pandemic, the consequences of Russia's invasion of Ukraine and the cost of living crisis.
- 5.3 It is therefore recommended that responsibility for considering ongoing risks and opportunities arising from Brexit should be devolved to the relevant services and governance structures, rather than being overseen by the Council-wide Brexit Advisory Team. Appendix 1 sets out the issues agreed by members last year in the strategy and roadmap for work following Brexit, along with the services and governance structures which this report recommends should now be responsible for taking forward the ongoing work on these.
- 5.4 In addition to the specific issues covered in the post-Brexit strategy and roadmap, the Risk and Assurance Board will have a general remit to consider the impact of any other changes which become apparent, particularly in relation to any changes to legislation as a result of the Retained EU Law (Revocation and Reform) Bill.

6. POLICY IMPLICATIONS

- 6.1 This report has been subject to the Pre-IIA Screening Tool and does not make any recommendations for change to strategy, policy, procedures, services or funding and so has not been subject to an Integrated Impact Assessment. An appropriate senior manager has reviewed and agreed with this assessment.

7. CONSULTATIONS

- 7.1 The Council Leadership Team and Brexit Advisory Team were consulted in the preparation of this report.

8. BACKGROUND PAPERS

- 8.1 None.

GREGORY COLGAN
CHIEF EXECUTIVE

DATE: 5 APRIL 2023

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TAKING THE COUNCIL'S POST-BREXIT WORK FORWARD

Following the recommendations of the internal audit report during 2021, it was agreed that the Council would continue to have a Brexit Advisory Team overseeing post-Brexit issues and activities until the end of financial year 2022/2023. An overarching post-Brexit response strategy and roadmap was developed and agreed by Committee in January 2022.

Dealing with any issues arising from Brexit has now become a part of the Council's mainstream work, and the table below suggests how each of the priority topics in the strategy and roadmap agreed last year could be taken forward by other existing governance arrangements once the Council-wide Brexit Advisory Team is wound up.

STRATEGIC AREA	PRIORITY	RESPONSIBILITY
Economic and Financial	Local Economy - continue to monitor impacts on local businesses and jobs, and work with partners such as Scottish Enterprise and the Dundee and Angus Chamber of Commerce to support businesses in mitigating any challenges and capitalising on any opportunities.	Executive Director of City Development with key partners and Business Gateway.
	Council Finances - continue to assess and report on any impact on Council revenue and capital budgets as further information about the consequences of the UK's new relationship with the EU becomes clear.	Executive Director of Corporate Services via Revenue Monitoring, Capital Monitoring processes and Treasury Management Strategy processes which would pick up any significant matters.
	External Funding - monitor developments with replacements for EU funding and seek to maximise opportunities for Dundee. Continue to assess and suggest possible lobbying strategies. Pursue opportunities to participate in European programmes with which the UK Government is continuing to be involved, including the Horizon Europe and the Interreg PEACE PLUS programmes.	Executive Director of City Development supported by the Funding & Projects team.
Procurement/Supply of Goods and Materials	Supply Chain Network - ensure the Corporate Procurement Team works with key stakeholders such as Scotland Excel and with Council services to identify any supply chains affected by Brexit as this becomes more prominent once the effects of COVID-19 begin to wane. Procurement and affected services should undertake the appropriate mapping and analysis required to develop suitable mitigations where supply chains are materially impacted.	Head of Corporate Finance
	Contracts and Supplier Resilience - ensure the Corporate Procurement Team and services identify any suppliers that have been unable to consistently meet demand or have passed through above-inflation price increases as a result of Brexit. As part of the contract management process, procurement should assess affected suppliers, undertake further analysis into the resilience of suppliers to develop alternative category and sourcing strategies, and ensure regular updates are provided.	Head of Corporate Finance

STRATEGIC AREA	PRIORITY	RESPONSIBILITY
	Customs Documentation, Tariffs and VAT - determine whether the Council has been exposed to increased costs as a result of the introduction of 'Rules of Origin' or changes to VAT regulations and include the estimated level of exposure, if any, as an impact on the Council's finances in the Brexit Risk Register. Procurement should assess alternative sourcing options, where possible and practicable, with relevant stakeholders.	Head of Corporate Finance
Regulatory Changes	Environmental Health/Trading Standards - monitor and liaise with officers on any changes to food standards, consumer rights etc.	Head of Communities, Safety and Protection
	Data and IT - noting the current data adequacy decision, liaise periodically with the Information Governance team to assess any potential new risks eg if the UK was to diverge from EU data standards.	Head of Legal and Democratic Services
Workforce	Staffing Issues - periodically review the Council's workforce planning strategy to ensure it can continue to absorb any reduction of EU workers in the medium to long-term.	Head of People
	Professional Qualifications - begin monitoring the issue of 'no automatic recognition of professional qualifications' for EU workers, particularly in the context of health and social care.	Head of People
EU Citizens	EUSS - maintain focus on ensuring affected citizens are aware of the requirements of the EU Settlement Scheme as part of a wider post-Brexit communications strategy. In particular, continue to support care experienced young people and vulnerable adults seeking help with late applications.	Head of Chief Executive's Services and Head of Customer Services & IT
	NRPF - monitor local and national developments on the approach to people with 'no recourse to public funds' as this impacts on EU citizens without settled status.	Head of Customer Services & IT
Consequences of new relationship with EU	Monitoring - ongoing work to understand impact of new relationship with EU.	Appropriate services as listed throughout this table.
	Resilience - monitor any emerging issues eg affecting food or fuel supplies.	Head of Communities, Safety and Protection via normal resilience planning processes
Opportunities	Funding - maximise opportunities for Dundee to benefit from the replacement for EU funding.	Executive Director of City Development with key partners and Business Gateway.
	City Marketing - as COVID-19 restrictions allow, continue promoting Dundee and the wider surrounding area for 'staycations', building on the recognition for	Tourism Leadership Group and Service Manager - Communications

STRATEGIC AREA	PRIORITY	RESPONSIBILITY
	UK Staycation Destination of the Year, in conjunction with Visit Scotland and regional partners, as well as at a local level through Dundee Tourism Partnership.	
	Jobs - lobby for any new civil service jobs relating to new trade and custom arrangements to be located in Dundee as potential opportunities emerge.	Executive Director of City Development with key partners and Business Gateway.
	Skill Shortages - take the opportunity to train long-term workless people, and those more recently affected by COVID-19 related redundancies, to fill skill shortages linked to the loss/reduction in migrant labour from the EU.	Executive Director of City Development with key partners and Business Gateway.
	Opportunities for local businesses - monitor and support opportunities for businesses who trade primarily in the domestic economy to benefit from any reduction in EU competitors bringing goods/services into the UK.	Executive Director of City Development with key partners and Business Gateway.
	State Aid - following EU State Aid ceasing to apply in the UK, the draft Subsidy Control Bill aims to make it easier for public authorities to provide subsidies to businesses, and introduces provisions designed to ensure that certain categories of subsidies, which are low risk and aligned with government priorities, can proceed with minimum administrative burden and maximum legal certainty. Monitor developments and explore any opportunities for local businesses.	Executive Director of Corporate Services In conjunction with Risk and Assurance Board

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