

Ukie's No Deal Brexit Survival Guide

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After the Government's defeat on the Brexit deal and subsequent slim victory in the vote of confidence in Parliament, there is a chance that the UK could fall out of the European Union without a deal on the 29th March 2019.

Though we strongly believe that no-deal should be categorically ruled out as an option – and that most members of Parliament have indicated that it is an undesirable option - we understand that businesses must make preparations for all eventualities.

That's why we have pulled together this guide on how games and interactive entertainment businesses can prepare in case of a no-deal Brexit.

Our [State of Play report](#) – which was released in March 2017 prior to the activation of Article 50 - found that the following issues were highlighted as key areas of concern for the sector:

- **Access to Talent**
- **Access to Markets**
- **Free movement of data**
- **Funding**

In this guide, we will examine the key challenges that could emerge in each of these areas as a result of a no-deal Brexit. We will then explain what steps you should consider taking to overcome these problems to help you prepare for the eventuality.

For further information about planning for a no deal Brexit, the government has also advised that businesses register to receive updates from HMRC by following the link listed [here](#).

This is by no means a comprehensive guide and the situation is changing all the time. As always, feel free to contact our policy team with any questions:

tim@ukie.org.uk

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ACCESS TO TALENT

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

In the case of a no-deal Brexit, **freedom of movement will end immediately on the 29th March 2019** upon the conclusion of the Article 50 process – which would mean there would be **no transition period** for businesses or individuals.

For EEA citizens already residing in the UK, the Government has confirmed that these citizen's rights - including the right to work - will be protected in a no-deal scenario.

For EEA citizens wanting to visit, work or study after the 29th of March, you will still be able to do so. For stays longer than 3 months, a European Temporary Leave to Remain will be required. A European Temporary Leave to Remain will be valid for 3 years. Information regarding a European Temporary Leave to Remain can be found [here](#).

An EU Settlement Scheme is currently being rolled out and will officially fully open on the **30th of March 2019**.

Any EU citizen living in the UK by 29th of March 2019 will be eligible to apply for settled status and have the deadline of 31st of December 2020 to do so.

The previous processing fee of £65 will be refunded, so you can apply at no cost.

Caroline Noakes MP, Minister of State for Immigration, has stated that:

- Employers will continue to carry out right to work checks on EU citizens, who will evidence their right to work by showing a passport or national identity card
- Employers will not be expected to differentiate between resident EU citizens and those arriving after exit

A new UK immigration system is intended to be implemented from the **1st of January 2021**. The new immigration system was outlined in the Government's [immigration White Paper](#). It proposes a single, skills-based immigration system for both EU and non-EU citizens with a possible minimum salary threshold of £30,000 for skilled workers (although the White Paper has indicated this will be consulted on).

Alternatively, if the job position you are recruiting for is on the [Shortage Occupation List \(SOL\)](#), this threshold is non-applicable.

We advise that you communicate with your employees the importance of these dates, and that you apply for settled status as soon as you can if necessary.

- [The Government has published a policy paper outlining immigration post-Brexit](#)
- [Step-by-step overview of the EU Settlement Scheme](#)
- [European Commission's no-deal Contingency Action Plan](#)

ACCESS TO MARKETS

Will games-related products face tariffs?

If the UK leaves without a deal, the **UK will fall back on World Trade Organisation rules.**

WTO rules treat sales of packaged software as “products” that are covered by the 1996 WTO Information Technology Agreement. This Agreement **eliminated tariffs** on a broad range of high technology products, including packaged software and hardware.

However, there is a risk of border delays due to reduced access across the straits at Dover and Folkestone for up to six months.

Will VAT be affected in a no-deal Brexit?

The Government's aim is to keep VAT procedures **as close to possible to what they are now**. In a no-deal Brexit, the current rules for imports from non-EU countries will also apply to imports from the EU.

UK VAT Mini One Stop Shop

If the UK leaves the EU without an agreement, businesses that sell digital services to consumers in the EU will be **required to register for the VAT Mini One Stop Shop (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 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 and **within 10 days of the first trade after the 29th.**

- [For further information about registering for VAT in EU member states, check the EU Commission's website here.](#)
- [For further information on how VAT may change after no-deal Brexit, click here.](#)

FREE MOVEMENT OF DATA

Can I still send and receive data to/from the EU?

The Data Protection Act 2018 would remain in place, and the EU withdrawal Act would incorporate GDPR into UK law. **You can continue to send personal data from the UK into the EU.** This is due to the degree of alignment between the UK and EU's data protection regimes.

However, the potential issue is with EU data being sent to the UK.

In theory, a Data Adequacy Agreement (an agreement allowing freedom of data movement) is possible. The European Commission has stated that the UK's level of personal data protection is essentially the same as the EU's standard. However the Commission has stated that a decision on adequacy cannot be fully agreed upon until Britain is a third country.

This means that in the case of a no-deal Brexit, **an adequacy decision is unlikely to be in place by the exit date of the 29th March 2019.**

It is advised that UK and EU organisations take steps to mitigate the possible impacts of this by using alternative ways of transfer. The ICO recommends using standard data protection clauses (more below).

Please get in touch if you have any questions or follow up.

- [For the Government technical note on data protection and transfer, please click here.](#)
- [The Information Commissioner's Officer has provided a handy chart of six steps businesses should take concerning data protection here.](#)
 - [A more detailed guide from the ICO is available here.](#)
 - [And more details concerning Standard Data Protection Clauses are here. \(They even provide template contracts!\)](#)
- [Digital Minister Margot James has written a blog with simple steps to prepare here](#)
- [Here is an interactive tool to help you with Standard Data Protection Clauses.](#)

What about One-Stop-Shop?

If you carry out data processing which impacts individuals in more than one EU/EEA state, you only need to deal with a single EEA data protection regulatory authority. This means a single supervisory authority will act as the lead on behalf of the other EEA supervisory authorities.

But after the exit date in a no deal brexit, **the ICO may no longer be part of the one-stop-shop system,**

The ICO recommends that you:

- Consider whether any of your processing of personal data involves cross-border processing under the GDPR, and if so who your lead supervisory authority is.
- Consider whether you will continue to carry out cross-border processing after exit date.
- If you will continue to carry out cross-border processing, and your current lead authority is the ICO, review the EDPB guidance, and **consider which other EU and EEA supervisory authority will become lead authority on exit date (if any)**. You may want to contact them closer to exit date.
- If you will no longer carry out cross-border processing after exit date, but your processing will continue to be within the scope of the EU GDPR (for example, if you are “targeting” individuals in the EEA), this could be a key change for your business and you may want to consider its impact.
- [For more information regarding one-stop-shop, the ICO have covered it here.](#)

FUNDING

Will Brexit affect UK tax reliefs?

The UK's Creative Sector Tax Reliefs **will not be affected by Brexit.**

Content will still qualify for the VGTR 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 BFI, is working to ensure that member states reassess the mechanisms by which they assess the eligibility of content and personnel for these incentives to ensure the UK still qualifies.

In the event of no deal, **UK personnel will have EEA status until 29 March 2019**. Those planning on accessing other countries' incentives should seek advice from the BFI.

In addition, there are **no major changes expected to the UK's State Aid regime under either deal or no deal**. This regime helps regulate how Government provides help to private industry, ensuring a level playing field for businesses operating across the UK and influencing their level of competitiveness relative to international counterparts too.

- [For more information on VGTR and the Cultural Test visit the BFI Website.](#)

What about European funding?

Following 29th March 2019, the **UK will no longer benefit from future funding for projects under EU programmes**.

However, **existing projects**, such as Creative Europe, agreed before the exit date **have been guaranteed**.

If you are in receipt, or have submitted a bid, for Creative Europe funds (or other EU-funded programmes), then you need to submit a registration form [here](#).

This will ensure that the responsible department has the correct information about approved and pending projects and participants – helping to underwrite and guarantee funding.

- [For the Government's technical note on EU-funded programmes in a no-deal Brexit scenario, click here.](#)
- [For further information pertaining to EU-funded programmes, the Government advises contacting the dedicated Brexit enquiry email of the Department for Digital, Culture, Media & Sport \[euqueries@culture.gov.uk\]\(mailto:euqueries@culture.gov.uk\)](#)

ANY FURTHER QUESTIONS?

Some useful links to additional information can be found here:

- [BFI](#)
- [Games4EU](#)
- [ArtsCouncil](#)

Feel free to get in touch with our policy team tim@ukie.org.uk

Alternatively, we have a number of legal partners we can connect you with.

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