

## Negotiating a new creative relationship between Wales and Europe

### A paper for the National Assembly's External Affairs and Additional Legislation Committee

1. For two decades the Arts Council of Wales and its international arm, Wales Arts International, have developed and nurtured a wide range of international and European cultural partnerships. Some of these have been funded by specific projects and focused programmes of exchange. Others have been longer-term, building connections that have fostered enduring relationships with countries around the world.
2. Whatever Brexit brings, there are a number of issues that are specific to the arts and creative industries. Many will be shared across the heritage sector. These issues need to be addressed clearly and systematically if Wales is to continue to benefit economically, culturally and socially from its international relationships. The creative industries are an important and growing sector of the economy in Wales with strong links to the arts. The creative industries have their origin in individual creativity, skill and talent that has the potential for wealth and job creation through the generation and exploitation of intellectual property. The arts nurture the imagination and vision that provide the steady flow of new ideas and products that enable economic exploitation through the creative industries.
3. Every sector has its Brexit issues and the creative industries and the arts are no different. However, we are aware that the Welsh Government's strategy is to focus in the first instance on those cross-cutting issues that apply more widely to economic, social and cultural life in Wales. We have organised this note accordingly.
4. Last year we hosted a consultative meeting in Swansea for the UK Creative Industries Federation. The Federation has identified four key areas of risk in which the interests of the arts and creative industries might be adversely affected. They are:
  - **Talent and skills** – including freedom of movement for specialist workers, skills shortages, visas and touring
  - **EU funding** – including access to Horizon 2020, Interreg, Erasmus+, Creative Europe, cultural exchange, export opportunities, eligibility in the run-up to Brexit
  - **Trade and investment** – including the EU as a principal market, new markets, regulated services, tax credits, World Trade Organisation terms
  - **Regulatory frameworks** – including Digital Single Market, intellectual Property rights, copyright protection, influence over new regulations

We believe that many sectors will have similar issues.

### Talent and skills

5. Developing talent and skills is fundamental to Wales' future prosperity. Creativity reaches beyond the realm of arts and culture, though they are its natural nurturing ground. Creative skills are key as they will permeate all areas of business activity in the future. The successful economies of the future will be those that can capitalise on their creative potential, enabling social inclusion and putting people and skills – 'human capital' – at their core. In today's society this is as critical as any other economic resource.
6. The creative sector thrives on innovative and specialist expertise and technologies. By their very nature, such skills are not widely available. Exceptional talent in the arts and creative industries is as vital to the success of the sector as other areas such as science and academia. European workers provide a steady stream of skills in areas where we currently lack capacity or expertise. Additionally, these workers help us to better understand Europe, our biggest overseas market.
7. The future mobility of skilled workers is therefore a key concern. The Migration Tier 2 Shortage Occupation List itemises jobs where the government will permit sponsorship of migrants in recognition of severe skills shortages. The current list already acknowledges gaps, with 17 creative industries occupations already identified.
8. High levels of technical skill do not always translate into high salaries. Many creative workers are self-employed or work on specific time-limited contracts. The Home Office requirement that non-UK nationals meet a minimum salary threshold for certain types of visa could be problematic. And this could be exacerbated by limitations on the number of Tier 1, 2 and 5 visas awarded each year.

#### **Recommendation:**

Artist mobility is the foundation of artistic and creative development. Whatever the future arrangements, any changes to immigration regulations must be negotiated in ways that allow reasonable and appropriate mobility of creative workers and avoid counter-productive barriers based exclusively on salary thresholds and quotas.

9. The UK's proximity to mainland Europe enables more affordable and 'frictionless' travel across borders. The easy access and movement for touring (of orchestras, theatre companies, exhibitions and individuals) is of significant practical and financial value. A return to the administrative and financial burdens of visas and carnets would be a costly retrograde step.

10. Any reinstatement of tariffs and mobility restrictions will create new borders for our large-scale arts organisations. But whilst these companies will certainly find such impediments inconvenient, for the smaller-scale companies and artists such barriers might become insurmountable.
11. Issues of mobility are not limited to creative professionals. The Erasmus + funding programme has enabled a generation of young people to explore and reinforce links to Europe. Young people, who were either not yet able to vote or who voted 'remain', need to develop competencies in European languages and understand European cultures. These exchanges must remain widely accessible and not restricted to an elite who can afford them.

**Recommendation:**

Every effort should be made to protect access to Erasmus funding.

Funding

12. Wales is a beneficiary of significant EU funding. Creative Europe, Europe for Citizens, Horizon 2020, European regional Development Fund (ERDF) and European Social Fund (ESF) have all contributed to a transformation of the cultural landscape in Wales. We need to explore how we can continue to benefit from these things in the future.
13. The UK Government has said that, in the case of EU funding streams administered by government, it will honour and fully fund all projects with signed contracts and funding agreements in place before the 2016 Autumn Statement. However, this implies projects will not be eligible for funding following this point. The UK remains eligible for competitive EU funds including Creative Europe and Horizon 2020 up until the point of exit.

**Recommendation:**

We need to ensure that the Treasury underwrites the payment of awards for all approved projects, including those that extend beyond the point of departure. We also need to identify appropriate mechanisms for Wales to have access to selected European programmes and funds in the future.

### Trade and investment

14. Many of Wales' best known actors, singers, musicians, designers and craftspeople were developed within publicly funded institutions. Arts organisations such as BBC National Orchestra of Wales, National Theatre Wales, National Dance Company Wales, National Museum and Welsh National Opera are ambassadors for our nation taking the Welsh 'brand' for quality and creativity around the world. The arts, in both languages, are our calling card to the world. They are valuable in their own right, but also promote the broader trading interests of Wales as a symbol of the country's imagination, innovation and diversity.
15. The opportunities for 'soft diplomacy' provided by the arts and creative industries have an economic as well as cultural value. Many of our cultural institutions are significant tourist attractions, drawing visitors from around the world. The arts also showcase the best of Welsh talent on the world stage. High quality cultural activity gets smaller countries onto the international map, increasing their visibility, authority and reputation.
16. Visibility and reputation matter. Successful businesses depend on a skilled workforce. But this skilled workforce can work anywhere. When business leaders are looking to grow or to relocate their businesses, quality of life issues will rank high for them, their families and their workforce. These will be important issues for the Welsh Government to have at the forefront of its future economic planning

### Intellectual Property and Regulatory Frameworks

17. The profit for many creative businesses lies in the intellectual property of their ideas and designs. However, intellectual property and copyright infringement are commonplace in some of the countries that the UK Government is currently targeting for export growth. Creative businesses cannot reap proper rewards unless and until IP and copyright is acknowledged and protected.
18. Other key issues, such as the digital single market, are in active negotiation, with all to play for. But the government must understand how IP protection and the regulatory framework will be affected - and, in some cases, undermined - for British creatives when the UK leaves the EU. UK creative businesses and individual creators have been successfully operating under the existing national copyright regime, based on the Copyright, Designs and Patents Act 1988. However, while the basic concepts of copyright have been agreed at a global level, many provisions of UK copyright are derived from European Union Directives.

There is clearly some uncertainty over the future status of those elements of UK legislation which are derived from EU law. However, any limitation or reduction in protection would put UK businesses at a competitive disadvantage relative to European competitors.

19. The UK currently provides a high level of protection for copyright works. However, intellectual property theft, particularly through piracy and counterfeiting, continues to be a significant concern in the UK and internationally. There are also significant problems with counterfeit physical goods, including design and fashion brands, which are largely imported from overseas. This is an area where cooperation could be strengthened in the course of building new trading relationships with non-EU countries, alongside continued cooperation with European and international enforcement agencies
20. A complete withdrawal from the single market would require the UK to rely on membership of the World Trade Organisation to provide terms on which to trade with the EU and its 53 trade partners. The process of transition from EU to WTO regulations is unprecedented and may take years to complete. While this happens, Intellectual property rights, including copyright and trademarks, must be protected – they are crucial to enabling the creative industries to capitalise on their ideas and talent. The creative sector needs to be able to make money. The UK has been at the forefront of developing this framework in Europe and it is vital that we continue to exert influence for as long as we can.

**Recommendation:**

The government should make it a priority to ensure that copyright works enjoy robust and properly enforced legal protection in international markets. Strong protection for copyright should be incorporated as a key principle into any future negotiations.

21. It will also be important that related areas of regulation align. For example, future trade negotiations will be helped if we can be sure how we are signing up to the new EU General Data Protection regulation rules.

**Recommendation:**

Sign up to the General Data Protection Regulations should ensure that the scheme will be adequate for our future trading ambitions.

### Issues of capacity

22. The availability of appropriately skilled individuals to manage negotiations and to plan for the implications of Brexit have been raised repeatedly. The range and quantity of regulations, corporate codes, competition law, consumer protection, environmental and employment law are daunting. A range of academic institutions, WGSBs and third sector agencies have specific expertise in international working. This could be deployed to assist the Welsh Government.

#### **Recommendation:**

In these exceptional times, the Welsh Government might want to enhance its organisational capability by drawing more widely on the expertise that exists within a range of organisations across Wales.

### International working

23. In these challenging times it is more important than ever that as global citizens we understand better the world around us. Maintaining cultural links with Europe has more than symbolic value. Exchanges in arts and culture helps us to build relationships, share experiences and unite us in working together to build stronger and more inclusive democratic structures.
24. Wales' continued participation in a range of international networks remains important. They provide intelligence and information about international markets and opportunities. Such intelligence will be vital if we're influence future debate and develop new cultural and trading relationships in Europe and further afield.
25. Our success in the arts and creative industries depends on openness and the quality of our international engagement with other countries. Sustaining this remains a vital national interest. Wales will respond more effectively to future challenges if it can develop a coherent international cultural strategy.
26. The impact of Brexit goes further than issues around legislative powers. And important as it is to get the settlement right for Wales in terms of making devolution work, an international cultural strategy is needed to enable all of the sub sectors (including government departments and public and private organisations) to align our priorities accordingly.

27. Wales is small enough for a meaningful strategy to be operational across sectors. The Committee could support such a proactive international approach by hosting a forum to bring together the depth and breadth of experience in working internationally that Wales has as well as the UK agencies that can help deliver such a strategy. The Arts Council of Wales and our international arm Wales Arts International would be more than willing to cooperate.

**Recommendation:**

The Committee could host a forum designed to facilitate the creation of an international cultural strategy for Wales.

Looking ahead – planning for change

28. As negotiations progress, the implications of Brexit for businesses in Wales will start to emerge. To date, the External Affairs and Additional Legislation Committee has been very diligent in explaining what is currently happening – who is doing what, where. As negotiations draw to a conclusion, smaller charities and third sector organisations are unlikely to have the capacity or expertise to interpret the consequences of change. They will require access to information and advice that helps them to anticipate and prepare for change. For this to be effective, it would need to be in place before the end of the Brexit period.

**Recommendation:**

The Committee could consider the steps that the Welsh Government – or other agencies – might take to put in place arrangements that assist and support business through the processes of change.