**Creative Scotland guidance on the UK withdrawal from the European Union**

**Last updated: 9 October 2019**

Following the Referendum held in June 2016, the UK Government has been engaged in the process of withdrawal from the European Union (EU), commonly referred to as Brexit.

This is currently due to happen on 31 October 2019. In the event of a Deal being agreed between the EU and the United Kingdom, this is then expected to be followed by a ‘transition period’ to the end of 2020, during which new political, financial and regulatory arrangements for the UK’s relationship with the EU will be agreed. In the event of a ‘No Deal,’ Scottish Government have recently issued advice on preparations and implications for Scotland. <https://www.gov.scot/publications/scottish-government-overview-no-deal-preparations/>

The UK’s departure from the EU will have significant implications for public bodies in Scotland and the organisations and services that they support, as well as freelance and small companies working in Scotland’s arts, screen and creative industries.

Creative Scotland remains firmly committed to international working in the arts, screen and creative industries and we will continue to champion the needs of Scotland’s cultural sector in any new European relationship.

There remains a great deal of uncertainty around Brexit – many of the risks and opportunities depend on decisions currently being discussed and yet to be taken. And much of this depends on whether an agreed withdrawal settlement is in place by the extended Article 50 deadline; or the UK leaves with no deal; or, indeed, whether Brexit happens at all.

Future opportunities will only become clear once the withdrawal process has been agreed and finalised.

In a constantly changing landscape, this guidance should not be seen as offering comprehensive or definitive advice on the course of action that you should take.

As always, you should ensure that you take the appropriate legal and technical advice that is specific to your individual circumstances.

A number of organisations are providing advice on Brexit and links to that advice is provided throughout this guidance. As the situation changes we will endeavour to keep links to advice on our web page as up to date as possible.

**Creative Scotland’s position on Brexit**

“Working internationally is key to ensuring that Scotland remains a successful and distinctive creative nation connected to the world.  We will continue support artists to take their work overseas and showcase Scotland’s creativity at festivals and cultural events across the globe, alongside supporting the presentation of international work here in Scotland.”

**The Scottish Government’s position on Brexit**

“1. The referendum on EU exit took place on 23 June 2016. In that referendum 62% of voters in Scotland voted to remain in the European Union. The Scottish Parliament subsequently voted against the triggering of EU exit negotiations and has consistently opposed a ‘No Deal’ exit from the EU.

2. The Scottish Government has also consistently opposed the UK’s proposed departure from the EU, in line with the clear majority of votes in Scotland in the 2016 referendum. At the same time, we have also been willing to seek compromise –for example, by suggesting that, in the event of EU exit, the UK might remain part of the single market and customs union. These efforts at compromise have, however, been rejected out of hand. Therefore, our priority remains to protect Scotland’s place in the EU.

3. Meanwhile, in the more than three years since the referendum, the UK Government has failed to secure an agreement with the EU on the terms of the UK’s withdrawal and a joint ‘political declaration’ on the future relationship that is acceptable to a majority of MPs. As a result, the formal process of leaving the EU (the ‘Article 50 process’) is into its second extension period, which comes to an end on 31 October 2019.

4. The current UK Government has indicated it wishes to renegotiate the agreement reached with the EU for the UK’s withdrawal – but that in the event it cannot reach a new agreement it is prepared for the UK to leave the EU on 31 October without a withdrawal agreement, transitional period or path for the future relationship. The Scottish Government vehemently opposes this proposal –because of the impact a ‘No Deal’ exit would have on the people and the economy of Scotland, and the UK as a whole.

5. We therefore continue to call on the UK Government to rule out the possibility of a ‘No Deal’ exit –as is entirely within its gift to do. The UK Government should instead act to secure an extension to the Article 50 negotiating period from the EU, to enable a General Election to break the current deadlock in the House of Commons. The Scottish Government would support a future vote on EU membership that includes an option to remain in the EU, now that the implications of EU exit are much better known and understood.

6. **While the risk of a ‘No Deal’ exit remains, we must take appropriate steps as a responsible Government to mitigate its potential impacts** –as we would with any significant threat to Scotland’s wellbeing. In doing so, we are in no way seeking to ‘deliver EU exit’ or to encourage a ‘No Deal’ –we are seeking to protect Scotland from the worst impacts of an utterly wrong-headed approach with which we profoundly disagree.”

More: <https://www.gov.scot/brexit/> and <https://www.gov.scot/binaries/content/documents/govscot/publications/publication/2019/10/scottish-government-overview-no-deal-preparations/documents/scottish-government-overview-no-deal-preparations/scottish-government-overview-no-deal-preparations/govscot%3Adocument/scottish-government-overview-no-deal-preparations.pdf?forceDownload=true>

 **Will Brexit affect Scotland’s cultural sector?**

Brexit will have wide-ranging and significant implications for people and organisations working in Scotland’s cultural sector, particularly if you:

* Tour, travel or work internationally
* Collaborate or co-produce with European partners
* Sell goods and services abroad
* Import goods and services into Scotland
* Employ or contract EU citizens
* Are affected by international regulation
* Have plans to develop international relationships
* Are involved in developing international productions or projects

With the above in mind, what actions should you be considering?

* Identify any specific areas where you might be materially affected – if there are risks, make sure they’re included on your Risk Register and reviewed regularly by your board
* Identify the best source(s) of advice relevant to your needs, and be aware that this may change frequently until an agreement is reached
* Make sure you are as agile as possible to the changing context
* Make sure that you monitor developments as Brexit negotiations continue
* Try and anticipate issues in advance, rather than react to them after the event

**Workforce issues and access to talent**

The health of the arts, screen and creative industries relies on creative collaboration and the exchange of ideas and skills. Changes to rules around freedom of movement (of people, goods and services) could, therefore, have implications for recruitment, retention, skills development, and access to international talent. There might also be limits on supply chain or movement of materials relating to producing art (stage, books, musical instruments etc).

Remember, that immigration policy is a reserved matter for the UK Government.

Brexit is expected to bring a tightening of immigration policy which will be linked more closely to employment. Free movement is a significant issue for people working in the arts, screen and creative industries. You should therefore consider the impact that future restrictions might have on your workforce. It’s not possible to predict with certainty what the eventual consequences will be of the current EU negotiations. However, if you employ EU nationals, or have a need to work with them on an occasional or temporary basis, you should think carefully about what this might mean.

The arts, screen and creative industries in Scotland relies on guest artists being able to travel in and out of the country. Accessing the very best talent is one of the ways that the arts grow and thrive. Until now, creative professionals from EU member states have been able to come in and out of the UK under existing freedom of movement arrangements. This will change and the changes may come into effect at different times after October 2019 depending on whether a deal is agreed. If the immigration system which currently applies for non-EU/EEA artists were to be applied to EU citizens, there are different options to consider.

For example, the Permitted Paid Engagement system works well, this is a short-term visa which allows non-EEA nationals to enter the UK for up to a month to take part in a paid engagement, although the 30-day restriction causes some problems for opera or theatre, where an artist may be engaged for a longer period. If the PPE system were to be extended to EU citizens, there is a risk of additional restrictions and bureaucracy compared to the current set up.

For longer term appointments, the current visa options (such as Tier 2 or Tier 5) which may in the future be applied to EU/EEA citizens require UK employers to first apply for a sponsor licence. Recruitment, under the Points Based System for Migrant Workers, could add to the administrative burden and cost of recruitment, involving substantial visa fees.

A further issue is that the salary threshold for entering the UK with an initial job offer has increased to £30,000, which is above the average for many people working in the arts, screen and creative industries. There’s also a risk that younger artists at the start of their career may not be able to prove to the satisfaction of the UK Border Force their standing, reputation and that they’re an “established professional”.

Forward planning could become more difficult. Larger companies will often work on a 2 to 3-year planning cycle. This means that in many cases contracts will already have been entered with EU artists beyond 31 October 2019. This could pose a risk in relation to additional costs and bureaucracy that might not have been budgeted for.

In the same way, similar obstacles may be imposed on Scottish artists travelling into Europe for engagements, and the arrangements may be different for each EU member state. Planning cycles will need to be longer. In the event of a no
deal Brexit, UK passport holders may require at least 3 to 6-month validity to travel to EU member states.

Under the EU Settlement Scheme, many EU citizens already living in the UK are eligible to apply for “settled status”, meaning they can stay indefinitely following a registration process which originally costed £65, but which the UK Government has stated waived after 29 March 2019 (costs are now being reimbursed). However, in the event of a no deal Brexit, there is no formal, written guarantee to ringfence this agreement between the UK and EU.

With the above in mind, what actions should you be considering?

* Review the employment/visa status of your current members of staff and consider what advice and support you may need to put in place.
* Support your staff as much as possible through clear internal communication, dialogue and guidance
* Review employment contracts and potential visa issues for future employees, freelancers and contractors
* Keep yourself informed of the situation regarding visas
* Consider applying to the Home Office for a Sponsor Licence
* Work out how you would cope with the need to urgently replace an indisposed artist
* Ensure that your budgets have sufficient contingency for unexpected additional costs

**Working internationally and cross borders**

Membership of the single market and the customs union has been hugely beneficial in enabling Scottish artists and companies to tour across Europe, generating revenue and developing their international reputation and profile.

A key practical issue resulting from Brexit could be the imposition of visas, carnets and other tariffs and barriers when touring into the EU.

The arts, screen and creative industries have also benefited from the freedom of movement of goods – from musical instruments to theatre and film sets. Current membership of the customs union removes the need for carnets and border controls for transporting musical instruments across EU borders. Should border controls and carnets be imposed once the UK leaves the EU, this will add significantly to the administration and cost of touring into Europe.

There could also be other issues that extend beyond the practicalities of border crossing. For example, the A1 form, which currently prevents the deduction of social security payments when arts professionals work in another EU country. The loss of access to the European Health Insurance Card will mean that those travelling into Europe will need to pay extra for medical insurance when on tour. UK drivers’ licences and insurances might not be valid.

The planning cycle for touring companies is often more than two years ahead of performance. This means that contracts with promoters in the EU have already been signed for beyond 31 October 2019. This means that fees have been fixed, and any additional costs that follow the UK’s withdrawal from the EU have the potential to cause already contracted tours to lose money.

HM Revenue and Customs has published a letter on [GOV.UK](https://www.creativescotland.com/__data/assets/word_doc/0003/61878/HM%20REvenue%20and%20Customs%20letter%20on%20trade%20with%20the%20EU) to help businesses that trade with the EU get ready to deal with customs should the UK leave the EU without a deal. The letter asks these businesses to take three actions now:

* Register for a UK Economic Operator Registration and Identification (EORI) number
* Decide whether they will use a customs agent to make import and/or export declarations or will make the declarations themselves using specialist software
* Contact the organisation that moves their goods (for example, a haulage firm) to find out if they will need to supply additional information to complete safety and security declarations, or whether they will need to submit these declarations themselves.

With the above in mind, what actions should you be considering?

* Quantify what additional costs and bureaucracy you might face if border rules and regulations change
* Review your contracts, licences and insurances
* Review your fees
* Consider new markets and explore government sponsored initiatives to engage in new markets
* Review any plans for work taking place in the EU in the immediate months after October 2019 and prepare a contingency plan to address potential risks
* Consider the advice contained in the HMRC’s letter on trading with the EU

**Economic factors**

Some commentators believe that Brexit will result in a downturn to the UK economy. If the economy does remain depressed, there’s a risk that public spending cuts might need to be made. This could mean subsequent reductions in Scottish Government budgets, local authority budgets and the budgets of public bodies like Creative Scotland.

There could also be a negative impact on spending on National Lottery, individual giving, corporate sponsorship and funding from trusts and foundations.

The slide in the value of the pound has had mixed consequences. If you receive payment in Euros or Dollars, you’ll have seen an increase in the value of this work. If you don’t, the opposite might be true. This should be anticipated as a possibility in your budgeting of future events.

Another key aspect being highlighted for other sectors but also important for the arts, screen and creative industries is that of continuing supply chains for equipment, instruments and technologies. Some of these may be impacted by the UK’s withdrawal from the EU.

The EU has also been a major funder of cultural infrastructure in Scotland and the UK’s withdrawal from the EU will mean that funding that has been previously available may no longer be so.

With the above in mind, what actions should you be considering?

* Look critically and forensically at the underlying stability of your company – could it withstand a funding drop?
* Check that you’re doing everything possible to diversify your income base
* Assess the extent to which you might be susceptible to the consequences of currency fluctuations
* Consider supply chain issues
* Engage with government agencies (UK and Scottish Government) and their support mechanisms designed to ease the transition to the economy beyond Brexit.
* Look at new markets for your work
* Use your membership (or become a member) of a relevant industry body or network

**Funding**

The EU has been an important source of funding for the arts, screen and creative industries in Scotland through the Creative Europe and other funding programmes.

It is currently unclear whether an arrangement will be agreed that enables UK organisations to continue to be eligible for funding. In the event of a deal, it is possible that current projects will continue and that UK organisations will be able to apply for funding up until the end of 2020.

In the event of a no deal, there will probably be no access to funding from EU programmes. However, the UK Government has guaranteed underwriting funding for all successful bids by UK partners whose projects run beyond the leave date.

For more information on this and for the potential impact on your own particular project and funding stream, stay up to date with the national agencies for those streams: e.g. Creative Europe Desk UK, Ecorys, and British Council

In the longer term, there may be the possibility of accessing certain EU funding programmes as a third country (eg Creative Europe, Erasmus +) but those could be under different conditions and with different funding amounts and structures.

With the above in mind, what actions should you be considering?

* If you are involved in a current EU funded project, keep up to date with developments regarding funding arrangements post October 2019
* If you have submitted a bid and are awaiting the results, keep up to date with developments regarding your eligibility post October 2019
* Assess the extent of any dependency you might have on EU funding
* Check if future projects or collaborations are dependent on EU funding
* Decide what you would do if you had to replace this funding

**Regulation and contracts**

EU laws and regulations are deeply embedded within the working practices of both the public and private sectors in Scotland.

EU laws and regulations directly impact on day-to-day activities such as procurement, employment rights, the environment, data protection and health and safety.

Some areas of regulation matter more to particular sectors. For example, the Association of British Orchestras and Musicians’ Union have highlighted the need to retain the revised Passenger Rights Directive (already passed by the European Parliament, but to be approved by the Council of Ministers). This is because it contains clauses relating to the adoption by airlines of fair and transparent policies on the carrying of musical instruments on planes. Once the UK has left the EU, it will lose its influence over these types of regulation.

Other key areas for the wider arts, screen and creative industries are around the UK’s withdrawal from the European Single Digital Market and the continuation (or not) of the Country of origin principle enabling companies ease of access to other EU countries. This is tied into the future relationship and it’s worth being agile to respond to what may be agreed.

There are currently around 11,000 EU regulations and 60,000 standards. These include such varied issues as common trade areas, the radio spectrum for wireless microphones, Intellectual Property, the postal service, the Working Time Directive, banking and financial services. This emphasises the need to get the proper expert advice on the implications for you and your organisation. The Creative Industries Federation have published some important and useful summaries of the technical notices issued by the UK Government on a no deal Brexit in terms of what is relevant for the creative industries (link at the end of the document).

With the above in mind, what actions should you be considering?

* Get appropriate technical and legal advice on the implications of changing regulations
* Review existing contracts with Brexit in mind. How will such contracts be affected if the UK leaves the EU? What rights might you be able to utilise under such contracts to protect your position?
* Do you have rights to vary the terms on which you have contracted, increase your charges, pass on additional costs (e.g. duties or tariffs) or terminate?
* Consider whether you need additional trademarking or intellectual property protection for your work.
* Consider carefully the likely implications of Brexit on any contracts you negotiate over the coming months. For example, will you need the right to revisit your pricing model in certain circumstances?

**Useful links**

Scottish Government position on Brexit: <https://www.gov.scot/brexit/>

Scottish Government advice and information on Brexit: <https://stage.mygov.scot/eu-exit/>

Scottish Government preparations for a No-Deal Brexit <https://www.gov.scot/publications/scottish-government-overview-no-deal-preparations/>

Scottish Enterprise prepare for Brexit toolkit: <https://www.prepareforbrexit.scot/updates/components-folder/filtered-card-list/prepare-for-brexit-toolkit>

Creative Industries Federation, guidance on Brexit: <https://www.creativeindustriesfederation.com>

UK Government latest guidance on Brexit: <https://www.gov.uk/world/brexit-ireland>

European Commission communication on Brexit preparations: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A52018DC0890>

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