



Leaving the European Union: The Arts Debate on 11 October 2018

This House of Lords Library Briefing has been prepared in advance of the debate due to take place on 11 October 2018 in the House of Lords on the motion moved by Lord Bragg (Labour), “that this House takes note of the impact on the arts of the United Kingdom’s withdrawal from the European Union”.

The cultural sector, which includes the arts, accounted for 2 percent of total UK jobs in 2017, 34 percent of which were in the arts sub-sector. Service exports from the cultural sector increased between 2015 and 2016, though this was largely driven by the film, television and music sub-sector. The value of cultural sector goods exports fell between 2015 and 2016, a decrease largely attributable to the arts and crafts sectors.

This Briefing focuses on three areas connected with the UK’s withdrawal from the EU: funding for the arts and cultural sector in the UK; free movement of people and the immigration regime; and copyright law.

European Union funding for the arts comes from two streams: European Structural and Investment Funds and transnational funds. Between 2007 and 2016, arts, museums and the creative industries in England received approximately £234 million from the European Structural and Investment Funds and £111.8 million from transnational funds.

The draft withdrawal agreement stated the UK will continue to take part in all EU programmes post-29 March 2019 until 2020. The Government has stated that in the event of ‘no deal’, it will guarantee EU projects agreed before the UK leaves the EU in order to “provide more certainty for UK organisations”.

At present, EU free movement rules and social security coordination enable EU citizens working in the arts sector to work in other EU countries without obtaining a visa or paying into two social security systems. Witnesses to parliamentary committees have expressed concern about the potential impact of the loss of this freedom on the arts sector.

EU regulations on copyright and related rights will be preserved in UK law as retained EU law under the powers in the European Union (Withdrawal) Act 2018. However, the UK is also currently party to EU cross-border copyright mechanisms, the reciprocal element of which will cease to apply to the UK after it leaves the EU unless specific arrangements are made.

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I. Contribution of Cultural Sector and the Arts to UK Economy

The Department for Digital, Culture, Media and Sport (DCMS) provides trade, employment, and gross value added statistics on the cultural sector and its sub-sectors. DCMS defines the cultural sector as those industries with a cultural object at the centre of industry, consisting of the following nine sub-sectors:

- arts;
- film, television and music;
- radio;
- photography;
- crafts;
- museums and galleries;
- library and archives;
- cultural education; and
- heritage.¹

DCMS further defines the ‘arts’ sub-sector as:

- performing arts;
- support activities to performing arts;
- artistic creation; and
- operation of arts facilities.

In 2017, the cultural sector accounted for 2 percent of total UK jobs (674,000).² This represented the highest number of jobs in the sector since 2011, with a 23.6 percent increase on 2011’s figure. The arts was the largest contributor to this, with 33.7 percent of cultural sector jobs found in that sub-sector in 2017. However, the arts experienced a 1.1 percent decrease in the number of jobs between 2016 and 2017, while other sub-sectors, such as film, television and music, saw an increase in the same period.

Focusing on trade, DCMS reported that in 2016 the value of services exported by the cultural sector reached its highest level since 2010 at £7.6 billion, a 22.7 percent increase on 2015.³ This accounted for 3.1 percent of total UK exports of services and was driven by the film, television and music sub-sector, which made up for 90 percent of the value

¹ Department for Digital, Culture, Media and Sport, [DCMS Sector Economic Estimates Methodology](#), 29 August 2018, p 15.

² Department for Digital, Culture, Media and Sport, [DCMS Sectors Economics Estimates 2017: Employment](#), 18 July 2018, p 11.

³ Department for Digital, Culture, Media and Sport, [DCMS Sectors Economic Estimates 2016: Trade](#), 6 August 2018, p 11.

of cultural sector services exports in 2016. Exports of services in the arts accounted for 0.2 percent of the total value of UK service exports in 2016, and increased 45.9 percent between 2015 and 2016.⁴

Cultural sector services imports in 2016 totalled £4.2 billion, a 38.2 percent increase from 2015.⁵ According to DCMS, this increase was “greater than the usual level of fluctuation” in value and “outstripped the growth in the value of imported services in the UK as a whole (11.1 percent)”. As with exports, the film, television and music sub-sector drove the increase, contributing 97 percent of the total value of service imports. In terms of total UK imports of services in 2016, the cultural sector accounted for 2.7 percent, an increase of 0.5 percentage points from 2015, and again continuing an upward trend since 2013.

For trade in goods, the value of both exports and imports associated with the cultural sector decreased between 2015 and 2016.⁶ However, DCMS stated that the decreases were in line with the normal level of fluctuation observed over the previous five years from 2010 to 2015.

In 2016, the value of exports of goods associated with the cultural sector was £10.5 billion, 3.4 percent of total UK goods exports.⁷ This was a 14.5 percent decrease from 2015 when value peaked at £12.2 billion. Despite the decrease, DCMS stated that the estimate for 2016 “is still the second largest figure in the years 2010–16”. However, the figures contrasted with the value of UK goods exports as a whole, which remained “quite stable”, declining 0.2 percent between 2015 and 2016. Commenting on the figures, DCMS reported that the sub-sectors likely to be driving down the value of exports of goods in 2016 were the arts and crafts.⁸ Explaining further, DCMS stated “these each accounted for around two-fifths of the total value of cultural sector goods exports in 2016, and decreased in value by 12.8 percent and 18.7 percent, respectively, between 2015 and 2016”.

In terms of imports, the cultural sector imported £8.4 billion worth of goods in 2016, 1.8 percent of the value of total UK goods imports in 2016 and the lowest level for the years 2010 to 2016.⁹ The value of cultural sector imports decreased 14.9 percent between 2015 and 2016. According to DCMS, as with exports of goods, arts and crafts drove the decrease in the

⁴ Department for Digital, Culture, Media and Sport, [Table 7-24: Export and Imports of Services by Sub-Sector](#), June 2018.

⁵ Department for Digital, Culture, Media and Sport, [DCMS Sectors Economic Estimates 2016: Trade](#), 6 August 2018, pp 12–13.

⁶ *ibid*, p 13.

⁷ *ibid*.

⁸ Crafts is defined by DCMS as the manufacture of jewellery and related items (Department for Digital, Culture, Media and Sport, [DCMS Sector Economic Estimates: Methodology](#), 29 August 2018, p 15).

⁹ *ibid*, p 14.

value. The arts made up approximately one-fifth of the total value of goods imported by the cultural sector in 2016, a decrease in value of 38.1 percent since 2015. In comparison, the craft sub-sector made up about three-fifths of the total value of goods imports by the cultural sector in 2016, a decline of 5.1 percent since 2015.

The cultural sector accounted for 1.5 percent of the UK total GVA (gross value added) in 2016.¹⁰ The GVA of the cultural sector increased by 4.4 percent between 2015 and 2016, and by 27.1 percent between 2010 and 2016.¹¹ Of the total GVA for the sector, 59.1 percent was in the film, television and music sub-sector, where GVA increased by 5.5 percent between 2015 and 2016, and by 23.9 percent since 2010. In 2016, the arts accounted for 22.7 percent of the total GVA for the cultural sector, and 0.3 percent of the UK total.¹²

2. European Union Funding for the Arts

Various EU programmes provide funding for the arts and cultural sector organisations in the UK. EU funding for the arts comes from two types of source:

- European Structural and Investment Funds, the purpose of which is to invest in job creation and “a sustainable and healthy” European economy and environment; and
- transnational funds, which are designed to stimulate collaborative working between partners from several eligible countries, or to support visits and exchanges between countries.¹³

The European Commission has argued that although the cultural sector is a “source of great potential for economic growth and job creation”, it suffers from a lack of support, a shortage of relevant skills and a lack of representation in other sectors.¹⁴ As a result, the EU seeks to support the sector through: direct financial assistance; technical or advisory assistance; and support for the development of platforms and networks.

A recent study by Euclid, a cultural sector consultancy, analysed EU funding for the arts, museums and creative industries in England between 2007 and

¹⁰ Department for Digital, Culture, Media and Sport, [DCMS Sectors Economic Estimates 2016: Gross Value Added](#), 29 November 2017, p 1.

¹¹ *ibid*, p 7.

¹² Department for Digital, Culture, Media and Sport, [GVA Subsector Tables](#), 29 November 2017.

¹³ European Commission, [European Structural and Investment Funds](#), accessed 25 September 2018; and Euclid, [Assessing the European Union’s Contribution to the Arts, Museums and Creative Industries in England 2007–2016](#), October 2017, p 2.

¹⁴ European Commission, [‘European Union Funding’](#), accessed 20 September 2018.

2016.¹⁵ This analysis found that approximately 1,385 projects in these sectors collectively received approximately £345 million in EU funding.¹⁶ Of this total, the arts received approximately £118.6 million.¹⁷

A survey of arts organisations undertaken for Arts Council England found that 14 percent of respondents reported having benefitted directly from EU or other international funding sources.¹⁸ Of the listed sources of funding from the EU, the most commonly cited as a source of funds was the transnational Creative Europe programme, with 4 percent of respondents reporting having benefitted from this programme directly.¹⁹

2.1 European Structural and Investment Funds

The European Structural and Investment Funds consist of the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund.²⁰ These funds are primarily jointly managed by the European Commission and the EU member governments, and in the UK are distributed separately in England, Scotland, Wales and Northern Ireland.²¹ However, some European Regional Development Fund money is distributed through [Interreg](#), an organisation which aims to foster cooperation between EU member states.²²

Between 2007 and 2016, arts, museums and the creative industries in England received approximately £234 million from the European Structural and Investment Funds.²³ Examples of arts projects that have benefited from European Structural and Investment Funds include: the redevelopment of the Everyman Theatre in Liverpool; Plymouth Theatre Royal's education and production centre (the TR2); and Live Theatre's Live Works development in Newcastle.²⁴

¹⁵ EU funding is organised in seven-year cycles. The current cycle runs from 2014 to 2020, and the previous cycle ran from 2007 to 2013.

¹⁶ Euclid, [Assessing the European Union's Contribution to the Arts, Museums and Creative Industries in England 2007–2016](#), October 2017, p 6.

¹⁷ *ibid*, p 9.

¹⁸ ICM Unlimited and SQW Limited, [Impact of Brexit on the Arts and Culture Sector](#), 20 February 2018, p 21.

¹⁹ *ibid*, p 22.

²⁰ European Commission, [European Structural and Investment Funds](#), accessed 25 September 2018.

²¹ Euclid, [Assessing the European Union's Contribution to the Arts, Museums and Creative Industries in England 2007–2016](#), October 2017, p 2.

²² European Commission, ['European Structural and Investment Funds: Country Factsheet—European Territorial Cooperation'](#), 19 May 2016.

²³ Euclid, [Assessing the European Union's Contribution to the Arts, Museums and Creative Industries in England 2007–2016](#), October 2017, p 6.

²⁴ Liz Hill, ['EU Funding Uncertainty Puts Arts Projects on Hold'](#), *Arts Professional*, 19 August 2016.

2.2 Transnational Funds

Between 2007 and 2016, EU transnational funds provided £111.8 million to arts, museums and the creative industries in England.²⁵ Of this total, approximately £24 million was distributed via the culture sub-programme of the Creative Europe programme.²⁶

Creative Europe: Overview

Creative Europe is the European Commission's framework programme for support to the cultural and audiovisual sectors.²⁷ It is the only EU multi-annual programme which directly targets the cultural and creative sectors.²⁸ It was established by EU regulation No 1295/2013 and came into force on 1 January 2014.²⁹ According to the regulation which established the programme, the general objectives of it are:

- (a) to safeguard, develop and promote European cultural and linguistic diversity and to promote Europe's cultural heritage;
- (b) to strengthen the competitiveness of the European cultural and creative sectors, in particular of the audiovisual sector, with a view to promoting smart, sustainable and inclusive growth.³⁰

A number of specific objectives were also listed:

- (a) to support the capacity of the European cultural and creative sectors to operate transnationally and internationally;
- (b) to promote the transnational circulation of cultural and creative works and transnational mobility of cultural and creative players, in particular artists, as well as to reach new and enlarged audiences and improve access to cultural and creative works in the Union and beyond, with a particular focus on children, young people, people with disabilities and under-represented groups;
- (c) to strengthen the financial capacity of small and medium-sized enterprises (SMEs) and micro, small and medium-sized organisations in the cultural and creative sectors in a sustainable

²⁵ Euclid, [Assessing the European Union's Contribution to the Arts, Museums and Creative Industries in England 2007–2016](#), October 2017, p 8.

²⁶ *ibid*, p 6.

²⁷ Creative Europe, '[About](#)', accessed 19 September 2018.

²⁸ Creative Europe Desk UK, [The Impact of Creative Europe in the UK](#), July 2018, p 7.

²⁹ [Regulation \(EU\) No 1295/2013 of the European Parliament and of the Council of 11 December 2013](#).

³⁰ *ibid*.

way, while endeavouring to ensure a balanced geographical coverage and sector representation; and

- (d) to foster policy development, innovation, creativity, audience development and new business and management models through support for transnational policy cooperation.³¹

The programme is delivered through the following three areas:

- the culture sub-programme, supporting the cultural, arts and heritage sectors;
- the media sub-programme, supporting the audiovisual sector; and
- the cross-sector strand, supporting the Cultural and Creative Sectors Guarantee Facility,³² cross-sectional activities, transnational co-operation, and the Creative Europe Desks.³³

Creative Europe desks are located in each participating country, including the eleven non-EU countries which participate in the programme.³⁴ In the UK, the Creative Europe Desk has offices in London, Manchester, Edinburgh, Glasgow, Cardiff and Belfast.³⁵ The role of each desk is to:

Promote and provide information about the programme in their respective countries, assist the cultural and creative sectors in relation to the programme, support the Commission and ensure the communication and dissemination of information concerning the European Union funding awarded and the results obtained for their country.³⁶

The programme has a budget of €1.46 billion for the period 2014 to 2020.³⁷ Of this, 31 percent is earmarked for the cultural strand, 56 percent for media and 13 percent for the cross-sectoral strand.³⁸

³¹ [Regulation \(EU\) No 1295/2013 of the European Parliament and of the Council of 11 December 2013.](#)

³² The Guarantee Facility is an investment instrument which was designed to provide support for SMEs working in the creative and cultural sectors (Creative Europe, '[Cross-Sectoral Strand](#)', accessed 19 September 2018).

³³ Creative Europe Desk UK, [The Impact of Creative Europe in the UK](#), July 2018, p 7.

³⁴ *ibid.*

³⁵ Creative Europe Desk UK, '[About](#)', accessed 19 September 2018.

³⁶ European Parliamentary Research Service, [The Creative Europe Programme: European Implementation Assessment](#), June 2016, p 9.

³⁷ Creative Europe Desk UK, [The Impact of Creative Europe in the UK](#), July 2018, p 7.

³⁸ European Parliamentary Research Service, [The Creative Europe Programme: European Implementation Assessment](#), June 2016, p 10.

In regard to participation, the programme is open to cultural and creative organisations from EU member states.³⁹ Under certain conditions, European Economic Area (EEA) countries, as well as candidate/potential European Neighbourhood Policy (ENP), can also participate on an “equal footing” with EU Member States. Article 8 of the regulation which established Creative Europe sets out the conditions those countries must meet to participate:

Without prejudice to paragraph 4, the Programme shall be open to the participation of the following countries provided that they pay additional appropriations and that, for the MEDIA Sub-programme, they meet the conditions set out in Directive 2010/13/EU of the European Parliament and of the Council:

- (a) acceding countries, candidate countries and potential candidate countries benefiting from a pre-accession strategy, in accordance with the general principles and general terms and conditions for the participation of those countries in Union programmes established in the respective framework agreements, Association Council decisions or similar agreements;
- (b) EFTA [European Free Trade Association] countries that are party to the EEA Agreement, in accordance with that Agreement;
- (c) the Swiss Confederation, on the basis of a bilateral agreement with that country;
- (d) countries covered by the European Neighbourhood Policy, in accordance with the procedures established with those countries following the framework agreements providing for their participation in Union programmes.⁴⁰

Non-EU countries which currently fully participate in the programme include Iceland, Norway and Albania.⁴¹

Creative Europe in the UK

In July 2018, the Creative Europe Desk UK published a report looking at the impact the programme has had in the UK. It reported that of the €635 million awarded to organisations since 2014, €74 million had been awarded to 334 UK-based organisations and companies.⁴² Focusing on the culture sub-programme, since 2014, 150 organisations had received €18.7 million to participate in 144 projects. The report featured case studies of projects Creative Europe has funded, including the London International

³⁹ Creative Europe, ‘[About](#)’, accessed 19 September 2018.

⁴⁰ [Regulation \(EU\) No 1295/2013 of the European Parliament and of the Council of 11 December 2013](#).

⁴¹ European Commission, [Eligibility of Organisations from Non-EU Countries](#), 22 March 2018.

⁴² Creative Europe Desk UK, [The Impact of Creative Europe in the UK](#), July 2018, p 10.

Festival of Theatre (LIFT)'s 2016 programme, two thirds of the budget of which was provided by Creative Europe or the previous culture programme.⁴³ Commenting on funding received from Creative Europe, Jon Davis, Senior Producer at LIFT, stated:

Creative Europe funding accounts for a significant amount of our income. The support has enabled us to co-produce and commission more new work and develop our transnational partnerships.⁴⁴

The Creative Europe Desk UK has also published figures for 2017, reporting that a total of €16.6 million was invested in the UK's creative, cultural and audiovisual sectors, €3.8 million of which was invested through the culture sub-programme.⁴⁵

Evidence of the impact of Creative Europe in the UK was also given to the House of Commons Digital, Culture, Media and Sport Committee. Summarising this evidence in response to its inquiry on the potential impact of the UK leaving the EU on the creative industries, tourism and the digital single market, the Committee stated:

To an overwhelming extent, the evidence submitted from organisations within the creative industries called for the UK to maintain participation in the Creative Europe funding programme. The Publishers Association, the Museums Association, the British Council and Producers Alliance for Cinema and Television (PACT) all emphasised the benefits that membership of Creative Europe has brought to the UK.⁴⁶

Citing Creative Europe Desk UK, the Committee observed that in many sectors British projects are "disproportionately successful" in applying for funding.⁴⁷ It also reported that demand from other EU organisations to work in partnership had meant that the UK had been involved in 44 percent of projects funded by Creative Europe.

The Committee highlighted evidence it received which argued that securing funding from Creative Europe "has been a catalyst for unlocking further

⁴³ Creative Europe Desk UK, [The Impact of Creative Europe in the UK](#), July 2018, p 22.

⁴⁴ *ibid.*

⁴⁵ Creative Europe Desk UK, [Creative Europe in the UK 2017: Support for the UK's Cultural, Creative and Audiovisual Sectors](#), 9 July 2018, p 6.

⁴⁶ House of Commons Digital, Culture, Media and Sport Committee, [The Potential Impact of Brexit on the Creative Industries, Tourism and the Digital Single Market](#), 25 January 2018, HC 365 of session 2017–19, p 20.

⁴⁷ *ibid.*

private investment in projects”.⁴⁸ Its report referenced Creative Europe Desk UK’s comment that: “Creative Europe funding has proved critical in helping to secure additional investment for [...] over two-thirds (68 percent) of culture beneficiaries”. In addition, based on the co-financing figures provided by the Executive Agency, Creative Europe’s sub-culture programme beneficiaries “were estimated to leverage match-funding worth 114 percent of their Creative Europe grant: an additional €17.2 million”.

2.3 Funding after the UK Leaves the EU

Government Funding Guarantee

The Government has released guidance which sets out its plans for programmes which are currently funded by the EU until and after the UK leaves the EU. Until the UK departs from the EU, it remains a member state with all the rights and obligations that entails, and therefore “the UK will continue to participate in all EU programmes”.⁴⁹

After 29 March 2019, the Government has provided information on two scenarios: what will happen if the UK leaves the EU with a deal, and what will happen if the UK leaves without a deal (often referred to as the ‘no deal’ scenario).⁵⁰ Focusing on the first scenario, that the UK leaves with a deal, the Government reference the financial settlement set out in the draft withdrawal agreement with the EU.⁵¹ The settlement means that should a deal be agreed, the UK will continue to take part in all EU programmes post-29 March 2019 for the rest of the 2014–2020 Multiannual Financial Framework.

The Government has stated that in the event of ‘no deal’, the financial settlement would not apply and UK organisations would no longer receive funding from the EU. However, to “provide more certainty for UK organisations over the course of EU exit”, the Government has said that it will guarantee “EU projects agreed before we leave the EU”.⁵² Commenting on this commitment, the Government stated that this guarantee “ensures that UK organisations, such as charities, businesses and universities, will

⁴⁸ House of Commons Digital, Culture, Media and Sport Committee, [The Potential Impact of Brexit on the Creative Industries, Tourism and the Digital Single Market](#), 25 January 2018, HC 365 of session 2017–19, p 21.

⁴⁹ HM Treasury, [The Government’s Guarantee for EU-Funded Programmes If There’s No Brexit Deal](#), 14 September 2018.

⁵⁰ HM Treasury, [The Government’s Guarantee for EU-Funded Programmes If There’s No Brexit Deal](#), 14 September 2018.

⁵¹ Department for Exiting the European Union, [Draft Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community](#), 19 March 2018.

⁵² HM Treasury, [The Government’s Guarantee for EU-Funded Programmes If There’s No Brexit Deal](#), 14 September 2018.

continue to receive funding over a project's lifetime if they successfully bid into EU-funded programmes before the end of 2020".⁵³

Future Participation: Commentary

A report published in January 2018 by the House of Commons Digital, Culture, Media and Sport Committee examined funding currently received from the EU to support the UK's cultural sector and considered what impact leaving the EU would have on this. The Committee noted that due to the UK Government's commitment to leave the EU, one source of funding has already been lost, as the UK can no longer participate in the European Capital of Culture Programme, where a city is designated for a period of one year during which it is given the opportunity to showcase its cultural life and cultural development.⁵⁴ In the UK, Liverpool (2008) and Glasgow (1990) have both previously benefited from this programme.⁵⁵

As part of the inquiry, the Committee also focused on Creative Europe and on the impact the UK leaving the EU has already had on the programme and could have in the future.

The Art Fund, an organisation which provides grants to museums and galleries across the UK, highlighted in its evidence to the Committee the importance of the programme and partnership working:

As well as offering essential funds to enable the development of projects, Creative Europe encourages museums and galleries to share their skills, ideas and talents across the EU through its partnership requirement for funding.⁵⁶

Creative Europe Desk UK argued that the outcome of the referendum had not curtailed applications from UK-based projects, or "dampened enthusiasm for cross-border partnerships".⁵⁷ However, the Museums Association disagreed, and stated that partnership working had been disrupted by the result of the referendum:

UK partners in joint projects have been asked to leave or to cease taking a leadership role in projects that would otherwise have

⁵³ HM Treasury, [The Government's Guarantee for EU-Funded Programmes If There's No Brexit Deal](#), 14 September 2018.

⁵⁴ University Network of the European Capitals of Culture, '[European Capital of Culture](#)', accessed 3 October 2018.

⁵⁵ House of Commons Digital, Culture, Media and Sport Committee, [The Potential Impact of Brexit on the Creative Industries, Tourism and the Digital Single Market](#), 25 January 2018, HC 365 of session 2017–19, p 20.

⁵⁶ *ibid.*

⁵⁷ *ibid.*

benefited the cultural and tourism sectors in the UK.⁵⁸

Looking at the future of Creative Europe in the UK, Sir Peter Bazalgette, chair of the Arts Council England, highlighted that EU membership is not a prerequisite to participating in the programme. He stated that the question going forward was

Are we going to stay subscribing to Creative Europe or are we going to leave that system and are we going to replace the money?⁵⁹

Both the Art Fund and the National Museum Director's Council urged the Government to retain membership of Creative Europe on leaving the EU, citing the examples of Iceland and Norway.⁶⁰ Separate to the Committee report, organisations such as the Creative Industries Federation have also argued for the UK to continue its participation in Creative Europe:

We call on government to continue to participate in EU programmes, such as Creative Europe, Horizon 2020 and Erasmus+. These programmes have been pivotal in facilitating partnerships, as well as providing investment, that have enabled the UK's creative industries to innovate and thrive.⁶¹

In addition, two surveys in which 620 creative professionals were asked for their views on the impact of Creative Europe found that 87 percent of respondents believed the audiovisual, creative and cultural sectors would benefit from continued participation in Creative Europe and its successor programme.⁶²

In contrast, Equity (a trade union representing over 40,000 performers and creative workers) highlighted that some countries from outside of the EU had experienced limitations in their participation:

Switzerland lost all access to funding schemes in 2014 after imposing restrictions on EU citizen mobility and while Norway pays into and can access schemes, they have no say in their development.⁶³

⁵⁸ House of Commons Digital, Culture, Media and Sport Committee, [The Potential Impact of Brexit on the Creative Industries, Tourism and the Digital Single Market](#), 25 January 2018, HC 365 of session 2017–19, p 21.

⁵⁹ *ibid.*

⁶⁰ *ibid.*

⁶¹ Creative Industries Federation, [Our Red Lines on Brexit](#), 20 June 2017, p 2.

⁶² Creative Europe Desk UK, [Report Shows Creative Europe's Impact in the UK](#), 23 February 2017.

⁶³ House of Commons Digital, Culture, Media and Sport Committee, [The Potential Impact of Brexit on the Creative Industries, Tourism and the Digital Single Market](#), 25 January 2018, HC 365 of session 2017–19, p 22.

Karen Bradley, the then Secretary of State for Digital, Culture, Media and Sport, outlined the Government's position on the issue to the Committee, stating that the Government was "looking carefully at the areas in which it is important that we continue membership".⁶⁴ However, the Committee reported that Ms Bradley did not commit to continued membership of any particular programme or a timeframe for a decision. The Committee also reported that in later correspondence she stated clearly that continued participation in Creative Europe would be subject to negotiation with the EU.

In conclusion, the Committee stated:

If the UK were to depart Creative Europe, this would represent a significant blow to the performing arts, museums, galleries, publishing and many other sectors in the creative industries. The limitations of participation experienced by other non-EU members illustrates that reaching agreement may not be straightforward but, equally, neither the UK nor EU member states will benefit from the UK's departure.⁶⁵

The Committee also recommended that as the Government seeks to build a new and unique relationship with the EU, "it should commit to making it an objective of negotiations to secure the UK's ongoing participation in Creative Europe".⁶⁶

3. Workers

At present, EU free movement rules and social security coordination enable EU citizens working in the arts sector to work in other EU countries without obtaining a visa or paying into two social security systems. Non-EU citizens must obtain a visa if they wish to work in the UK.

3.1 Current Regime

EU Citizens

The European Union's Citizens Rights Directive (2004/38/EC) provides that, subject to some limitations, EU citizens can live and work in any EU member state if they:

- are a worker or self-employed person, a jobseeker, or a student;
- are self-sufficient;

⁶⁴ House of Commons Digital, Culture, Media and Sport Committee, [The Potential Impact of Brexit on the Creative Industries, Tourism and the Digital Single Market](#), 25 January 2018, HC 365 of session 2017–19, p 22.

⁶⁵ *ibid.*

⁶⁶ *ibid.*

- have been resident for less than three months;
- are a permanent resident—that is, they have lived legally and continuously in the member state for at least five years; or
- are a family member of someone with the right to reside.⁶⁷

Citizens of the three non-EU states that are members of the European Economic Area—Iceland, Norway and Liechtenstein—also have free movement rights within the EU, and Switzerland is party to free movement through separate agreements.⁶⁸

Figures published by DCMS stated that in 2017, 6 percent of jobs in the cultural sector were held by non-UK EU nationals.⁶⁹ However, in evidence submitted to the House of Lords European Union Committee, the Creative Industries Federation argued that DCMS figures provided “nowhere near enough detail” about the importance of EU citizens to the cultural sector, highlighting “massive variation” within sub-sectors that rely on much higher levels of EU citizens.⁷⁰

Research undertaken for Arts Council England in September and October 2017 found that 67 percent of the arts and cultural organisations surveyed did not employ any EU nationals.⁷¹ Larger organisations and those based in London were more likely to employ EU nationals. Looking at the data across different art forms, organisations working in dance were the most likely to employ EU nationals (58 percent), followed by those in organisations specialising in music (36 percent). The most common type of role held by EU nationals was ‘artistic and creative’, followed by ‘managerial’ and ‘specialist’.⁷²

In addition to providing a legal basis for the employment of EU nationals in the arts in the UK, EU free movement rules enable EU artists to undertake tours in the EU and to travel for one-off or short-term engagements, without the need to obtain a visa.

In 2018, the House of Lords European Union Committee conducted an inquiry into the impact of Brexit on the free movement of people in the cultural sector. The Committee concluded that witnesses to its inquiry saw

⁶⁷ [Directive 2004/38/EC of the European Parliament and of the Council](#), 29 April 2004.

⁶⁸ House of Lords European Union Committee, [Brexit: Movement of People in the Cultural Sector](#), 26 July 2018, HL Paper 182 of session 2017–19, p 8.

⁶⁹ Department for Digital, Culture, Media and Sport, [DCMS Sectors Economic Estimates 2017: Employment](#), 18 July 2018, p 22.

⁷⁰ House of Lords European Union Committee, [Brexit: Movement of People in the Cultural Sector](#), 26 July 2018, HL Paper 182 of session 2017–19, p 10.

⁷¹ ICM Unlimited and SQW Limited, [Impact of Brexit on the Arts and Culture Sector](#), 20 February 2018, p 51.

⁷² *ibid*, p 53.

the ability to move between the UK and EU countries at short notice as “integral to the business model of many cultural sector organisations”.⁷³ Witnesses told the Committee that short-term touring was essential to the business model of many self-employed artists, and that other EU countries were their principal destinations. A representative from the Musician’s Union argued that if musicians were obliged to obtain visas for each EU member state while on tour, tours “would basically [be] impossible to schedule”. In addition, witnesses such as Arts Council Wales/Wales Arts International were concerned about the potential increased costs of touring after the UK has left the EU, particularly for smaller arts companies.

EU rules governing social security coordination mean that workers, including the self-employed, ‘posted workers’ (those sent by their employer to work in another country) and those on short-term contracts, only pay into one country’s social security system at a time.⁷⁴ The House of Lords European Union Committee found that continuation of social security coordination after the UK’s exit from the EU was a high priority for some arts sector organisations, as its loss could result in touring becoming prohibitively expensive.⁷⁵

Non-EU Citizens

The House of Lords European Union Committee summarised the three types of visa typically used by non-EU citizens to take up employment in the cultural sector in the UK:

Tier 5 is for paid temporary work for up to 12 months, and requires a UK sponsor. It is designed for people such as actors or touring musicians who come to the UK from outside the EU on short-term contracts or for short-term engagements. To act as a sponsor, a UK business must obtain a sponsor licence. [...]

Tier 1 is for individuals who are recognised as world leaders, or have demonstrated the potential to become world leaders, in the fields of science, engineering, humanities and the arts. Applications for this route need the endorsement of a designated ‘Competent Body’, a cultural sector organisation selected by the Home Office to assess visa applications.

The Tier 2 (general) route allows UK employers to bring third country nationals to fill specific jobs. Tier 2 (general) visas are capped at 20,700

⁷³ House of Lords European Union Committee, [Brexit: Movement of People in the Cultural Sector](#), 26 July 2018, HL Paper 182 of session 2017–19, p 15.

⁷⁴ European Commission, ‘[EU Social Security Coordination](#)’, accessed 27 September 2018.

⁷⁵ House of Lords European Union Committee, [Brexit: Movement of People in the Cultural Sector](#), 26 July 2018, HL Paper 182 of session 2017–19, p 18.

annually and subject to pay thresholds. The Tier 2 (general) system provides two pathways to a visa: the resident labour market test (RLMT) and the shortage occupation list (SOL). Jobs offered under the RLMT must first show that there is no suitable resident worker available, with the job being advertised to resident workers for a set period. The job must also meet a minimum skill requirement and an annual salary threshold (with effect from April 2017, £30,000). Jobs on the SOL are exempt from requirements to meet the RLMT, and are subject to salary thresholds specific to each job (which can be lower than the RLMT threshold). There are 17 roles in the creative industries on the shortage occupation list, including dancers, choreographers, and musicians.⁷⁶

Research undertaken for Arts Council England found that, relative to the percentage of organisations that employ EU nationals, the number of organisations that support visas for workers outside the EU is small: 3 percent of survey respondents had supported a Tier 2 visa in the last two years, while 9 percent had supported a Tier 5 visa.⁷⁷ In addition, it found that those organisations which have supported a Tier 2 or Tier 5 visa did so infrequently, with the median number of visas sponsored in the past two years fewer than five for each visa type.⁷⁸

In addition to long-term visas, artists and entertainers from non-EU countries currently may enter the UK under the visit (standard) and visit (permitted paid engagement) visa routes.⁷⁹

The visit (standard) route allows individuals to enter the UK for up to six months to carry out certain permitted activities. These include: giving performances as individuals or as part of a group; taking part in competitions or auditions; making personal appearances; undertaking promotional activities; attending workshops and giving talks; and appearing at one or more cultural events or festivals on the list of permit-free festivals.

The visit (permitted paid engagement) (PPE) route allows professionals over the age of 18 to stay in the UK for up to one month to undertake specific paid engagements. This visa allows professional artists and entertainers who are invited to the UK to carry out one permitted engagement, or a short series of engagements, relating to their profession. It is a single-entry permission only. It extends to the performing and creative arts and includes musicians, visual artists, make-up artists, and writers.

⁷⁶ House of Lords European Union Committee, [Brexit: Movement of People in the Cultural Sector](#), 26 July 2018, HL Paper 182 of session 2017–19, pp 13–14.

⁷⁷ ICM Unlimited and SQW Limited, [Impact of Brexit on the Arts and Culture Sector](#), 20 February 2018, p 53.

⁷⁸ *ibid*, p 54.

⁷⁹ UK Visas and Immigration, [Routes of Entry for Artists and Entertainers](#), 1 August 2015.

Future Application

Commenting on the suitability of applying the current third country immigration regime to EU citizens in the future, witnesses to both the House of Lords European Union Committee and the House of Commons Digital, Culture, Media and Sport Committee expressed the view that salaries, as required for Tier 2 visas, were not an appropriate proxy for skill in the creative and cultural sector. The House of Commons Digital, Culture, Media and Sport Committee concluded:

We believe that salary levels are a crude proxy for value and fail to recognise the central role that workers from the EU and beyond play in making British businesses successful.⁸⁰

Similarly, the House of Lords European Union Committee stated:

The cultural sector relies on highly talented individuals, yet often pays salaries that are less than the UK median. Bringing EU cultural workers under the same restrictions as third country nationals could therefore prove detrimental to the sector, because existing visa rules require a minimum salary in excess of what many cultural organisations can offer. As a result, the UK may struggle to attract talent.⁸¹

3.2 Government Policy

EU Citizens Currently Resident in the UK, and UK Citizens Currently Resident in the EU

The main provisions of EU law on freedom of movement of people have been fully incorporated into UK law by the European Union (Withdrawal) Act 2018.⁸² As a result, the rights of EEA citizens to live and work in the UK will continue after the UK leaves the EU unless and until the Government introduces changes to the rules.

The Government has stated that EU citizens who have been resident in the UK for five years or more will be able to apply for ‘settled’ status in the UK in preparation for the UK’s exit from the EU.⁸³ Settled status will confer the right to stay and work in the UK indefinitely. EU citizens who have lived in

⁸⁰ House of Commons Digital, Culture, Media and Sport Committee, [The Potential Impact of Brexit on the Creative Industries, Tourism and the Digital Single Market](#), 25 January 2018, HC 365 of session 2017–19, p 19.

⁸¹ House of Lords European Union Committee, [Brexit: Movement of People in the Cultural Sector](#), 26 July 2018, HL Paper 182 of session 2017–19, p 2.

⁸² UK in a Changing Europe, [Cost of No Deal Revisited](#), 3 September 2018, p 20.

⁸³ HM Government, [‘Settled and Pre-Settled Status for EU Citizens and Their Families’](#), accessed 27 September 2018.

the UK for fewer than five years will be able to apply for ‘pre-settled status’, allowing them to stay in the UK for a further five years and apply for settled status after that time. These changes have already been given effect, in changes to the immigration rules.

In December 2017, the UK provisionally agreed with the European Commission that UK nationals living in EU countries before December 2020 will be able “to continue living their lives broadly as they do now” after Brexit, under a citizens rights agreement.⁸⁴ However, the implementation of these arrangements is dependent on the UK and EU reaching an overall agreement on the terms of the UK’s withdrawal from the EU. The academic research initiative UK in a Changing Europe has highlighted that most EU countries have not established legislative and administrative mechanisms to implement the provisions set out in the draft withdrawal agreement in domestic law, nor made contingency plans for implementing them if the withdrawal agreement is not approved.⁸⁵

Movement of People and Social Security After the UK Leaves the EU

In a white paper on the UK’s future relationship with the EU published in July 2018, the Government stated that “free movement of people will end as the UK leaves the EU”.⁸⁶ However, the Government stated that it would seek “reciprocal mobility arrangements with the EU” that: “support businesses to provide services and to move their talented people; allow citizens to travel freely, without a visa, for tourism and temporary business activity; [and] facilitate mobility for students and young people, enabling them to continue to benefit from world leading universities and the cultural experiences the UK and the EU have to offer”.

In its white paper, the Government also stated that:

The UK will seek reciprocal arrangements on the future rules around some defined elements of social security coordination [...] It would also ensure workers only pay social security contributions in one state at a time.⁸⁷

In July 2018, Lisa Cameron (SNP MP for East Kilbride, Strathaven and Lesmahagow) asked the Government if it would “seek the creation of a visa

⁸⁴ HM Government, [‘UK Nationals in the EU: Essential Information’](#), accessed 27 September 2018.

⁸⁵ UK in a Changing Europe, [Cost of No Deal Revisited](#), 3 September 2018, p 20.

⁸⁶ HM Government, [The Future Relationship Between the United Kingdom and the European Union](#), July 2018, Cm 9593, p 32.

⁸⁷ *ibid*, p 35.

system between the UK and EU countries to meet the needs of the creative sector”. Caroline Nokes, Minister of State for Immigration, replied:

The Government is considering a range of options for the future immigration system. We will build a comprehensive picture of the needs and interests of all parts of the UK, including different sectors businesses and communities, and look to develop a system that works for all.

We will make decisions on the future immigration system based on evidence and engagement. That is why we have asked the independent Migration Advisory Committee to advise on the economic and social impacts of the UK’s exit from the EU. When building the new system, various aspects including the creative sector will be taken into account, to ensure the future immigration system works for sectors.

We will set out proposals later this year.⁸⁸

At the time of writing, such proposals had not been published.

4. Intellectual Property

Copyright, a subset of intellectual property law, ensures that the work of the UK creative industries is protected in both the domestic and global marketplace.⁸⁹ Current copyright legislation is laid out in the Copyright, Designs and Patents Act 1988, which has been amended to incorporate relevant EU law. The UK is also a party to international treaties on copyright and related rights, which do not depend on the UK’s membership of the EU.⁹⁰

EU regulations on copyright and related rights will be preserved in UK law as retained EU law under the powers in the European Union Withdrawal Act 2018. However, the UK is also currently party to certain EU cross-border copyright mechanisms, the reciprocal element of which will cease to apply to the UK after it leaves the EU unless specific arrangements are made.⁹¹ The Government has outlined how this may affect organisations and individuals in the UK were no deal to be agreed:

- UK-based satellite broadcasters that currently rely on the

⁸⁸ House of Commons, ‘[Written Question: Arts: Visas](#)’, 2 July 2018, 159638.

⁸⁹ House of Commons Digital, Culture, Media and Sport Committee, [The Potential Impact of Brexit on the Creative Industries, Tourism and the Digital Single Market](#), 25 January 2018, HC 365 of session 2017–19, p 41.

⁹⁰ Department for Business, Energy and Industrial Strategy, ‘[Copyright If There’s No Brexit Deal](#)’, 24 September 2018.

⁹¹ *ibid.*

country-of-origin copyright clearance rule (Council Directive 93/83/EEC of 27 September 1993) when broadcasting into the EEA may need to clear copyright in each member state to which they broadcast.

- UK Collective Management Organisations will not be able to mandate European Economic Area Collective Management Organisations to provide multi-territorial licensing of the online rights in their musical works, as they can currently do under the Collective Rights Management Directive (Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014).
- UK-based organisations will not be able to rely on the Marrakesh Directive and Regulation implementing the Marrakesh Treaty, allowing the cross-border transfer of accessible format copies of copyright works between EU members states and other countries that have ratified the Treaty. The Government has stated that it intends to ratify the treaty, but this will not take place before the UK leaves the EU on 29 March 2019. Therefore, between exit and the point of ratification, businesses, organisations or individuals transferring accessible format copies between the EU and UK may not be able to rely on the EU Regulation.⁹²

Research published by Arts Council England cited concerns expressed by PRS for Music (an organisation which manages rights and royalties for writers, composers and publishers in the music industry) that the UK's exit from the EU means it will be unable to influence the development of the draft EU directive on the digital single market, which includes copyright provisions:

The major concern for PRS is the UK's ability to influence the development of the copyright framework in its largest market, such as the ongoing negotiations under the European Commission's Digital Single Market package.⁹³

In evidence to the Digital, Culture, Media and Sport Committee, the Authors' Licensing and Collecting Society expressed similar concerns.⁹⁴

⁹² Department for Business, Energy and Industrial Strategy, '[Copyright If There's No Brexit Deal](#)', 24 September 2018.

⁹³ ICM and SQW (on behalf of Arts Council England), '[Impact of Brexit on the Arts and Culture Sector](#)', 20 February 2018, p 73.

⁹⁴ House of Commons Digital, Culture, Media and Sport Committee, '[The Potential Impact of Brexit on the Creative Industries, Tourism and the Digital Single Market](#)', 25 January 2018, HC 365 of session 2017–19, p 41.