

Environment and Economy Board Item 6

**Private and Confidential**

**Brexit Update**

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| This report, a version of which was presented to Leaders on 30 November, provides an update on the work being undertaken by COSLA on Brexit, including the work done with councils and the broader public sector around preparedness. In doing so, the report comments on the potential future options and particularly highlights the work started, that will need to be substantially extended, should No Deal become a realistic option.  If required an oral update will be provided at the meeting in terms of any developments since the report was written.  The Board is invited to:   1. Note the current update and the need for further detailed work once the way forward around Brexit is known; 2. Provide any comments particularly on the implications of Brexit for the areas covered by the remit covered by the Environment and Economy Board; and 3. Provide any comments on any other aspect of the report. |

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| **References**  Previous relevant reports:   * [Environment and Economy Board October 2017 – UK’s Exit from the European Union](http://www.cosla.gov.uk/sites/default/files/documents/17-10-23_item_06_uk_withdrawal_from_the_eu.pdf) * [Environment and Economy Board April 2018 – UK’s Exit from the European Union – Policy, Funding and International Engagement after Exit](http://www.cosla.gov.uk/sites/default/files/documents/18-04-20_item_08_uks_exit_from_the_european_union_policy_funding_and_international_engagement_after_exit.pdf) |

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**December 2018**



**Private and Confidential**

**Brexit Update**

**Purpose**

1. To provide an update on the work being undertaken by COSLA in relation to Brexit, including the work with councils and the broader public sector around preparedness, particularly should there be a No Deal. A version of this report was presented to Leaders on 30 November 2018.

# Current Position

1. Since the Referendum, COSLA has sought to achieve the best possible outcomes for our communities and Local Government, irrespective of the final deal agreed between the EU and the UK Government.
2. To build on the work done to date to prepare for Brexit, particularly given the still significant uncertainty and ever shortening/timetable, COSLA has set in train a programme of work to ensure Local Government is informed and able to take action when it is necessary to do so. The workstreams being taken forward are briefly set out below under four broad headings.
3. COSLA has separately issued our summary of the draft Withdrawal Agreement, agreed between UK Government and EU negotiators earlier this month. The Withdrawal Agreement was formally agreed between UK Government and the EU Leaders at an emergency European Council meeting on 25 November, as was an accompanying Political Declaration. The draft Agreement will be submitted to the UK Parliament with the intention of a “meaningful vote” on its terms on 11 December 2018. This is likely to be preceded by a debate and non-binding vote in the Scottish Parliament.
4. Currently, political commentators suggest that neither the draft Agreement nor a No Deal are likely to win a majority of votes in the UK Parliament. Assuming that, there would then be 21 days for the Parliament to identify an alternative course of action. Currently those options seem to be that: a further draft Agreement is put forward (although, as yet, exactly what that might look like and whether it would be acceptable to a majority of the Parliament and all EU Leaders remains unclear); a so-called People’s Vote (where again what options that might include remains unclear, though most favour the inclusion of an option to either endorse the agreed Withdrawal Positions or Remain in the EU) or a General Election. Were any of these options to be pursued, then it is almost certain that Article 50 would have to be suspended or revoked and the potential date for the UK leaving the EU would have to be delayed.
5. It may become clearer over the week and, if relevant, an oral update will be provided at the meeting. It is worth noting though, in terms of the above, that a number of councils have now taken formal decisions to actively promote the People’s Vote as an option. COSLA has so far taken no formal position around the upcoming votes in the UK Parliament.

**What is Changing?**

*COSLA and Scottish and UK Governments*

1. COSLA’s President, Cllr Alison Evison, met with Mike Russell MSP, Cabinet Secretary on 21 November 2018, to discuss Brexit, preparedness and areas where Local and Scottish Government might work together over coming months. Some of the outcomes of that discussion are reflected below under the workstreams to be pursued. The issue was also discussed with Aileen Campbell MSP in the latest Bi-monthly meeting between the Cabinet Secretary and the COSLA President. In both cases there is agreement to regular political discussion over the coming months and beyond Brexit Day on 29 March 2019.
2. There was also agreement that a Brexit Preparedness event be held in January within COSLA for all councils, once the direction of travel at a national level is known, at which Mr Russell has agreed to speak.

1. A COSLA representative attended a meeting with David Mundell, the Secretary of State for Scotland where he sought to clarify the Withdrawal Agreement and Political Declaration. COSLA officers continue to meet separately with Scottish and UK Government officers to discuss key issues and some of that discussion is reflected below.
2. COSLA has a seconded member of staff from Scottish Government to assist with preparedness work with councils. Billy McKenzie has begun visiting individual councils and speaking to key officer contacts. Again, the feedback from that work thus far is incorporated into the information below. This work with councils will be further developed as what exactly we are preparing for becomes apparent. Meantime, every effort will be made to arrange contact with those councils that our secondee has yet to meet.
3. While, in general, work will continue bearing in mind all possible future options. It is fair to say that serious consideration is now turning to the worst case scenario of a No Deal. In so doing we are seeking to work with both Scottish and UK Governments on areas identified as key or particularly problematic. We are now therefore looking, as well as the council based work referred to above, to work in parallel with professional associations to identify key issues for their service, which may have cross-country legal and/or resource implications.
4. We are also seeking to see COSLA formally involved in any resilience arrangements activated by Scottish Government through SGoRR (the Scottish Government Resilience Room). This is more than discussing and seeking means to resolve service specific issues. It acknowledges that, working alongside national politicians, local political support, understanding and coordination will be crucial over the next few months if we are to maintain cohesion and local economies, and deliver the smoothest possible Brexit for our communities

*Other General Activity*

1. Work continues sharing good practice and information with the other UK Local Authority Associations with regular phone meetings now in place. Contacts are strong and are providing useful intelligence that we are using to ensure Scottish Local Government is as prepared for Brexit as they can be.
2. Now information is being released that provides some answers for people across the UK, COSLA is refining our website to ensure key information and documents are clearly visible.

The aim is to ensure there is a single information point for Scottish Local Government to go to for Brexit matters, or where not possible contact details for relevant organisations.

**COSLA Position**

*People*

During our secondee’s visits to councils, a key issue has been the concern around workforce if non-UK EU nationals residing in the UK do decide to or have to leave. Identifying exact numbers of these and therefore any potential impact, both within councils and in the local economy more generally is proving difficult.

1. In discussions with the Cabinet Secretary, it became clear that as robust as possible information around numbers of non-UK EU nationals who are part of the public sector workforce staff is required, particularly while the possibility of a No Deal remains live. With this in mind, COSLA is again seeking urgently councils’ assistance to quantify, as accurately as possible, workforce information, initially particularly around early years and health and social care staff.
2. In August, Leaders agreed that COSLA would write to the Scottish Government Minister for Europe, Migration and International Development, Ben Macpherson, to seek clarity on the Scottish Government’s commitment to meet the cost of settled status fees for EU nationals working in devolved public sectors. COSLA Spokesperson, Cllr Whitham, received a response from the Minister on 24 October. Unfortunately, the Minister’s response did not fully address our key questions on who the commitment will cover and the practical elements of delivering on it. Cllr Whitham responded, raising these concerns and emphasising that the matter of clarity has become even more pressing with the imminent introduction of the second phase of piloting of the EU Settlement Scheme. This part of the testing will come into effect in early December and covers health and social care workers. Some assurances around Local Government staff have now been received but a definitive statement is awaited.
3. Chief Executives were sent an email on 6 November asking them to note their interest in providing an assisted digital service for the EU Settlement Scheme application process. As outlined in the EU Settlement Scheme report in August, the process will predominantly be online and COSLA has been working with the Home Office to ensure those without the ability to use or access online methods are able to complete their applications. The Home Office has commissioned We Are Digital to provide an assisted digital service for the application process and one of the delivery mechanisms will be face to face support in a local centre, such as libraries or community centres.
4. To date, 14 councils have noted an interest in providing this service in their area. This highlights Scottish councils’ commitment to ensuring that non-UK EU citizens in our communities are well informed and supported to access settled status. COSLA officers are now liaising with We Are Digital to obtain more information on the service and how it can be rolled out, and councils will be kept apprised of these discussion.
5. COSLA previously responded to the Migration Advisory Committee’s consultation on future migration policy, making clear the challenges that Scotland faces in terms of depopulation and skills gaps, irrespective of Brexit. As previously reported through COSLA’s governance structures, the Migration Advisory Committee chose largely to ignore these representations in the recommendations it made to UK Ministers. We will now work with Scottish Government and other stakeholders on lobbying around the need going forward for locality sensitive migration policy.

*Place*

1. We are currently bringing together the secondee elicited responses, as well as feedback from council representatives on COSLA’s governance structures, and the various groups of officers who are now meeting, to assist best identify key areas of concern around place. So far these tend to focus on the effect on local communities and business, the general uncertainty around Brexit and the difficulties that creates for planning and future replacement EU funding. However, as the work develops and the Brexit Agreement or No Deal becomes clearer, then it is likely that more place based issues will emerge.
2. Linked to this and responding to a point made at the last Leaders meeting, contact is being made with Cornwall Council to establish whether there is any learning there that might be helpfully shared with the Highlands and Islands.

*Goods and Services*

1. COSLA officers are continuing to engage with professional bodies and the wider public sector, through a variety of forums. This is now becoming more specialist in nature, for example recently on Environmental Health issues, and particularly the implications of a No Deal. Reports will be brought back through COSLA’s governance structures as and when required over the coming months.
2. COSLA officers are now holding monthly meetings with their Scotland Excel counterparts to establish areas of mutual interest and the potential for sharing information. That work will include working with councils to look at supply chains to seek to identify potential problems going forward.
3. On a specific matter, following advice from a senior Department for Exiting the European Union (DExEU) official, both Scotland Excel and councils have been alerted to the need to apply for a licence prior to Brexit Day to be GDPR compliant should they have electronic data hosted in EU states.

*Funding*

1. Looking to the future, but to some degree reflecting on the problems of the present, COSLA has been working with UK Government to arrange some initial consultation events on the Shared Prosperity Fund, the replacement for EU Funding from 2020. The events thus far have highlighted the ongoing frustration with the Scottish Government’s existing bureaucracy around structural funds and a situation where Scotland may actually end up handing money back to the EU because it has not been spent. While we still await the formal feedback, the following summarises the main points made by delegates at the events:

* Need for practical, reasonable approach to reporting, no need to be overly scrutinised
* Chance to take a fresh look, innovate, dial back the reporting burden, simplify and truly do something different
* How we apply the rules compared to other countries? Tendency to be risk averse with structural funds in Scotland which makes things more complicated.
* Need for flexibility. One size doesn’t fit all – need to think about regional differences – different issues in different local authorities
* Role of managing authorities (i.e.. Scottish Government) – has been more extreme than it has to be
* How can we get the balance right between outputs and outcomes?
* Need to simplify IT systems – if continuing to use existing systems need to strip back complexities
* Need to look at the positives from EU funds – e.g. 7-year funding cycle, especially useful in context of place and thinking about making real difference – multiyear funding gets people to think about long term and can spark innovation
* Retain additionality as a key requirement
* Importance that funding works for communities – need to involve communities in conversations/consultations

1. Engagement so far has been through largely informal discussions with officers. A more formal consultation is expected and Mr Russell and COSLA President, Cllr Evison, agreed to write jointly to James Brokenshire, Secretary of State for Housing, Communities and Local Government to seek clarity on what was to be proposed.
2. In terms of existing EU funding, the point was made strongly to Mr Russell that this had to be maximised and that issues clearly remained in terms of accessing the funds. The Cabinet Secretary agreed to raise this as a matter of urgency with officials and welcomed further information provided by COSLA and SLAED to assist him do that.
3. More broadly, COSLA continues to press at UK and EU levels for the continuation of access to funding streams such as INTERREG, Erasmus and Horizon 2020.

**Next Steps**

1. The scenarios being considered are changing very rapidly now. Much of what we have to plan for will depend on political decisions at Westminster and across the EU. If the current draft Agreement is approved then the expectation is that there won’t be immediately obvious changes to day to day life for most people. However, most of the decisions around Brexit that have been considered most politically difficult have merely been put off for resolution during a transition period that could now extend to December 2022.
2. Should there be No Deal then there will be significant implications, certainly between now and 29 March and for a period beyond that. Significant legislation will be required in both UK and Scottish Parliaments and, as said above, both Government’s resilience arrangements will be formally activated.
3. If there is to be a ‘third way’ identified over the coming weeks, then we need to see what that is before identifying how best we might most effectively respond.
4. Work will continue on all of the areas listed above meantime. Efforts are also being made to secure direct representation at the UK Government’s formal Brexit Delivery Board.