

Implications of a No Deal Brexit for the cinema and event cinema sector



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1. Introduction

The ongoing prospect of a No Deal Brexit gives rise to a number of uncertainties for UK cinema operators and colleagues working across the event cinema value chain.

With that in mind, in September the UK Cinema Association and the Event Cinema Association submitted a joint bid to the Government's Business Readiness Fund, established to support trade bodies in advising their members on relevant considerations, should such a scenario take place.

Our funding bid was successful. We therefore sought Brexit preparedness advice from advisors at Cooley (UK) LLP and Towerhouse LLP.

The present document has been prepared by way of general background for members of both associations. It does not replace the need for individual companies or organisations to seek their own legal advice in relation to specific circumstances or events.

2. Current position

In general terms, a No Deal Brexit would mean the UK would immediately fall back to the status of a ‘third party’ state with regard to the EU-27¹. This would abruptly terminate UK participation in all institutional and legal arrangements of the EU.

As of October 2019, a No Deal Brexit could occur at one of two points, either:

- when the UK leaves the EU at the end of the Article 50 notice period, as extended (if the UK and EU-27 do not agree on a transition agreement before the UK’s departure date); or
- at the end of any official transition period post-Brexit, if the UK and the EU-27 do not agree on a post-Brexit UK-EU-27 relationship during that period.

This means that a No Deal Brexit could take place: as early as the end of the most recent extension of Article 50 (currently set to end at 1 February 2020, but possibly earlier); at the end of any extension of the UK’s membership in the EU; or as late as end of 2020 (or even later), if post-Brexit negotiations between the UK and EU-27 ultimately prove unsuccessful.

In this document, the date of a No Deal Brexit is referred to as the ‘withdrawal date’.

Because the three possible No Deal Brexit exit points above are so different, and events so fluid, the advice from both associations to their members is members should consider the implications of a No Deal Brexit and be prepared for them now, even if the UK agrees to a post-Brexit transition period with the EU-27.

1. In this note, the term ‘No Deal Brexit’ refers to the UK losing its status as a European Union (‘EU’) Member State without a having first negotiated a transition agreement covering the period between loss of EU Member State status and negotiation of some other form of international association with the EU-27. When referring to relations between the UK and the other 27 EU Member States post-Brexit reference is made to the latter as the ‘EU-27’.

3. Scope

This document focuses only on those issues which is it is considered are likely to have a direct impact on cinema operators and those involved in the event cinema value chain. It does not therefore cover potential impacts of a No Deal Brexit on the film production community – for example the Film Tax Credit and workforce issues.

In the majority of circumstances – and in particular for cinema operators – action on the issues that arise from a No Deal Brexit is primarily for others (in particular suppliers and contractors). But it is considered prudent to make all members aware of these issues so that they are equipped to ‘ask the right questions’ in all circumstances.

It is beyond the scope of this note to consider the implications for members of any post-transition arrangements between the UK and the EU.

4. Key considerations

The core business of the cinema and event cinema sector – the showing of commercially-sourced content to a live audience, funded by ticket sales and advertising – is not directly regulated by EU law in a sector-specific way.

As such, the implications of a No Deal Brexit on most members will be the same as those on any business operating in the EU. The document therefore sets out some general considerations in sections 4.(a)-4.(e) below.

4.(a) Trading conditions

It is recognised that in addition to film (and event cinema) content, cinema operators are reliant on a range of other supply chains, for example around food and drink, technology, seating and a host of other 'hard goods'.

This section attempts to set out the likely impacts of a No Deal Brexit in terms of:

- delays and increased tariffs around the import of these goods; and
- impacts on manufacturing, especially where raw materials are sourced from outside of the UK.

i. delays and increased tariffs around the import and export of goods

As an EU Member State, the UK currently enjoys tariff-free access to all goods of EU origin entering the UK. The UK and other EU Member States also operate in what is in effect a unified regulatory space with regard to a range of issues affecting manufactured goods.

In the case of a No Deal Brexit:

- Goods entering the UK from the EU-27 would suddenly be subject to World Trade Organisation (WTO)-level tariffs. These can vary considerably between product categories. The UK government recently committed to unilaterally reduce UK tariffs to zero on nearly 90 per cent of all goods in a No Deal Brexit scenario.
- However, this plan has met with significant criticism, and the government has suggested that even such emergency unilateral tariff reductions, if adopted, would be a temporary measure. Members should therefore not only examine the government's current proposed 'No Deal' tariff schedule [here](#) to determine where goods essential to their business fall, but also consider examining current UK/EU WTO tariff schedules [here](#) to verify how these might impact key EU-27 imports upon which they depend.
- Goods entering the UK from the EU-27 and travelling from the UK to the EU-27 will also be subject to regulatory checks to verify the conformity of such goods with local standards. Current alignment between UK standards and those in the EU-27 suggests that such checks on goods travelling to the EU-27 should not be an issue, at least in the immediate term. The same should also apply to goods entering the UK from the EU-27, although it currently is unclear what regime the UK Government anticipates adopting in that regard.

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- However, under WTO rules – and in the absence of any bespoke agreement – such checks will nonetheless legally be required and members should anticipate some potentially severe delays as a result. Members could avoid the impact of such delays in the immediate post-Brexit period by setting by additional supplies of goods, but that may be of limited assistance in relation to perishable goods.
 - As an EU Member State, the UK also benefits from the substantial number of international trade deals the EU has negotiated over the past 50 years with a range countries around the World. In the case of a No Deal Brexit, the UK would suddenly fall out of the scope of coverage of such agreements, facing higher tariff barriers and reduced customs facilitation arrangements, among other impacts, vis-à-vis such territories.

Overall, members should consider their exposure to high prices, delays and disruption of supplies in relation to essential goods regularly sourced from the EU-27 and consider alternative UK supply arrangements or the creation of reserve supplies to manage the immediate post-withdrawal date phase.

ii. impacts on manufacturing, especially where raw materials are derived from outside of the UK

The tariff barriers and regulatory checks noted above as applicable to the import of goods into the UK from the EU-27 exports will have similar impacts on manufacturing.

Current UK manufacturing relies on just-in-time delivery of EU-sourced manufacturing inputs, including the absence of import tariffs and regulatory checks. A No Deal Brexit will impose potentially significant additional costs and delays on UK-based manufacturing, potentially disrupting current supply chains or worse.

Members should consider the extent to which their UK-based suppliers are dependent on EU-27 sourced raw materials. It may be appropriate to seek assurances from relevant suppliers.

4.(b) Employment

As residents of an EU Member State, UK citizens currently enjoy the freedom to work across the entire EU region. Other EU citizens enjoy equivalent rights in the UK. Indeed, some UK-based business have grown reliant on access to the full EU labour market to carry out their duties.

In the case of a No Deal Brexit, freedom of movement between the EU and the UK will immediately cease. EU nationals will no longer have an automatic right to enter and to work in the UK. Employment of such persons will be subject to current UK rules on the employment of non-EU nationals within the UK.

In practice this will subject the employ of EU-27 nationals in the UK to visa requirements and potential restrictions on the length of stay.

In particular, EU-27 nationals who seek to enter the UK temporarily to perform a specific service-related function (such as setting up technical arrangements for an event) will be subject to the UK's WTO-level restrictions on temporary entry of workers. This will mean that performance of such functions by EU-27 workers may be prohibited, subject to obtaining a labour market opinion confirming the necessity of the temporary entry. The same will apply to UK individuals seeking to fulfil temporary service roles in the EU-27. More information on this issue can be found [here](#).

4.(c) Contracts

It would be prudent for members to undertake a systematic review of relevant contracts to consider the extent to which the advent of a No Deal Brexit might introduce a material change (or trigger ‘*force majeure*’ clauses) allowing a contract either to be repudiated (i.e. terminated) or otherwise renegotiated.

Material changes might in this context include substantial new and unanticipated costs affecting the sale of goods between the UK and the EU-27, including through the imposition of tariffs, the completion of custom declarations, longer transportation times, compliance with regulatory and customs checks or lack of availability of appropriate staff as a result of the end of freedom of movement between the UK and the EU-27.

In contracts between cinemas and distributors, cinemas would expect the distributor of each film to have cleared any necessary rights issues for the UK territory. Ordinarily rights are cleared on a territory by territory basis, rather than – for example – on a cross-EU basis. It is therefore highly unlikely that a No Deal Brexit would require any renegotiation of these arrangements.

However, for example, contracts for the supply of foodstuffs consumed at UK cinemas typically sourced from EU-27 Member States could be declared frustrated as a result of the additional time and costs imposed by sudden new customs procedures, tariffs and resulting delays on the newly-established border between the UK and the EU-27.

Members may want to be particularly vigilant with regard to contracts that contain ‘classes’ of countries, such as where the UK is included without specific reference in a term such as ‘Europe’ or the ‘EU’. By virtue of removal from the EEA, members may find themselves ‘demoted’ to a category of ‘third country’ or a residual ‘rest of world’ category.

4.(d) VAT

A No Deal Brexit would see the UK treated as any other third party territory in relation to the EU-27. As a result, supplies and movement of goods between the EU-27 and the UK would be subject to EU-27 VAT rules on imports and exports. More details [here](#).

Goods will be exempt from VAT if they are dispatched or transported from the EU-27 to a destination outside the EU, including to the UK, based upon a certification of export.

Similarly, goods imported into the UK from the EU-27 will be subject to UK VAT, at the rate that applies to the supplies of the same goods within the UK. This may be relevant, for example, in relation to the importing of food/beverages into the UK.

In light of the above, ‘taxable persons’ in the UK have been advised to ensure that they can provide all necessary evidence with regard to their supply chains and acquisitions to and from the EU-27 before the withdrawal date, and with regard to all other supplies that they have made in, or received from, the EU-27 before the withdrawal date.

As of the withdrawal date, requests by UK businesses for VAT refunds from an EU-27 Member State will follow the procedural EU rules for taxable persons established outside the EU. More information is [here](#).

4.(e) Data transfer (GDPR)

Although the EU General Data Protection Regulation (GDPR) is an EU regulation, it has been written into UK law (with necessary amendments to tailor its provisions). Consequently, GDPR's key principles and the rights and obligations it creates will remain unchanged after a No Deal Brexit. The Information Commissioner will remain the UK's independent regulator for data protection.

However, a No Deal Brexit will have implications for the transfer of personal data between the UK and the EEA and other countries, including the US.

The GDPR prohibits the transfer of personal data to any country outside the UK unless that country is covered by an 'adequacy decision', verifying that that country has a legal framework in place providing 'adequate' protection for individuals' rights and freedoms for their personal data).

i. data transfers to EEA countries (including EU Member States)

The UK recognises all EEA States, EU and EEA institutions, and Gibraltar as providing an adequate level of protection for personal data. As a result, personal data can continue to flow freely from the UK to those destinations following a No Deal Brexit. Accordingly, there is no action required in respect of transfers from the UK to the EEA in the event of No Deal Brexit.

ii. data transfers to countries covered by an existing EU adequacy decision

Where the EU has already made an 'adequacy decision' in respect of a country outside of the EEA, transfers from UK organisations to those 'adequate' countries can continue uninterrupted. Countries that are currently recognised include Canada, Guernsey, Israel, Isle of Man, Jersey, New Zealand, Switzerland. Accordingly, there is no action required in respect of such transfers in the event of No Deal Brexit.

The US is also regarded as 'adequate', but only with respect to organisations covered by the 'Privacy Shield' framework (see below).

iii. data transfers to US-based Privacy Shield-certified organisations

In the event of a No Deal Brexit, UK-based data exporters would continue to be able to transfer personal data to organisations in the US that are Privacy Shield-certified organisations – those that have put in place agreed provisions to protect personal data and provides means for individual redress – provided that these organisation have updated their public Privacy Shield commitments to extend it to transfers of personal data from the UK.

Those relying on these protections should therefore check with relevant US organisations that these changes are planned.

iv. data transfers to non-EEA and non-adequate countries

If there is no ‘adequacy decision’ with respect to a data transfer to a particular country, then there may be other mechanisms that might be used under the GDPR. Further advice is available from both trade associations on these.

v. data transfers from EEA countries (including EU Member States)

A No Deal Brexit would – in the absence of any declaration by the EU – see the UK become a ‘third country’ for the purposes of the GDPR, meaning that companies and organisations in the EEA transferring data to the UK would have to establish an approved transfer mechanism in respect of any such transfers to the UK.

Members wishing to receive data from a company or organisation in an EEA country following a No Deal Brexit will need to ensure that it has established an approved mechanism in respect of such transfers to the UK.

Transfers from non-EEA countries will depend on the law of the relevant non-EEA countries.

5. Event cinema

5.(a) Audiovisual Media Services Directive

The prospect of a No Deal Brexit has called into question whether live (and ‘as live’) event cinema screenings fall within the provisions of the EU Audiovisual Media Services Directive (‘AVMSD’), which governs the provision of broadcast and on-demand audiovisual media services.

In EU law, an Audiovisual Media Service is defined as either a television broadcast or an on-demand audiovisual media service, specifically:

- a ‘television broadcast’ means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programming schedule; or
- an ‘on demand audiovisual media service’ means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his or her individual request on the basis of a catalogue of programmes selected by the media service providers.

Given the nature of current event cinema screenings, where each generally is a discrete ‘event’ rather than part of a programme of screenings, such screenings are unlikely to be interpreted as falling within the provisions of the AVMSD. A No Deal Brexit therefore should have no impact on them.

5.(b) Copyright clearance in satellite broadcasting

However, a No Deal Brexit might impact on other aspects of current practice, in particular copyright clearance in satellite broadcasting.

At present, when a satellite broadcaster transmits a copyright work (such as event cinema content) from one EU Member State to another, they are only required to obtain the copyright holder’s permission for the Member State in which the broadcast originates – the so-called ‘country of origin’ principle.

A No Deal Brexit could see UK-based broadcasters cease to benefit from this provision and find that such activities become subject to the domestic legislation in the ‘receiving’ EU state. As a result, broadcasting copyright works from the UK to the EU-27 after the withdrawal date may require obtaining individual licences for every EU-27 State in which the copyright work is broadcast.

The converse is not true for the broadcast of content into the UK from any EEA country, where relevant legislation is expected to be amended to provide that legitimate satellite broadcasts of copyright works transmitted into the UK from EEA territories will not require specific right holder permission for the UK.

In practice, this will need an assessment on a case-by-case basis, and following any actions taken by the UK in light of a No Deal Brexit.

6. EU funding programmes

Creative Europe Programme

In the case of a No Deal Brexit, the UK will fall out of the Creative Europe programme on the withdrawal date.

UK applicants will no longer be eligible to submit new applications for funding after this point. While the European Commission has suggested that those beneficiaries with a funding agreement in place before Brexit may continue to receive payments as normal if the UK agrees to honour the financial commitments it has already made to the programme, this is subject to the offer being accepted by the UK Government.

The UK Government has said it will take this decision in due course depending on the progress of negotiations. Should the EU-27's offer be declined, the UK Government has said that it will replace funding for those awardees which had been selected for funding by the withdrawal date.

It is as yet unclear what will happen to applications that have been submitted but not selected by the withdrawal date.

A new Creative Europe programme is due to be put in place to cover the period 2021-2027. In a no deal scenario, future participation for the UK may be possible – as third countries can participate – but this would be contingent on political developments between the UK and the EU-27 following a No Deal Brexit.

Europa Cinemas

The Europa Cinemas network is supported by Creative Europe MEDIA funding, providing (amongst other elements) financial support to cinemas showing non-UK European film content. Currently 42 UK cinemas are part of the scheme.

In a No Deal Brexit scenario, the UK will automatically become ineligible for the Creative Europe programme, meaning UK cinemas will no longer be able to access the MEDIA funding made available through the Europa Cinemas network.

As UK films will no longer qualify for MEDIA support, non-UK cinemas will no longer be incentivised to programme them. Unless a way can be found to negotiate a more bespoke kind of participation, this will effectively mean the end of UK membership of the Europa Cinemas network for the foreseeable future.

As above for the Creative Europe programme, the UK Government has asserted that it will provide replacement funding. However, the nature and level of such funding has yet to be determined. The British Film Institute would also look to facilitate exchange programmes so UK cinema operators did not miss out of networking/CPD opportunities which are a key element of the Europa Cinemas scheme.

The latest position on these issues can be found [here](#).