

Title of meeting:	Full Cabinet Meeting
Date of meeting:	4 th February 2020
Subject:	Provision of Regulatory Services at Portsmouth International Port
Report by:	Director of Culture, Leisure and Regulatory Services
Wards affected:	All
Key decision:	No

1. Purpose

1.1 The purpose of this paper is to inform the Cabinet of:

- the statutory responsibilities placed upon Regulatory Services at the Portsmouth International Port, and
- post the General Election, provide a summary of how the activities of Regulatory Services is likely to be impacted by a free trade deal with restrictions as the United Kingdom leaves the European Union, and
- to manage the expectations of all interested parties in respect to the operational readiness of Regulatory Services in respect to a free trade deal with restrictions which results in an increased Regulatory Services presence or increased Regulatory Services responsibilities at the Portsmouth International Port border entry point.

2. Recommendation

2.1 **It is RECOMMENDED that the Cabinet:**

- Acknowledges the continuing risk that Regulatory Services will be significantly impacted by increasing demands in border control regulations at the Portsmouth International Port following the United Kingdom's departure from the European Union.
- Accepts that any intensification of border control demands at the Portsmouth International Port will place substantial unpredictable and currently unavailable financial burdens upon Portsmouth City Council statutory regulatory functions.
- Approves further engagement with governmental departments and Ministers in respect to the need for revenue funding equivalent to any additional need to deliver essential border control functions at the Portsmouth International Port.

3. Introduction

- 3.1 All Regulatory Services functions protect residents, consumers, businesses and communities through the regulation of a wide range of protective environmental, health and performance standards set down within legislation. The United Kingdom withdrawal from the European Union may possibly impact upon two primary functions of Regulatory Services which are / are likely to be required to be performed at the Portsmouth International Port. These functions are the Portsmouth Port Health Authority and the Trading Standards Service.
- 3.2 A Brexit deal has been agreed in principle with the European Union. Both the United Kingdom and the European Union however still need to approve and sign the terms of the withdrawal agreement following which they will start to negotiate new arrangements. There is a transition period up to the end of 2020 to prepare for new rules during which the European Union will treat the United Kingdom as if it were a Member State. This transition period can be extended by up to 1 or 2 years to be decided by the 20th June 2020.
- 3.3 At the time of writing this paper it remains conceivable that the United Kingdom could still leave with a no trade deal if the withdrawal agreement is not approved at the end of the changeover period.

4. Current Regulatory Services activity at the Portsmouth International Port

- 4.1 The Portsmouth Port Health Authority's current workload in facilitating its total responsibilities at the Portsmouth International Port is low, equating approximately to a single officer. The Trading Standards Service currently has no formal responsibilities at the Portsmouth International Port.
- 4.2 This low level of activity occurs because most of Portsmouth International Port activities relate either to borderless free movement from the European Union or the importation of low risk products of non-animal origin only such a fruits from third countries.
- 4.3 The Portsmouth International Port has never been designated as a Border Inspection Post which is an United Kingdom entry point designated and approved in line with European Union legislation for carrying out far wider checks than those currently undertaken at the Portsmouth International Port on animal products or products of animal origin arriving from third countries at an European Union border.
- 4.4 However, the Portsmouth International Port has recently (December 2019) been re-designated as a Border Control Post. European Union Regulation 2017/625, Article 64 lays down the minimum requirements for Border Control Posts. This designation has been secured following inspection of port facilities by United Kingdom Border Control Agencies.
- 4.5 The existing European Union legislation that the United Kingdom already complies with will be incorporated into domestic law as "retained European Union law" under the European Union (Withdrawal) Act 2018. Under the Withdrawal Act United

Kingdom government will ensure that current European Union standards remain in force, without amendment, in the immediate months after our European Union exit as part of United Kingdom domestic law.

- 4.6 Regulatory Services has been in significant discussions with the Food Standards Agency in respect to products of non-animal origin and application of such to the Portsmouth International Port and Roll-on Roll-off transportation of goods through ferry services to the Portsmouth International Port which carry freight. Currently only 1.5% to 2% of non-European Union goods imports into the United Kingdom are subject to any border inspections however approximately 80% of these are on environmental health grounds, such as food hygiene and quality standards.
- 4.7 Information from the government currently suggests that in the short term Roll-on Roll-off imports of products of animal origin will continue to be permitted into the United Kingdom through the Portsmouth International Port's new Border Control Post status. It is expected however that there will be increasing concerns in relation to trade in animal and plant products through the Portsmouth International Port and that additional checks, reflective of current percentages for non-European Union goods, will be necessary as food safety and animal welfare are considered paramount by the United Kingdom Government and their Food Standards Agency agents.
- 4.8 These checks are likely to take the form of export licences, inspections and rules of origin documentation. Whilst such checks will serve to maintain the smooth flow of goods through advance clearance and declaration waiver agreements, at this point in time there remains a high degree of uncertainty in respect to the detail of such and what the implications on Regulatory Services may be as a result. We anticipate however that any impact, no matter how small, will be highly significant in terms of the abilities of Regulatory Services to deliver these requirements.

5. What import checks are possible?

- 5.1 Checks of imported goods form an important part of official controls delivered by the Portsmouth Port Health Authority on behalf of the Food Standards Agency to secure food safety. There are three levels of possible check - documentary, identity and physical.
- 5.2 In the documentary check, health certificates and any accompanying laboratory test results are likely to be tested for authenticity and cross-matched with the details of the commercial documents to ensure that they relate to the consignment.
- 5.3 The identity check may involve the inspection of the consignment, checking the container seals and often the packaging of the goods to ensure that the goods match the information on the certification. Labelling and health marking checking is also likely.
- 5.4 It is possible that all consignments of controlled goods will be subject to at least a documentary check. We suspect however that other inspections will be applied randomly in accordance with the inspection quotas which will, in time, be set out by

Department for Environment, Food and Rural Affairs in their guidance or by legislation relating to specific goods deemed to be higher risk.

5.5 The frequency of physical checks for products of animal origin is uncertain, however if they are similar to those currently deployed to other third countries currently outside the European Union they are likely to be in the order of:

- 20 per cent for meat and fish
- 50 per cent for poultry meat, honey and dairy products

1-10 per cent for inedible products of animal origin, such as for example, hay

5.6 Where consignments fail inspection it is additionally possible that Portsmouth Port Health Authority will be required to increase checks on similar products. Portsmouth Port Health Authority officers may then have the final decision on whether consignments meet whatever Department for Environment, Food and Rural Affairs' import conditions are and delegated powers to serve legal notices stating the reasons for rejection and what actions are consequently required, including:

- re-export
- destruction
- remedial action or use of the consignment for another purpose in some permitted cases

5.7 Additionally, the Portsmouth Port Health Authority may take formal samples of high-risk food products. This may be required by the control legislation or as a result of a risk assessment carried out in respect of the product. If a consignment is formally sampled it will need to be detained while a public analyst or microbiologist carries out an inspection to check prescribed hygiene standards are met. Currently the Portsmouth Port Health Authority has no funding provision for sampling or detaining goods which, depending upon the need could extend to tens of thousands of pounds.

5.8 As previously mentioned, an alternative view might be that all goods originating inside the post withdrawal European Union will be allowed to continue to travel freely to the United Kingdom. There is however no certainty in respect to this particularly as / when public health scares arise increased scrutiny is likely to be demanded. What is more, goods arriving from the European Union but originating outside the European Union are likely to require significant checks particularly as it remains unclear what checks European Union countries will undertake of these goods transiting from the first point of entry within the European Union to the United Kingdom.

6. What import checks may be carried out by the Trading Standards Service?

6.1 The Trading Standards Service is a statutory function provided by Regulatory Services. Trading Standards Services are responsible for enforcing over 250 pieces of criminal legislation. Trading Standards Service operate in the United Kingdom market place, including the intra-European Union supplies of goods, where they aim

to ensure that counterfeit and / or unsafe goods are not placed on the United Kingdom market using United Kingdom powers under domestic legislation (Consumer Rights Act, General Product Safety Regulations and Consumer Protection Act).

- 6.2 European Union imported goods enter the United Kingdom at various points of entry. In respect to the activities at the Portsmouth International Port as they are currently predominately European Union in origin or have cleared customs in another European Union member state, they benefit from free movement and therefore are free to leave the port with the absence of checks. Consequently Trading Standards Service has almost no involvement at the Portsmouth International Port.
- 6.3 As the European Union has sought to raise and harmonise the levels of consumer protection through directives and regulations across the single market, so too has the United Kingdom continued to legislate domestically, balancing principles of subsidiarity within European Union maximum harmonisation restrictions. The United Kingdom exit from the European Union is likely to create interesting narratives in respect to this work and how demands upon Trading Standards Service will increase.
- 6.4 Whilst this area has not been a focus of discussion so far we know that from 1 April 2020 The Office for Product Safety and Standards will assume responsibility for the Product Safety at Ports and Borders programme. This emerging programme will therefore be of huge significance in protecting consumers from dangerous products and consequently any importation of similar goods through the Portsmouth International Port is likely to be increasingly of operational significance to Trading Standards Service as the United Kingdom's departure from the European Union matures.
- 7. A focus upon the import and export of fish - an example of increasing pressures**
- 7.1 Whilst all documentary checks / changes are likely to be of increased significance, we know that the importation and export of fish requirements to and from the United Kingdom is highly likely to change dramatically.
- 7.2 Under the Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009, Portsmouth Port Health Authority is listed as the competent authority for where fish and fishery products are imported by container ship, air road or rail. If the European Union treats the United Kingdom as a third country for the purposes of Illegal, Unreported and Unregulated regulation it will result in the United Kingdom requiring catch certificates for imports of fish and fishery products from the European Union.
- 7.3 Importers are likely to have to submit the certificate to the Portsmouth Port Health Authority. The certificate will need to be checked at least 3 working days before the estimated arrival time into the Portsmouth International Port. Such checks are complex as they needed to be made with the countries where the fishing vessels are registered, where the fish have been caught and processed. Consequently they

take significant time to complete. This deadline could therefore be problematic as imports from the European Union mainland will take a matter of hours to arrive at United Kingdom ports, and could cause delays if the paperwork has not been submitted on time. As a result of the current free trade mechanisms in play the level of fish importation through the Portsmouth International Port is presently unclear but is thought to be significant.

8. European Union Exit and Regulatory Services readiness

- 8.1 The Portsmouth Port Health Authority has discussed their status with the Department for Environment, Food and Rural Affairs' Borders Readiness Team regarding European Union exit. The Borders Readiness Team have carried out an assessment of high priority points of entry agencies to understand levels of confidence to deliver border responsibilities ahead of the European Union exit with a no / limited trade deal. It has been agreed that, through no fault of our own, as a result of the current levels of resources afforded to the Portsmouth Port Health Authority it has a low level of readiness currently, and that this situation would still be the case should the United Kingdom exit the European Union in the next 12 months. Department for Environment, Food and Rural Affairs have advised that this will be reported to the relevant government minister.

9. Officer authorisations and governance

- 9.1 The United Kingdom Government has a constitution which sets out how responsible authorities such as Portsmouth Port Health Authority and Trading Standards Service operate, how decisions are made and the procedures that need to be followed to ensure that these are efficient, transparent and accountable. Regulatory Services currently has limited clarity how the United Kingdom Government will authorise Regulatory Services (and our staff) in terms of delegated authority and expertise / qualification and who they will appoint to undertake any increased roles of border protection at the Portsmouth International Port.

10. Risks

- 10.1 The risks incumbent upon Regulatory Services as a result of a no, limited or restricted withdrawal deal which result in an increase in service activities at the Portsmouth International Port are summarised in Table 1.

Table 1 - Options and Potential Outcomes

Option	Options	Potential Outcomes
1	Do nothing. Maintain service levels. Current workforce redirected from other statutory functions as necessary to respond to the needs of the Portsmouth International Port as	This will create significant impact on all other Regulatory Services statutory and government audited functions. It is anticipated that this will create beyond critical pressures being placed upon service leading to non-compliance with statutory responsibilities and service failure in multiple areas. Risk of non-compliant food and non-food consumer products entering the United Kingdom market.

	they develop.	
2	Recruit and train new dedicated Portsmouth Port Health Authority / Trading Standards Service staff	No funding streams are available. Nationally there is an acute shortage of suitability trained and qualified staff. Lead in time is predicted to be a minimum of 24 months. Number of officers required currently uncertain due to ambiguity of demand / need.
3	Contract Portsmouth Port Health Authority out to an agency or neighbouring authority	Release of internal resources, potential cost to service, for servicing contract and / or loss of income from Portsmouth Port Health Authority. Highly unlikely to be possible as other ports are experiencing similar difficulties. In house management and administration would still be necessary.

- 10.2 All options carry significant risks. Currently, option 1 is only available as options 2 and 3 require substantial levels of additional revenue funding which has not been made available to Regulatory Services. There remains a high degree of uncertainty that option 1 will however succeed as result of the need to train and authorise officers in respect to the range of new duties expected.
- 10.3 In regard to the need to communicate the position of Regulatory Services in respect to its activities at the Portsmouth International Port, Councillor Gerald Vernon-Jackson, Leader of Portsmouth City Council wrote to Rt Hon Michael Gove MP on the 3rd October 2019 outlining the position at that time. This letter is attached as Appendix 1.
- 10.4 Funding applications have and will continue to be made to Central Government. To date the only grant funding approved has been recovered for expenditure already made. This equates to approximately £5000 for attending training courses, for example, for fish certification.

11. Integrated impact assessment

- 11.1 An Integrated Impact Assessment is attached as Appendix 2. The proposal has an association with the assessment categories of 'Employment Opportunities' and 'Economy'.

12. Head of Legal Services' comments

- 12.1 Legal Services can confirm that in October 2019, the United Kingdom Government and the European Commission reached an agreement at European Council on the United Kingdom of Great Britain and Northern Ireland's withdrawal from the European Union. The Withdrawal Agreement contains provisions for a Transition Period that currently runs from when the United Kingdom exits the European Union on 31st January 2020 until the end of December 2020. During this period Union food and feed safety law would continue to apply in the United Kingdom. Regulatory Services will therefore continue to have the same statutory objectives that they have now.

- 12.2 During (and after) a Transition Period, Regulatory Services must continue to ensure it meets its statutory objective of protecting consumers by ensuring that there is a robust and effective regulatory regime which maintains the safety and authenticity of food. This will include bringing online some of the work that the government has delivered to prepare for European Union Exit across surveillance, risk analysis, incidents and the compliance regime. The government intend to continue to monitor for new and emerging food and feed safety risks as they do now and advise on these risks.
- 12.3 The governments Statutory Instruments have been laid and made to ensure operability of retained European Union law. The programme of no deal Statutory Instruments is an example of an area where all necessary work had been completed to ensure the operability of food and feed law on day one, but where additional work will be required due to changes that have subsequently taken effect or will be undertaken during the transition period, further work may also be needed depending on the outcome of the United Kingdom - European Union negotiations during the transition period.
- 12.4 The changes that will need to be designed and implemented by the government's food European Union Exit Programme are not yet all known and will not be known for certain until negotiations are complete with the European Union. Depending on negotiations, Regulatory Services need to be prepared for no negotiated outcome having been agreed on the future relationship with the European Union by the end of December 2020 and the implications of such upon border controls.

13. Head of Finance comments

- 13.1 The activities and risks identified within this report will not be able to be met from existing service budgets, as approved by Full Council. The approximate cost for a suitability qualified officer (as assessed by the Regulatory Services Manager) equates to £50K per officer per annum.

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Signed by: Stephen Baily, Director of Culture, Leisure and Regulatory Services

Appendix 1: Letter to Government - 3rd October 2019

Appendix 2: Integrated Impact Assessment

Background list of documents: The following list of documents discloses facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Location and Title	
1	https://www.food.gov.uk/sites/default/files/media/document/fsa-20-01-06-eu-exit-update_2.pdf

The recommendations set out in 2 above were approved by The Leader of Portsmouth City Council on the 4th February 2020.

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Signed by: Councillor Gerald Vernon-Jackson, The Leader of Portsmouth City Council