

Brexit

Purpose of report

For discussion.

Summary

This report updates members on the work that the LGA is undertaking to address the opportunities and risks of Brexit for councils.

This report examines, in summary, the issues that we have raised with Government since the referendum to ensure that such opportunities and risks are on the public record and being addressed through national decisions as our exit from the EU is negotiated. The report sets out where there is clarity and where clarity is still being sought.

Recommendation

The LGA Executive are requested to consider where further LGA action is needed and the focus of future Brexit work.

Action

Officers to take forward in-line with members steer.

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Background

1. Since the referendum of June 2016, the LGA has developed a detailed Brexit work programme, through working with councils across England and with the associations of Wales, Scotland and Northern Ireland.
2. We have identified opportunities and risks to councils of Brexit and worked hard to ensure that negotiators were considering these views as a deal with the EU was developed.
3. We are still working in an extremely fluid political environment. The nature of the deal with the EU is still to be defined, with a special European summit being called in November to see if a deal can be agreed. Government is also working proactively to prepare for a “no deal” scenario (though this is not a favoured option). Should a deal be agreed with the EU in November, it will still require a “meaningful vote” in Parliament.
4. Within this uncertain context, this report summarises the opportunities and risks that we have identified and discussed with Government, where assurance has been given and where we are still seeking clarity.

Longer Term Opportunities and Risks

5. It was clear from immediately after the referendum that the onus was on the LGA and councils to illustrate a way forward which strengthened local communities.
6. Through press work, conference events with partners, publications and formal meetings with Government, we have established ideas for a debate about England post-Brexit. In many areas, we have set out tangible work plans and timelines for Government.
7. Big issues which are on-the-record through reports, submissions and evidence to Parliament include:
 - 7.1 Devolution to English communities: the opportunities of devolving powers post-Brexit to communities through local government and ensuring that Brexit does not result in a concentration of power in Whitehall.
 - 7.2 The English Question: the need to address the issue of devolution in England, as the current UK constitutional settlement only covers Holyrood, Cardiff Bay and Stormont.
 - 7.3 A major review of EU legal powers to support local service delivery (for example, procurement and food hygiene).
 - 7.4 Taking the opportunity to create a better local regeneration funding stream to succeed EU Structural Funds.

- 7.5 Ensuring that any “Brexit dividend” extends beyond the NHS to local services such as social care.
- 7.6 Utilising local government expertise in economic development to support future trade deals.
8. We have made progress and have started work with Whitehall on a number of issues. For example:
- 8.1 We have secured a Government agreement to bring local government’s role in EU law making across to the UK post-Brexit and we are awaiting a Parliamentary Statement on detail.
- 8.2 We are meeting Department of International Trade to start to scope the council role in future trading relationships.
- 8.3 Though much depends on the nature of the future trade deal with the EU, Government has taken on board our call for a review of returning EU laws, focusing in the first instance on public procurement and food hygiene laws.
9. LGA Boards have also been scoping out the opportunities and addressing the risks. For example:
- 9.1 The People and Places Board has established the Post Brexit England Commission to examine the devolved powers needed to help non-metropolitan authorities thrive.
- 9.2 The City Regions Board is developing work to bring together a number of representative urban organisations to promote a future urban devolution agenda.
- 9.3 EEHT Board is working with DEFRA on its post-Brexit policies (including a future waste policy).
10. In all these areas, the onus has been on the LGA and councils to create the public debate on the longer-term, localist agenda and to initiate the discussion in Whitehall. Parliament and Whitehall at the moment are concentrating heavily upon the immediate work of preparing for March 2019. Thus it has been difficult to gain much traction on detail when minds are concentrated on the much shorter timescales. However, our successful work on the housing shows that we need to pursue a long-term agenda to initiate changes to national debate.
11. Brexit will change the way that the UK is governed and our work has ensured that we are prepared to promote new powers and responsibilities reaching local communities. There remains a risk that without continued evidence and ideas from the LGA, partners and councils, the centralisation of powers in Whitehall post-Brexit will occur without challenge.

12. Members may wish to consider our current work in this area and any gaps. There will be a point in time when this work will be a staple of our discussion with Whitehall. It is unlikely that this will occur before a deal is agreed. However, the onus remains with the LGA to prepare for and provide the evidence for the longer-term devolution of powers.

Preparing for the Immediacy of Brexit

13. Whilst the detail of the UK's exit deal with the EU remains to be clarified, the LGA has been identifying the issues where councils needed clarity in the immediacy of exit (either in March 2019 or after a transition period in 2021).
14. Working with councils, the big issues identified have included:
 - 14.1 Providing legal certainty for councils as many councils services are underpinned by EU law (e.g. procurement and environmental services).
 - 14.2 Securing regeneration projects currently funded by EU Structural Fund, funding initiatives and the European Investment Bank.
 - 14.3 Securing the continuity of public services and local businesses that depend heavily on non-UK EU residents (for example, seven per cent of social care staff in England).
 - 14.4 Identifying the capacity needed to undertake any increased responsibilities at ports (including port health, emergency planning and transport issue) and in regulatory services (such as trading standards).
 - 14.5 Clarity on voting and standing rights in 2019 local elections.
 - 14.6 Clarity on how new council costs from any new tariff on EU goods would be funded by Government.
 - 14.7 Mitigating the risk of the unintended local consequences of national deals and ensuring enough local flex to ensure that local opportunities were ceased.
15. In these areas, we have proactively offered solutions from the local government perspective. For example, we identified all EU laws impacting on councils and provided detail to ministers of where legal certainty was needed. In addition, where we have identified those parts of the local government workforce or other sectors important to the local economy most vulnerable to change and offered a longer term solution through our Work Local proposals

16. We have been given clarity in some areas:

16.1 There is legal certainty as all local government laws based on EU regulations will be transferred into UK law through the Withdrawal Act. However, many statutory instruments are required to be put in place by March 2019 to provide full assurance to the sector.

16.2 Our lobbying has achieved a guarantee that HMT will cover the costs of projects funded by EU Structural Funds and associated initiatives, until 2021 (even under no deal).

16.3 Settled status provides assurance in the short-medium term for non-UK EU residents and provides legal certainty for employees in public and other local services. Under a no deal scenario, we are still awaiting advice from Government.

17. We are still seeking clarity in the following areas:

17.1 We are awaiting the detail of many Statutory Instruments which convert EU law into UK law, some of which will be vital to service delivery. These technical changes may require councils to make administrative / constitutional amendments, the full scale of which has not yet been mapped out (for example, we have been made aware that Food Standards Agency guidance on officer authorisations expects councils to list each piece of legislation they are authorised under; the majority of which are about to change).

17.2 The detail of the UK successor to EU regeneration funding has yet to be developed.

17.3 We need further details on how more vulnerable groups will be supporting in attaining settled status and we need assurance about the residency and rights of non-UK EU citizens under a “no deal” scenario.

17.4 We await clarity on voting and standing rights in May 2019 elections.

17.5 There has been no response to our concerns about new council costs from any new tariffs on EU goods.

17.6 The “no deal” technical papers, in general, deal with how ports and trading standards adjust its processes and systems when EU goods are treated as third party goods. However, they do not consider the detail of delivery and capacity issues for local councils. Through pressure from the LGA, a cross-departmental working group has been established in Whitehall to work through these issues with port towns. We are closely monitoring progress.

17.7 We have advised that Government “no deal” technical papers are needed to address the impact across all services at a local level. These are unlikely to be delivered.

18. One issue of concern that we raised immediately after the referendum in 2016 was that Government preparation for exit was based on departmental plans. As most Government departments dealt with local government’s issues, the sector was likely to have to deal with and coordinate the work of all departments in order to understand the scale of the work needed by councils. This continues to be a concern.
19. The new MHCLG Brexit Delivery Board, established by the Secretary of State, is dealing with this issue more effectively. Other Government Departments are being invited to attend. However, there is still an onus on the sector itself to join up the action plans of Whitehall. The LGA is pressing MHCLG to fill this important gap in Brexit preparedness and to provide a central hub of information for councils on Whitehall planning. This would be a vital tool to allow councils to prepare for Brexit.

No Deal Scenario

20. Whilst it has stated that “no deal” is not a preferred option, the Government is publishing a series of technical papers which help prepare citizens and businesses for leaving the EU with no deal. These have been communicated to all leaders and Chief Executives to ensure that expectations about councils’ preparedness is on their radar.
21. It should be stressed that Government expectations are that councils are making local plans for “no deal” as a result of its technical papers.
22. Some of the papers (such as changes to procurement rules) have direct impact on councils. Other papers have little impact on councils. There are other areas where no advice has been provided, including employment and residency rights and 2019 local election rules. . As such, there are still gaps where clarity can only be achieved by national advice. It should also be noted that the technical papers do not consider local capacity to deliver regulatory change.
23. The LGA has provided a detailed breakdown for all councils of the formal advice from Government to date and, importantly, has set out the expectations in other areas such as emergency planning. This should help councils prepare where advice is available.
24. This can be found [here](#).

Council Preparedness

25. The ‘No Deal’ technical papers do raise more general issues about councils’ preparedness which we should discuss with Government.

26. Under the no deal scenario, these issues are stark as preparedness is needed by March 2019 when a switch from EU rules to new UK rules becomes effective. The effective date for such change under a deal with a transition period is likely to be from Jan 2021, but these general issues are still of relevance.
27. Firstly, the technical changes advised in “no deal” papers are purely technical (for example, advising that port health databases will switching from an EU IT system to a new UK DEFRA system in March). They do not consider the training/change management needed locally nor do they consider any additional resource that might be needed. Though some detail of these issues are being addressed with councils across Whitehall, there is a more general issue that the LGA needs to make: Councils are capable to manage this change but they need new resources for new duties. Change requires training and an understanding of detail of front-line staff. Under a no deal scenario, the time and training needed for such additional capacity may not be available and “a period of grace” may be needed in which any confusion between the sudden shifts in regulatory systems will result in support rather than punishment.
28. Secondly, much of the Government’s preparations on Brexit is being undertaken through confidential meetings. While it is by no means the case that these confidential meetings will provide all the information and answers that councils need, it is clearly unhelpful that not all councils are able to access information and we are aware of a number of instances where councils have sought information but information remains confidential. This is hampering efforts by councils to prepare for Brexit and needs to be reviewed.

Local Impact

29. Since the referendum we have been aware that there would be studies analysing the economic impact of Brexit at a national level. The onus has been on the LGA to provide the evidence of local impact, where local opportunities can be supported and where risks need to be mitigated.
30. We have led this work with MHCLG through inviting councils and their partners to set out local opportunities and risk. Regional seminars have been held across the country. Regular submissions have been made to MHCLG with evidence.
31. One of the problems of collecting such evidence was the uncertainty of the detail of the Brexit, with councils working to many scenarios. It has been important to register these local issues to ensure that Government’s Brexit preparations were positively influenced by local evidence.
32. We have to work to a scenario where the detail of Brexit may not be known until the last minute and we may need to be prepared for local economic shocks or emerging local opportunities that need to be developed quickly. As such, we are raising with MHCLG the need for resources or capacity which deal with these local risks and opportunities.

For example, we have already put on record that the UK successor to EU funding needs to be a locally based fund which is not bound by national rules, but able to flexibly respond to the challenges and opportunities of local economies post-Brexit.

Going Forward over Next Few Months

33. The biggest unknown is of course the detail of any deal which could be agreed between the UK and the EU. The technical detail will impact on council services, possibly from April 2019. We will continue to monitor developments, analyse the impact on councils and provide briefings for the sector.
34. The timetable below does imply that any deal may not be finalised until the last month of our notice to leave the EU. Thus the Government's planning for "no deal" and the expectations of planning by the sector may continue until exit day.
35. These are the important milestones to consider:
 - 35.1 18 October - UK/EU Negotiations: This meeting of the European Council was expected to agree the UK/EU exit deal. This is now unlikely but more detail might emerge on the likelihood of a deal. A special European Council meeting is being planned for Nov at which it is hoped a deal will be finalised.
 - 35.2 13 November - UK/EU Negotiations: This is the anticipated date for the special meeting when it is hoped a deal will be agreed.
 - 35.3 13 December: There is scheduled meeting of the EU Councils in December. This is possibly the final meeting at which a deal can be agreed.
 - 35.4 From December: UK Parliament discussion on exit: If there is a deal, Parliament will vote on the Government's motion to approve the withdrawal agreement and future framework.
36. There are three "no deal" scenarios for Parliament.
 - 36.1 If Parliament has decided not to pass the Government's motion to approve the withdrawal agreement and future framework.
 - 36.2 If, before 21 January 2019, the Government tells Parliament that no agreement can be reached.
 - 36.3 If after 21 January 2019, no agreement has been reached.
37. Under these scenarios, the Government would have to make a statement to Parliament setting out what it intended to do next. Parliament would then have an opportunity to vote on those plans.

38. From Dec: The European Parliament needs to agree the deal.

Implications of Wales

39. Members and officers are working closely COSLA, the Northern Ireland LGA and the Welsh LGA. The other UK associations are members of the LGA Brexit Task Group where we coordinate our work.