

Brexit “No Deal” briefing for councils

Date: Friday 5 October 2018



BACKGROUND

Over the past few weeks, the Government has published a number of technical papers to ensure businesses and citizens understand what they would need to do in a ‘no deal’ scenario, so they can make informed plans and preparations.

It has been emphasised by the Government that a negotiated deal is still its preferred option. However, the impasse in negotiations between the EU and UK at September’s Salzburg summit means that “no deal” preparations are important and that such preparations are likely to be twin-tracked with the UK/EU negotiations, possibly right up to March 2019. Thus the Government is making it clear that it would be prudent for all public and private organisations to ensure that they were making preparations for a no deal scenario.

In this paper, we are summarising for councils both the “known” and “unknowns” under a ‘no deal’ scenario for local government from national advice. We look at:

- The issues that local government needs to address as a result of national advice from the Government (as contained in its “no deal” technical papers).
- Future announcements on regulatory and legislative change that could affect councils in the run-up to March 2019.
- Community cohesion and civil contingency.

NO DEAL FOR COUNCILS

In advance of the Government papers being published, the LGA produced its own [“No Deal” briefing](#) to identify the top-line issues for councils and highlight where clarity needs to be provided by Government. We have particularly sought to emphasise that in the immediacy of exit under no deal, the sector would need:

- Clarity on the continued employment and residency for non-UK EU citizens running vital public services;
- Compensation for the additional costs to councils from any new tariffs on imports from the EU;
- A guarantee for local regeneration currently funded from the EU (*NB Government has already responded positively in this area*);
- Additional capacity and resources to fulfil our regulatory responsibilities at ports of entry or inland if there are no checks at ports and/ or EU third country controls require it;

Briefing

- Immediate UK replacements where we rely on EU processes at the moment (e.g. procurement); and
- The opportunity to immediately reform some EU laws which constrain local economies (such as procurement and state aid).

GOVERNMENT'S TECHNICAL NOTICES FOR NO DEAL

In July, the Prime Minister and DEXEU Secretary of State announced that they would be publishing a series of technical notices to ensure that businesses and citizens understand what they would need to do in a 'no deal' scenario.

Three sets of papers have been published to date. The latest tranche of these was published on Monday 24 September. At least one more tranche is expected in early-mid October.

As Government papers were published, we analysed them against our headline concerns. To date, the technical papers deal with some but not all of our issues. For example, there is advice on future procurement processes, but technical advice on the residency/employment status of non-UK EU workers under "no deal" has yet to be published.

In **the appendix** to this report, we have provided a summary of the issues contained in the 76 Technical Papers published to date. In all cases the technical notices contain information that will affect businesses and/or individuals. In some cases there are direct implications for local authority services and programmes and these are highlighted. It is hoped that this can act as an initial checklist for leaders and chief executives of those issues where local government has received advice for "no deal" planning and local preparations will be expected.

In reading this summary, the following should be considered:

- In some areas clarity is given. In other areas, an issue is acknowledged and further Government work is promised. For example, it is acknowledged that we cannot use OJEC for procurement after a "no deal" exit and further engagement is promised on how to deal with ongoing procurement procedures as we switch from EU to a UK system is promised nearer the time. So our preparedness will depend on further advice.
- The Government has not finished publishing its technical papers. Consequently, there will be further additions to our summary paper. We will keep our summary reference paper up-to-date [here](#).
- At present, there is no advice on residency and employment rights of non UK EEA residents under a no deal scenario

The appendix is not formal advice from the LGA. It is a prioritized checklist of where corporate systems may need to change quickly in 2019. We will continue to analyze future papers and provide advice as it is released by the Government

The Government has asked for feedback on all aspects of its technical notices. We would particularly like to understand where there are gaps or unintended local consequences and where further Government advice may be needed.

FUTURE TECHNICAL ADVICE AND CHANGES TO REGULATIONS

As stated, more Technical Papers are expected from Government and we will continue to analyse them as they are published.

EU law and regulation underpins many council services (such as waste and environmental standards). The Withdrawal Act 2018 provided for all EU law to be brought into UK law to ensure that there was legal certainty for businesses and residents. The Withdrawal Act is now law and this legal certainty remains in place under No Deal.

However, many UK laws refer to EU regulations or to EU agencies. The Withdrawal Act gives ministers the ability to amend such laws where EU institutions or processes are mentioned. We have been assured that the principle that the Government is working to is that of continuity (at least in short-medium term) and naming UK successor agencies to EU regulators.

Under No Deal, all these legal changes to UK law need to be in place by March 2019 and relevant information communicated to the sector by Government. Given the number of Statutory Instruments that are required it is not clear at the moment whether all changes will be communicated via the “no deal” technical papers or through direct communications by a number of Government departments to relevant professional bodies or directly to councils.

In the short-term, we have raised with Government that:

- There is a responsibility to ensure coordinated Whitehall communications with the sector.
- All relevant councils need to receive information about planning for issues such as post- exit border controls.
- Such speedy legal/regulatory change will require a “period of grace” immediately after exit to implement changes effectively

This is an area we understand needs continual monitoring and work by the LGA and councils and we will return to this in future communications.

COMMUNITY REASSURANCE

As we are heading for a period of change, councils’ role as community leaders will come to the fore.

As we prepare for a possible “no deal”, many non-UK EU citizens will be seeking reassurance about their future in the UK. Seven per cent of social care staff in the England are from the non-UK EEA and are providing vital public services. The anticipated reciprocal “settled status” for non UK EU citizens may only be possible under a deal with the EU.

The LGA is seeking assurance of on two important issues under a no deal scenario: employment/residency/access to services and voting/standing rights in the 2019. In some areas where elections are due, EU Citizens make up more than 30 per cent of the local population. Local parties are already making their candidate selections, current councillors are seeking certainty about their tenure and electoral registers are being compiled. Any change to voting and eligibility rules at this late stage could lead to disruption. We hope the former will be detailed in a future technical paper and we have sought for clarity on the latter. We will update councils once the Government has responded.

Whilst we await clarity on these issues, the principles have been set out in a recent address by the PM. In her speech from Number 10 on Friday 21 September, the Prime Minister stated:

There are over three million EU citizens living in the UK who will be understandably worried about what the outcome of yesterday's (Salzburg) summit means for their future. I want to be clear with you that even in the event of no deal your rights will be protected. You are our friends, our neighbours, our colleagues. We want you to stay. (PM Brexit negotiations statement: 21 September 2018).

CIVIL CONTINGENCIES

As in any period of significant change, councils' business continuity and emergency planning duties and our anticipation of the possible unintended local consequences of "no deal" on exit need to be considered.

There is the immediate impact of a "no deal". For example, the imposition of new checks on all goods arriving from or going to the EU could cause traffic backlogs at UK port towns. After the referendum, there was a rise in hate crimes and we would need to assure our communities that we had plans in place for any immediate community reassurance work.

In the short-to medium term, there would be scenarios that we would need to think through, such as the possible return of large numbers of largely elderly UK citizens from other parts of the EU, the impact on the local government workforce and key skills needs, and the additional capacity that was needed if more regulatory checks were required to keep on importing from or exporting to the EU.

A number of commentators including the Governor of the Bank of England, have also highlighted the potential macroeconomic consequences of "no deal" arising from trade and currency fluctuations, with impacts to household and business stability. This may lead indirectly to increased pressure on local public services and more challenging prospects for local growth.

Cabinet Office's Civil Contingencies Secretariat and CLG's Resilience and Emergencies Division have begun discussions with Local Resilience Forums to ensure preparedness for key issues; councils will be contributing to this and doing their own scenario planning at an organisational level to ensure preparedness.

CORPORATE CAPACITY TO DELIVER AND PREPARE FOR NO DEAL.

The LGA recognises that this is additional work for councils. Brexit planning by councils comes at a time of great pressures on services and finances.

We have raised this issue with Government and will continue to press the point strongly.

We would like to understand where additional advice or capacity is already being utilised or may still be required to help prepare for all the work anticipated in the no deal technical papers.

It would be very helpful if you could provide any information on:

- ***Most effective advice/support needed at the corporate centre***
- ***The most pressing issues for your councils***
- ***Any gaps in national advice***
- ***Any additional support you will need in the short-medium term***

A FUTURE DEAL

It should be emphasised that one of the most important “unknowns” at the moment is the nature of any deal that may be agreed between the EU and the UK. As stated before, over the next six months we are likely to be twin-tracking “no deal” preparations with EU/UK negotiations and offering advice on how any draft deal may impact on councils. Government has indicated that no deal preparation should continue up to the point at which any deal is ratified by the UK and EU Parliaments

As the details of any deals are developed, the LGA will be briefing on the implications for councils. We have already briefed on the draft Withdrawal Agreement and the Chequers Agreement. It should be noted that any deal is likely to include an implementation period – i.e. a transition period to the end of 2020 so that change can be achieved gradually.