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To: Growth, Economic Development and Communities Cabinet Committee –
10 January 2019

Subject: Preparations by HM Government and the European Commission for a No-Deal Brexit

Key Decision: No

Classification: Unrestricted

Past Pathway of Paper: None

Electoral Division: Countywide

Summary: The final outcome of the UK's Brexit negotiations are still unclear at the time this report has been prepared. This report reviews the current preparations for a No Deal Brexit.

Recommendation: The Cabinet Committee is invited to note the plans being put in place by the Government and the European Commission for a No-Deal Brexit; this paper complements the paper considered under item 7 of the County Council's agenda on 13 December 2018 on the work of the County Council to prepare for the possible event of a No-Deal Brexit.

1. Background

- 1.1 The United Kingdom leaves the European Union on 29th March 2019 at 23:00 hours Greenwich mean time. The legal default position is that all EU primary and secondary law will cease to apply to the United Kingdom from that moment, unless a ratified withdrawal agreement is in place that establishes another date.
- 1.2 The UK Government and the European Commission have been negotiating the terms of the UK's departure since July 2017 and, in November 2018, published a draft Withdrawal Agreement. This Agreement provides for a transition period after 29th March 2019 where the UK will continue to apply the entire body of EU law. This period lasts until 31st December 2020 but can be extended in July 2020, by mutual agreement, for a further one or two years.
- 1.3 This draft agreement is subject to further discussion in Brussels and in Parliament but will require ratification by both the UK and EU parliaments. If either the UK or European Parliament fails to ratify legislation to give effect to the Agreement before 29th March 2019, the UK will leave the E.U. with no transition agreement in place. This is colloquially described as the "No-Deal Brexit". It would mean that all EU legislation would cease to apply in the UK at that moment in time and there would be no transition period to give businesses,

governments and citizens additional time to adjust.

- 1.4 This paper sets out details on preparations within the UK and EU for the possibility of a No Deal Brexit. At the present time it seems unlikely that all required legislative, policy, systems and process changes to prepare for the UK's exit are deliverable by this date on either side of the Channel.

2. UK Government preparations

- 2.1 The Government has published over one hundred technical notices setting out where leaving the EU without a withdrawal agreement in place would affect government bodies, businesses and individuals and how they should prepare for this situation. At the time this paper was being drafted, the Cabinet confirmed its intention to implement Brexit 'No Deal' plans in full and to send advice to businesses and business umbrella organisations on no-deal planning. We have not been able to analyse this advice and the rest of this section therefore covers Government actions prior to this date.

- 2.2 **Legislative changes:** Many of the areas for action by the Government identified in the technical notices require legislation to be put in place. Much of this is secondary legislation and the EU Withdrawal Act, adopted in the Summer of 2018, provides the legal framework for this programme. The Government estimated in November that some 700 statutory instruments would be required. Of these, the Hansard Society calculated that the Government had laid 265 before Parliament by mid-December.

- 2.3 The Government also has a number of major pieces of primary legislation to adopt. Bills on sanctions, road haulage, nuclear safeguards and customs have already received royal assent. Those on trade, agriculture, fisheries and reciprocal healthcare arrangements were working their way through Parliament in December.

- 2.4 **Changes to specific policy areas:** Over the course of 2018, the National Audit Office and several Parliamentary committees have highlighted concerns about readiness of Government departments for a 'No Deal' Brexit. The Government says it has 320 workstreams running to prepare for a 'No Deal' Brexit and breadth of policy areas affected is highlighted by its technical notices. Many establish requirements for new systems and processes to replace those currently carried out by EU bodies and several new IT systems would need to be ready by the end of March 2019.

- 2.5 A number of areas affect cross-border trade to and from the UK via the short straits crossing points between Kent and northern France in the event of a no deal Brexit. The Government's border planning assumptions, published on 7th December, confirmed that EU member states are getting ready to operate full

third country controls on trade with the UK. The Government's assumption is that the impact would be felt in reduced access into Dover and Folkestone for up to six months. However, the Government also stated its desire to work closely with EU Member States to ensure the continued full flow of goods. HMRC published an impact assessment of changes at the border in December together with specific guidance on import and export processes for users of ro-ro ports and the Channel Tunnel in December. Further guidance has been promised for publication in January 2019.

- 2.6** On 17th December, the Government was able to confirm that the UK would remain within the Common Transit Convention in the event of a no deal Brexit: this ensures traders will only have to pay import duties once (at their final destination) and make a single customs declaration when crossing multiple borders in the EU and its neighbouring countries that are also signatories to the Convention.
- 2.7** **Communication with businesses:** this began in earnest with the publication of the UK's 'No Deal' notices from late Summer onwards. HMRC launched in October a "partnership pack" to help businesses and intermediary organisations supporting businesses work through customs processes and procedures that are likely to apply in a 'No Deal' scenario. HMRC also wrote to UK traders known to be operating in the UK and EU only to inform them of the need to get ready for changes.
- 2.8** Government departments have also published specific advice at moments when traders need to take action immediately. Examples of this are:
- Notice given to hauliers to apply for European Conference of Ministers of Transport permits (ECMT permits) if they wish to continue carrying out haulage in the EU.
 - Notice from HMRC to all traders planning to continue trading with the EU should register for a UK Economic Operator Registration and Identification Number.
- 2.9** The Government is also seeking to engage with traders within the EU. The Border Delivery Group is planning a series of outreach events on the near continent to reach customers of the short straits crossing points (the Channel Tunnel; Dover; Calais; Dunkirk) to ensure businesses and industry are aware of potential changes in trading arrangements, what they need to do to prepare, and what government officials will be doing to help to protect the movement of goods in trucks across at the border. The first of these events will take place in Lille on 15th January.
- 2.10** **Citizens' rights:** The Government published a policy paper in December setting out how EU citizens would be able to secure their rights to settled status in the event of a no deal Brexit. The main changes to how proposals would apply with a

withdrawal agreement are that only EU citizens resident by 29th March 2019 will be eligible to apply to this scheme (as opposed to 31st December 2020 in the event the Withdrawal Agreement is adopted) and they will have until 31 December 2020 to apply for settled status.

3. European Union preparations

3.1 The European Commission and EU member states have been preparing a set of legal, administrative and practical measures to address the scenario where the UK leaves the EU without an agreement in place. These cover actions at the EU, national and local levels and are aimed at public administrations, citizens and businesses.

3.2 To drive forward preparations at the EU level, a dedicated team was set up in the European Commission's Secretariat-General towards the end of 2017. This team has:

- **Overseen the preparation of information notices on the legal changes that would apply to the UK and to business with the UK in a day one no deal scenario:** these cover a similar set of areas to the no deal notices published by the UK Government.
- **Analysed existing EU legislation to identify where primary of secondary legislation may be needed at EU level:** a programme of legislation is foreseen, and this covers a number of areas of particular concern. On animal exports, for example, the Commission has noted its intention to swiftly list the UK as an "authorised third country" so the UK may continue to export animal and animal products to the EU after Brexit. For aviation, the Commission has said provided reciprocal action is taken by the UK, that it will propose measures on aviation traffic rights and safety to avoid an abrupt interruption in flights between the UK and EU.
- The Commission will also adopt legislation to exempt UK travellers from a requirement to obtain a visa for short stays in the EU. UK travellers will, however, be required to register on the EU's forthcoming visa waiver system, ETIAS, for entry to the Schengen Zone. This visa would cost 7 euros for three years.
- **Liaised with the EU's agencies to make sure they are ready to process applications and authorisations from UK entities:** in many instances, UK businesses wishing to continue to trade with the EU will require new licences and authorisations issued by EU bodies to replace those held by UK entities that will no longer be valid after the UK's exit.
- **Coordinated a series of seminars for EU member states to compare the legal and administrative measures they will need to take:** this has focussed on areas of particular concern such as residency and visa-related issues; financial services; air and road transport; customs;

sanitary/phytosanitary rules; and the transfer of personal data. The presentations from the most recent sectoral seminars in November and December are freely accessible on line at: https://ec.europa.eu/info/council-working-party-article-50-preparedness-seminars_en

3.3 The European Commission has also set out its approach to preparing for a 'No Deal' Brexit in two policy papers. The July 2018 paper emphasised that responsibility for Brexit preparedness was a matter for all stakeholders and citizens and not just national governments. This has been followed up by a paper in November 2018 that set out a series of principles for contingency planning. According to the Commission, any measures that the EU or member states adopt:

- “Should not replicate the benefits of membership of the Union, nor the terms of any transition period.”
- Should be temporary in nature: they should not, in principle, go beyond the end of 2019.
- Should be adopted unilaterally by the EU: this means they can be revoked by the EU or its member states at any time.
- Should be compatible with EU law, including any international obligations the EU has
- Should not remedy delays where other responsible stakeholders have not acted in time: this principle, in particular, is to avoid situations of unfair competition.

3.4 On 19th December, the European Commission published 14 pieces of legislation to implement contingency measures for a no deal Brexit. According to the Commission, the areas covered are ones where a no deal scenario would create major disruptions for citizens and businesses in EU member states.

The measures proposed included the following areas:

- road transport: the EU will allow hauliers to continue to carry goods into the European Union until the end of 2019 without the requirement to hold an ECMT permit. However, they will not be able to carry out cabotage in the EU. (This is the right for hauliers to collect and deliver loads within another EU country).
- Aviation: point-to-point flights from the UK to the EU will be allowed until 30th March 2020.
- Financial services: EU firms will continue to be allowed to have access to UK central clearing counterparties and to UK central security depositories for 12 and 24 months respectively.

Accompanying the package are a further policy paper and memo setting out in more detail the changes the Commission foresees if the UK leaves the EU without a withdrawal agreement in place. The areas covered include citizens' rights to stay in the EU; social security coordination; financial services; air, road

and rail transport; the application of customs, VAT and veterinary rules.

The Commission intends to have any further proposals for secondary legislation ready by 15 February 2019. This is also the date by which EU member states must propose any plans to the Commission for new or extended border inspection posts in ports that wish to continue receiving live animals or animal products from the UK.

4. Preparations by EU member states

4.1 Measures taken by EU member states have focussed in particular on resolving the legal situation of UK citizens living in other EU countries, the rights of EU citizens returning from the UK, and on policy and legislative requirements for cross-border trade between the UK and EU after Brexit. The measures taken have fallen into three broad areas:

- **Legislation:** EU member states have been examining where they may need to amend national legislation to address challenges arising from Brexit. The Dutch and French Governments, for example, have published single overarching legislation to bundle together powers to issue emergency legislation in specific areas. Germany, on the other hand, has divided the measures it is taking across a series of Bills while, in Belgium, legislation is being developed to take account of the different competences spread across the country's different levels of government.
- **Communication to businesses and citizens:** several countries have launched single, cross-government online portals to link to advice and support available from different government departments. Countries such as the Netherlands and Ireland were also quick to put in place impact-scanning tools and certain financial incentives to help businesses identify areas of exposure to Brexit.
- **Changes to government services in specific policy areas:** Brexit requires a number of changes to systems and processes, such as for customs where goods passing between the UK and EU will be treated as imports and exports, and for foodstuffs where animals and animal products, in particular, will be subject to EU health-related import conditions. All the countries bordering the UK have begun recruitment drives for new customs officials and veterinarians in anticipation of the restoration of customs controls and certain plant and animal health checks. How these changes can be made to work at ro-ro ports with as little disruption as possible appears to be a shared concern in the Netherlands, Belgium, Ireland and France.

4.2 To illustrate national preparations for Brexit more fully, we set out some examples of the actions taken by the UK's nearest neighbour, France, in the paragraphs below.

4.3 **Legislative changes in France:** in early December, the French Parliament

approved legislation allowing the French government to take emergency measures by decree addressing the situation of French nationals returning from the UK; the situation of British in France; the movement of people and goods to and from the UK. The measures include powers to derogate from statutory planning and consultation requirements to construct and fit out infrastructure in ports, stations and airports required for re-establishing controls on people of goods going from or to the UK.

4.4 Cross-government coordination: in early October, the French Government appointed a cross-government coordinator for border delivery, M. Vincent Porquery de Boisserin. While M.de Boisserin's role is similar to that of Karen Wheeler at the UK Border Delivery Group, it is not yet clear what administrative support he has available to fulfil this role effectively.

4.5 Communication to business: The French Government published a business planning guide in the Autumn and launched a series of seminars on customs to be delivered jointly by the French customs service and the Chamber of Commerce network. Brexit.gouv.fr, a cross-government portal with links to advice for citizen and businesses from different government services, went live in November.

4.6 Government services at the border: France has recruited 250 new customs officers in 2018 with a further wave of 350 to be recruited before March 2019. We understand the French Government will shortly take a decision on a single site for the long-term provision of customs and veterinary checks in the vicinity of the port of Calais and the Channel Tunnel terminal in Coquelles. We believe that discussions are ongoing between the French Government and the European Commission for the approval of temporary border inspection arrangements for animals and animal products to be ready at the end of March 2019 at the port of Calais and the Channel Tunnel. In addition, we understand the French Government is seeking a derogation, so fish and shellfish transported through the port of Calais can continue unimpeded onto Boulogne, the centre of fish processing in France, where a border inspection post already exists.

5. Recommendation

The Cabinet Committee is invited to note the plans being put in place by the Government and the European Commission for a No-Deal Brexit; this paper complements the paper considered under item 7 of the County Council's agenda on 13 December 2018 on the work of the County Council to prepare in the event of a No-Deal Brexit.

Background Documents - None

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