

Key Decision Required:	Yes	In the Forward Plan:	Yes
-------------------------------	------------	-----------------------------	------------

CABINET**13 NOVEMBER 2020****REPORT OF THE ENVIRONMENT & PUBLIC SPACE PORTFOLIO HOLDER****A.8 FUTURE PORT HEALTH ARRANGEMENTS AT TENDRING PORTS**

(Report prepared by Tim Clarke & Lisa Hastings)

PART 1 – KEY INFORMATION**PURPOSE OF THE REPORT**

To update Cabinet on the Border Operating Model from 31st December 2020 and seek approval for a joint arrangement with Suffolk Coastal Port Health Authority in respect of the provision of imported food controls at Tendring ports.

EXECUTIVE SUMMARY

- From 2300 hrs on 31st December the EU transition period will end and a new Border Operating Model will commence
- Currently, the imported food control at Tendring ports is carried out by Suffolk Coastal Port Health Authority (SCPHA) on behalf of Tendring Port Health Authority. This is a low scale service as the majority of incoming goods are from the EU and not subjected to any checks or inspection regime.
- The new Border Operating Model introduces a requirement for goods entering the UK from the EU to be subjected to monitoring, checking and sampling as is currently the case for goods from the rest of the world. The volume of goods from the EU requiring checks are unknown and currently based on estimates from Government.
- A substantially increased port health function, primarily at Harwich, is necessary. From July 2021 Government currently estimates that up to 22,334 import consignments will contain products subject to port health controls whereas currently only around 23 meet the criteria.
- As to whether physical checks are undertaken for all imports or on a proportionate risk based approach is unknown at the time of this report, with DEFRA's policy and guidance awaited.
- The current arrangements with SCPHA are therefore required to be up-scaled accordingly.

RECOMMENDATION(S)

It is recommended that Cabinet:

- a) notes the anticipated increase in demand for Tendring Port Health Authority following the end of the EU exit Transition Period based on current assumptions;**
- b) acknowledges the continuation of the joint arrangements with East Suffolk Council and Suffolk Coastal Port Health Authority and that a new legal agreement is necessary;**

- c) subject to (b) notes the reliance of Regulation 12(7) of the Public Contract Regulations 2015 to enter into a direct joint arrangement with East Suffolk Council and Suffolk Coastal Port Health Authority for the shared aim of delivering Port Health Authority functions and the public interest in doing so;
- d) authorises the exemption to the Council's Procurement Procedure Rules to allow a direct agreement to be entered into;
- e) agrees that until further reviewed by the Portfolio Holder for Environment the Fees and Charges for the Port Health Authority functions should be set in line with those published by Suffolk Coastal Port Health Authority or those suggested by the Government in due course, whichever are the highest;
- f) approves the delegation of the necessary Port Health Authority functions to Suffolk Coastal Port Health Authority, which will be recorded within the Council's Scheme of Delegation and clearly set out within the legal agreement; and
- g) authorises the Corporate Director for Operations & Delivery to negotiate the final terms and conditions of the legal agreement in consultation with the Portfolio Holder for Environment and the Section 151 and Monitoring Officers.

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

The decisions will contribute to the following priorities in the Corporate Plan 2020-2024:

Community Leadership Through Partnerships

Delivering High Quality Services

A Growing and Inclusive Economy

FINANCE, OTHER RESOURCES AND RISK

Finance and other resources

The current arrangement with SCPHA costs the Council just under £8,000 per year for the general services that are provided in respect of imported food control. The general services will remain largely the same under the new arrangements from January 2021 but there will be a much greater volume of work. SCPHA have therefore estimated that their revised fee will be £10,000 per year based on the Governments' current projection of around 22,000 consignments that require checks. This management fee will increase or potentially decrease in proportion to the number of checks that are actually required once the new operating model has settled down. This cost is based upon the fees and charges for the Port Health Authority functions being retained by Suffolk Coastal Health Authority. This means there is only likely to be a direct cost pressure to the Council of £2,000 per year.

The greatest financial implications come from the increased monitoring, physical checks and sampling of goods arriving from the EU at the port. These are all chargeable services, based on a scale of rates set by Government and payable by hauliers/importers to the Port Health Authority. In the current scenario SCPHA collect these fees and there are very few as physical checks and sampling are extremely rare. It is expected that that arrangement will continue however with a vastly increased requirement for monitoring the consignments, physical checks and sampling the fees involved will be significantly higher.

Port Health Services should be self-financing and operate on a break-even basis but Government have yet to publish the future charging regime which makes designing the future service extremely difficult. The Council will, through the proposed contractual

arrangements, set the fees that will be charged for the goods entering via Harwich and it is likely they will be based on the fees currently levied by SCPHA or set by Government, whichever is the highest.

In order to undertake the increased requirements SCPHA have estimated that they need to employ around 60 additional members of staff across both Harwich and Felixstowe, 40 of whom will need to have specialist training / qualifications. An additional annual cost of £3.6M has been estimated for this staffing requirement.

Based on shipping consignment projections Harwich will require 59% of this resource at a cost of £2.124M per year.

Any future agreement with SCPHA will need to reflect the sums of money involved and review mechanisms and as such will require a much more comprehensive document than that currently in place.

The position will be kept under review and will need to be considered on an on-going basis as part of future financial performance reports and/or as part of the budget setting process as necessary.

Risk

The key risks involved are:

Not meeting timescales – the service must be ready for the new Border Operating Model coming into force. This risk will be mitigated as far as possible through close working with SCPHA but is dependent on factors outside of the control of both organisations including government support grants to cover salary costs, the availability of suitable staff, staff training opportunities, clarity from government around charging and exact requirements.

Reputational – delivery of the service carries a reputational risk. This will be mitigated by close working with SCPHA.

Financial – the set up costs for the new operation are a risk that will be shared by both TDC and SCPHA and it is anticipated will be mitigated via government grant. An application has been submitted to the Port Health Authority Transition Fund for £1.8M to cover the first 6 months staffing for the new arrangements and we understand that further tranches of funding will be made available.

No transition fund grant awarded – this will put both SCPHA and the Council in a difficult position and one where it may not be possible to undertake the checks that are required. In a worst case the scenario the Council may need to fund costs in the short term until the service becomes self-financing.

LEGAL

Port health control in the Port of Orwell Haven was formerly the responsibility of a Joint Board called the Harwich Port Health Authority (established by The Port Health Authorities (England) Order 1974). This Order was abolished by **The Port Health Authorities (Tendring and Suffolk Coastal) Order 1981 – 1281 (Article 9)**. The Order constitutes two areas within the Port of Orwell Haven as port health districts and the District Councils of Tendring and Suffolk Coastal (now East Suffolk) each to be port health authority for one of those districts (Articles 2 and 4). The jurisdiction and powers of the District Councils as port health authorities are specified in Articles 3, 5 and 6. Article 7 provides for the transfer from the Joint Board to the District Councils of property held by the Board together with related liabilities and contracts and makes provision in respect of accounts and legal proceedings.

Article 6 of the Order sets out the functions of the Port Health Authority.

Currently, services related to the import of food through Harwich International Port, Harwich Navyard and Mistley Quay, Essex are carried out by East Suffolk Council, through their Port Health Authority – Suffolk Coastal Port Health Authority (SCPHA), in accordance with:

- the Official Feed and Food Controls (England) Regulations 2009 (as amended) in relation to products of non-animal origin;
- the Trade in Animals and Related Products Regulations 2011
- The Plastic Kitchenware (Conditions on Imports from China) (England) Regulations 2011
- The Sea Fishing (Illegal, Unreported and Unregulated Fishing) Order 2009; and
- other applicable legislation and official guidance concerning the import of food.

The remaining statutory responsibilities are carried out in-house by the Environmental Health team.

Port Health Authorities are responsible for monitoring all food imports but will not physically check all food imports. Although detailed import checks may be carried out on any food products from non-EU countries ('third countries'), the actual checks carried out are determined on a risk basis. For products that have been declared as high risk at an EU/UK level, special health controls are in place, and checks must be carried out at import stage.

End of Transition period:

From 2300 hrs on 31st December the EU transition period will end and a new Border Operating Model will commence with implementation over three phases – 1st January 2021, 1st April 2021 and 1st July 2021.

SCDC have undertaken an assessment of the requirements necessary and actions proposed to be taken in order to prepare for the implementation of Port Health controls at the end of the transition period. There are still some uncertainties as to the exact requirements as DEFRA are yet to produce policy in this regard and therefore, in these circumstances, the best available assumption or a logical deduction has been used.

It is anticipated that Tendring will be required to establish a large scale port health function at Harwich and the service at Felixstowe will need to be up scaled, this is solely due to the fact that although the Port Health Authority statutory powers are remaining the same, the level of checks will be increasing due to no longer being within the EU.

Recently, a joint single bid for the Government's Port Health Authority Transition Readiness Fund was submitted by SCPHA and TDC using this assessment, the outcome of that application is awaited. The bid was prepared on the assumption that the two authorities could continue to work together producing economies of scale, but still subject to formal decisions being in place.

Future Agreement for Delivery of Service:

SCPHA have indicated that they would be able to provide the increased upscaling of the current operation under a new agreement for the delivery of the Port Health functions. Fees and Charges apply to the Port Health functions and these would be set by Tendring District Council but retained by SCPHA with a management fee, similar to a service recharge or management costs. So far the indicative recharge to deliver the service on behalf of

Tendring District Council would be £10,000 per annum however, this would be subject to review once the demand is established.

SCDC are very experienced in their field, running a large scale operation at the port of Felixstowe. They are well regarded in the port health arena with their officers providing specialist training to other authorities. Both TDC and SCPHA have worked in a successful partnership for many years in respect of the arrangements at Harwich Port.

Procurement exemptions

By virtue of Regulation 12(7) of the Public Contract Regulations 2015 it is permissible to enter directly into contracts between contracting authorities (where there is no separate controlled body) without the need to follow the requirements of the Regulations. These arrangements are excluded in specific circumstances and under the regulations all of the following conditions must be fulfilled:

- the contract establishes or implements cooperation between the participating contracting authorities with the aim of ensuring that public services they have to perform are provided with a view to achieving objectives they have in common.
- the implementation of that cooperation is governed solely by considerations relating to the public interest.
- the participating contracting authorities perform less than 20% of the activities concerned by the cooperation on the open market.

The regulations specify how the percentages are to be calculated in the three situations described above and is known as the “Hamburg exemption”.

There is also an alternative route, where one authority not only entrusts the service but delegates its powers to deliver services to another authority (which has been called the Hannover exemption following *Case 51/15 Remondis GmbH & Co. KG Region Nord v Region Hannover*).

The arrangement being proposed builds upon the existing partnership approach between the two authorities with more formalities due to the scale of the operation. However, essentially the two Port Health Authorities are working together to deliver their statutory functions in the public interest with some specifically being delegated from Tendring to Suffolk, on a non-commercial basis. Executive functions can be delivered solely by the Council, through joint arrangements or delegated functions to another local authority.

The Councils Financial Procedure Rules set out a framework to ensure value for money is obtained through a robust procurement process. Even where the Public Contract Regulations do not apply, internal rules should still be observed. Where services sought are of a specialist nature it is possible to seek an exemption from the usual procurement process and this is one such situation. SCPHA are the closest Port Health Authority with the relevant experience to run a large scale operation. Given the pressures on port health authorities currently it is very unlikely that another authority would be interested in taking on the functions at Harwich.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder/Equality and Diversity/Health Inequalities/Consultation/Public Engagement

Crime and Disorder

Equality and Diversity

Health Inequalities

Ward

All wards are covered by the proposal.

PART 3 – SUPPORTING INFORMATION

Background

Tendring Port Health Authority is an entity established by the The Port Health Authorities (Tendring and Suffolk Coastal) Order 1981.

Port Health authorities have the following functions:

- carrying out inspections on board ships and other vessels to check they comply with food safety and hygiene standards
- inspecting the port for signs of pests
- overseeing the import of food through the port
- monitoring the port for infectious diseases
- checking the quality of water provided to and stored on ships
- issuing ship sanitation and exemption certificates

The Council's Food and Safety team undertakes the above functions with the exception of overseeing the import of food through the port. This is a function that has been carried out on behalf of Tendring Port Health Authority by Suffolk Coastal Port Health Authority (SCPHA).

SCPHA operates a very large scale imported food control service at the port of Felixstowe where large quantities of goods are shipped in from outside of the EU, mainly in containers. Their experience and expertise in running that service has enabled them to oversee a proportionally very small imported food control service at Harwich port. The imports at Harwich are almost exclusively via roll on roll off ferries and either accompanied or unaccompanied lorry trailers arriving from EU countries.

Unlike goods from third countries, goods from the EU currently have a free passage into the UK. From 31st December 2020 this will change as a new Border Operating Model is introduced. From 1st April 2021 vast quantities of goods entering the UK from EU countries will be subjected to an increasing regime of checks as is currently the case for goods from non-EU countries.

Detail is still emerging from Government about the extent of the checks that will be required but working on a worst case scenario basis the service at Harwich will need to be scaled up to 80% of the current Felixstowe capacity. Capacity at Felixstowe will also need to increase.

To be clear, this is not an increase in actual shipments or goods arriving, it is a change to the regime of import controls associated with those goods. It is possible that the port will see additional shipments over time and that will depend on capacity at other ports and decisions made by the port themselves and the shipping companies, mainly Stena Line, who operate out of Harwich.

- From January 2021: Traders importing standard goods, covering everything from clothes to electronics, will need to prepare for basic customs requirements, such as keeping sufficient records of imported goods, and will have up to six months to complete customs declarations. While tariffs will need to be paid on all imports, payments can be deferred until the customs declaration has been made. There will be checks on controlled goods like alcohol and tobacco. Businesses will also need to consider how they account for VAT on imported goods. There will also be physical checks at the point of destination on all high risk live animals and a proportion of low-risk live animals.
- From April 2021: All products of animal origin (POAO) – for example meat, pet food, honey, milk or egg products – and all regulated plants and plant products will also require pre-notification and the relevant health documentation.
- From July 2021: Traders moving all goods will have to make declarations at the point of importation and pay relevant tariffs. Full Safety and Security declarations will be required, while for Sanitary and Phytosanitary (SPS) commodities there will be an increase in physical checks and the taking of samples: checks for animals, plants and their products will now take place at GB Border Control Posts.

To provide a sense of scale there are around 527 lorries / trailers incoming at Harwich daily carrying a total of around 7700 tonnes of goods. From July 2021 it is estimated that up to 22,334 import consignments will contain products subject to port health controls. Currently around only 23 meet the criteria.

The increase in checks does not apply only to food products. Animals and plants will be subject to a new regime and border controls generally will be increased. The Animal and Plant Health Agency and UK Border Control are the agencies affected in those respects.

In order to facilitate the additional checks infrastructure and facilities are required. The current facility for food checks at Harwich Port are very old and have not been used to any degree for many years. The new regime requires completely new infrastructure that will be provided by the port using funding they will be bidding for from Government. Facilities need to be up and running by 1st July 2021.

Given the scale of the changes and additional checks required officers believe that continuing to contract the service to SCPHA is the best way forward. To provide such a service in-house, starting effectively from scratch, would leave to Council very exposed and the risk of not being ready or able to deliver within the timeframe would be high.

There are other port health authorities with large scale operations, such as London and Hull & Goole. Given the geographical distance and the challenges they too will be facing it is unlikely they would be interested in providing a service at Harwich. Harwich and Felixstowe ports are both Haven Gateway ports and are viewed by Government to some extent as one. Longer term there may be scope to form a Haven Gateway Port Health Authority.

For now we must concentrate on having an arrangement in place by 1st January 2021 in order to deliver the new Border Operating Model. SCPHA are keen to deliver this service for the Council and have worked on modelling in order to design a service covering both Felixstowe and Harwich with management and administration based in Felixstowe. Moving

OFFICIAL

to a 24/7 service for the non-containerised imports is necessary to maintain flow within the ports. This is not necessary for containerised imports where the turnaround is generally much slower. This service will require an additional 60 members of staff 40 of which will need to be qualified in some of the following areas in order to undertake the range of check required:

- Environmental Health
- Food Safety
- Food Standards
- Veterinary

Similar numbers will be required at other ports in the country raising a significant questions around who will apply for these roles. The reality is that there are very few appropriately qualified people available meaning new staff will need to be trained. DEFRA are proposing to arrange some online training but it will be largely for the port health authorities to recruit and train staff, ideally by 1st January 2021.

The current contract with SCPHA costs the Council just under £8,000 per year. This fee covers general services with the costs of any physical check and sampling, which is rare at Harwich, recovered from the importers by SCPHA. Moving forwards the level of physical checks and sampling will dramatically increase. Funding for the additional staffing will be met by the fees levied by SCPHA in respect of the checks and sampling. The total additional staffing bill for 60 members of staff is around £3.6M per annum, approximately 59% of the additional work will be at Harwich.

FURTHER HEADINGS RELEVANT TO THE REPORT

None

BACKGROUND PAPERS FOR THE DECISION

HM Government Border Operating Model <https://www.gov.uk/government/publications/the-border-operating-model>

APPENDICES

None