

Committee(s)	Dated:
Port Health & Environmental Services	19 September 2017
Subject: Impact of the UK leaving the EU (Brexit) on Port Health & Public Protection	Public
Report of: Director of Markets & Consumer Protection	For Decision
Report author: Jon Averbs, Port Health & Public Protection Director	

Summary

Following a referendum in June 2016, the UK is due to leave the European Union on 29 March 2019. Negotiations are underway between the UK and EU in relation to the terms of the UK's departure. As a wide and varied range of European legislation is enforced by the Port Health & Public Protection Division of the Department of Markets & Consumer Protection, particularly by Port Health and Animal Health, there are considerable implications concerning the way in which controls will be undertaken post-Brexit.

This report outlines the key issues and implications for the Division, and refers to an independent report that was commissioned to examine the impact of Brexit on the Division. Recommendations are made to protect City of London Corporation interests and those of the Consumer.

Recommendations

Members are asked to approve the following:

- 1) The recommendations contained in the report commissioned by the City Corporation and listed in Appendix 3 should be pursued in more detail, and a progress report provided in March 2018.
- 2) The following key principles should form the basis of negotiations with government and relevant agencies with regard to the functions undertaken by Port Health and Public Protection:
 - a. The same, or an improved, level of consumer protection should be sought for public, animal and environmental health in terms of any proposed changes to regulatory controls after the UK leaves the EU.
 - b. Any changes to the current legislation should be commensurate with the risk posed by different activities and trades, as it is recognised that some enforcement requirements could be streamlined.

- c. The UK should continue to recognise EU controls in order to avoid resourcing implications at the UK border; and this would **best** be done as part of a reciprocal agreement with mutual recognition, as this would be more sustainable politically, promote regulatory alignment, and facilitate UK-EU trade.
- d. Full cost recovery for local authorities and port health authorities to enforce relevant legislation is essential, and this should be extended to include those areas not already covered, particularly if they have to undertake additional controls as a result of Brexit.
- e. The current checks at UK and EU borders on third country imports should be maintained to facilitate free movement of goods within the EU, and between the EU and the UK, and the UK should maintain access to existing IT and rapid alert arrangements.

Main Report

Background

1. A referendum was held in June 2016 in which the UK voted to leave the European Union. Subsequently, the UK triggered Article 50 of the Treaty of Lisbon, whereby the UK gave formal notice of withdrawal from the EU which is due to take place on 29 March 2019.
2. The Port Health & Public Protection Division enforces a range of legislation, much of it based on EU Directives and Regulations. The key areas are the border controls undertaken at by Port Health at the ports, and by Animal Health at Heathrow Animal Reception Centre (HARC).
3. The purpose of this report is to consider the main impact of Brexit on the Port Health & Public Protection Division, focusing on animal health and port health, and what measures.
4. The legislation enforced at the Ports and HARC is wide and varied, but is fundamentally aimed at protecting the consumer in terms of public, animal and environmental health. Controls are exercised by Port Health on food and feed imported from third countries, i.e. those outside the EU. Products arriving from other EU countries currently benefit from the Single Market so are not routinely subject to full inspections. This is based on uniform standards coupled with common inspection and certification procedures in the countries of origin.
5. At HARC, animal health and welfare checks are undertaken on all animals imported through the Airport and the Pet Travel Scheme is administered. More information can be found in Appendices 1 and 2 (profiles of Port Health & Animal Health).
6. Within the Square Mile, most of the food safety and air quality legislation is EU based. This also applies to a lesser extent to other environmental, trading standards and health & safety law.

7. The UK is still subject to its legal obligations to the EU and vice versa until an exit is formally concluded. Whilst many EU Directives have been absorbed into domestic legislation and will therefore automatically remain post-Brexit, many are still “European”, painting a mixed picture for workplace and consumer law.
8. The European Union (Withdrawal) Bill was published on 13 July 2017. This converts all relevant EU law onto the UK statute books which means that current regulations and controls will remain and be transposed into domestic legislation. However, government will eventually review laws to consider which should be removed and if any alternatively regulatory measures should be introduced. The timetable for this, and any transitional regime that goes with it though, will only start to emerge over time, but the new legislation could result in considerable changes following Brexit.
9. To try and inform post-Brexit arrangements and any changes to legislation, meetings have been held with senior Civil Servants, directors of relevant Agencies and Business/Trade organisations. Representation has been secured on various review panels and boards, and opportunities are being taken to engage with relevant politicians.
10. Brexit has been included on the Port Health & Public Protection Division risk register and this report forms part of the actions identified to address the risk.
11. To identify areas of concern regarding the current level of control and the operational implications of potential post-Brexit changes, a report was commissioned to examine key impacts and opportunities. This was undertaken by two consultants who have extensive experience in local authority regulation, animal health, and food safety.

Current Position

12. Although negotiations have commenced between the UK and the EU, there has been little indication of how animal and port health border controls will be undertaken post-Brexit. However, more recently the government has started to issue position papers, including one on future customs arrangements and another entitled ‘Continuity in the availability of goods for the EU and the UK’. The later contains the following statement: ‘The UK’s ambition is to work towards a comprehensive future agreement with the EU, which includes securing the freest and most frictionless trade possible in goods and services to the benefit of all.’
13. The report commissioned by the City Corporation referred to above has also been received. This this explores the array of scenarios for the post-Brexit regulatory landscape, focussing on Port Health and Animal Health control systems, impact, threats and opportunities for the Corporation. An electronic link has been circulated and hard copies are available in the Members’ reading room.
14. The report outlines the different post-Brexit scenarios with the two extremes being as follows:

- a. No deal: in this case trade would be governed by the World Trade Organisation and the UK would be treated as a 'third country' in relation to trade with the EU. Similarly, imports from the EU to the UK might no longer be given free movement, so tariffs and strict controls could be imposed at UK borders. Food and agricultural imports would be seriously affected as by their nature they require clearance through Port controls without delay. There could be similar difficulties for agricultural exports to the EU.
- b. Single Market: Such an agreement would ensure harmonised regulation and tariff free trade with the EU and if it included customs and agriculture it would be the equivalent, in trade terms at least, of continued membership of the EU.

15. The Labour Party has recently announced its support for continuing the Customs Union and Single Market, at least for a transitional term.

Implications for Port Health & Public Protection

16. The implications for Port Health & Public Protection are more severe if a 'hard' Brexit is the outcome of negotiations, and a summary is provided for each area below:
17. **Port Health** – Treating imports from the EU in the same way as those from third countries would lead to a significant increase in the work of port health authorities around the country as checks would be required at the borders. Given the current trade pattern in the Port Health area of jurisdiction (the tidal Thames and lower Medway), this would result in a 25% increase in workload. This would have staffing and training implications, and also require additional offices and facilities at wharves and ports that do not currently have them. The seven Official Veterinarians (OVs) employed by the Corporation are all nationals of other EU Member States, as are many OVs who carry out other food safety and animal health functions.
18. Conversely, should checks at the border be relaxed through free trade agreements with other third countries, or if for any reason inspections were undertaken inland rather than at the borders, this could pose a risk to Public and Animal Health, and result in redundancies and decreased income.
19. Shellfish monitoring and controls are carried out in the Thames estuary to EU standards and a high proportion of the harvest is exported to the EU. Existing standards need to continue if consumer protection and the current EU trade are to be maintained.
20. **Animal Health** – the main source of income and controls undertaken at HARC relate to the Pet Travel Scheme. Any changes to the Scheme, or to the way in which animals from the EU third countries are handled and checked could have a major impact on HARC, both in terms of activity and income.

21. A large percentage of the pet travel trade is via professionals relocating to the UK for work on one or two year contracts. If this employment moves away from the UK because of Brexit there will be decrease in throughput at HARC.
22. Currently there are no live animal border inspection posts (points of entry approved by the European Commission) at any UK seaport. If it becomes a requirement to check all live animal consignments entering the UK from the EU, this would push trade to airports, especially in the short term due to the lack of facilities at seaports. This could have staffing and facility implications at HARC as it is currently the major live animal border inspection post serving the UK.
23. **Air Quality** - The European Union Ambient Air Quality Directives set a series of air quality limit values that must be met across Member States. The most challenging limit value to meet has been for nitrogen dioxide. Member States were required to produce plans to limit nitrogen dioxide to acceptable levels by 2010, or 2015 at the latest. The UK failed to do so and will have nitrogen dioxide levels that breach the limits beyond 2025.
24. After Brexit, the limit values would remain in UK law, having been enshrined through Air Quality Standards Regulations. However the European Commission would no longer have a role in enforcement and the UK would be free to repeal the laws. The UK is currently subject to EC infraction proceedings, so exiting the EU would also remove the threat of fines for non-compliance. The increasing awareness of the broad range of adverse health effects resulting from air pollution exposure could make any significant watering down of limits politically sensitive.
25. As well as imposing the limit values, EU laws also empowered campaigners to challenge the UK Government in the courts over its failure to ensure that air quality meets the limits. Following a legal challenge by ClientEarth, the Department for Environment, Food and Rural Affairs brought out a new strategy outlining further steps that will be taken to improve air quality across the UK.
26. **Food Safety** - whilst having high level domestic legislation such as the Food Safety Act 1990 and the Food Standards Act 1999, most UK food law is derived from directly effective EU Regulations and is not incorporated into UK law so these would have to be enacted into domestic legislation post-Brexit.
27. **Health & Safety** – for health and safety legislation the opposite is true with most of our laws flowing from EU Directives which have been already incorporated into UK legislation and so leaving the EU will have little impact on UK health & safety law.
28. **Trading Standards** – is a real mixture with domestic legislation providing the framework yet some areas of product liability, cosmetics, medical devices and medicines regulation have standards that are both UK and EU defined.
29. **Pollution Control** - legislation is primarily based on the law of nuisance and various Public Health Acts that pre-date entry into the European Union. As such, amendments to legislation concerning issues such as noise and other nuisance,

some environmental controls, and privately rented housing is unlikely in the short to medium term following Brexit.

Proposals

30. The City Corporation consultants' report has made ten recommendations on how the City should approach Brexit with regard to Port Health and Animal Health and the preparations that it should make. These are included in Appendix 3 to this report. Given the short time that has elapsed since the report was received, subject to any comments received by your Committee, I propose to pursue these in more detail and provide a further report in March 2018.
31. Due to the uncertainties of how Brexit will impact on Port and Animal Health, I propose that in negotiations with government departments, agencies etc., the City Corporation should adopt the following five key principles:
- a. The same, or an improved, level of consumer protection should be sought for public, animal and environmental health in terms of any proposed changes to regulatory controls after the UK leaves the EU.
Rationale: there should not be any consumer detriment as a result of Brexit, and there may be opportunities to improve public health standards in areas such as air quality, as well as controls undertaken at the borders.
 - b. Any changes to the current legislation should be commensurate with the risk posed by different activities and trades, as it is recognised that some enforcement requirements could be streamlined.
Rationale: in line with (a) above, although the overall level of consumer protection should be maintained or improved, some legal requirements could be relaxed where there is clearly a lower level of risk.
 - c. The UK should continue to recognise EU controls in order to avoid resourcing implications at the UK border; and this would **best** be done as part of a reciprocal agreement with mutual recognition, as this would be more sustainable politically, promote regulatory alignment, and facilitate UK-EU trade.
Rationale: mutual recognition or equivalence agreements, whereby the EU and UK recognise controls at the point of production (or first point of entry into the UK or EU – see (e) below) and therefore do not carry out checks at borders for products being exported from the EU to the UK, or vice versa, would keep unnecessary controls to a minimum. Given that the FSA estimates around a third of the food consumed in the UK is imported from the EU, and were checks to be undertaken at the border, there would be massive resource implications, so reciprocity would avoid this potential problem.
 - d. Full cost recovery for local authorities and port health authorities to enforce relevant legislation is essential, and this should be extended to include those areas not already covered, particularly if they have to undertake additional controls as a result of Brexit.

Rationale: the cost of enforcing legislation should not fall to the public purse, and although full cost recovery is permitted in many cases, this could be extended to include other areas, such as food hygiene and health & safety inspections, imported consumer product safety, and shellfish monitoring.

- e. The current checks at UK and EU borders on third country imports should be maintained to facilitate free movement of goods within the EU, and between the EU and the UK, and the UK should maintain access to existing IT and rapid alert arrangements.

Rationale: currently, once third country goods have undergone border controls at the point of entry into the EU, there is no further need for additional checks. In line with (c) above, if these checks were maintained goods could still move freely between the UK and the EU. The current IT and rapid alert arrangements regarding hazardous food/feed are essential for effective controls, so if possible should be retained.

Corporate & Strategic Implications

32. The proposals outlined above address the actions outlined in the Departmental Risk Register and also conform to objectives in the Business Plan.
33. As far as financial implications are concerned, there is insufficient information available to make an assessment of how any proposals will affect Port Health & Public Protection budgets. However, as part of the ongoing monitoring of Brexit these will be kept under review.
34. The legal implications of the EU Withdrawal Bill are being overseen by the Remembrancer. His most recent briefing for MPs prior to the second reading of the Bill referred border inspections, and his comments have been incorporated into the recommendations made in this report.

Conclusion

35. There are a range of potential impacts on the Port Health & Public Protection Division resulting from the UK leaving the EU, particularly for Animal Health & Port Health. The implications need to be kept under review, and the City Corporation needs to address them taking into account agreed principles that protect the City Corporation and in line with the recommendations of the consultants' report.

Appendices

- Appendix 1: London Port Health Authority Profile
- Appendix 2: Animal Health & Welfare; Primary Customers
- Appendix 3: Summary of recommendations from report commissioned by the Port Health and Public protection Division

Background Papers

Report commissioned by the Port Health and Public Protection Division: **Brexit**: A future regulatory landscape, key impacts and opportunities. Authors: Derek Allen and Will Creswell.

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