

Brexit Q&A – Updated January 2020

The UK is currently set to leave the European Union on 31st January 2020. In August 2019, Boris Johnson was voted in by party members as the Leader of the Conservative Party and became the next Prime Minister following the General Election. The Prime Minister has renegotiated parts of the previous Prime Minister's Withdrawal Agreement. These changes largely relate to citizen's rights and Northern Ireland.

Both parties have negotiated an implementation period which will last until 31st December 2020. During the implementation period, EU law will continue to apply and day-to-day business will remain largely unchanged.

For the Prime Minister's deal to come into effect after the UK leaves the EU on 31st January, Parliament must pass legislation implementing the Agreement into UK law. The EU must also pass a resolution approving the Withdrawal Agreement. If this legislation is not passed, the UK will leave without a deal.

The information below is based on the new Withdrawal Agreement, the revised Political Declaration on the future relationship between the UK and the EU and other Government advice and reports. It should be noted that the Withdrawal Agreement and the advice below are both still subject to change depending on how the Withdrawal Agreement Bill is amended during its passage through the House of Lords and Commons. Pact will continue to keep this document as up to date as possible, and ensure members are aware of any changes.

The guidance below should not be treated as legal advice. If Pact members have any legal queries regarding Brexit, they should seek legal advice from qualified professionals.

Digital Single Market

Q Will the UK be leaving the Digital Single Market after Brexit? If so, what impact will this have?

The Prime Minister has not made any specific comments regarding the Digital Single Market and Brexit. In the revised Political Declaration, the Government notes that digital trade is on the rise and the UK and EU should help facilitate this and seek to address any barriers to digital trade.¹

Given the Government's assurances that the UK will be developing an independent trade policy and put an end to the free movement of people², it's likely that the UK will no longer be part of the Single Market as well as the Digital Single Market.

Intellectual Property and Copyright

Q Will Brexit impact Intellectual Property and copyright laws?

The revised Political Declaration recognises the importance of IP and states that both the UK

¹ Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom, 19 October 2019, p9

² Ibid p2

and the EU should preserve the current high levels of protection and enforcement of IP and should go beyond the standards of the WTO Agreement on Trade-Related Aspects of IP Rights.³ The revised Withdrawal Agreement ensures that the current high standards of IP will be maintained and IP rights holders will be protected.⁴ The Government has also taken steps to ensure that holders of IP rights will continue to be protected in the case of a no-deal Brexit.⁵

The UK is a member of numerous international treaties and agreements protecting copyright meaning that the majority of UK copyright works are protected around the world. The UK's relationship with the EU will not impact this.⁶

In the case of no deal, the Government have introduced a statutory instrument⁷ which removes or corrects references to the EU, EEA or member states in UK copyright legislation. This will ensure that the UK law regarding copyright is preserved where possible.⁸

Data Protection

Q How will Brexit impact data protection rules?

The EU (Withdrawal) Act 2018 retains the GDPR in UK law. The fundamental principles, obligations and rights that businesses have become familiar with under GDPR will stay the same.

The European Commission will start assessing the UK's data protection standards as soon as possible after the UK leaves the EU; the aim is for the European Commission to make a decision regarding this by the end of 2020 if the adequate conditions are met by the UK.⁹ At the same time, the UK will be establishing its own international transfer regime and take steps to facilitate the transfer of personal data to the EU.

The UK Government have stated that data transfers to the European Economic Area (EEA) will not be restricted after Brexit. If a business in the EEA is sending your business personal data, then it will still need to comply with EU data protection laws.

If the UK leaves the EU without a deal, the responsibilities of your company's data controllers will not change. The same GDPR standards will continue to apply in the UK and the Information Commissioner will remain as the UK's independent regulator.¹⁰

Businesses should review contracts and include Standard Contractual Clauses (SCCs) or other legal safeguards where necessary. This will allow your business to continue legally receiving personal data from EEA countries. The Information Commissioner's Office has an

³ Political Declaration setting out the framework for the future relationship between the EU and the UK, October 2019, p10

⁴ Agreement on the withdrawal of the UK of Great Britain and Northern Ireland from the EU and the European Atomic Energy Community, October 2019 p85 - p92

⁵ No-Deal Readiness Report, HM Government, October 2019, p92

⁶ Government response to the 'potential impact of Brexit on the creative industries', DCMS Committee, June 2018, p17

⁷ The Intellectual Property (Copyright and Related Rights) (Amendment) (EU Exit) Regulations 2019

⁸ Changes to copyright law after Brexit, IPO, October 2019

⁹ Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom, HM Government, October 2019, p4

¹⁰ Amendments to UK data protection law in the event the UK leaves the EU without a deal, DCMS, April 2019

interactive tool on its website¹¹, which can help organisations understand what SCCs are and determine whether SCCs can help maintain the flow of data into the UK from the EEA.

Businesses which are part of a multinational group may be able to rely on binding corporate rules to transfer personal data within their group.¹² Members who are still unsure about complying with GDPR post Brexit should contact the ICO directly.

Creative Europe

Q I heavily rely on Creative Europe funding to run my business. Will I still be able to rely on this funding after Brexit?

During the implementation period UK organisations are still able to apply for EU programmes' funding, including Creative Europe. The Department for Digital, Culture, Media and Sport has advised that UK organisations will still have the same rights and obligations as other countries who are participating in the Creative Europe programme. The UK's participation in EU programmes will be unaffected by the UK's withdrawal from the EU until the 31st December 2020, the current EU budget period.¹³

If there is a no deal scenario, payments to UK beneficiaries of Creative Europe funding would be expected to stop after the 31st January 2020.¹⁴ The UK Government has provided reassurances that it will underwrite the payments of awards. Where a UK organisation is the lead member of a partnership, any funding it distributes to non-UK associated beneficiaries will not be covered by the Government's guarantee.¹⁵ The Department for Digital, Culture, Media and Sport has said that the guarantee will only apply to project applications that are approved directly by the European Commission or other relevant EU agencies acting on its behalf.

Successful Creative Europe applicants or prospective applicants should contact with the Creative Europe UK desk who can provide guidance and advice.

Currently, it is still unclear on whether the UK will be a part of the 2021-2027 Creative Europe programme. Members who have queries related to Creative Europe should get in contact directly with the Creative Europe Desk UK.¹⁶

European Works

Q Will UK content still qualify as European Works?

Content originating in the UK will still be classed as European Works after the UK leaves the EU. Member States and those outside of the EEA which are party to the Council of Europe Convention on Transfrontier Television (ECTT) are included within the European Works content quota. Leaving the EU will not affect the UK's position in the ECTT as the Council of

¹¹ Information Commissioner's Office – interactive tool: <https://ico.org.uk/for-organisations/data-protection-and-brexit/standard-contractual-clauses-for-transfers-from-the-eea-to-the-uk-interactive-tool/>

¹² Using personal data in your business or organisation and Brexit, DCMS, BEIS and ICO, February 2019

¹³ Creative Europe Brexit update, Creative Europe Desk UK, December 2019

¹⁴ *ibid*

¹⁵ *ibid*

¹⁶ For Creative Europe Desk UK contacts see: <http://www.creativeeuropeuk.eu/contact-us>

Europe is separate from the EU.¹⁷

Visas, Immigration and Filming

Q Will Brexit make accessing EU talent and skills? harder for the sector?

Continued access to talent and skills is a key component in maintaining a thriving creative industry, and free movement of people has been a part of this.

The Prime Minister has made it clear that he wants to introduce an Australian style points-based immigration system. The Migration Advisory Committee (MAC) is currently examining this.¹⁸ This new points-based immigration system would be introduced from January 2021. Free movement rules will continue until the end of the proposed implementation period.¹⁹

The MAC consulted on the Shortage Occupation List. Pact encouraged members to submit evidence of their experiences recruiting UK staff for specific jobs and – if applicable – the importance of EU and non-EU staff to their company. The Shortage Occupation List gives applicants for listed jobs a much stronger chance in securing a Tier 2 work visa; applicants who are applying for jobs on the List are also not required to undertake the Resident Labour Market Test, or meet the five-year salary threshold. In June 2019, the MAC published their conclusions from the review, and recommended including more creative industry related roles to the Shortage Occupation List.²⁰

Q Will Brexit make filming in the EU more difficult?

The Political Declaration recognises the importance of the temporary movement of objects and equipment for cooperation on areas such as culture.²¹

Under the Withdrawal Agreement temporary movement of goods, which includes filming equipment, would continue as normal through the proposed implementation period.²² After the implementation period, the rules around the temporary movement of goods would be subject to further negotiation with the EU.

If the UK leaves the EU without a deal, it's likely that the temporary movement of goods between the UK and the EU will be subject to similar rules in place for temporary movement of goods with non-EU countries. The Government does not have any specific guidance in place for filming in the EU after Brexit however, it is likely that producers will need an ATA Carnet. An ATA Carnet is an international customs document which allows the temporary

¹⁷ Future Relationship Between the United Kingdom and the EU, Cabinet Office, July 2018, p37

¹⁸ <https://homeofficemedia.blog.gov.uk/2019/08/19/media-factsheet-eu-citizens-and-freedom-of-movement/>

¹⁹ <https://homeofficemedia.blog.gov.uk/2019/08/19/media-factsheet-eu-citizens-and-freedom-of-movement/>

²⁰ Full Review of the Shortage Occupation List, Migration Advisory Committee, May 2019

²¹ Political Declaration setting out the framework for the future relationship between the EU and the UK, HM Government, October 2019, p5

²² Agreement on the withdrawal of the UK of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, HM Government, October 2019, p75

importation of professional equipment to countries which are part of the ATA Carnet system.²³

Audiovisual Media Services Directive

Q Will the Audiovisual Media Services Directive still apply in the UK post Brexit?

The Department for Digital, Culture, Media and Sport recently consulted on the Government's strategy for implementing the Audiovisual Media Services (AVMS) Directive. The implementation of this Directive is a requirement of EU membership. The Government stated that their approach to implementation will closely follow the guiding principles.²⁴

If the UK leaves the EU without a deal, the UK is not bound to transpose the AVMS Directive into UK law. However, the UK would be free to align domestically in certain areas, following the usual processes for introducing new or amending legislation. In the consultation document, the Government states that further work would be required to identify the best way forward and the responses to the consultation will help inform that work.²⁵

Pact submitted a response to this consultation and welcomed the further clarity from the Government on the implementation of the AVMS Directive. Pact are confident that British content will continue to sell well in Europe without the need for any additional European Works quotas, and will also remain in a prominent position in online catalogues due to its popularity and high quality.

In January 2019, French president Emmanuel Macron confirmed that France will ensure the European audiovisual sector is excluded from any all-encompassing UK-EU free trade agreement (FTA) post Brexit. He said that France would demand an explicit mention of the exclusion of audiovisual services in any directives adopted by the EU Commission within the framework of a future FTA between the EU and UK.²⁶

Cultural Test

Q Will Brexit impact the UK cultural test and applying for tax relief? Why is this relevant to the EU?

Currently state aid rules, which the creative industry tax reliefs come under, are set out in the Treaty of the Functioning of the European Union and associated European legislation. There is no specific UK legislation related to state aid regulation. The Competition and Markets

²³ For more information on ATA Carnets, see: <https://www.gov.uk/taking-goods-out-uk-temporarily/get-an-ata-carnet>

²⁴ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/682752/eu-transposition-guidance.pdf

²⁵ Audiovisual Media Services: Consultation Document, The Department for Digital, Culture, Media and Sport, May 2019

²⁶ France to keep European audiovisual sector out of post-Brexit UK-EU free trade agreement, Screen Daily, 2019, <https://www.screendaily.com/news/france-to-keep-european-audiovisual-sector-out-of-post-brexit-uk-eu-free-trade-agreement-/5135696.article>

Authority will take over state aid regulation after Brexit, unless there is a deal agreed with the EU.²⁷

The law on this area contains references to the EEA; the Government has introduced an amendment to this legislation. This action was taken in order to 'avoid the situation that, unless the references to EEA state are amended, then British directors, actors and other production personnel would not be eligible to score points under various sections of the test, whereas nationals or residents of any EEA state would.'²⁸

In short, the cultural test will not be changing post Brexit, and companies will still be able to qualify for UK tax reliefs under this test.

Co-production and EU Tax Reliefs

Q Will my ability to co-produce with other countries be affected by Brexit?

Co-production treaties between the UK and another country are not governed by EU law. All co-production agreements form part of UK legislation, and so Brexit will have no impact on company's ability to co-produce.

The European Convention on Cinematographic Co-Production²⁹ is governed by the Council of Europe, and the UK will continue to be party to this convention after Brexit.

Q Will I still be able to have the same access to tax credits from EU countries after Brexit?

Currently UK personnel have EEA status meaning they are able to qualify for other European Member States cultural tests and can access tax credits in European Member States, UK personnel will lose this status post Brexit.

Amendments to European Member States legislation will be needed to ensure that UK content and workers will continue to be able to access the same tax credits after the UK leaves the EU. These changes will have to be made in both a deal scenario and a no deal scenario. Under the Withdrawal Agreement, UK workers will have EEA status until the 31st December 2020, the end of the implementation period. If the UK leaves without a deal, there is no implementation period.

In some cases, no amendments are required to access European Member States tax incentives. Access to French tax credits will remain unchanged by Brexit as UK content can qualify for these under the UK-France co-production treaty. The UK Government and the BFI are currently working to ensure that European Member States undertake the necessary work

²⁷ State aid if there's no Brexit deal, Department for Business, Energy and Industrial Strategy, <https://www.gov.uk/government/publications/state-aid-if-theres-no-brexit-deal/state-aid-if-theres-no-brexit-deal>

²⁸ The Cultural Tests (Films, Television Programmes and Video Games) (Amendment) (EU Exit) Regulations 2018 <https://www.gov.uk/eu-withdrawal-act-2018-statutory-instruments/the-cultural-tests-films-television-programmes-and-video-games-amendment-eu-exit-regulations-2018>

²⁹ This convention specifically relates to film

to ensure the same access to European tax credits post Brexit. Pact is in touch with officials to ensure the most up to date advice is available to members.³⁰

No Deal Brexit

Q Will a no deal Brexit impact IP and copyright laws?

If there is a no deal scenario, the UK's continued membership of the main international treaties on copyright will ensure that the scope of protection for copyright works in the UK, and for UK works abroad will remain largely unchanged. However, there are a number of cross-border copyright arrangements that are unique to the EEA; meaning that once the UK leaves the EU these will no longer apply. The Government has amended UK legislation to ensure that these arrangements will operate domestically, or are brought to an end after the UK leaves the EU.³¹

Q What impact will a no deal Brexit have on freedom of movement and immigration?

In September 2019, the Home Secretary announced that if the UK does leave the EU with no deal, freedom of movement will end. The majority of the free movement framework will remain in UK law until legislation is passed to repeal the Immigration (European Economic Area) Regulations 2016.³²

The EU has confirmed that UK nationals will not require a visit visa for short stays of up to 90 days in every 180-day period for things such as a tourism. Passports will need to be valid for at least six months after the date of entry to the EU and have been issued within the past ten years.³³ The Government has advised businesses to familiarise themselves with the immigration rules of the relevant country ahead of travel to ensure they have the right permissions and paperwork.

³⁰ BFI Brexit Guidance, December 2019 <https://www.bfi.org.uk/about-bfi/policy-strategy/policy-statements/withdrawal-agreement-plus-deal-guidance>

³¹ Changes to copyright law after Brexit, October 2019, IPO

³² <https://homeofficemedia.blog.gov.uk/2019/08/19/media-factsheet-eu-citizens-and-freedom-of-movement/>

³³ No-Deal Readiness Report, HM Government, October 2019