No-Deal Brexit Guidance

*** Following the result of the 2019 general election, it is now likely that the UK will leave the EU by 31 January 2020. The UK would then enter a transition period which would last until 31 December 2020, with the possibility of an extension. Although a no-deal Brexit is now less likely, it is still a possibility. The Scottish Funding Council has published guidance for Scottish colleges and universities on managing a possible no-deal Brexit. We encourage institutions to be prepared for any eventuality and have included within this document a number of useful links for further information. In the light of this fast moving policy environment, please also be aware that this briefing is a live document and will be updated as appropriate. ***
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Introduction

1. This guidance provides advice to Scottish colleges and universities (‘institutions’) on preparing for a ‘no-deal Brexit’.

2. Following the result of the 2019 general election, it is now likely that the UK will leave the EU by 31 January 2020. The UK would then enter a transition period which would last until 31 December 2020, with the possibility of an extension. Although a no-deal Brexit is now less likely, it is still a possibility.

3. The Scottish Funding Council is working with colleges, universities and the Scottish Government to consider the potential consequences that a no-deal Brexit could have for colleges and universities.

4. Brexit impacts are likely to be greatest in a no-deal scenario. Areas of potential impact on staff, students and institutions include:
   - Movement of people
   - Business continuity
   - Levels of funding
   - Availability and price of consumables and equipment required for study
   - Availability and exchange of data
   - Continuation of EU-wide projects and trials
   - Access to facilities in the EU
   - Mutual recognition of professional qualifications
   - Lack of regulatory alignment
   - Intellectual property rights
   - Exchange rates
   - Dispute resolution mechanisms
   - Audit/anti-fraud assurance.

5. The first part of this briefing focuses on business continuity, and how institutions should respond to possible impacts of a no-deal situation. The remaining sections cover the current policy position of the UK and Scottish Governments on key issues.

6. Most of the material in this briefing draws on other information sources and we have included several useful links throughout this document. For example, the Scottish Government covers a number of areas affected by Brexit on its website. The UK Government also has guidance on how to prepare for Brexit if there is no-deal. The UK Government site includes an email alert function with links to technical notices and up to date information. In addition, COSLA is supporting councils to ensure that Local Government is adequately prepared for a no-deal Brexit and provides information and advice on its website.
Business continuity

7. SFC has visited all Scottish institutions and is aware of the significant activities they are undertaking to ensure business continuity in the event of a no-deal Brexit. Institutions should continue to make preparations for a no-deal Brexit and ensure that business continuity plans are regularly reviewed and updated.

8. The impacts of a no-deal are difficult to predict and may be wide ranging. The following are examples of issues\(^1\) that may arise from a no deal Brexit and which would be most likely to impact on business continuity in institutions:

- Disruption to supply chains caused by delays at ports – meaning that it may be more difficult to source consumables, including some fresh food, medicines, medical supplies and teaching materials.
- Increased costs of goods, fuel and services because of shortages and increased trade tariffs.
- Potential public disorder, ranging from peaceful, small-scale demonstrations to more serious civil unrest.
- Disruption to regulatory frameworks which can impact on issues such as data sharing agreements and the mutual recognition of professional qualifications.
- The need for reassurance for staff who are EU nationals in the UK, UK staff in the EU, and non-EU staff who have concerns regarding business sustainability.

9. This list is by no means exhaustive and institutions will want to consider the specific issues to which their organisation may be exposed.

10. It is difficult to accurately predict when the impacts of a no-deal Brexit will be felt and there may be variance across regions of Scotland. For example, rural areas might experience greater problems with the transport of goods. Similarly, it is not possible at this stage to forecast how long any disruption is likely to last. With these caveats in mind, it is our view that the most immediate impacts post-Brexit - such as disruption to supply chains and travel, and potential public disorder - might be felt in the first 3-9 months. In the longer term, the key impacts would be more likely to concern rising prices of consumables, reductions in the numbers of EU nationals living in Scotland and the evolving labour market.

Planning to support business continuity

11. Institutions have built risk assessment into their core planning processes. Institutions have in the past had to activate their business continuity plans to deal

\(^1\)Based on the UK Government’s reasonable worst case planning assumptions:
with short term closures (for example, during periods of severe weather). All institutions have disaster recovery plans to enable them to deliver core services in the event of severe disruption or emergencies. These plans should be reviewed, tested and, if necessary, adapted to reflect considerations around Brexit. Institutions should also test their planning assumptions against information supplied by their local authorities on preparing for Brexit, to take account of local circumstances. Furthermore, institutions should consider whether they can link with nearby college or university partners with a view to developing a co-ordinated regional response where required.

**Supply chain and procurement**

12. Institutions have given assurances to SFC that they are taking all possible steps to ensure that they can secure the necessary consumables they require to continue to run their courses and provide core services for students and staff. Institutions are advised to continue to develop and refine this work, including the consideration of advance purchase of some goods (where appropriate) and communications with suppliers and contractors to ensure that they, in turn, have secure supply chains. Those institutions working with micro businesses and/or small medium enterprises should be aware that these organisations might be less resilient to a no-deal Brexit. Advanced Procurement for Universities and Colleges (APUC) can provide further advice on the procurement of goods through framework agreement suppliers and institutions can also sign up to APUC’s regular updates on this subject.

13. Energy markets are volatile by nature and influenced by many global factors. The main risk associated with Brexit that may inflate energy costs is that of currency fluctuations. Most Scottish colleges and universities buy energy in advance through the Scottish Government Energy Contracts that operate on a flexible purchase basis, with over 90% of energy advance-purchased for the period up to March 2020 and secured pricing for over 60% of predicted required energy up to March 2021. Any institution which has not invested in advance purchase energy should contact APUC for advice on this.

**Information Technology and data protection**

14. Jisc has confirmed that the Janet network will continue to operate in a no-deal scenario. Jisc has a designated page of its website for FAQs regarding Brexit.

15. Regarding data protection, the UK is expected to become a "third country" if it leaves the EU without a deal. The UK Government has stated that the rules for transferring personal student data from colleges and universities in the UK to the EU will remain the same. However, any transfers from the EU to the UK will need to satisfy the General Data Protection Regulations. With respect to the
processing and transfer of student data by HESA and SFC, none of that takes place outside the UK.

16. It is not yet clear how large research consortia, under Horizon 2020 for example, will coordinate the exchange of data with UK partners in the event of a no deal Brexit.

Disruption or suspension of activities

17. Despite the ongoing efforts of institutions to prepare for a no deal Brexit, there are significant factors which are outwith institutions’ control which could disrupt their activities. This may mean that there will be periods of time where they will need to close their premises and/or suspend their activities. Individual college and university management teams will be best placed to judge on the need for closures, based on their assessment of their local circumstances. We advise that institutions continue to provide teaching and research activities only where it is safe to do so.

18. It is recommended that Business Continuity and Disaster Recovery plans include details on how decisions on closures will be cascaded to staff and students, should this be necessary (see section on Communicating with staff and students below). Plans should also detail how premises, facilities, equipment and any animals or livestock will be protected and secured in the event of closures.

19. If an institution needs to close for an extended period or for multiple short durations, this may have an impact on course delivery and completion, for example:

- Cancellation of teaching or delivery of practical elements of courses due to lack of equipment.
- Cancellation of research activities.
- Cancellation of field trips or practical assessments due to access restrictions.
- Difficulty in securing work placements for students because businesses have been affected by Brexit.
- Restricted access to institutions by staff or students because of security concerns or cancelled travel.

20. This could therefore impact on students’ academic progress and institutions’ ability to meet their activity targets. There is the potential that other Brexit-related factors could compound the impact of closures. For example, if significant numbers of EU staff or students decide to leave the UK, if researchers leave and take EU research funding and support staff with them, or if applicants decide not to take up offers of places.

21. To mitigate against the impact of extended closures, institutions should:
• Have in place plans to provide online teaching materials to students, where possible.
• Ensure that assessors are aware of potential impact on student assessments and consider alternative assessment procedures as necessary.
• Provide clear and reassuring messaging for applicants, students and staff – see section on **Communicating with staff and students** below.

22. In the event of all closures SFC should be informed (through Outcome Agreement Managers) – see section on **Reporting to SFC** below.

**Priority subjects in the event of disruption**

23. In the event of severe disruption to normal activities, institutions should prioritise the provision of core services. This includes the teaching of students in subjects that are most critical to ensuring that Scotland can continue to deliver fundamental services. As far as possible, institutions should give priority to ensuring that students in key subjects are supported to complete their studies. The priority areas for academic year 2019-20 include: Medicine; Nursing; Dentistry; Professions Allied to Medicine; Social Care; Teaching; Childcare and any activity related to food production or the supply of goods and transport of consumables, for example shipping.

24. SFC will issue further advice on subject priorities for the mid- to long-term in 2020-21 as part of its wider work on meeting Scotland’s skills challenges. Institutions should be aware that they may be asked to show increased flexibility and move swiftly to adapt curricula to respond to rapidly changing labour market demands.

**Student funding post-Brexit**

25. Colleges should ensure that students receive bursary and other student support payments in the event of any disruption to their learning. Payments to students should not be reduced due to non-attendance because of no-deal Brexit-related factors. For example, because a student is unable to travel to college. Communications to students should make clear that their payments will be unaffected in such circumstances.

26. Both college and universities should be aware that they may experience increased demand for discretionary and hardship funds, if students are experiencing increased costs. This should be factored in to future applications for student funding from SFC and the Student Awards Agency Scotland (SAAS), as appropriate.
Communicating with staff and students

27. It is advisable that institutions are satisfied that staff and students have the right to work and study in the UK. In particular, that institutions take all reasonable steps to encourage staff and students who are EU nationals to apply to the settlement scheme so that they can be granted settled or pre-settled status. As discussed later in this briefing, EU nationals currently have until 31 December 2020 to apply in the event of a no-deal Brexit. Immigration policy from 2021 onwards is currently the subject of a UK Government White Paper. Institutions should prepare to ensure that staff are well briefed on immigration policy from 2021 onwards once policy decisions are finalised.

28. Institutions should also have in place plans to communicate with staff and students in the event of no-deal Brexit-related disruption. For example, messaging and updates around campus closures. Most institutions have SMS text and email communication systems in place, as well as dedicated Brexit webpages, which can be utilised for this purpose. However, institutions should ensure that they have agreed structures in place, so that management decisions can be cascaded through the relevant systems.

29. Institutions should also consider the likely emotional, practical and financial impacts on their staff and students. This could result in further increased demand for counselling and other support services. In communicating with staff and students, institutions should emphasise the Scottish Government’s position that EU citizens are welcome in Scotland and seek to provide reassuring messaging where possible, in addition to practical and policy advice.

Reporting to SFC

30. SFC will request regular no-deal updates from all institutions to feed into the Scottish Government’s work on national resilience planning. The level of detail that will be required and the timing of this will be determined by the nature and severity of impacts being experienced by universities and colleges. In the interim, institutions are asked to complete the checklist associated with this briefing and notify their Outcome Agreement Managers of any areas where they have concerns about their level of preparedness.

31. Institutions should also feedback other information to SFC on Brexit impacts through their Outcome Agreement Managers. In the event of any form of closure, Outcome Agreement Managers should be informed. If institutions anticipate that Brexit related factors are going to impact on their ability to meet activity targets, they should provide details of this to their Outcome Agreement Manager as soon as possible. Information provided should include:

- The nature and scale of the impact on the institution, staff and/or students.
- Remedial action taken by the institution.
- Any remaining problems.
- A quantification of the cost of the impact, either in immediate additional costs, the loss of funding or the cost of taking mitigating actions.
- Any other special circumstances.

32. This information should be as specific as possible, containing, for example, details of courses that have had to be cancelled and reasons for cancellations, numbers of key staff and/or researchers and full details of cost implications. This feedback is intended to inform SFC of the overall position in the sector. If, on the basis of this information, SFC concludes that specific action is required, further investigations may be undertaken. The information collected by SFC will be fed back to Scottish Government to inform national Brexit resilience planning.

33. Institutions which are experiencing cashflow issues as a result of Brexit, for example because of delays in receiving underwrite payments, should report this through either their regular cashflow returns (for colleges) or via their Outcome Agreement Manager.

**Other resources for business continuity planning**

34. Other organisations have also produced useful resources ahead of Brexit. In October 2018, Audit Scotland published a report, *Withdrawal from the European Union: Key audit issues for the Scottish public sector*. Scottish Enterprise has developed a toolkit *Prepare for Brexit*. Institutions are advised to use these resources as part of their preparation.
Impact on people

35. In the case of a no-deal Brexit, the current freedom of movement of people between the UK and the EU\(^2\) as we currently understand it will end immediately. The implications of this, as far as they are known at this stage, are set out below.

**UK Nationals living, working and studying in the EU**

36. Nearly all member states have now passed legislation to protect UK nationals’ rights in the case of a no-deal Brexit (the two member states yet to pass legislation, Romania and Croatia, have indicated that they will do so ahead of Exit Day). However, the extent to which these measures reciprocate the UK offer varies significantly by member state. However, students may find it difficult to complete their studies in the EU due to reasons such as: affordability of tuition fees, access to healthcare, or a change in immigration requirements. In a no-deal Brexit situation, students should contact their course provider for individual advice about completing their studies.

37. If students cannot, or do not wish to, remain at their EU institution post-Brexit, they may wish to apply for a transfer to a Scottish higher education provider. Further details on the transfer process are available on the SAAS website.

**EU citizens resident in the UK before Brexit**

38. In a no-deal scenario, the UK Government guarantees that EU citizens resident in the UK before Brexit will be able to stay and have their rights protected, subject to certain conditions.

39. EU citizens (except those from the Republic of Ireland) will have to apply for ‘settled status’ if they have lived continuously in the UK for at least 5 years and want to stay in the UK after 31 December 2020.\(^3\) Non-EU family members of EU citizens will also need to apply if they want to stay in the UK after 31 December 2020.

40. Those who have not lived continuously in the UK for 5 years and want to stay, will have to apply for ‘pre-settled status’. Once they have been resident for 5 continuous years, they can apply for ‘settled status’.

41. Those approved for ‘pre-settled status’ or ‘settled status’ should be able to continue to work, study and access benefits and services in the UK.

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\(^2\) For the purpose of this briefing, references to the EU and EU citizens/nationals also include associated EEA and Swiss citizens/nationals.

\(^3\) Continuous residence means that for 5 years in a row a person has been in the UK for at least 6 months in any 12 month period, except for one period of up to 12 months for an important reason (for example, childbirth, serious illness, study, vocational training or an overseas work posting) or for compulsory military service of any length.
42. The EU Settlement scheme is now open. There is no fee for applying.

43. Staff and students who are EU nationals, and their family members, can apply for settled status through the EU settlement scheme. The Scottish Government has launched the Stay in Scotland campaign which provides up to date and accurate information, materials and on the ground support to EU citizens. Citizens Advice Scotland is delivering some of this support through a dedicated advice service and helpline. The Citizens’ Rights Project’s website also has information, advice and support for EU citizens living in Scotland.

**EU citizens who move to the UK after Brexit**

44. In the event of a no-deal Brexit, the UK Government has published a policy paper laying out the European Temporary Leave to Remain immigration rules that will apply to EU nationals entering the UK after Brexit day if there is a no-deal.⁴ This proposes that:

- EU citizens who move to the UK for the first time after Brexit will be able to enter the UK as they do now. The rights to live, work and study that they currently enjoy will be preserved until 31 December 2020.
- Any EU citizen arriving after Brexit who wishes to remain beyond 31 December 2020 will have to apply for an immigration scheme called ‘Euro Temporary Leave to Remain (Euro TLR)’.
- EU citizens granted Euro TLR will be given 36 months leave in the UK, starting from the date of grant. The deadline for applications under the new system is 31 December 2020.
- Those who do not apply for Euro TLR will be expected to leave the UK by 31 December 2020 unless they have applied for and obtained immigration status under the UK’s new points-based system which is yet to be announced.
- Arrangements for crossing the border will remain the same until an as yet unspecified date. EU citizens will continue to be able to use E-gates and enter the country on a national identity card. The use of ID cards will be phased out during 2020.
- EU citizens can be accompanied by direct family members and extended family members as now. They will be able to stay in the UK until 31 December 2020.
- Close family members, defined as spouses/partners and dependent children under 18, will be able to apply for Euro TLR once their EU citizen sponsor is granted status if they wish to remain beyond December 2020. No mention is made of the position of extended family members.

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⁴ The provisions outlined in the policy paper are subject to parliamentary approval of the necessary legislation before these proposals can be implemented.
• Applications will be made via ‘a simple online process and identity, security and criminality checks’.
• Until December 2020 EU citizens will be able to evidence their status in two ways: National ID card/biometric passport; or secure digital status (as under the current EU Settlement Scheme).
• Time spent in the UK with Euro TLR status can be accrued towards the qualifying period for settlement.
• The UK Government has indicated that the future immigration system will be an Australian points-based system. EU citizens who wish to remain longer than the 36 months granted under Euro TLR will have to apply under this new system. If they do not meet the requirements of the new system they will have to leave the UK.
• Employers, landlords and other third parties will not be required to distinguish between EU citizens who moved to the UK before or after Brexit until the new points-based system is introduced.
• Family members of British Citizens who move to the EU after Brexit and wish to return to the UK at a later date will have to meet the requirements of the UK’s domestic family immigration rules.
• British citizens in the EU after Brexit who wish to return to the UK with their family members will be able to do so as now until 29 March 2022.
• No fee will be charged for Euro TLR.
• Alternatively, students can enter the UK via Tier 4 of the Points Based System for a student visa to cover the full length of their course.

45. Institutions will require to be familiar with immigration rules as part of their recruitment processes for globally mobile staff, including EU citizens in the EU and EU citizens being recruited from non-EU locations, as well as international researchers in non-EU countries.

46. EU national students entering in academic year 2019-20 and 2020-21 are covered by the commitment made by the Scottish Government that the students will continue to be eligible for home fee status and student support on the same terms that currently apply for the duration of their course. The SAAS website has a dedicated Brexit page for students. It may be that, despite having an offer of study and home fee status, some EU students may decide not to take up their place. Institutions may wish to factor this in to their recruitment activities over the coming years.

Students and staff travelling at the time of Brexit

47. We cover those participating in Erasmus+ at the time of Brexit in more detail in a following section.
48. Many institutions are advising against non-essential travel around the no-deal window in case of disruption. For those who are travelling, it is recommended that:

- Their passport has six months validity.
- They have travel insurance.
- For EU citizens who want to re-enter the UK around the date of a no-deal Brexit, those without settled or pre-settled status take proof of residence with them. This could be a council tax bill or equivalent.
Erasmus+

*Students and staff on Erasmus+ and European Solidarity Corp programmes on the date of the UK’s withdrawal from the EU*

49. If the UK leaves without a deal, staff, students and trainees on Erasmus+ and European Solidarity Corp (ESC) mobilities on the date of Brexit should be able to complete their exchange (subject to immigration policy in the resident country). This will apply to Scottish students studying at EU27 institutions and EU27 students studying at Scottish institutions.

50. The European Commission has a list of frequently asked questions [here](#).

*Students and staff wishing to access Erasmus+ and European Solidarity Corp programmes after the UK’s withdrawal from the EU*

51. If the UK leaves the EU without a deal, institutions may no longer receive EU funding for Erasmus+ projects and may need to make a claim against the [HMG guarantee](#). The guarantee will cover the payment of awards to UK applicants for all successful Erasmus+ bids submitted before the end of 2020. Organisations will need to initiate claims through the [Grants Management Function](#) and institutions should register on the website now.

52. In a no-deal scenario it is not clear whether continued participation in Erasmus+ will be possible for Scottish institutions.

53. It is recommended that Scottish institutions seek to make bilateral agreements with Erasmus+ partners which include a no-deal Brexit scenario.
54. The UK government has committed to guarantee replacement funding for successful competitive UK bids to Horizon 2020 that are submitted before we leave the EU, if there’s a no-deal Brexit.

55. The guarantee also covers all successful competitive UK bids to Horizon 2020 calls open to third-country participation submitted between Brexit and the end of 2020. Both the guarantee and extension commit funding to UK Horizon 2020 participants for the lifetime of projects.

56. UK Research and Innovation (UKRI) will also manage the independent assessment of UK applications to European Research Council (ERC), Marie Skłodowska-Curie Actions (MSCA) and SMEi grants that have been submitted before Brexit, if they are not assessed by the European Commission. Successful applications will be funded for the lifetime of the project.

57. Many of the practical details of the administration of the UK government guarantee and the associated timescales are currently unknown. A portal has been established by UK Research and Innovation (UKRI) to gather information on existing projects that could be covered by the guarantee, and to keep Horizon 2020 participants informed of future developments. Research Managers and European Liaison Officers can also stay abreast of Brexit related R&I policy developments if they sign up to the UKRO portal newsletters.

58. The UK Government guarantee only focuses on the financial aspects of participation. The impact of Brexit on the exchange of people, goods and data is not covered.

**Horizon Europe**

59. In the longer term, the UK Government’s stated position is that it prefers the option to associate to Horizon Europe (Horizon 2020’s successor) which is due to begin in 2021. However, the Commission’s regulations for association to Horizon Europe have not been finalised yet and may differ from those currently in place for Horizon 2020. In particular it will be important to understand what the regulations for association and third countries will be. The UK Government has made association to the programme subject to a Value for Money analysis by Treasury. The UK Government’s evolving immigration policy may also be a factor in whether the UK will be able to associate to the programme.

60. The UK Government is also exploring alternatives if the UK chooses not to associate to Horizon Europe. Professor Sir Adrian Smith was commissioned to provide independent advice on the design of potential future UK funding schemes.
for global international research and collaboration. His findings were published in the *Changes and Choices* report in November 2019.

61. Scottish institutions are advised to strengthen bilateral relationships with countries and organisations in the EU / EEA and utilise existing research and innovation networks to ensure opportunities for continued collaboration. Examples include the League of European Research Universities, the Guild, and Cesaer. Scotland is actively engaged in these networks, and many others, and they align with our strategic interest.
European Social Funds

62. Where colleges are in receipt of European Social Funds (ESF) for the Developing Scotland’s Workforce programme, this will continue to be honoured until the end of this programme cycle, starting in 2020 and ending in 2023. In the event of a no-deal exit from the EU, the ESF funding allocated by SFC, and any European Social Funds that have been allocated directly to institutions, are covered by the underwrite under the HM Treasury Guarantee.

63. Beyond this date the UK Government has committed to a new domestic fund which will replace ESF, the UK Shared Prosperity Fund (UKSPF). At the time of writing the consultation on UKSPF proposals have not been published.