



Ukie's **No Deal Brexit** **Survival Signposting** **Guide**

With the instability of political developments in Westminster, there is still a chance that the UK may leave the EU without a deal.

Though **we strongly** believe that no-deal Brexit 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 some of 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:

Use the interactive 'Get ready for Brexit' checker for businesses, accessible [here](#).

You can also receive updates from HMRC by following the link listed [here](#).

The Government has also published step-by-step guides for the [creative industries](#), and [digital and technology businesses](#).

This is by no means a comprehensive guide and the situation is changing all the time. Issues such as the potential impact on **consumer protection rights**, our ongoing relationship with the **Digital Single Market strategy** or **Intellectual Property Law** are all worth considering as we approach October 31st.

As always, feel free to contact our [policy team](#) with any questions.



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Access to talent

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

Originally, freedom of movement was due to end immediately on the 31st of October 2019 in the case of a no-deal Brexit.

Government advice has recently changed to state that there will be a **transitional period from the 31st of October until 31st December 2020** - EU citizens and family members will be able to move to the UK and live, work and study until the end of the transitional process even during a no-deal Brexit.

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. An EU Settlement Scheme is currently open for EU, EEA or Swiss citizens to apply for if they intend to continue living in the UK.

The deadline for applying in a no deal scenario will be 31st December 2020. Any EU/EEA/Swiss Citizen who is living in the UK before it's departure from the EU is eligible.

Its free to apply.

For EEA citizens wanting to visit, work or study after the 31st of October, you will still be able to do so until the 31st December 2020. For stays longer than 3 months, a European Temporary Leave to Remain (Euro TLR) will be required.



A European Temporary Leave to Remain will be valid for 36 months for those who enter during the transitional period. Information regarding a European Temporary Leave to Remain can be found [here](#).

The Government guidance suggests that EU citizens may want to apply for a Euro TLR even during the transitional period for greater confidence. Time accrued with a Euro TLR will count towards a future application for indefinite leave to remain.

Alternatively, if the job position you are recruiting for is on the [Shortage Occupation List \(SOL\)](#), certain requirements such as a possible salary threshold for settlement will be 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.

Employers, landlords and other third parties will not be required to distinguish between EU citizens who moved to the UK before or after Brexit until the new, points-based immigration system is introduced from January 2021.

[Updated government advice on no deal immigration arrangements](#)

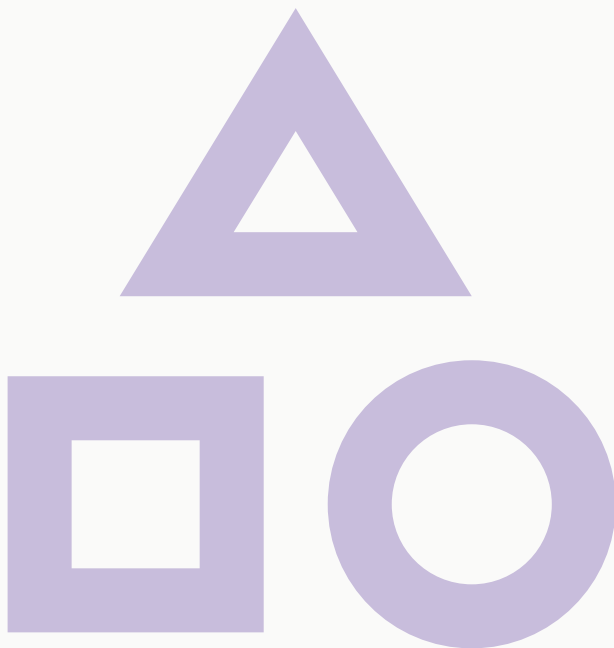
[Step-by-step overview of the EU Settlement Scheme](#)

[European Commission's no-deal Contingency Action Plan](#)

What about workplace rights?

In the Government's technical notes which provide advice for businesses in the event of a no-deal Brexit, they state that "almost all workplace rights" will be "transferred to UK law".

[For the Government's technical note on workplace rights, please click here](#)



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) in an EU member state**. You cannot register before Brexit, and must do so by the 10th day following your first sale to an EU customer after Brexit.

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.

You'll be able to use the UK's VAT MOSS system to:

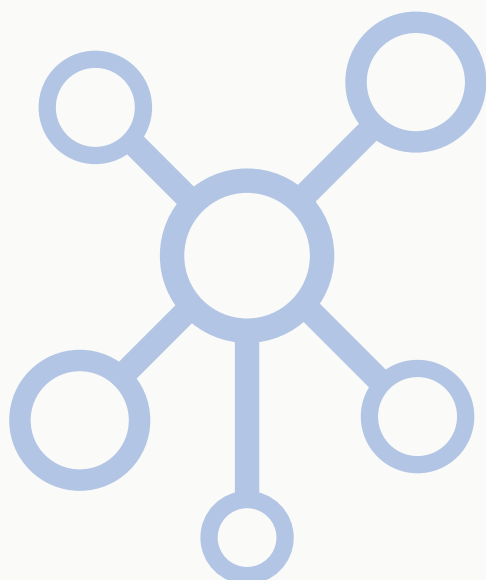
- submit your final return by 20 January 2020
- amend your final return until 14 February 2020
- update your registration details until 14 February 2020
- view previous returns

To check whether you should register for Union or Non-Union VAT MOSS, or find out who to contact to register for VAT MOSS in an EU member state, the European Commission have a checker you can access [here](#).

[GOV.UK information on VAT MOSS post-Brexit is available here](#)

Free movement of data

Can I still send and receive personal 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 personal data being sent to the UK from the EU.

What is needed is a Data Adequacy Agreement (an agreement allowing freedom of data movement). 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 31st October 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 or other Alternative Transfer Mechanisms ([more below](#)).

Businesses that are part of a multi-national group may be able to rely on binding corporate rules (BCRs), for intra-group transfers as an appropriate safeguard.

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

[GOV.UK guidance on data transfer post-Brexit.](#)

[The Information Commissioner's Office have a tool to check how to maintain the free flow of data from Europe into the UK here.](#)

[The ICO have also provided an article on data protection for small organisations.](#)

[And more details concerning Standard Data Protection Clauses are here.](#)

What do I do in regards to European Data Protection?

Article 27 of the GDPR requires organisations (controllers and processors) not established in the EU but that offer goods or services to individuals in the EEA, or monitor the behaviour of individuals located in the EEA, to **appoint a representative based in the EU.**

This representative will act as your local representative with individuals and data protection authorities in the EEA. This is separate from DPO obligations, and **your representative cannot be your DPO or one of your processors.**

You do not need to appoint a representative if you are a public authority, or if your processing is only occasional, low-risk, and does not involve special category or criminal offence data on a large scale.

The representative can either be an individual or exercised based on a service contract concluded with an individual or an organisation (such as law firms, consultancies, private companies, etc.) One representative can also act on behalf of several non-EU controllers and processors.

The European Data Protection Board are in the process of publishing further guidance on this requirement. Please also consult the ICO website for more information.

UK domestic law places the same requirement on EU organisations.

[Information from the ICO on appointing European representatives.](#)

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.

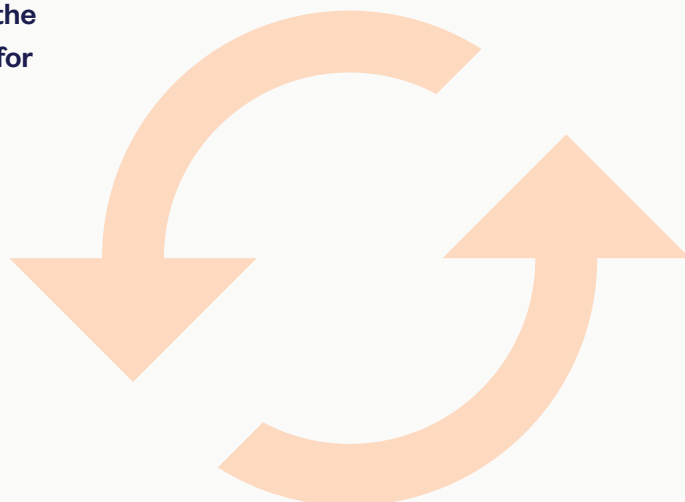
Creative sector cultural tests will also continue to recognise EEA content and personnel regardless of whether the UK secures a deal with the EU.

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 31st October 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 31st October 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 \[enquiries@culture.gov.uk\]\(mailto:enquiries@culture.gov.uk\)](#)

Copyright

What about copyright law?

In regards to copyright law, there is no single worldwide or EU-wide copyright standard, however, there is generally harmonisation internationally and within the EU.

UK copyright law is substantially derived from the EU copyright framework - as a result, there are references to the EU,

EEA or member states within UK law. In preparation for a no deal Brexit, an amendment is being introduced that removes such references in UK law.

The Government has explained that UK and EU copyright works will still be protected in their respective territories due to wider international treaties.

It states that participation in such treaties does "not depend on our relationship with the EU".

However, for consumers, some laws agreed with the EU will have to cease following a no deal Brexit; for example, currently online content services have to provide the same content they usually would in the UK to a UK customer temporarily present in another EU member state. Of course, in a no deal Brexit, this would have to end.

[For more information detailing the changes being made, the Government has published an overview.](#)