

UK-EU Negotiations - Update

Summary and Recommendations

This paper provides further updates for Leaders by way of a digest on the progress made through the ongoing UK-EU negotiations around the future partnership between the European Union and the United Kingdom. It provides further information on detail provided in previous reports on a topic by topic basis, as has emerged on a range of priority issues and updates on COSLA political and officer engagement.

Leaders are invited to:

- i. Note the updated positions on the key areas of interest and the on-going dialogue in which COSLA politicians and officers are engaged;
- ii. Note particularly that we are now actively preparing for No Deal at the end of the Transition Period;
- iii. Welcome the additional funding provided to create Compliance/Technical Officer posts to support the work of Environmental Health Officers, but agree that work continue to seek adequate resourcing for increased demands on the service; and
- iv. Agree that Leaders and Councils be kept updated on key developments.

References

Previous reports:

- COSLA Leaders 25 September 2020 – UK EU negotiations.
- COSLA Leaders 28 August 2020 – UK EU negotiations.
- COSLA Leaders 12 June 2020 – UK-EU negotiations extension.
- COSLA Leaders 28 February 2020 – UK-EU negotiations.

UK-EU Negotiations - Update

Purpose

1. To update Leaders on progress and the potential implications of the ongoing negotiations around the future partnership between the European Union and the United Kingdom and to provide details of COSLA's related work.

Current position

2. After further talks, which followed completion of the ninth round of negotiations on Friday 2 October 2020 in Brussels between the EU and UK, the Prime Minister has announced that it is time to "get ready" for a No Deal Brexit and that the UK should now prepare for an "Australia style" deal. The UK has been hoping for a free trade deal, similar to that struck between the EU and Canada. Whilst still unable to reach agreement on fishing rights and state aid rules, it appears that neither the UK nor EU have walked away completely from discussions and the October deadline for striking a post-Brexit free trade deal has been extended to mid-November. Indeed, at the time of writing the UK and EU have agreed to engage in further intensive talks in an effort to see if it is possible to bridge the gaps that remain between their positions.
3. Despite this recent return by both sides to the negotiating table, realistically councils must now start to prepare for the real possibility of No Deal by the end of the Transition Period on 31 December 2020. Never before will a Treaty have been drafted, legally revised, translated into 24 European languages, signed by (in this case) the UK Government and EU leaders, then ratified by both the European and UK parliaments in such a short period. At best now, it appears the only other deal possible would diminish additional barriers to trade and mobility, but would still present significant challenges in those aspects; both the UK and EU official preparedness guidance already makes this clear. Both are now doing preparedness work for a no-deal scenario or, at best, for a minimalistic deal. And both sides are advising businesses, the public sector and the general population to do the same within the best of their ability.

What is changing?

4. In addition to the UK-EU negotiations a range of related domestic arrangements are taking place at the same time.

Scottish EU Continuity Bill

5. This Bill will give powers to Scottish ministers to keep pace with future EU legislation. The Bill already introduces statutory consultation for Local Government on future environmental obligations. Following earlier discussions between the President, Cllr Alison Evison, and the Cabinet Secretary, Michael Russell, and the evidence given by the Environment and Economy Spokesperson, Cllr Steven Heddle, at the Finance and Constitution Committee, constructive dialogue is now taking place between COSLA officers and civil servants seeking to introduce arrangements so that Local Government is consulted formally whenever ministers wish to introduce new relevant obligations to keep pace with EU standards.

UK Internal Market Bill

6. The UK Internal Market Bill has progressed through the Commons stages on to the House of Lords. The Scottish Parliament declined the relevant Legislative Consent Motion, but the UK Government is keen to continue on the basis that this protects the free movement of goods and services across the UK. COSLA submitted Leaders' views to the Scottish Parliament which has already provided its scrutiny report. The House of Lords Select Committee on the Constitution issued a report on the Bill on 16 October that aligns with the concerns expressed by Leaders in September on the potential impact of this Bill for the Devolution Settlement.
7. In parallel, COSLA has been discussing with the Scottish Government and the Scotland Office the UK Common Frameworks to deal with UK-wide EU returned matters. Some of those concern Local Government such as waste, environmental, health and safety and trading standards. Again, our intention is to ensure that Local Government is consulted formally before any such Framework is agreed.

State Aid

8. Although the UK intention to comply with EU guidelines on State Aid is set out in the Withdrawal Agreement, recent negotiations suggest that the UK's position is somewhat different to that of the EU. Historically, the UK Government's interpretation of what might constitute State Aid has actually been stricter than most other EU countries. While the UK Government has now indicated that it will broadly retain the general principles governing State Aid, it has not yet spelled out how it intends to enforce them. The Internal Market Bill is sparse on such details, other than to be clear that State Aid will be a reserved matter. We have had a range of discussions with UK and Scottish officials and we expect this to intensify in the coming weeks, including potentially a formal consultation. As yet, a definitive position remains unclear. Further information will be provided to councils as soon as it is available.

Fisheries

9. Fisheries is the other major issue of contention between the UK and EU. While it is entirely unrealistic to expect the UK to remain in the Common Fisheries Policy in all but name (as it appears France/the EU wants), progress is unlikely on this sensitive issue, unless a form of subsidy to EU fleets and/or gradual withdrawal from UK waters can be agreed. Though the UK position is strong on this issue, it is complicated by the fact that most fish and seafood is exported into the EU thus becoming another lever for the EU to use in the broader trade negotiations with the UK.

CoR Contact Group/UK Joint Committee

10. COSLA officials have had further discussions with the Committee of the Regions and relevant Devolved and Local Government officers from the rest of the UK. The first meeting of the UK Committee of the Regions Contact Group will take place on 16 November. The COSLA President, alongside her counterparts and the Presiding Officers of the devolved parliaments are expected to attend via video conference. The CoR will invite UK representatives for each individual meeting, about twice a year, focusing on a particular topic. The purpose of this informal forum is to discuss the post Brexit relationship between the UK and the EU from a local and regional perspective while keeping existing partnerships and developing new ones. As agreed by the March 2018 Convention, COSLA will be represented by the Presidential team and appropriate spokespersons depending on the main item of the agenda. Leaders will be kept updated on developments.

Ministerial Engagement

11. On 8 October Cllr Evison, Cllr Houston and Cllr Heddle met with Iain Stewart MP Parliamentary Under Secretary of State (Minister for Scotland) for a further discussion on UK Exit from the EU, but focused primarily on the UK Internal Market Bill. The Minister confirmed that he had now written to Robert Jenrick, Secretary of State for Housing, Communities and Local Government, on the matter of establishing consultation arrangements for Local Government in respect of the developments in a range of areas including future funding arrangements to replace the European Structural Funds.
12. The new Shared Prosperity Fund was raised with the Minister and he agreed to receive further information on COSLA's position on it. He also agreed to further discussion once greater detail was available from the Ministry for Housing, Communities and Local Government, probably at the time of this year's Spending Review. This is a matter that will require further discussion by Leaders once that further detail is available.
13. Some of the further discussion at the meeting is reflected elsewhere in this report under other headings. He agreed to the principle of further and more frequent meetings between COSLA and Scotland Office Ministers, and further meetings have now been diarised for November and December.
14. The next meeting is planned between Cllrs Evison, Houston and Heddle and Mr Russell after the Scottish Parliamentary recess. Details will be provided once available.
15. This month's meeting of the UK Brexit Local Government Transition Board with UK Ministers and the other Local Authority Associations has been postponed to 4 November. The next agenda will focus on Shared Prosperity Fund and Regulatory Services.

Migration

16. In terms of our concerns about the Social Care workforce post-EU exit, we were advised by Mr Stewart that the Migration Advisory Committee was now recommending adding residential day and domiciliary care managers and proprietors, nursing auxiliaries and assistants, and senior care workers to the UK shortage occupation list. COSLA officers are currently assessing the implications of this, assuming it is accepted by UK Government, and how far this might assist in resolving some of the issues identified by councils.
17. More generally, as regards our position of seeking a migration policy which accommodates the differing needs of Scotland, Mr Stewart indicated that there will be a Scotland only shortage occupation list, but the detail of that remains unclear. He indicated that there could be further discussion around this at future meetings.

Environmental Health

18. The Scottish Government has announced initial funding of £2.9m to fund additional Environmental Health support posts for a year to help deal with the increased workload required after the end of the Transition Period as well as the ongoing work on Covid. This is considered in the Distribution report elsewhere on this agenda. While the additional funding is warmly welcomed, this is only part of the problem though. Challenges still remain and there is still a need for more fully qualified Environmental Health Officers, particularly given the likely considerable increase in Export Health Certificates post-EU exit. COSLA continues to pursue further resourcing to meet this need.

Brexit Coordinators

19. Cllr Evison wrote to the Cabinet Secretary requesting funding for Brexit Coordinators in each council, as agreed previously by Leaders. Ms Campbell has replied with an expression of support and gratitude for the work already carried out by councils in respect of Brexit preparedness, but advising she needs further 'tangible evidence' of what funding beyond 31 December 2020 would achieve. Cllr Evison has written again providing further information.

Freeports

20. Recent correspondence from Ivan McKee, Minister for Trade, Investment and Innovation has outlined extensive engagement with a range of Scottish stakeholders which, we understand, included local authorities, which has helped identify a number of opportunities and risks around this policy. The Minister admits lacking key information requested from UK Government on economic modelling and specific tax, finance and regulatory levers the UK Government intends to apply. He also recognises potential detriments such as economic displacement. The UK Government has made it clear that any process for selecting Freeports in Scotland would be undertaken jointly by both the UK and Scottish Governments. In the meantime, the Minister is inviting further views and evidence on the opportunities and risks attached to Freeports. Cllr Heddle is scheduled to hold a meeting with Mr McKee in advance of Leaders meeting on the Shared Prosperity Fund and, as part of that, will raise the issue of Freeports and the Scottish Government's developing position. Leaders will be updated of any developments.

Border Infrastructure

21. Coronavirus has impacted on businesses' ability to prepare for the end of the Transition Period and the UK has taken the decision to introduce new border controls in three stages up until 1 July 2021¹. This is designed to give industry extra time to make necessary arrangements.
22. New infrastructure at ports will be needed whether or not the UK secures a negotiated agreement with the EU and new procedures will be coming into place. On 2 October the UK Government launched a £200 million fund for ports to build new facilities. The fund is targeted at those ports that have the space to build new border infrastructure on their current sites i.e. vital port infrastructure - from warehouses and control posts to traffic management systems; so that they are ready to handle new customs requirements under the new Border Operating Model. The deadline for applications is 30 October, with successful bids announced shortly after.
23. Where infrastructure is not best situated at ports, the UK Government has allocated an additional £270 million to build inland customs facilities.
24. Scottish local authorities are entitled to apply to both these funds.

Preparedness Work

25. Clearly, given the strong possibility of no deal by the end of the Transition Period, councils will be stepping up their preparedness work. Building on the work done prior to previous Brexit deadlines, COSLA has started discussing with key officers in councils, how best we might support that. Undoubtedly there is much that can be learned from the response to Covid over the last few months. Cllr Evison meets Ms Campbell, just prior to this meeting, in the latest bimonthly and undoubtedly preparedness work and potential support from

¹ [The Border with the European Union](#)

Scottish Government will be discussed there. Further information will be provided at Leaders meeting.

Proposed COSLA Position

26. The pace of work continues to increase and office bearers and officers are now engaging regularly in various meetings. This is all being done in the context of ongoing work to respond to Covid.
27. Given the imminent end to the Transition Period, consideration is being given as to how best we keep councils up to date on developments between Leaders meetings. This will include updating the COSLA Brexit webpages and use of the Elected Members Bulletin.

Next Steps

28. Leaders will be kept informed on the progress of UK-EU negotiations, the accompanying legislation and the practicalities of the Transition Period ending, and additional positions might be requested as these discussions progress.

October 2020