

## **Exhaustion of intellectual property rights if there's no Brexit deal**

### **Summary**

How the exhaustion of intellectual property rights would be affected if the UK leaves the EU in March 2019 with no deal.

### **Detail**

If the UK leaves the EU in March 2019 without a deal, find out how this would affect the exhaustion of intellectual property rights.

This is one of four notices covering intellectual property. The other notices cover:

- EU trade marks and registered Community designs [\[LINK to notice\]](#)
- patents [\[LINK to notice\]](#)
- cross-border copyright [\[LINK to notice\]](#)

A scenario in which the UK leaves the EU without agreement (a 'no deal' scenario) remains unlikely given the mutual interests of the UK and the EU in securing a negotiated outcome.

Negotiations are progressing well and both we and the EU continue to work hard to seek a positive deal. However, it's our duty as a responsible government to prepare for all eventualities, including 'no deal', until we can be certain of the outcome of those negotiations.

For two years, the government has been implementing a significant programme of work to ensure the UK will be ready from day 1 in all scenarios, including a potential 'no deal' outcome in March 2019.

It has always been the case that as we get nearer to March 2019, preparations for a no deal scenario would have to be accelerated. Such an acceleration does not reflect an increased likelihood of a 'no deal' outcome. Rather it is about ensuring our plans are in place in the unlikely scenario that they need to be relied upon.

This series of technical notices sets out information to allow businesses and citizens to understand what they would need to do in a 'no deal' scenario, so they can make informed plans and preparations.

This guidance is part of that series.

Also included is an [overarching framing notice](<https://www.gov.uk/government/publications/uk-governments-preparations-for-a-no-deal-scenario>) explaining the government's overarching approach to preparing the UK for this outcome in order to minimise disruption and ensure a smooth and orderly exit in all scenarios.

We are working with the devolved administrations on technical notices and we will continue to do so as plans develop.

## **Exhaustion of intellectual property rights regime in the UK**

### **Purpose**

If the UK leaves the EU in March 2019 without a deal, find out in this notice how this would affect the exhaustion of intellectual property rights.

### **Before 29 March 2019**

Intellectual property rights give the business, organisation or individual that holds the rights (the right holder) certain exclusive entitlements, which include the right to control distribution of a protected product. The exhaustion of intellectual property (IP) rights refers to the loss of the right to control distribution and resale of that product after it has been placed on the market within a specified territory by, or with the permission of, the right holder.

The UK is currently part of a regional European Economic Area (EEA) exhaustion scheme, meaning that IP rights are considered exhausted once they have been put on the market anywhere in the EEA with the rights holder's permission.

### **After March 2019 if there's no deal**

In this scenario the UK will continue to recognise the EEA regional exhaustion regime from exit day to provide continuity in the immediate term for businesses and consumers.

This approach means there will be no change to the rules affecting imports of goods into the UK, and businesses that undertake this activity may continue unaffected.

Ongoing UK recognition of the EEA regional exhaustion area will ensure that parallel imports of goods, such as pharmaceuticals, can continue from the EEA. A parallel

import is a non-counterfeit product which is imported into a country where the intellectual property rights in that product have already been exhausted.

While there will be no change for the importation of goods into the UK, there may however be restrictions on the parallel import of goods from the UK to the EEA. Businesses undertaking such activities may need to check with EU right holders to see if permission is needed.

The government is currently considering all options for how the exhaustion regime should operate after this temporary period. The government is undertaking a research programme to support this decision. Information relevant to specific areas can be found in the following additional technical notices. [To link to cross cutting notices on goods, life sciences, marketing authorisations for medicines and access to medicines] [How medicines, medical devices and clinical trials would be regulated if there's no Brexit deal](<https://www.gov.uk/government/publications/how-medicines-medical-devices-and-clinical-trials-would-be-regulated-if-theres-no-brexite-deal/how-medicines-medical-devices-and-clinical-trials-would-be-regulated-if-theres-no-brexite-deal>)

## **Implications**

Intellectual property-protected goods placed on the EEA market by, or with the consent of, the right holder after the UK has exited the EU will continue to be considered exhausted in the UK. This means that parallel imports of these goods from the EEA to the UK will be able to continue unaffected.

Goods placed on the UK market by or with the consent of the right holder after the UK has exited the EU will not however be considered exhausted in the EEA. This means that businesses exporting these goods from the UK to the EEA might need the right holder's consent.

## **Actions for businesses and other stakeholders**

Businesses may find that they need the right holder's consent to export intellectual property-protected goods that have been legitimately put on the market in the UK to the EEA.

Businesses may wish to seek legal advice on how this arrangement could affect their business model or intellectual property rights.

## **Further information**

The government will be working closely with business representatives, trade associations and other stakeholders on the implications of our plans.

In order to prepare the UK's statute book for its exit from the EU, the UK government will be passing technical changes through statutory legislation in Parliament over the coming months, using powers under the EU (Withdrawal) Act 2018. The government will be publishing detailed guidance alongside any legislative changes and will work closely with business representatives, trade associations and stakeholders on the implications.

The Intellectual Property Office has also published a [factsheet on intellectual property rights and EU exit](<https://www.gov.uk/government/news/ip-and-brex-it-the-facts>).

This notice is meant for guidance only. You should consider whether you need separate professional advice before making specific preparations.

It is part of the government's ongoing programme of planning for all possible outcomes. We expect to negotiate a successful deal with the EU.

The UK government is clear that in this scenario we must respect our unique relationship with Ireland, with whom we share a land border and who are co-signatories of the Belfast Agreement. The UK government has consistently placed upholding the Agreement and its successors at the heart of our approach. It enshrines the consent principle on which Northern Ireland's constitutional status rests. We recognise the basis it has provided for the deep economic and social cooperation on the island of Ireland. This includes North-South cooperation between Northern Ireland and Ireland, which we're committed to protecting in line with the letter and spirit of Strand two of the Agreement.

The Irish government have indicated they would need to discuss arrangements in the event of no deal with the European Commission and EU countries. The UK would stand ready in this scenario to engage constructively to meet our commitments and act in the best interests of the people of Northern Ireland, recognising the very significant challenges that the lack of a UK-EU legal agreement would pose in this unique and highly sensitive context.

It remains, though, the responsibility of the UK government, as the sovereign government in Northern Ireland, to continue preparations for the full range of potential outcomes, including no deal. As we do, and as decisions are made, we'll take full account of the unique circumstances of Northern Ireland.

Norway, Iceland and Liechtenstein are party to the Agreement on the European Economic Area and participate in other EU arrangements. As such, in many areas, these countries adopt EU rules. Where this is the case, these technical notices may also apply to them, and EEA businesses and citizens should consider whether they need to take any steps to prepare for a 'no deal' scenario.