
BREXIT RISK REGISTER

1 PURPOSE OF REPORT

- 1.1 This report considers the key emerging implications for the Council of the UK leaving the European Union (“Brexit”) so far as they are known at the date of this report.

2 INTRODUCTION

- 2.1 On 24 June 2016 the United Kingdom European Union Membership Referendum (the “2016 Referendum”) resulted in a simple majority of 51.9% in favour of leaving the EU. As a District there was a 78.9% turnout in the 2016 Referendum with 34,937 (67%) voting to Leave the EU and 17,510 (33%) voting to Remain.
- 2.2 In accordance with the European Union (Notification of Withdrawal) Act 2017, Article 50 of the Lisbon Treaty, which gives a member state the right to negotiate exit, was invoked by the UK on 29 March 2017. Article 50 gives a two-year period during which it has been incumbent upon the parties to negotiate to secure the UK’s orderly exit from the EU and its future relationship with the trading block. The Government’s negotiating strategy and stated outcomes are set out in its White Paper “The Future Relationship Between the United Kingdom and the European Union”, which was published on 12 July 2018.
- 2.3 Triggering Article 50 means that by automatic operation of law, the UK will leave the EU on Friday 29 March 2019 (“Brexit Day”) unless the UK withdraws its Article 50 notification (about which there is some legal debate as to whether this is possible) or an extension to the expiration date is agreed by the parties. The European Communities Act 1972 will also be automatically repealed on Brexit Day so all existing agreements between the UK and the EU will cease to be of legal effect. A new act, the European Union (Withdrawal) Act 2018, will come into effect on Brexit Day; it incorporates a significant body of EU law into domestic law. Without this new act, it is likely there would be large gaps in the UK’s statute book after leaving the EU.
- 2.4 The draft Withdrawal Agreement, which has been produced as a result of the negotiations between the UK and the EU, is intended to form the eventual treaty between the UK and the EU, governing the UK’s formal exit and future relationship with the EU. Article 184 of the draft Withdrawal Agreement says the EU and the UK will seek to “*negotiate rapidly the agreements governing their future relationship*” between Brexit Day and the end of a transition period in December 2020, which is when the new arrangements are intended to come fully into effect. The terms of the Withdrawal Agreement need to be approved by at least 20 of the 27 member states and 65% of their population, which took place on 25 November 2018.

- 2.5 Following the EU ratification of the draft Withdrawal Agreement (which will become a draft treaty between the parties), it will be laid before the respective UK and EU Parliaments. In accordance with the European Union (Withdrawal) Act 2018 the UK Parliamentary vote must be “*before the European Parliament decides whether it consents to the withdrawal agreement being concluded on behalf of the EU*”. At the time of writing it is anticipated that this will be in late December 2018/early January 2019. If the Withdrawal Agreement is approved, Parliament will have to pass the European Union (Withdrawal Agreement) Bill to implement it. Before Brexit can take effect legally, it must also be approved by the European Parliament.
- 2.6 In parallel with the exit negotiations, the UK and the EU have also been preparing for a “no deal” scenario i.e. when the UK leaves the EU by automatic operation of law on Brexit Day but there is no legally agreed Withdrawal Agreement. A “no deal” scenario will arise if Parliament fails to approve the draft Withdrawal Agreement. The UK has released a series of “technical notices” and the EU has released a series of “preparedness notices” which have, to date, focussed on specific technical subjects such as medical supplies, nuclear safeguards and financial services. There is widespread commentary about the effect of these notices and much speculation as to what the operational consequences may be. There is no technical or preparedness notice relating to local government and nor does the Local Government Association believe that any such notice is likely.

3 KEY ISSUES FOR THE COUNCIL

- 3.1 There remains, therefore, much uncertainty about the implications of Brexit, whether as part of the Withdrawal Agreement or as part of a “no deal” scenario. This report attempts to highlight some of the issues that may impact on the Council. This report is not exhaustive and nor is it a commentary on the perceived rights or wrongs of either the Withdrawal Agreement or a “no deal” scenario.

Economic impact

- 3.2 Opinions differ about the economic impact of Brexit and how long that economic impact will be felt whether under the Withdrawal Agreement or a “no deal” scenario. It is, however, widely argued by many commentators that there will be a degree of negative economic impact, at least in the short term. Any negative economic impact is likely to affect the Council in one or more of the following ways:
- 3.2.1 Fluctuations in the value of the pound could affect the rate of return on the Council’s financial investments and if the Sovereign Credit Rating of the UK is downgraded this would affect the Council’s Treasury Management strategy which requires investment in UK Banks to be in line with current rating;

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- 3.2.2 A depressed economy (whether technically classified as a recession or not) is likely to put continued pressure on Government finances, which could lead to an extended period of austerity for local government.
- 3.2.3 Inflationary pressures may lead to wage growth being depressed in real terms, which could affect the Council's ability to recruit and retain staff; and the potential for higher levels of defaults on Council Tax and NNDR income due.
- 3.2.4 A depressed housing market may lead to a slowing down of housebuilding and development activity which may, in turn, impact delivery of the Council's strategic objectives.

Workforce issues

- 3.3 The Council does not currently employ any EU nationals on its workforce although, should it wish to do so in the future, it will have to comply with all relevant statutory criteria relating to the right of non-UK citizens to remain and work in the UK. As any such requirements are presently unclear, it is not known what impact that will have on the Council's ability to recruit and/or retain staff.
- 3.4 Where EU nationals are employed elsewhere in the district and where that employment comes into contact with the Council's business processes, the Council will need to comply with relevant statutory criteria relating to the eligibility of the non UK citizen and their right to remain and work in the UK e.g. licensing of taxi drivers, license holders of licensed premises, owners and operators of food preparation businesses. Again, the potential impact of this is not yet fully known.
- 3.5 EU nationals have a strong presence in certain types of employment role e.g. care workers, agricultural labourers and construction workers. If these sectors experience a decrease in available individuals to take up these roles because the existing workforce are not able to remain and work in the UK, then productivity and viability of local businesses may be impacted if the relevant skills cannot be sourced from the UK population and this will impact the macro economic picture.

Communities and civil contingency

- 3.6 Any economic downturn will inevitably impact families and communities. If wages are stretched families will be vulnerable to increased stresses which may manifest themselves for example through more people claiming benefits, an increase in those being unable to pay Council Tax or even through an increase in family breakdowns, domestic violence or substance abuse which will increase demand on the Council's services and those of the voluntary sector organisations with whom the Council partners. Furthermore, if the housing market is depressed, we may see an increase in repossessions and

people presenting as homeless which will put the existing provision under additional strain.

- 3.7 Rules relating to eligibility for benefits payments will change in respect of non-UK citizens and the Council will be required to make changes to its systems and processes to recognise these which may, in turn, have cost consequences. At the time of writing it is not possible to determine what, if anything, that cost might be.
- 3.8 It is possible that expatriates may return to the UK and place further demand on the Council for services, but it is not possible to quantify this risk at present.
- 3.9 There is an increased risk of civil unrest e.g. protests, marches and rallies not just about the fact of Brexit (i.e. leave vs. remain) but also arising from perceived consequences of Brexit alongside an increased risk of xenophobic anti-social behaviour and/or hate crime. This risk is not limited to this Council or the district and is being considered in the context of a county wide response via the Essex Resilience Forum (for which more see below).

Funding and investment

- 3.10 The Council is not operating any projects which are directly funded by EU funding, however there are several business grants currently available that will cease from March 2019, that are EU funded that we currently promote and encourage businesses to apply for (on our business funding web page). These are the Essex Rivers LEADER grant; LoCASE; Keep+; Get Exporting 2 (DiT); and NWES.
- 3.11 All the above are EU funded projects, the majority are likely to be fully spent by March 2019 as they have received enough applications now to allocate all the money. LEADER and LoCASE 'may' apply for any underspend from other areas as there is talk of an extension of grant funding to 2020, but as it stands today nothing has been approved. The BEST Growth Hub itself, who provide business support to whole of Essex is European Regional Development Fund funded too, but the Department for Business, Energy and Industry Strategy has confirmed funding currently until March 2020. However, they offer a free business diagnostic service that could impact the District businesses if they were to discontinue. Over the years EU grant funding programmes have benefitted the District businesses by many hundred thousand pounds, one business alone receiving over £70,000, so it may impact business growth and job creation locally if the EU funding is not replaced with a similar UK programme, although new funding opportunities are coming forward through the Government's Industrial Strategy.

Procurement and State Aid

- 3.12 The European law relating to procurement in the public sector is already incorporated into domestic law, so it is unlikely that there would be any

significant immediate change. However, to the extent that domestic law defaults to EU jurisdiction, e.g. the use of the Official Journal of the European Union, the role of the European Commission and the case law emanating from the European Court of Justice, it seems likely that the UK will deploy new legislation to replace the European element. There is guidance from the Government relating to the domestic replacement for the European aspects of the current public procurement process and it is anticipated that this will be introduced by secondary legislation over time. In particular, the rules around so called “Teckal companies” i.e. local authority trading companies which are controlled by local authorities and do no less than 80% work for that controlling local authority comes from European case law, codified into domestic law. It remains to be seen whether the UK will retain this distinction going forward; any changes will directly impact the Council’s Green Gateway group of companies.

- 3.13 The rules around state aid will continue to be relevant after Brexit Day and the Government has stated that the Competition and Markets Authority will take over the monitoring and enforcement role of state aid as currently performed by the European Commission and technical enquiries after Brexit Day should be addressed to them.

EU Legislation

- 3.14 European legislation permeates more than just procurement and state aid law. It underpins extensive statutory codes in, for example, environmental law, consumer protection, and industrial regulation and employment rights. For the most part the European Union (Withdrawal) Act 2018 will cover the gaps that domestic law does not quite reach, so continuity will be preserved on Brexit Day. Going forward that will likely change as new UK law is enacted. The Council can, therefore, expect a considerable amount of changes in law in coming years and to the extent that those changes in law require changes to existing systems and processes, including operational time and effort in implementation, the Council will have to incorporate them. Whilst changes in law are something to which the Council must always be responsive, the potential volume of change could bring additional implementation risk and cost to the Council.

Import/Export issues

- 3.15 There is speculation that the major routes to and from the UK’s freight and passenger ports will become gridlocked as the freedom of movement which currently exists within the single market is replaced by border controls. If this risk materialises, the Council’s proximity to those major routes means that there is a risk that the transport routes across the district suffer additional congestion as road users try to avoid major blockages.
- 3.16 This risk is particularly acute around London Southend Airport where the access to and from the terminal is filtered through a roundabout but is bounded to one side by the railway line. There is potential for traffic disruption

if entrance to and egress from the airport site is delayed due to lengthier border controls.

Elections

- 3.17 The eligibility of EU nationals to vote in UK elections, stand for candidacy and/or propose nominations for UK elections, will remain for the May 2019 elections but it is unclear after that, although EU nationals that are elected will be able to serve their full term of office.
- 3.18 It remains a risk for the Council that a second referendum or General Election soon will impact the preparation for the district elections in May 2019. This is not a risk that the Council can control but the Elections Team is sighted on the risk and the necessary steps which would need to be taken in that eventuality. The UK is not participating in the European Parliamentary Elections in May 2019.

4 RISK IMPLICATIONS

- 4.1 The impact of Brexit has been added to the Council's corporate risk register. As the impact becomes clearer, we can continue to refine and develop the risk register and capture operational impacts within the risk register for the relevant service area.
- 4.2 Key risks are considered monthly by the Leadership Team and this will include the impact of Brexit. Additionally, Brexit is a standing agenda item on the fortnightly meetings which the Leader and Deputy Leader have with the Managing Director and the Strategic Director.
- 4.3 The Essex Resilience Forum (ERF) is considering the risk of disruption in Essex, based on the issues raised in the Government's technical notices. There are currently 106 such notices and the ERF is working with the Ministry of Housing and Local Government Resilience and Emergencies Division (RED) and the Cabinet Office to consider the implications of the issues raised. The work is being led by Superintendent Adrian Coombs and he will be reporting back to ERF partners on 4 December 2018 and leading discussions on the work required by the ERF.

5 CRIME AND DISORDER IMPLICATIONS

- 5.1 None additional to those raised in section 3 of this report.

6 ENVIRONMENTAL IMPLICATIONS

- 6.1 None additional to those raised in section 3 of this report.

7 RESOURCE IMPLICATIONS

- 7.1 There are no direct resource implications of Brexit at this time; this will be kept under review as the UK's position becomes clearer, to assess the potential

financial impact should any of the risks set out in this report crystallise. However, further officer time is likely to be required for the purposes of business continuity planning in the lead up to Brexit Day on 29 March 2019.

8 LEGAL IMPLICATIONS

Many legal obligations imposed by European legislations, i.e. procurement and data protection, are already incorporated into domestic law. At present it is envisaged there will be little immediate impact on UK law. However, the Monitoring Officer will continue to keep a watching brief on any legislative changes that may come forward as a result.

9 PARISH IMPLICATIONS

- 9.1 Ongoing implications for parishes and communities will continue to be reviewed as Brexit is implemented and the Council will work with the relevant parish and town councils as the situation unfolds.

10 EQUALITY AND DIVERSITY IMPLICATIONS

- 10.1 An Equality Impact Assessment has not been completed as no decision is being made.

11 RECOMMENDATION

- 11.1 It is proposed that Council **RESOLVES** to note the report and the ongoing work of the Council to understand the emerging implications of Brexit.



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Background Papers:-

None.

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