

## How to prepare for a ‘no deal’ Brexit: TIGA’s guidance

### Introduction

On 1 February 2017, the UK Parliament voted to allow the Prime Minister to trigger Article 50<sup>1</sup>; the EU subsequently accepted this application. Following an extension of Article 50, by law, the UK must leave the EU on 31 October 2019. As the UK Parliament are yet to approve a Withdrawal Agreement, the default legal position of the UK is to leave the EU without a deal.

Leaving the EU without a deal creates a number of uncertainties for the UK video games industry. It is important that the UK games sector assesses the risks and opportunities that Brexit will bring, and prepare for all eventualities.

In the event of a ‘no deal’, the key areas of concern for the UK video games industry include:

- Access to EU talent;
- Access to EU funding programmes and tax reliefs;
- Barriers to trading with the EU; and,
- Implications on trade marks, personal data copyright and intellectual property rights.

Although delivering the deal negotiated with the EU remains the Government’s top priority, it is important that businesses across all industries prepare for the potential outcome of a ‘no deal’ Brexit. To help prepare companies in the video games industry, TIGA has prepared a short guide which covers the key concerns we have actively raised with Government.

This guide signposts Government notices and policy papers, and shares information TIGA has received through our engagement with Government.

*Please note this is not a comprehensive guide and the Government is constantly producing new guidance. Whilst every care has been taken to ensure the accuracy of the information in this guide at the time of publication (August 29th 2019), the information is intended as guidance only. It should not be considered as legal advice.*

*If you have any further queries regarding the information provided in this guidance, please contact [info@tiga.org](mailto:info@tiga.org) who will do their best to answer your questions.*

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<sup>1</sup> Division 135, *Hansard*, 1 February 2017, Col. 1136-1140, [link](#)

## Access to EU Talent

The global success of the UK video games industry depends on its ability to attract global talent. According to TIGA research, EU workers make up 20 per cent of the industry, while 5 per cent come from countries outside the EU. The ability to retain these workers and recruit more talent is essential for the continued success of our industry.

### What will happen to the UK immigration system in a no-deal Brexit?

In the event of a 'no deal' Brexit, freedom of movement will end at 11pm on 31 October 2019. To offer assurance to EU citizens residing in the UK, and to those wanting to work, study or visit the UK after 31 October, the Government has outlined the following:

- EEA citizens and their family members, including Swiss citizens, will still be able to come to the UK for visits, work or study and they will be able to enter the UK as they do now, for a transitional period.<sup>2</sup>
- To stay longer than 3 months, you will need to apply for permission and receive European Temporary Leave to Remain, which is valid for a further 3 years.<sup>3</sup>
- EU citizens granted Temporary Leave to Remain and wish to stay for longer than 3 years will need to make a further application under the new skills-based future immigration system, which will begin from 2021.<sup>4</sup>
- Any EEA and Swiss citizen living in the UK by before it leaves the EU will be eligible to apply for settled status and have the deadline of 31 of December 2020 to do so.<sup>5</sup>

See: [Guidance for EU citizens coming to the UK to visit, study, work or join family if the UK leaves the EU with no Brexit deal.](#)

### Recommendations to employers employing workers from the EEA.

The [Creative Industries Federation](#) has recommended the following actions for employers to complete to prepare for the potential eventuality of a no deal scenario:

- Moving EEA or Swiss nationals to the UK before exit day, wherever possible. They would still benefit from free movement rights and under current policy would be able to register for Pre-Settled Status and ultimately stay in the UK permanently, so long as the requirements for Settled Status are met after five years.

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<sup>2</sup> Home Office and UK Visas and Immigration, Staying in the UK for longer than 3 months if there's no Brexit deal, 29 January 2019, [link](#).

<sup>3</sup> Ibid.

<sup>4</sup> Settled and pre-settled status for EU citizens and their families, [link](#).

<sup>5</sup> Ibid.

- Speaking to their employees to explain their residency rights post-Brexit, including if no deal is agreed. It is sensible to plan communications against government milestones over the next two years, for instance ahead of or shortly after Brexit on 31 October 2019 and before the deadline for making a Pre-Settled or Settled Status application: 31 December 2020 if there is no deal or 30 June 2021 if a deal is agreed. If your employees are currently unsettled you may wish to write or speak to them sooner rather than later. Information is available on the .gov website and many immigration law firms are already helping with communication planning and delivery.
- Evaluating where their future employment needs lie and what costs, delays and administration they may need to account for if all EEA and Swiss citizens come under the existing non-EU immigration system.

See: [EU Settlement Scheme: employer toolkit](#) and [Employing EU, EEA and Swiss citizens and their family members after Brexit](#)

### **What will happen if EU citizens move to the UK after a no deal Brexit?**

On 4 September 2019, the Government announced that EU citizens moving here after a no deal Brexit will be able to access a temporary immigration status, until the new skills-based immigration system goes live at the start of 2021. The Home Office will open a new European Temporary Leave to Remain scheme for EU citizens and their close family members moving to the UK after Brexit, in a no deal scenario. When the Scheme opens it will be voluntary, and we will not charge a fee. It will be open until the end of 2020 and EU citizens who apply will be able to secure a 36-month temporary immigration status which will extend beyond the launch of the UK's future immigration system. Once the future system opens at the start of 2021, anyone without European Temporary Leave to Remain will have to qualify under the provisions in the future system if they wish to stay in the UK. In contrast, those who have applied for the bespoke interim scheme will have more time to transition into the future system and will not need to qualify until their temporary leave expires. The same arrangements will apply to nationals of Iceland, Liechtenstein, Norway and Switzerland.<sup>6</sup>

### **What will the UK's future skills-based immigration system look like?**

On the 19 December 2018, the Government published an [Immigration White Paper](#) setting out its proposed single, skills-based immigration system for both EU and non-EU citizens post-Brexit. The policy is due to be implemented at the end of the post-Brexit transition period, at the beginning of 2021.

Some of the key proposals put forward in the White Paper include:

- Lowering of the skills threshold on the skilled workers route to include medium-skilled workers.
- Removing the cap on the skilled workers route.
- Consulting on a minimum salary requirement of £30,000 for skilled migrants seeking five-year visas.

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<sup>6</sup> Priti Patel, *Hansard*, 2 September 2019, Col.11 WS [link](#).

- No longer requiring employers of skilled migrants to carry out a resident labour market test as a condition of sponsoring a worker.

The publication of the White Paper begins a 12-month engagement period with industry about the future immigration system.

### Shortage Occupation List

On 23 July 2019, Sajid Javid announced that the Government will expand the shortage occupation list (SOL) in line with the Migration Advisory Committee's (MAC) [recommendations](#).

The MAC's recommendations included:

- **Expansion of Programmers and Software Development Professionals code (2136)** to include all related job titles on the SOL, including Games Designers. The MAC stated that this occupation 'tops our shortage indicators' ranking and has had above average vacancy rate'.
- **Inclusion of additional roles under the Web Design and Development Professionals code (2137)** on the SOL, including UX and VFX Designers. Currently, SOC 2137 is not present on the SOL. This report is the first to consider Web design and development professionals in detail.
- **Expansion of Artists code (3411)** to include all job titles within this SOC code. The list of job titles requested to be put on the SOL or to remain on the SOL were: 3D artist, technical artist, animator, art director, VFX artist, character artist, UI artist, lighting artist, technical animator, technical artist, character artist, concept artist, storyboard artist, previsualisation artist, layout artist and lead marketing artist.
- **Inclusion of additional roles under the Graphic Designers code (3421)** on the SOL.
- **Retaining Arts Officers, Producers and Directors code (3416)** on the SOL. Within this occupation, the MAC noted that 'gaming has a range of SMEs who struggle to compete on salary with larger organisations and other industries that require the same skill set (e.g. the financial sector).
- **Expansion of IT Business Analysts, Architects and System Designers code (2135)** to include the entire occupation on the SOL. The MAC has also recommended removing the requirement for a migrant to have a minimum of five years' work experience for this code, as it is 'no longer feasible as demand for these roles is significantly outstripping supply in the UK'.

The SOL comprises occupations and job titles held to be in shortage across the UK. Job titles on the SOL are not required to undertake the Resident Labour Market Test or meet the five-year salary threshold for settlement.

## Helpful Resources

- [Guidance for EU citizens and their families after the UK leaves the EU](#)
- [Immigration Rules: shortage occupation list](#)
- [The UK's future skills-based immigration system](#)
- [TIGA's response to the Migration Advisory Committee's review of the Shortage Occupation List](#)
- [Staying in the UK for longer than 3 months if there's no Brexit deal](#)

## Access to European Funding in the event of ‘no deal’ Brexit

The UK video games industry benefits from a number of EU funding initiatives. In the event of a ‘no deal’ Brexit, UK organisations would no longer receive future funding for projects under EU programmes such as Creative Europe, the European Regional Development Fund and Horizon 2020.

### What will happen to funding from EU programmes in the event of a ‘no deal’ scenario?

The Chancellor announced in August and October 2016 that the Government will guarantee EU projects agreed before we leave the EU. This guarantee will cover all successful bids submitted by UK participants before the UK exits the EU, for the full duration of the projects.<sup>7</sup>

In July 2018, the Government extending this guarantee to provide further stability for UK organisations in a ‘no deal’ scenario.<sup>8</sup> The guarantee now covers:

- the payment of awards where UK organisations successfully bid directly to the European Commission on a competitive basis while we remain in the EU; and
- the payment of awards under successful bids where UK organisations are able to participate as a third country in competitive grant programmes from Exit day until the end of 2020.

This guarantee ensures that UK organisations, such as charities, businesses and universities, will continue to receive funding over a project’s lifetime if they successfully bid into EU-funded programmes before the end of 2020.

If you are in receipt of funds from an EU programme such as Horizon 2020, or you have submitted a bid to one of the funds, then you need to submit a recipient registration form. Instructions for UK recipients of EU Direct Bid funds to submit information about projects which may be eligible under the UK government’s guarantee can be found [here](#).

### Helpful Resources:

- [The government’s guarantee for EU-funded programmes if there’s no Brexit deal](#)
- [A technical notice on Horizon 2020 funding if there’s no Brexit](#)
- [Creative Europe Brexit update](#)
- [European Regional Development Funding if there’s no Brexit deal](#)
- [European Social Fund \(ESF\) grants if there’s no Brexit deal](#)
- [Horizon 2020: UK government underwrite guarantee](#)

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<sup>7</sup> *HM Treasury*, The government’s guarantee for EU-funded programmes if there’s no Brexit deal, 3 December 2018, [link](#).

<sup>8</sup> *Elizabeth Truss MP*, HM Government’s guarantee: Written statement - HCWS926, 24 July 2018, [link](#).

## Trading with the EU in the event of ‘no deal’ Brexit

If the UK leaves the EU on 31 October 2019 without a deal, the government’s aim will be to keep VAT procedures as close as possible to what they are now.

### **Are video games at risk of tariffs or other barriers being introduced in the event of a ‘no deal’ scenario?**

TIGA wrote to Mel Stride MP, the Financial Secretary to the Treasury and Paymaster General at the time, calling for guidance on the distribution of video games in the event of a ‘no deal’ Brexit scenario.

In response to TIGA’s letter, Mel Stride MP offered the following guidance:

“Digital sales of video games via online platforms or marketplaces are considered a supply of service, as opposed to a supply of goods. Therefore, such sales are currently not subject to UK customs tariffs when supplied to ‘Rest of World’ countries.

“For VAT on services to consumers outside of the UK, the current ‘place of supply’ rules determine which country UK businesses will need to account for VAT on their supply. In the unlikely event of a no deal scenario, the technical notice ‘VAT for business if there’s no Brexit deal’ published on 23 August 2018, confirms that *“the main VAT ‘place of supply’ rules will remain the same for UK businesses...These rules are in line with international standards set out by the Organisation for Economic Co-operation and Development (OECD), guidelines can be found on the OECD website.”*

### **What will happen to VAT Mini One Stop Shop (MOSS)?**

If the UK leaves the EU without an agreement, businesses that sell digital services to consumers in the EU will be able to register for the MOSS non-union scheme.

MOSS is an online service that allows EU businesses that sell digital services to consumers in other EU member states to report and pay VAT via a single return and payment in their home member state. Non-EU businesses can also use the system by registering in an EU member state.

If the UK leaves the EU with no agreement, businesses will no longer be able to use the UK’s Mini One Stop Shop (MOSS) portal to report and pay VAT on sales of digital services to consumers in the EU.

Businesses that want to continue to use the MOSS system will need to register for the VAT MOSS non-Union scheme in an EU member state. This can only be done after the date the UK leaves the EU. The non-Union MOSS scheme requires businesses to register by the 10th day of the month following a sale.

Alternatively, a business can register in each EU member state where sales are made. You can find further information about registering for VAT in EU member states on the EU Commission’s website.

See: [VAT for businesses if there's no Brexit deal](#)

## **Will Brexit affect UK tax reliefs?**

The UK's Creative Sector Tax Reliefs will not be affected by Brexit — this includes those available for film, high-end TV, animation, childrens' TV and videogames.

The BFI have published the following guidance on this issue:

The UK's Creative Sector Tax Reliefs will not be affected by Brexit – this includes those available for film, high-end TV, animation programmes, children's television and video games. In the BFI's recent Screen Business report, the previous Chancellor restated Government's commitment "to supporting [the UK's] highly-skilled and innovative creative industries through creative sector tax reliefs". Content will still qualify for the applicable Creative Sector Tax Relief if it passes the UK's relevant cultural test. Creative sector cultural tests will also continue to recognise EEA content and personnel regardless of whether the UK secures a deal with the EU.

Some minor changes will be required if the UK is to continue to qualify for incentives in some EU Member States after it has left the EU. UK Government, in conjunction with the BFI, is working to ensure that wherever possible Member States undertake the work needed to ensure UK content and personnel can still qualify.

These changes will have to be made in both a 'deal' and 'no deal' scenario. Under the Withdrawal Agreement as it stands, UK personnel would have EEA status – and thus will be able to qualify for other Member States' cultural tests – until the end of the transition period. In the event of no deal, UK personnel will have EEA status until the exit date.

However, amendments will be required for UK content and personnel to continue to qualify where they are able to now in the longer term.

In either deal or no deal scenarios, no material changes are expected to the UK's State Aid regime. Under no deal, the EU state aid regime will be transposed into domestic UK law and the Competition and Markets Authority (CMA) will become the UK's state aid enforcement authority, in place of the European Commission, from the date on which the UK leaves the EU. The Statutory Instrument putting this system into place does not materially alter the substance of the EU state aid framework. The CMA will be required to adopt the existing EU guidelines as statements of policy and publish them by day one of EU Exit.

See: [Brexit: Answering questions from the screen sectors](#)

### Helpful Resources

- [Industry guidance in the event of a 'no deal' Brexit scenario](#)
- [How to register and use the VAT Mini One Stop Shop to report and pay VAT due on sales of digital services to consumers in the EU](#)
- [Accounting for import VAT in a no-deal Brexit](#)



- [Check temporary rates of customs duty \(tariffs\) on imports after a no-deal Brexit](#)
- [Exporting after Brexit: check what you need to do](#)

## **Letters on no deal Brexit advice for businesses trading with the EU**

[HMRC letters](#) to VAT-registered businesses trading with the EU explaining how to prepare for changes to customs, excise and VAT if the UK leaves the EU without a deal.

## **Trade marks, Personal Data, Copyright and Intellectual Property Rights in the event of a ‘no deal’ Brexit**

### **What are the implications for trade marks and design in the event of a ‘no deal’ Brexit?**

In the event of the UK leaving the EU without a deal, all existing European Union Trade Marks (EUTM) will cease to provide protection in the UK. To ensure that UK protection is preserved, the government will provide holders of existing EUTMs with a comparable UK trade mark on exit day.

As a result, the government has introduced [The Trade Marks \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) and [The Design and International Trade Marks \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) under the powers of the [European Union \(Withdrawal\) Act 2018 \(EUWA\)](#).

UK businesses will still be able to obtain trade mark protection in the remaining 27 Member States of the EU through an application to the EUIPO, and businesses from the EU and worldwide will still be able to apply for a UK domestic trade mark through the Intellectual Property Office.

From exit day, all existing registered EUTMs will be treated as if they had been applied for and registered under UK law. For all registered EUTMs the government will create comparable UK trade marks, which will be recorded on the UK register.

International trade marks and designs registered at the World Intellectual Property Organisation (WIPO) designating protection in the EU will no longer be protected in the UK following exit. However, the UK Government has committed to ensure that these rights continue to be protected following exit.

See: [Trademarks and designs if there’s no Brexit deal](#) and [Changes to trade mark law in the event of no deal from the European Union](#)

### **How can businesses ensure data can continue to flow between the UK and EU?**

If the UK leaves the EU on 31 October 2019 with no agreement in place regarding future arrangements for data protection, there would be no immediate change in the UK’s own data protection standards. This is because the Data Protection Act 2018 would remain in place and the EU Withdrawal Act would incorporate the GDPR into UK law to sit alongside it.

You would continue to be able to send personal data from the UK to the EU. In recognition of the unprecedented degree of alignment between the UK and EU’s data protection regimes, the UK would at the point of exit continue to allow the free flow of personal data from the UK to the EU. The UK would keep this under review.

However, the legal framework governing transfers of personal data from organisations (or subsidiaries) established in the EU to organisations established in the UK would change on exit. The EU has an established mechanism to allow the free flow of personal data to third countries outside the EU, namely an adequacy decision. Adequacy decisions recognise that non-EU countries have the

same privacy protections as the EU. The US, Japan and Switzerland are among countries which have this agreement.

If the European Commission does not make an adequacy decision regarding the UK at the point of exit, organisations which want to receive personal data from organisations established in the EU (including data centres), should consider assisting their EU partners in identifying a legal basis for those transfers. More information is available from the [Information Commissioner's website](#).

See: [Data protection if there's no Brexit deal](#) and [ICO: data protection if there's no Brexit guidance](#)

## **Copyright and Intellectual Property Rights**

Copyright is largely harmonised internationally by a number of treaties to which the UK is signatory. This means that much of the copyright framework in the UK is not dependent on membership of the EU and will remain intact when we leave.

However, some UK copyright law is derived from the EU copyright framework; hence there are references in UK law to the "EU", the "EEA", and "Member States". Some of these references arise from the UK's implementation of certain EU cross-border copyright mechanisms. These are unique to the EU and provide reciprocal protections and benefits between Member States, covering areas such as cross-border portability of online content services, sui generis database rights, and copyright clearance for satellite broadcasting.

To ensure UK copyright law functions properly if the UK leaves the EU without a deal, the Government introduced [The Intellectual Property \(Copyright and Related Rights\) \(Amendment\) \(EU Exit\) Regulations 2019](#). This removes or corrects references to the EU, EEA, or Member States in UK copyright legislation to preserve the effect of UK law where possible. For reciprocal cross-border mechanisms where continuing to extend provisions to the EU on a unilateral basis after exit would adversely affect those in the UK, we are limiting the mechanisms to operate on a purely domestic basis or bringing them to an end, as appropriate. Guidance for stakeholders has been published alongside this.

Although the UK is leaving the EU, UK and EU copyright works (e.g. books, films and music) will continue to be protected in the EU and UK respectively because of the international treaties on copyright (e.g. the Berne Convention and the TRIPS Agreement), which require all treaty countries to protect works originating in any other treaty country to a minimum standard. Our participation in these treaties does not depend on our membership of the EU.<sup>9</sup>

See: [Changes to copyright law in the event of no Brexit deal](#)

## Helpful Resources

- [Leaving the EU – six steps to take concerning data protection](#)
- [IP and Brexit](#)

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<sup>9</sup> House of Commons, 21 August 2018, [link](#)

- [Do I need to use standard contractual clauses \(SCCs\) for transfers from the EEA to the UK \(if we leave the EU with no deal\)?](#)
- [Changes to registered design, design right and international design and trade mark law if the UK leaves the EU without a deal](#)
- [Exhaustion of intellectual property rights if there's no Brexit deal](#)