

PLYMOUTH CITY COUNCIL

Subject: Brexit and the Environment
Committee: Brexit, Infrastructure and Legislation Overview and
Scrutiny Committee
Date: 6 March 2019
Cabinet Member: N/A
CMT Member: Giles Perritt - Assistant Chief Executive
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Ref: BILCO/002/19
Key Decision: No
Part: I

Purpose of the report:

The report provides an overview of environmental issues arising from the decision of the UK to leave the EU.

Corporate Plan

The Brexit, Infrastructure and Legislation Scrutiny Panel will hear evidence on the subject. This responds to our Corporate Plan values of being democratic and cooperative. The recommendations made by the panel will inform the development of our Corporate Plan priority - a green sustainable city that cares about the environment.

Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land

None.

Other Implications: e.g. Child Poverty, Community Safety, Health and Safety and Risk Management:

The report will cover Brexit impacts on our air quality management and our Port Health Authority role which could have health and safety implications for our residents.

Equality and Diversity

Has an Equality Impact Assessment been undertaken? No - as no decision is being taken on which to base one.

Recommendations and Reasons for recommended action:

Members of the panel are asked to note the report.

Alternative options considered and rejected:

None.

Published work / information:

Minutes of Council 26th March 2018.

Background papers:

Title	Part I	Part II	Exemption Paragraph Number						
			1	2	3	4	5	6	7

Sign off: Not required as no decision is being taken.

Fin		Leg		Mon Off		HR		Assets		IT		Strat Proc	
Originating SMT Member Giles Perritt													
Has the Cabinet Member(s) agreed the contents of the report? The view of the Leader has been sought in his capacity as the relevant Portfolio holder.													

I. INTRODUCTION

- 1.1 This report sets out known and potential impacts of the UK leaving the European Union (Brexit) that relate to the natural environment and our Environmental Health regulatory role. Following discussion with the Chair of the Brexit, Infrastructure and Legislation Overview and Scrutiny Committee (BILCO) the report is focussed on areas of interest to the committee:-
- The broad direction of Government policy around the environment set out in the 25 year Environment Plan and the Draft Environment (Principles and Governance Bill) 2018.
 - The potential impact on planning policy and practice in relation to the environmental assessment of development projects and policies.
 - Changes to the current regulatory framework for air quality and related corporate work streams, e.g. the plan for trees and our policy around electric vehicles, and relevant pledges made by the administration.
 - The impact on our natural environment, in particular areas and species with protected status under EU law.
 - The impact of the delivery of our Port Health Authority functions and relevant Environmental Health regulatory functions, e.g. catch certificates and export health certificates.
- 1.2 The report is based on known changes to the legal framework at the time of writing we anticipate more than 600 statutory instruments will be laid before parliament in the coming months. There may therefore be changes in the near future that will have impacts we are unable to take into account.
- 1.3 The ongoing uncertainty about the outcome of the Government's negotiations complicate the picture significantly. The draft withdrawal agreement negotiated with the EU includes a principle of non regression in relation to existing EU environmental law. It is unclear whether this would be applied unilaterally in the event of a no deal outcome to the negotiations.
- 1.4 In the situation of a 'hard' (no deal) exit, then in accordance with the however, it will then be 'fixed' and will not be subject to any subsequent interpretations by the Court of Justice of the European Union and the only way to amend it will be through domestic measures.
- 1.5 In the situation of a 'soft' exit, characterised by the application of internal market / customs union requirements, then the majority of EU environmental law will continue to apply but not all of it. Importantly, the common fisheries and common agricultural policies will not, neither will the Birds, Habitats and Bathing Water Directives, which are not part of the single market settlement. Otherwise the current law will continue to apply as it stands on exit day until amended through domestic measures.

2.0 GOVERNMENT POLICY

"A Green Brexit, seizing a once-in-a-lifetime chance to reform our agriculture and fisheries management, how we restore nature, and how we care for our land, our rivers and our seas. A new system of support for farmers will have environmental enhancement at its heart"

- 2.1 A Green Future: Our 25 Year Plan to Improve the Environment was published in January 2018. The aims of the plan include:-
- Farmers will be rewarded for turning over fields to meadows and for transforming broader landscapes by connecting habitats into the larger corridors recommended by the Lawton review.
 - A new Northern Forest and review of National Parks and Areas of Outstanding Natural Beauty.

- Work with nature to offer valuable habitats by planting more trees and creating and sustaining more wetlands which reduce carbon dioxide levels and flood risk.
- 2.2 Leaving the EU also means taking back control of UK international waters.
- Developing a fishing policy that ensures fish stocks are replenished.
 - Extend the marine protected areas around our coasts to preserve our maritime heritage.
- 2.3 It sets out the Governments' intention to consult on plans for an independent, statutory body, to hold Government to account for a comprehensive set of environmental principles. It will be regularly updated to reflect the changing nature of the environment.
- 2.4 The draft Environment (Principles and Governance) Bill sets out how we will maintain environmental standards as we leave the EU and build on the vision of the 25 Year Environment Plan. Published in December 2018 the bill will make the statutory changes needed to implement our new approach, and enshrine in law a transparent series of checks and balances to map our progress towards our goal.
- 2.5 Key features of The Environment Bill includes: the precautionary principle, so far as relating to the environment,
- the principle of preventative action to avert environmental damage,
 - the principle that environmental damage should as a priority be rectified at source,
 - the polluter pays principle,
 - the principle of sustainable development,
 - the principle that environmental protection requirements must be integrated into the definition and implementation of policies and activities,
 - the principle of public access to environmental information,
 - the principle of public participation in environmental decision-making, and
 - the principle of access to justice in relation to environmental matters.
- 2.6 The final three are actually 'rights', not principles as they are related to the Aarhus requirements which are independent of EU membership as they exist by virtue of a Council of Europe Convention as a measure in Public International Law as ratified by the UK.
- 2.7 The Environment Bill will require the Secretary of State for the Environment to issue a policy statement in respect of each principle, and then for Ministers to have a duty to 'have regard to the policy statement' which many see as weak and open to legal challenge. Also, this currently means that anybody with environmental decision-making powers is not required to have regard to the Bill. There are also a number key exemptions including matters of defence, taxation and any other matter specified by the Secretary of State.
- 2.8 The Bill sets out to take three important steps towards reaching their goal:
- Establishment of a new environmental body, the Office for Environmental Protection (OEP) to champion and uphold standards as we leave the EU.
 - The introduction of a clear set of statutory environmental principles to guide policymaking.
 - The placing of the 25 Year Environment Plan on a statutory footing.
- 2.9 The OEP will replace the Commission's / CJEU's oversight and enforcement actions. However, as it currently stands, the OEP will lack the independence and rigour currently applied to environmental measures by the CJEU. The Bill proposes that the OEP should be created and managed by DEFRA and the Secretary of State and is therefore more of an ombudsman than an independent watchdog with teeth.

- 2.10 Under the current proposals, the OEP will have scrutiny and advice functions and whilst it will have the power to report on 'any matter' in respect of environmental law, it will not have the power to recommend a course of action.
- 2.11 The OEP will also be able to investigate formally and issue recommendations relating to a complaint regarding serious compliance issues, but these recommendations will not be legally binding.

3.0 IMPACT ON PLANNING POLICY AND PRACTICE

- 3.1 The main influence of EU law on planning is through EU directives that require environmental assessment of development projects and policies. These are currently transposed into UK legislation by way of the Strategic Environmental Assessment (SEA) Regulations, the Environmental Impact Assessment (EIA) regulations, and the Habitats Regulations.
- 3.2 The SEA regulations – are given effect in UK law primarily through the Strategic Environmental Assessment Regulations. They require that the authority preparing a Local Plan must do so “with the objective of contributing to the achievement of sustainable development”. More specifically they require a local planning authority to carry out a sustainability appraisal of each of the proposals in their Local Plan during its preparation.
- 3.3 A sustainability appraisal is a systematic process that must be carried out during the preparation of a Local Plan. Its role is to promote sustainable development by assessing the extent to which the emerging plan, when judged against reasonable alternatives, will help to achieve relevant environmental, economic and social objectives.
- 3.4 The EIA regulations are given effect in UK law primarily by the Environmental Impact Assessment Regulations 2017. The regulations set out a procedure for identifying those projects which should be subject to an Environmental Impact Assessment, and for assessing, consulting and coming to a decision on those projects which are likely to have significant environmental effects.
- 3.5 The aim of Environmental Impact Assessment is to protect the environment by ensuring that a local planning authority when deciding whether to grant planning permission for a project, which is likely to have significant effects on the environment, does so in the full knowledge of the likely significant effects, and takes this into account in the decision making process.
- 3.6 The Habitats Regulations are given effect in the UK by The Conservation of Habitats and Species Regulations 2017. The Regulations transpose Council Directive 92/43/EEC, on the conservation of natural habitats and of wild fauna and flora (EC Habitats Directive), into national law.
- 3.7 The Regulations provide for the designation and protection of 'European sites', the protection of 'European protected species', and the adaptation of planning and other controls for the protection of European Sites. Under the Regulations, competent authorities i.e. any Minister, government department, public body, or person holding public office, have a general duty, in the exercise of any of their functions, to have regard to the EC Habitats Directive and Wild Birds Directive.

4.0 AIR QUALITY AND RELATED CORPORATE WORK

- 4.1 Air quality is an important issue for which there is considerable EU legislation. There are two areas of work for which we are responsible for, one of which is also a responsibility of the Environment Agency.
- 1) We regulate industrial processes which have the potential to pollute the air, and the EA have a wider remit of regulation of processes that have the potential to pollute air, land and water. Processes are split with regulation falling between the two enforcing bodies. Plymouth have a number of processes which we regulate including quarries, crematoria, solvent processes,

vapour recovery such as petrol stations and terminals, to name but a few. A fee is paid by these businesses to request an Environmental Permit and based on risk, they are inspected at a set frequency. An annual payment is made for a permit.

- 2) We also have a responsibility for air quality monitoring and action planning, which is required where there is a breach of the air quality standards. Each local authority is required to assess air quality against guidance and if the air quality standards are breached to declare an air quality management area. Where this is declared, an action plan must be written setting out how the local authority intends to implement measures to reduce air pollution. We have an AQMA in Plymouth, and we have seen reductions in levels over the last few years. The AQMA in Plymouth relates to nitrogen dioxide. Most legislation is set out from EU regulation and the Government has been clear that it has no plans to change limit values and targets for air quality following Brexit. The Government's intention is that pursuant to the European Union (Withdrawal) Act 2018, law derived from the EU, including air quality legislation, would be converted into domestic law after Exit Day. Depending on the terms agreed of any future trading arrangements, once the UK has left the EU, the UK could then potentially amend air quality standards and review any deadlines for meeting them.
- 4.2 There has been considerable debate over the future of EU environmental principles and the loss of the role of EU institutions in monitoring and enforcing environmental law following Brexit. In response to concerns raised, the Government held a consultation on environmental principles and governance from May-August 2018. It proposed the creation of a new statutory independent environmental watchdog to hold government to account on its environmental obligations; and options for establishing environmental principles in the UK. The consultation applied to England only. Scotland and Wales are both considering governance arrangements, with further announcements from Ministers expected in coming months.

5.0 IMPACT ON OUR NATURAL ENVIRONMENT

- 5.1 In the short term following Brexit, it is unlikely that there will be a significant impact on the natural environment of Plymouth as the current environmental restrictions will continue under their current guise. However, in the longer term, there are uncertainties on how the legislation is amended to reflect legal findings and jurisprudence following ECJ court cases.
- 5.2 Plymouth City Council will still be required to have regard to the designated European sites and species (including Plymouth Sound and Estuaries Special Area of Conservation and Tamar Estuaries Complex Special Protection Area) in all of its activities as required under the Environment Bill.
- 5.3 Similarly for the proposal to declare the waters off Plymouth as Britain's first National Marine Park; in the short term Brexit will not change the way in which the waters are managed as current legislation will continue to apply.
- 5.4 The Plan for Trees sets out how the Council will work with partners across the City to promote, protect, care and enhance trees and woodlands to ensure they deliver the maximum benefit for communities and wildlife. Under Brexit, it is not anticipated that there will be any impact on its delivery, as the Plan includes a commitment to source all trees from British-grown stock.

6.0 IMPACT OF THE DELIVERY OF OUR PORT HEALTH AUTHORITY FUNCTIONS

- 6.1 Plymouth City Council's Port Health Authority is part of the Public Protection Service (PPS). The Port Health Authority has been advised to continue to plan for a 'no deal' situation. Government departments have been working to design customs and other control

arrangements at the UK border in a way which ensures goods can continue to flow into the country, and won't be delayed by additional controls and checks. However, the UK Government does not have control over the checks which member states impose at the EU border. The European Commission has made it clear that, in the event of a 'no deal' scenario, it will impose full third country controls on people and goods entering the EU from the UK.

- 6.2 Because the risk is not expected to change on day one, no new controls are envisaged in relation to imports of high-risk food and feed (with the exception of catch certificates for fishery products) from the EU for a time limited period after exit. To maintain high levels of food safety, the UK would require importers of high-risk food and feed to pre-notify the Food Standards Agency (FSA) of imports from the EU. A new online import notification system (IPATH) is being developed. This requirement would have no direct impact at the border or for port health authorities. Pre-notifications would be made electronically, in advance, by those introducing high-risk foods into the UK, and would be managed by the FSA. No additional controls would be introduced at the border.
- 6.3 The Port Health Authority has no further information about the 'time limited period' after Exit. Plymouth is not a Border Inspection Post (BIP), so on expiry of the time limited period, the meat, fish and dairy that is currently imported through the port will not be able to enter. This equates to approximately 1500 vehicles of freight per year which would have to be re-directed to a BIP. Southampton and Falmouth are currently the closest BIPs to Plymouth. It seems unfeasible to expect that high-risk food can continue to come into the EU with no checks indefinitely. Plymouth Port Health Authority is looking into the feasibility of Plymouth becoming a BIP in the medium to longer term.
- 6.4 Although Plymouth Port Health Authority is not expecting extra port checks (except catch certificates) on imported food and feed from day one, the Environmental Health Officers will be expected to continue to check traceability and food safety during routine food hygiene inspections and investigations inland, which may add time to each intervention.
- 6.5 Changes would apply to control requirements for imports of third country animal products and high-risk food and animal feed which move through the EU before arrival in the UK, from March 2019. Importers would need to notify UK authorities using the new import notification system (IPATH) and would be directed to an existing UK BIP where the relevant checks would take place. As Plymouth is not a BIP, the port should not expect to receive any of this cargo from day one. Available intelligence to date suggests that Plymouth currently receives very little cargo that has originated from outside the EU at the port.
- 6.6 There would be an increase in the number of consignments requiring import control checks at UK Border Inspection Posts as a result of the need to carry out checks on transit items that are currently carried out elsewhere in the EU. Plymouth has been identified as a port that will take extra ferries carrying cargo to help alleviate this extra pressure on the BIPs. Brittany Ferries have confirmed that the new contract will increase sailings by 40% and therefore there will potentially be 40% more cargo and passengers coming through the port.
- 6.7 EU fishery products landed to Plymouth from the lorries on the ferries will require the port health authority to issue Catch Certificates in accordance with illegal, unreported and unregulated fishing legislation (IUU). This is a new and onerous duty. It is estimated that between 80 and 200 vehicles per year arrive into Plymouth and will require certificates if we have a 'no deal'. This will be chargeable to the importer at full cost recovery but there is a significant impact on capacity in the Food Safety team.
- 6.8 Exports to the EU do not currently need any special documentation, so this is a new area that will require resource and training. There will be a significant increase in requests for Export Health Certificates to accompany food being exported from our Plymouth based exporters and the fish quay. The export certificates themselves will be calculated at full cost recovery, however, the resource required to issue them will have an impact on the Food Safety team.

- 6.9 The Public Protection Service are currently anticipating approximately 8 days of update training for seven EHO's to deal with import and export legislation. The impact of all this training will have a knock-on effect on the planned food hygiene inspection programme and other statutory duties. There will be increased demand for business advice concerning imports and exports of goods.
- 6.10 Plymouth Port Health authority was awarded £34k from the Food Standards Agency for this financial year to help with preparation for food and feed Brexit-related issues. The bidding process for 2019/20 is now open and the authority will be bidding for more funding from the Food Standards Agency to include extra staffing to help with demand. The authority estimates that a 'no deal' Brexit will require between 1.00 and 1.75 FTE at Grade H for the food safety impact, plus 1.0 FTE admin support. It will be possible to recover costs from Export Health Certificates and Catch Certificates.
- 6.11 Plymouth City Council has two EU designated bathing water sites at East and West Hoe. The quality of the water is currently classified as 'Excellent'. It will be crucial for Plymouth City Council to continue to secure protection of these sites in the absence of EU protection.

7.0 IMPLICATIONS FOR PLYMOUTH CITY COUNCIL

- 7.1 The broad direction of Government policy is to maintain much of the current framework of protection inherited from the EU. To replace the monitoring role currently carried out by the CJEU the government proposes to introduce the Office for Environmental Protection. It is at least arguable that this body will be less robust since it will be operated by DEFRA and the Secretary of state and will not therefore be fully independent, now will it have the same power to direct compliance.
- 7.2 Whilst the short term impact on planning policy may be limited UK legislation will no longer have to keep pace with EU legislation and the principal of non regression may suggest longer term relaxation of the current EU standards.
- 7.3 Air quality regulations will also be translated into UK law and regulations without amendment on exit. However there would be no obligation on the Government to maintain them, thereafter and should they seek to amend them, then in the absence of the existing EU regulatory bodies the OEP would be the only body with a remit to challenge any perceived downgrade in environmental protection.
- 7.4 In relation to our natural environment the government will no longer be obliged to have regard to the decision of the CJEU in relation to protected species and habitats.
- 7.5 Our Environmental Health Service have been forced to invest considerable resources in making contingency plans to manage operations at the port in the event of a no deal Brexit. Whilst the belated decision to operate a light touch regime for the early period we will have to invest in increased capacity to deliver Port Health Authority functions if no deal is the eventual outcome and this may also be true of a negotiated withdrawal depending on the content of the agreement. We should in these circumstances be pushing for a full new burdens assessment.

ⁱ Rt Hon Michael Gove MP, Secretary of State for the Environment in the forward to the 25 year environment plan.