

Brexit – No Deal or FTA?

INTRODUCTION

The UK formally left the EU on 31 January 2020 and entered into an Implementation Period, during which time all the current freedoms of movement for goods and people continue to apply. This means that ABO members will see no change until the end of December 2020.

The UK Government is currently negotiating with the EU over a Free Trade Agreement to take effect from 1 January 2021, at which point a new immigration system will be implemented. This immigration system will make no distinction between EEA and non-EEA citizens.

The UK Government's stated position is that it wants a 'Canada-style' Free Trade Agreement but is prepared to accept what it calls an 'Australia-style deal', which is No Deal by another name. It published its [negotiating position](#) on 27 February.

It is important for ABO members to understand that whatever the outcome of the negotiations, the UK is leaving the Customs Union at the end of this year, which means that custom controls including carnets and CITES inspections are inevitable.

There remains a significant risk of the UK and EU failing to negotiate a Free Trade Agreement, which would mean the No Deal scenarios outlined in the ABO's No Deal Planning factsheet would apply. This guidance can be found below.

ABO members need to prepare for the additional costs and bureaucracy that will ensue after 31 December 2020. This factsheet comprises guidance received from the Government so far.

IMMIGRATION

Freedom of movement will cease on 31 December 2020. We recommend viewing the ABO's [Immigration Webinar](#) with Alison Hunter of Wesley Gryk.

Tier 2 General Visa

Details of the [future immigration system](#) were announced on 13 July 2020. As expected, this will see a new single immigration system, ending free movement. There will no longer be one immigration system for non-EEA citizens and another for EEA citizens ie. a Points Based System will apply to all. There will be no cap on the number of visas, and the resident labour market test will be removed.

Sponsors must undergo checks to demonstrate they are a genuine business, are solvent, and that the roles they wish to recruit into are credible and meet the salary and skills requirements (if applicable). Sponsors must also pay a licence fee (and Immigration Skills Charge and Health Surcharge where required) and ensure they act and behave in a way which is conducive to the wider public good. Senior personnel and key users of the service need to undergo criminality and other security checks.

Employers who sponsor migrant workers under Tier 2 will be required, as now, to pay the Immigration Skills Charge and Health Surcharge. Details of fees can be found at <https://www.gov.uk/government/publications/visa-regulations-revised-table>.

All applicants for a Tier 2 Visa will need to demonstrate that they have a job offer from an approved sponsor at the required skill level, have sufficient funds to support themselves and their families while in the UK, and meet the English language requirement.

While the salary threshold for Tier 2 visas has been reduced to £25,600, the 'going rate' for musicians has been set at **£27,000**, which means applicants must meet this minimum salary level, unless they can 'trade' points eg. by having a job offer in a specific shortage occupation as recommended by the Migration Advisory Committee. There is also a lower salary threshold for 'new entrants' of £20,480 for three years eg. recent graduates, who will have two years from graduation to find employment.

The ABO is assuming that the inclusion of Principals, Sub-Principals and numbered positions on the Shortage Occupation List will continue. This may offer a path for self-employed musicians to obtain positions in a sponsoring orchestra, or the musician may be able to obtain a Tier 1 Global Talent visa.

We have noted that the Government has recognised that there are professions where there is a heavy reliance on freelance workers and intend that "in line with the recommendations from the MAC, we will create a broader unsponsored route within the points-based system to run alongside the employer-led system. This will allow a smaller number of the most highly-skilled workers to come to the UK without a job offer". We are hoping that this will provide an alternative route for skilled self-employed musicians.

Tier 1 Global Talent

The UK Government has replaced the Tier 1 (Exceptional Talent) visa with a new Global Talent visa, with no limit on the number of visas. Despite indications from the UK Government that the Tier 1 (Exceptional Talent) visa would be modified and made more open, the criteria remains identical to before ie. the applicant must be able to provide evidence of international media recognition and a substantial track record in more than one country. This may be too high a bar for orchestral musicians.

Arts Council England, which endorses applications for Tier 1 visas, has however, given us some encouragement. With the lifting of the cap, they want to see numbers climb and will interpret the guidance as sympathetically as possible for those playing in ensembles as they recognise the level of talent and training required.

Short term visitor routes

The Government is currently reviewing the short-term visitor routes. ABO members should assume that the current Tier 5 (including the Tier 5 concession) and PPE systems for non-visa nationals will apply to EEA citizens from 1 January 2021. Please note that recent media reporting was inaccurate, and EU musicians will not need 'visas' for short term visits. The Government has also updated its advice on [Visiting the UK after Brexit](#).

Settled and pre-settled status for EU citizens and their families

The UK has implemented the EU Settlement Scheme. This gives EU citizens already here, and also those who arrive in the UK during the Implementation Period, the opportunity to secure their future residence in the UK.

The movement of people, rights, pensions, healthcare etc., for **Irish** citizens in the UK and vice versa **will not change**.

The [EU Settlement Scheme](#) establishes the principle that EU citizens must obtain a specific, individual permission to stay on in the UK after the end of the Implementation Period. EU citizens and their families will be able to apply to the EU Settlement Scheme to continue living in the UK after 30 June 2021.

EU citizens' rights (and their family members) for those living lawfully in the UK before the end of the Implementation Period will be as follows:

- EU citizens who have been living in the UK continuously for five years will be eligible for settled status in UK law.
- EU citizens who arrived before the end of the Implementation Period, but who have not been here for five years, will be eligible for pre-settled status, enabling them to stay until they have accumulated five years, after which they may apply for settled status.
- The Withdrawal Agreement will also allow close family members who live in a different country to join an EU citizen at any time in the future under current rules, if the relationship existed before the end of the Implementation Period.
- EU citizens protected by the agreement will continue to be able to work, study and establish a business in the UK as now.
- EU citizens with settled status or pre-settled status to stay may access healthcare, pensions and other benefits and services in the UK, as they do currently.
- Frontier workers (EU citizens who reside in one state, and work in the UK) will continue to be able to enter the UK to work under current rules, if they started this work before the end of the Implementation Period.

The EU Settlement Scheme opened fully on 30 March 2019. The deadline for applying is **30 June 2021**.

UK nationals travelling to and working in the EU

The rules for travelling or working in Europe will change from 1 January 2021. See [UK nationals travelling to the EU: essential information](#). Unfortunately this guidance does not explain how each of the EU nations will deal with short term working.

The European Commission has confirmed that UK citizens will not need a visa for short stays in the Schengen area or elsewhere in the EU, and will be able to stay for up to 90 days in any 180-day period. Visits to the Schengen area within the previous 180 days before the date of travel will count against the 90-day limit. The 90 day visa period, however, does not entitle third country citizens to work in the Schengen area, and many countries will require a work permit.

If you are intending to stay in the Schengen area for longer than 90 days, or your stay would take you over the 90 days in the 180-day limit, you may need to get a visa before you travel.

We are unable at present to advise as whether work permits will be required to work in EU countries. Work permits are within the national competence of each EU member state. Some may have exemptions for artists or very short-term employment. We recommend having a conversation with the promoter as they should be able to advise and have experience of bringing in ensembles from existing non-visa countries such as the USA and Japan.

Other issues of relevance to ABO members are:

- you may need to renew your passport earlier than planned.
- you should take out appropriate travel insurance (including health cover) before travelling abroad.
- using your mobile phone in the EU may become more expensive.
- if you intend to use a bank card or other financial services in the EU after exit, this may be affected.
- if you intend to drive in the EU after exit, you may need a green card from your insurer.
- you may need an International Driving Permit to drive in the EU after exit.

For further details on National Brexit Information and Preparedness in each EU country visit https://ec.europa.eu/info/brexit/brexit-preparedness/national-brexit-information-member-states_en.

TOURING

The UK Government has published guidance on [Providing Services to EEA and EFTA countries after EU Exit](#). This confirms that the UK will no longer operate under the European Economic Area (EEA) regulations for the cross-border trade in services. It also includes links to specific guidance for each EU country.

SOCIAL SECURITY AND AIs

The Withdrawal Agreement and Political Declaration on the future relationship between the UK and the EU includes provisions for the continued co-ordination of social security systems. It has also been included in the UK Government's negotiation policy framework.

There remains, however, the risk that, in the event that the UK and the EU are unable to negotiate a Free Trade Agreement, social security co-ordination, including access to the AI certificate system, will switch off after 31 December 2020. This puts ABO staff and musicians in danger of double deduction of irrecoverable social security contributions when posting their workers into the EU, until such time as the UK negotiates co-ordination agreements with each of the EU27 countries.

ABO members should consider and plan for potential additional social security contributions and administration costs after 31 December 2020.

In advance of previous No Deal deadlines, France confirmed it would not recognise UK-issued AI certificates in the event of a No Deal Brexit. The only countries that agreed to reciprocate the UK's offer to extend social security co-ordination were Ireland and Switzerland. We will inform members as soon as we have news on progress in these negotiations.

CUSTOMS

The UK Government has published details of new [Border Controls](#) from 1 January 2021.

Moving goods to and from the EU through roll on roll off ports or the Channel Tunnel - this [guidance](#) outlines arrangements for importers or exporters, using roll on roll off ports or the Channel Tunnel to transport goods between the EU and the UK after 1 January 2021.

Carnets

Members should prepare themselves for the need to obtain ATA Carnets for temporary imports and exports between the UK and the EU from 1 January 2021. It is also possible that carnets will be required for transport between Great Britain and Northern Ireland.

The advice previously supplied on moving goods through the Port of Dover and Eurotunnel with an ATA Carnet will apply from that point.

On leaving the UK, to have your ATA Carnet processed you will need to go to any of:

- North Weald Airfield
- Ebbsfleet International Rail Station car park D
- Stop 24

Entering the UK through Eurotunnel - you will need to go to Ashford to have the Carnet processed.

Entering the UK through the Port of Dover - you will need to go to Dover Western Docks to have your ATA Carnet processed.

If using the Port of Holyhead, it cannot process ATA Carnets so you will need to go to Roadking Truckstop.

Exporting or importing objects of cultural interest

The UK Government has updated its [guidance](#) on the export or import of object of cultural interest. During the transition period, if you are exporting objects of cultural interest from the UK, two licensing regimes are in place:

1. UK law applies for exports to any foreign destination
2. EU regulations apply to objects travelling outside the EU

From 1 January 2021 you will need a UK licence to export cultural objects from the UK to any destination. You will no longer need to apply for the EU licence.

There are no licensing requirements for importing objects of cultural interest into the UK. However, if you are importing items from the EU to the UK or another country outside the EU you will need to comply with the EU and individual EU countries export licensing regimes.

CITES

ABO members need to prepare themselves for the implementation of CITES inspections from 1 January 2021, both between the UK and EU, and between Great Britain and Northern Ireland.

Of particular importance to ABO members is the [guidance](#) on trade in, or travel with, endangered animals or plants, or their products. This includes a list of CITES-designated points of entry and exit.

Following pressure from the ABO, DEFRA has confirmed that this list will now include some high volume ports ie. Dover-Calais, Eurotunnel and Holyhead. It still does not however include Immingham and Newcastle, and the ABO continues to press DEFRA for the inclusion of these ports. Please note that Eurostar is not designated for CITES.

In relation to entering the EU, the designated ports for entry and export are published at: http://ec.europa.eu/environment/cites/info_entry_points.htm

The European Commission is planning to update this list as there are some Member States which are identifying further ports of entry as part of their preparedness programmes for Brexit. In case of doubt we encourage members to contact the competent authorities of the relevant Member State (<https://cites.org/eng/cms/index.php/component/cp>).

To import CITES specimens into the UK through Eurotunnel you must present your CITES documents for endorsement at Ashford. You must [make a customs declaration on the CHIEF system](#) before you transport them.

If you're exporting specimens from the UK through Eurotunnel, you should prepare for it to be very busy. You may present your CITES documents to Border Force at Ebbsfleet, but if possible present it at another [suitable designated point of entry and exit](#) away from Kent before you travel through Eurotunnel.

For Dover, the documents will need to be presented at Dover Western Docks.

We recommend that members try to avoid the need for Musical Instrument Certificates altogether by requiring their musicians to have second instruments that do not contain CITES-listed materials.

ROAD HAULAGE

Previous guidance on what lorry and goods vehicle drivers from the UK may need to do to drive in the EU and EEA after the UK leaves the EU has been withdrawn and we await news on arrangements from 1 January 2021.

The Government has issued guidance on [ECMT International Road Haulage Permits](#). Of importance to members is that there is an exemption from permit requirements for “transport for non-commercial purposes of properties, accessories and animals to or from theatrical, **musical**, film, sports or circus performances, fairs or fetes, and those intended for radio recordings, or for film or television production”.

We have had clarification from the Freight Transport Association that “the exemption for concerts and other performances from the ECMT scheme is valid as long as the goods are not for sale - this is what “non-commercial” means in this context.”

INTELLECTUAL PROPERTY

This [guidance](#) explains how intellectual property law will apply during the transition period.

The UK Government has issued [guidance](#) on how copyright law will be applied from 1 January 2021.

DATA PROTECTION

The Information Commissioner’s Office (ICO) has issued a [statement](#) on data protection during the Implementation Period, clarifying that it is business as usual.

It is not yet known what the data protection landscape will look like at the end of the transition period and there are concerns about the flow of personal data in future.

The ICO continues to monitor the situation and update its external guidance accordingly. Its [full suite of Brexit guidance and materials, to enable you to prepare for all scenarios, is available here](#).

CREATIVE EUROPE

As guaranteed by the Withdrawal Agreement, a legislative act passed by both UK and European Parliaments and ratified by the EU Commission and the UK Government, UK organisations can continue to apply for Creative Europe funding until the current programme ends in December 2020. See Creative Europe Desk’s [Brexit guidance](#).

Creative Europe contracts awarded during or prior to the implementation period will cover the entire duration of the project, including for projects that continue after 1 January 2021.

The new Creative Europe programme will launch on 1 January 2021 and last until 31 December 2027. It will be open to the participation of non-EU countries.

Creative Europe has not been included in the list of EU programmes the UK Government wishes to continue to participate in.