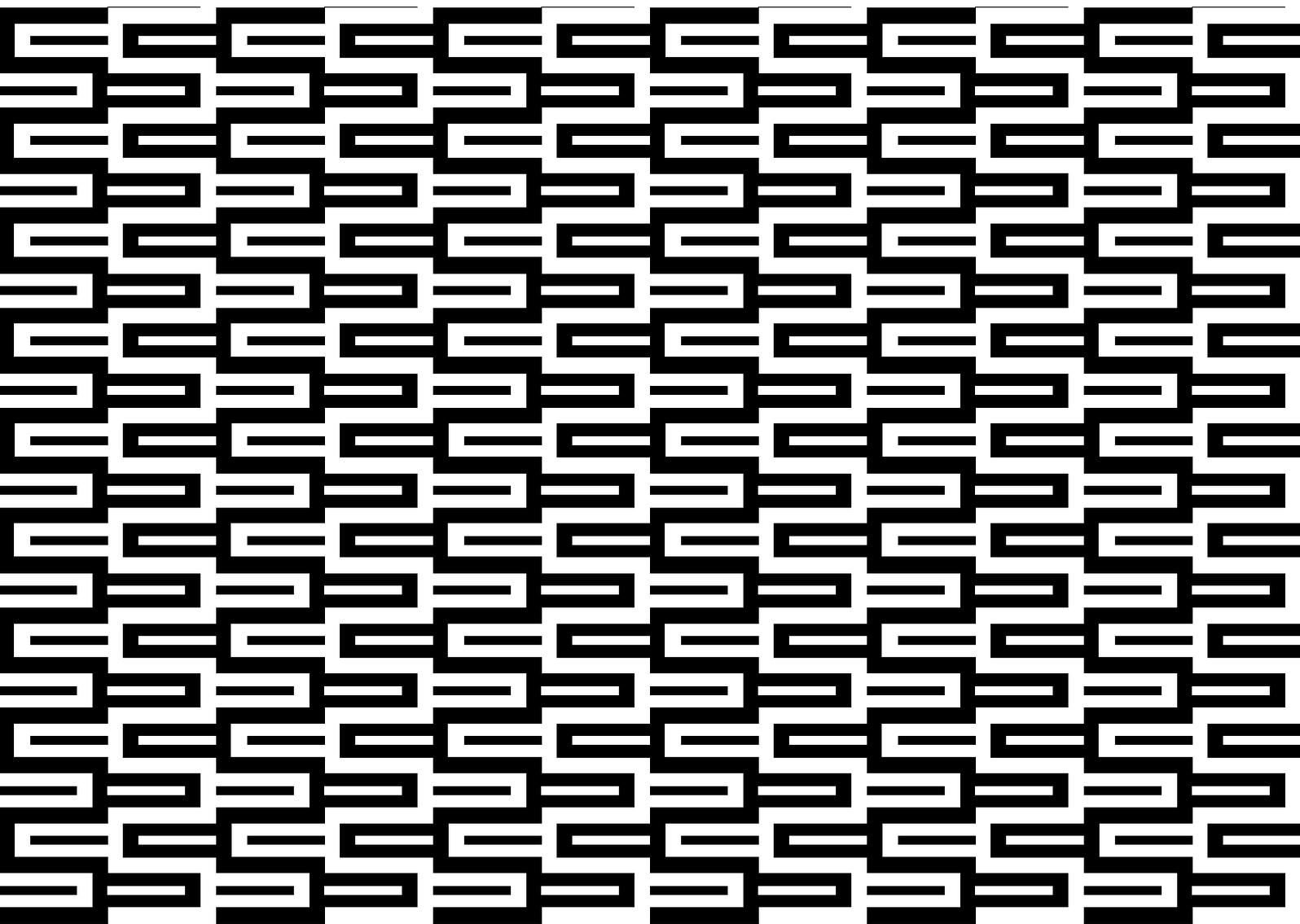


# Assessing the implications of Brexit for the arts

An Arts Council of Wales Briefing Note



December 2018 (updated 12.12.18)

*Images: Cefyn Burgess*

## Withdrawal from the European Union

1. Following the Referendum held in June 2016, the UK Government began the process of withdrawal from the European Union (EU). This is due to happen on 29 March 2019. This is then expected to be followed by a 'transition period' to 31 December 2020 during which new political, financial and regulatory arrangements for the UK's relationship with the EU will be agreed.
2. The UK's departure from the EU will have significant implications for Welsh public bodies and the organisations and services that they support, as well as freelance and small companies working in the cultural sector. Many issues will be shared more widely across the cultural and heritage sector. But there are some that are specific to the arts and creative industries.
3. The Arts Council of Wales remains firmly committed to international working in the arts. We will continue to champion the needs of the sector in any new European relationship, and we work in partnership with our sister organisations in the rest of the UK to promote a coherent view of the issues affecting the sector.
4. As the withdrawal deadline gets closer, cultural organisations must assess carefully the Brexit risks – or opportunities – that are particular to them, including in a 'no deal' scenario. There remains a great deal of uncertainty around Brexit – many of the risks and opportunities depend on decisions yet to be taken. And much of this depends on whether an agreed withdrawal settlement is in place in March 2019 or the UK leaves with no deal.
5. As is evident, there are two 'sides' to the Brexit debate. Some commentators believe that new trading opportunities will open up as a result of Brexit. This might well prove to be the case. However, for the purposes of this briefing we highlight some of the key areas that those working in the creative sector in Wales should consider in the immediate future, regardless of their views on Brexit. Future opportunities will only become clear once the withdrawal process has been agreed.
6. Please remember that this note shouldn't be seen as 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 trade associations and professional advisers are now offering Brexit advice. (The **Creative Industries Federation** produces useful practical advice on a wide range of Brexit issues.) It's important that you deal with this at the appropriate level, including regular discussions at board level of your company. Agility will be key in helping you, in the months ahead, to prepare your company to be agile enough to make the changes needed to deal with the challenges ahead.

## Getting started

7. You might not think that Brexit is relevant to you. However, if you...

- tour, travel or work internationally
- collaborate or co-produce with European partners
- sell goods and services abroad
- import goods and services into Wales
- employ or contract EU citizens
- are affected by international regulation
- have plans to develop international relationships

... then there will be important practical issues for you to consider.

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### 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 regularly 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
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## Workforce issues and access to talent

8. In the UK as a whole, there are approximately 131,000 EU nationals working in the creative industries, making up 7% of the total workforce. Freelance and self-employed workers make up 35% of the sector and 33% of EU workers. The health of the arts and creative industries rely 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) or indeed services to develop talents – eg master classes. Please note that different sets of regulations will govern these areas. The creative sector in this respect is unique in that it is frequently dependent on all three.
9. 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 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.
10. Orchestras, opera and dance companies, touring theatre all rely on guest artists (such as conductors, soloists, singers, dancers, directors, designers) being able to travel in and out of the UK. This can happen on an almost a daily basis and often for just one engagement. You might need, at extremely short notice, to replace artists who have had to cancel due to illness and injury. Their work can also rely on the movement of sets and instruments and sometimes services.
11. 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 March 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, 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.

12. 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.
13. 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. 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".
14. Forward planning could become more difficult. Larger companies will often work on a 2-3 year planning cycle. This means that in some cases contracts will already have been entered with EU artists beyond 29 March 2019. This could pose a risk in relation to additional costs and bureaucracy that might not have been budgeted for.
15. In the same way, similar obstacles may be imposed on British 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 3-6 month validity to travel to EU member states.
16. 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 currently costs £65. However, in the event of a no deal Brexit, there is no formal, written guarantee to ringfence this agreement between the UK and EU. The Creative Industries Federation has more information for employers on the Settlement scheme ([link at end of document](#)).

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#### **What actions should you be considering?**

- Review the employment/visa status of your current staff and consider what advice and support you may need to put in place.
  - Support your staff.
  - 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
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## Working internationally and cross borders

17. Travel and cultural exchange are fundamental to international working in the arts. Membership of the single market and the customs union has been hugely beneficial in enabling Welsh artists and companies to tour across Europe, generating both revenue and developing their international reputation. A key practical issue resulting from Brexit could be the imposition of visas, carnets and other tariffs and barriers when touring into the EU. This changes significantly established business practice.
18. And it's not just people who are on the move. The arts have also benefited from the freedom of movement of goods – from musical instruments to theatre 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.
19. There could also be other issues that extend beyond the practicalities of border crossing. For example, the A1 form, which 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 and will need to pay extra for medical insurance when on tour. UK drivers' licences and insurances might not be valid.
20. 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 March 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.
21. HM Revenue and Customs has published a [letter on GOV.UK](#) to help businesses that trade with the EU get ready to deal with customs should the UK leave the EU without a deal on 29 March 2019.



22. 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.

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**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 March 2019 and prepare a contingency plan to address potential risks
  - Consider the advice contained in the HMRC's letter on trading with the EU
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## Economic factors

23. 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 further reductions in funding for the Arts Council of Wales and Welsh local authorities. These might have to be passed on to arts organisations.
24. There could also be a negative impact on individual giving, corporate sponsorship and funding from trusts and foundations. All three sources of private funding rely on a benign economy and investment growth. The economy in Wales has been heavily subsidised by European Structural Funds. Although the UK Government is committed to maintaining the investment to areas which are lagging behind, it is unclear how this will be managed in the future.
25. 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.
26. Another key aspect being highlighted for other sectors but also important for the creative and culture is that of continuing supply chains. Some aspects are known to us (the origin of our harps) others are unclear (components that go into customised technology eg sound or light).

### 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 Welsh 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 (ABO, AIM, CIF IETM etc)

## Funding

27. The EU has been an important source of funding for the arts 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.
28. 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: Creative Europe Desk UK; Erasmus + UK; and WEFO for ERDF/ESF projects in Wales (links at the end of the document).
29. 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.
30. In the period from 2007–2016 in Wales, over 150 projects received around £23m in EU funding.

### What actions should you be considering?

- If you are involved in a current EU project, keep up to date with developments regarding funding arrangements post March 2019
- If you have submitted a bid and are awaiting the results, keep up to date with developments regarding your eligibility post March 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

31. EU laws and regulations are deeply embedded within the working practices of many companies in Wales. EU laws and regulations directly impact on day-to-day activities such as procurement, employment rights, the environment, data protection and health and safety.
32. 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.
33. Other key areas for the wider 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 or not.
34. 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).

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### 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?
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## Useful links

[Creative Industries Federation](#), for access to the following documents:

- Guide to a 'No-Deal Brexit', written in collaboration with Bates Wells Braithwaite
- Creative Industries-focused Summary of government's Technical Notices concerning a 'No-Deal Brexit'
- Preparatory Document: Creative Industries employers' information on the EU Settlement Scheme

[Creative Europe Desk UK Brexit update](#)

[Erasmus + UK Brexit update](#)

[WEFO Brexit update](#)

[Wales Civil Society Forum on Brexit](#)

[Welsh Government Brexit for Business portal](#)

[National Assembly for Wales Research team blog](#)

[www.gov.uk/government/brexit](http://www.gov.uk/government/brexit)

[www.instituteforgovernment.org.uk/our-work/brexit](http://www.instituteforgovernment.org.uk/our-work/brexit)

[www.pwc.co.uk/the-eu-referendum/brexit-contingency-actions-take-to-prepare-for-no-deal.html](http://www.pwc.co.uk/the-eu-referendum/brexit-contingency-actions-take-to-prepare-for-no-deal.html)