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Dear Michael

TEO COMMITTEE –JANUARY 2021 UPDATE ON EU EXIT MATTERS

The TEO Committee has requested monthly written briefings that provide a general update on Brexit issues, between the monthly oral briefings by Junior Ministers. The attached paper provides an update covering the period up to 18 January 2021. The Junior Ministers are scheduled to provide a further oral update on 27 January.

Yours sincerely

Departmental Assembly Liaison Officer

COMMITTEE FOR THE EXECUTIVE OFFICE UPDATE ON EU EXIT MATTERS

This paper provides an update to the TEO Committee on EU Exit matters as they stand at 18 January 2021. The position, particularly in relation to operational matters, is extremely fluid and has the potential to change significantly over a short space of time. The Committee will be kept updated through the regular oral briefing process, as progress is made on the matters set out below.

OPERATIONAL READINESS

1. In advance of the end of the Transition Period, significant work was taken forward across Departments and in close engagement with UKG, focused on day one readiness. This included meeting the Executive's obligations under the Protocol in relation to SPS checks and working with UKG and businesses to mitigate high impact issues and risks.
2. Whilst significant progress was made, following the end of the Transition Period there remain some operational issues which have the potential to impact significantly on our economy and our people as businesses respond to the new requirements. In light of this, work is progressing across Departments to resolve immediate issues whilst also preparing for the end of the grace periods. Given the nature of the issues, this also involves close engagement with UKG, Irish Government officials and businesses.
3. Since 1 January trade bodies and individual businesses have highlighted initial challenges and difficulties in adjusting to the new requirements. This is particularly so in relation to the movement of goods following the end of the transition period with reported disruption and short term reductions in the availability of some product lines in shops, particularly fresh produce. However, this is not unique to Northern Ireland with similar challenges being reported in GB.
4. Whilst the movement of goods through NI Ports has been relatively smooth, particular challenges have been identified by hauliers and traders in relation to the movement of goods from GB to NI via Dublin Port.

5. The underlying issue both in relation to Dublin Port and the wider movement of goods between GB and NI remains the lack of preparedness of GB companies for the additional paperwork and processes required as a result of the Protocol and the impact of EU Exit on groupage. To address this, TEO officials are engaging jointly with UKG and Irish Government officials. In response, additional guidance and support has been developed by TSS for transit from GB to NI with further guidance and support currently being developed for NI-GB movements through Dublin. TSS are also increasing reach out and seminars to increase awareness and compliance of GB businesses. Similarly to assist in the movement of goods through Dublin Port, the Irish Government has implemented a temporary arrangement for notification of goods. Whilst this will hopefully help in the short term, the easement is provided on condition that traders work with Irish Revenue to upskill and ensure future compliance.
6. Prior to 1 January many goods, particularly agri-food were usually transported as part of mixed loads or groupage. Whilst this model worked in the context of the Single Market and helped drive efficiencies for our hauliers who operate to tight margins and turnaround times, the end of the Transition Period introduces significant constraints. This presents a major challenge for our hauliers but particularly affects smaller companies who are not benefitting from the grace period for supermarkets. Whilst the new requirements for the movement of goods will constrain the model of groupage going forward, officials have been engaging with UKG and businesses to identify and trail a number of options. Guidance on groupage is expected to be published by UKG imminently pending the outcome of those trials.
7. Given the short time frame from the announcement of decisions on the implementation of the Protocol and the Trade and Cooperation Agreement and the end of the Transition Period, grace periods were agreed to enable businesses to move to compliance. This included a three month grace period for supermarkets, meaning that they do not have to provide Export Health Certificates (EHCs) on Products of Animal Origin (POAO) until 1 April 2021. A six month grace period for Prohibited and Restricted goods (e.g. chilled meat products).

8. The expiry of the grace periods will lead to increased challenges if current issues are not resolved now and businesses are not encouraged and supported to move to compliance. In addition, however, concerns about the ability and capacity in GB to issue EHCs have been raised with UKG on several occasions as the system will have to be fully operational before the end of the current grace period.

UK-EU TRADE & COOPERATION AGREEMENT

9. Following weeks of intensified negotiations the UK and EU agreed a new Trade and Cooperation Agreement (TCA) on 24 December 2020. The legal text of the TCA comprises several distinct components:
 - a. Trade, Transport, Fisheries and other arrangements
 - b. Law enforcement and judicial cooperation in criminal matters;
 - c. Thematic cooperation in health security and cyber security
 - d. Participation in Union Programmes, sound financial management and financial provisions;
 - e. Governance arrangements including the creation of a Partnership Council and provisions for dispute settlement, enforcement and review.
10. The TCA is accompanied by separate agreements on civil nuclear cooperation and security procedures for exchanging and protecting classified information, as well as a number of joint declarations.
11. The TCA text is complex and will require careful legal scrutiny by policy officials and their legal advisors within each department. The interactions between the TCA and the implementation of the Protocol will require specific assessment.
12. On 30 December the Future Relationship Bill received Royal Assent, ratifying the TCA in domestic law. The Agreement came into force at the end of the Transition Period on 31 December. On 30 December the Presidents of the European Council and European Commission signed the agreement authorising its provisional application in the European Union.

JOINT MINISTERIAL COMMITTEE (EUROPEAN NEGOTIATIONS)

13. Meetings of the Joint Ministerial Committee (European Negotiations) (JMC(EN)) took place on Thursday 3 December and Tuesday 29 December via videoconference.
14. The meeting of 3 December was attended by the First Minister, deputy First Minister and Junior Ministers Kearney and Lyons. The agenda for the meeting covered the UK-EU negotiations, readiness, legislation and an update on the progress of the UK Internal Market Bill.
15. The meeting of the 29 December was attended by the First Minister and deputy First Minister. The agenda for the meeting covered the UK-EU Trade and Cooperation Agreement, and readiness including deal implementation, legislation and the Protocol.

JOINT COMMITTEE

16. The Joint Committee met on 17 December 2020. The Northern Ireland Executive was represented by the First Minister and deputy First Minister.
17. The Joint Committee was mandated by the Northern Ireland Protocol to take four decisions, on “at risk” goods, agriculture and fisheries subsidies, EU supervision, and customs exemptions for fish landed in Northern Ireland. On 17 December the Joint Committee formally approved decisions on “at risk” goods, agriculture and fisheries subsidies, and EU supervision but did not make a decision on customs exemptions for fish landed in Northern Ireland because that is covered by the Trade and Cooperation Agreement.
18. The Joint Committee Decision on Agricultural Subsidies sets the maximum level of support, exempt from EU state aid rules, for agricultural products other than fisheries and aquaculture products at £382.2 million, with the possibility to carry over an additional £25.03 million if not spent in the previous year. For fisheries and aquaculture the maximum level of support is £16.93 million over five years, with a maximum of £4.01 million in any individual year.

19. The Joint Committee Decision on the Determination of Goods not at Risk sets out the criteria for considering goods not to be at risk of subsequently being moved into the EU, and also defines the conditions for considering that a good brought into Northern Ireland from outside the EU will not be subject to commercial processing in Northern Ireland.
20. The Joint Committee Decision on Arrangements under Article 12(2) of the Protocol covers practical working arrangements relating to the exercise of the rights of EU representatives referred to in Article 12(2) of the Protocol, including EU presence at activities covered in the Protocol, access to IT systems, requests for controls, and agreement to review the decision in three years. Under the agreement there will be no dedicated office in Belfast but EU officials will be able to fulfil the role envisaged under the Protocol to get the assurance they need that the arrangements are operating properly. This will include limited office facilities.
21. The Joint Committee also approved a decision on “errors and omissions” which includes the removal of two EU rules from the Protocol relating to the CO2 emission performance of new cars and vans registered in the EU. It adds eight legal acts to the Protocol, which the UK and EU have agreed are essential for the application of the rules of the EU internal market for goods in respect of Northern Ireland and which were overlooked for inclusion in the Protocol at the time of adoption.
22. At the Joint Committee on 17 December the UK submitted a unilateral declaration on export declarations to simplify process for business moving goods from NI to GB. The EU submitted a unilateral declaration to allow a grace period of six months on the import of chilled meat products, a grace period of three months on official certification and a grace period of one year on human and veterinary medicines. These measures are intended to support the operability of the Protocol from 1 January 2021.

RIGHTS AND DEDICATED MECHANISM

23. The Equality Commission (ECNI) and The NI Human Rights Commission (NIHRC) has agreed to undertake a scrutiny and monitoring role that will form

the 'Dedicated mechanism' to ensure there is no diminution in rights, safeguards and equality of opportunity (as set out in the Good Friday Agreement) for people here following the UK's exit from the EU. (This is provided for in the Protocol and by the EU (Withdrawal Agreement) Act 2020.)

24. Funding has been secured from HM Treasury to cover ECNI's costs in relation to the dedicated mechanism until March 2023. Northern Ireland Office (NIO) has confirmed additional resources for this financial year 20/21 and the subsequent two financial years 21/22 and 22/23. Consideration is being given to long-term funding and TEO officials are in discussions with DoF and NIO officials to formalise funding beyond the initial 3 year period.

25. The NIO has advised that, in common with all UK Government and Northern Ireland departments and arms-length bodies, future funding for the dedicated mechanism will be subject to the normal Spending Review processes. The NIO has made clear that the commitment set out in Article 2 of the Protocol is enduring. We therefore fully expect the dedicated mechanism to exist beyond 22/23. Future funding levels will be discussed with HMT at the appropriate time.

26. ECNI has begun the process for recruiting staff and key positions have now been filled. On 14th October, the Northern Ireland Human Rights Commission, Equality Commission for Northern Ireland and the Irish Equality Human Rights Commission issued a joint statement expressing their concerns about the Internal Markets Bill. They also reported that they have written to the Secretary of State for Northern Ireland to seek an assurance that the Internal Markets Bill will have no adverse effect on the 'No Diminution' commitment. We understand that the Secretary of State has replied restating his commitment to Article 2 of the Protocol and its 'no diminution' commitment.

LEGISLATION

27. The latest monitoring returns from 6 January indicate the potential need for 1 Assembly Bill and 11 Westminster Bills (6 of which, including the Internal Market Bill, have now been enacted), 80 Statutory Rules to be brought before the Assembly (52 of which have already been laid) 18 of the remaining 28

SRs had previously been assessed as non-essential and consequently deferred to the post –transition period. A total of 102 Statutory Instruments that cut across devolved matters were to be laid at Westminster (77 of which have been laid and 21 of the remaining 25 SRs having previously been deferred to the post-transition period). This generated a significant surge in secondary legislative activity in the Assembly and at Westminster throughout November, December and has carried over into January.

28. Significantly, at this time, the programme cannot reflect the full range of legislation which may be required to implement the Protocol or those legislative requirements which are likely to arise from the Trade and Cooperation Agreement.

REPATRIATED POWERS - COMMON FRAMEWORKS

29. A review and assessment process for 35 interim Frameworks Outline Agreements was completed in mid-November, assessing individual policy areas against a set of criteria to ensure that they were sufficiently developed to progress to provisional confirmation by JMC (EN). The assessment included Governance, impact on the Internal Market, dependency on the outcome of the future relationship negotiations and stakeholder engagement. In relation to the specific circumstances for Northern Ireland, the assessment process addressed whether the Common Frameworks proposals adhered to the JMC(EN) principles endorsed by the Executive in June 2020 to “ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. They will also adhere to the Belfast Agreement”.
30. Following the completion of the review and assessment process, the Common Frameworks were approved by the respective Departmental Ministers and submitted for provisional confirmation by JMC (EN). Three frameworks did not complete the process: Mutual recognition of Professional Qualifications, Services and Organic farming.
31. The Framework for Organic farming was identified as requiring further development and a second review and assessment meeting was held on 21

December which did not allow sufficient time for clearance before 31 December. The frameworks for Mutual Recognition of Professional Qualifications and Services were not sufficiently developed due to uncertainties over the provisions of the Internal Market Act. Development of these three Common Frameworks is ongoing in the expectation that they will receive provisional confirmation as early as possible in 2021.

32. Throughout the process there has been significant interdependencies between the development of common frameworks and other workstreams such as the negotiations on the future relationship, the UK Internal Market Proposals and the operation of the Protocol. Now that the Trade and Cooperation Agreement, Internal Market Act and the decisions of the Withdrawal Agreement Joint Committee on Protocol implementation have been published, officials will engage with the other administrations to establish the impact upon Northern Ireland and identify whether the Common Frameworks will need to be amended to take account of these developments.
33. Following provisional confirmation by JMC (EN), all Common Frameworks will be submitted to the relevant Assembly Committee for scrutiny prior to implementation. Officials within TEO have developed and disseminated guidance on this issue through the NICS Common Frameworks Forum. TEO officials will continue to engage with the relevant Departments to reinforce the guidance and encourage policy teams to coordinate the scrutiny process with their counterparts in the other Administrations, whilst taking into account any delays caused by elections in the Scottish Parliament and Senedd Cymru.
34. Monitoring of the delivery of Common Frameworks will continue to be undertaken by the Common Frameworks Project Board which has representatives of TEO, Cabinet Office, Scottish Government and Welsh Government at senior official level which meets at least monthly and which is supported by a series of sub groups drawing appropriate expertise from across the four jurisdictions

INTERNAL MARKET

35. The UK Internal Market Bill completed its passage through Parliament and received Royal Assent on 17 December 2020.

36. During its passage through Parliament the contentious 'notwithstanding' clauses in Part 5 of the Bill were withdrawn by the Government. This removed the threat of the UK Government breaking the international law by unilaterally amending the EU Withdrawal Agreement, including the Dedicated Mechanism, which had been a concern of many groups here.
37. In a further Government concession, to address Scottish and Welsh concerns about the Bill's lack of recognition for Common Frameworks, amendments were tabled to the Market Access Principles of the Bill. These allowed for limited regulatory divergence to be agreed using the Common Frameworks structures and processes.
38. Work on the UK Internal Market has not finished with the passing of the Internal Market Act 2020 onto the statute book and officials will be working in the coming weeks to clarify, for example, how the Office of the Internal Market will operate.
39. The provisions of the Act which have local relevance are as follows:-
- 1) The Market Access Principles (Mutual Recognition and Non-Discrimination), restrain devolved competence, but mean that local goods cannot be discriminated against in the GB market. When taken in the round with the Protocol provisions in the Act and associated qualifying goods legislation this therefore provides the promised 'unfettered access' for local goods. ;
 - 2) Any future UK subsidy regime is reserved to the UK Government, which is not an issue here as it was never viewed as being devolved locally. The Scottish and Welsh Governments in contrast believe it was part of their devolution settlements;
 - 3) The Financial Assistance powers give the UK Government to provide funding in areas such as infrastructure, culture and sport etc, which were previously wholly or partially devolved to the Assembly.
 - 4) The set up an Office of the Internal Market within the Competitions and Mergers Authority (CMA) to monitor the Internal Market.
 - 5) The Act is entrenched and so cannot be amended by the Devolved Administrations.

