



## Brexit FAQs

October 2019

## When is Brexit?

The UK is currently due to leave the European Union on 31 January 2020, with the option to leave earlier if a deal can be approved by the UK Parliament before that date.

## What is the transition period?

Under the current draft withdrawal agreement, there is a “transition period” to allow for the smooth implementation of the terms of the UK’s withdrawal from the EU. During the transition period, EU law will continue to be applicable to, and in, the UK. This transition period is scheduled to expire on 31 December 2020, although this period could be extended if the date for Brexit continues to change.

If the UK leaves the EU without an agreed Brexit deal, there will be no transition period.

## What IP rights will be affected by Brexit?

EU trade marks and EU registered design rights will be affected. Once the UK has left the EU and any transition period has expired, EU trade marks and EU registered designs will no longer be effective in the UK. For a trade mark or design to be recognised in the UK an application will need to be filed at the UK Intellectual Property Office (UKIPO).

Patents will not be affected by the UK’s departure from the EU. There are no EU level rights for patents at present. The European Patent Convention, which governs the granting of European patents, is not a piece of EU legislation and so no action is required in this sense.

There is a question mark around what will happen to the Unified Patents Court (UPC), which is a proposed single Court for the enforcement of European patents, if the UK leaves the EU. This is unclear, although the UK Government has ratified the Unified Patent Court agreement which intends to bring the proposed EU-wide Unitary Patent into force.

## Will my EU trade mark rights cease to exist?

**No, your EU rights will continue to exist.** Regardless of whether the UK exits the EU with or without an agreement, the UKIPO will automatically create equivalent UK trade marks for all EU trade marks that were registered/ granted before the UK leaves the EU, and no action will be required on your part. These equivalent marks will retain the filing dates of the original EU trade marks, and will also retain any priority and/or seniority dates. Of course, your EU trade marks will continue to exist as normal, the only

difference being that they will cover the remaining EU 27 Member States and not the UK.

## What happens if a Brexit deal is agreed?

The proposed withdrawal agreement contains provisions under which EU registered trade marks and EU registered designs will automatically be granted an equivalent UK national right. The granting of equivalent UK national rights will apply to any EU right which has been registered/ granted before the end of the transition period, based on the current terms of the draft withdrawal agreement. There should be no re-examination of any equivalent UK national right created under these conversion provisions.

## What happens if a Brexit deal is not agreed?

The situation here is similar to if a Brexit agreement is reached but the timing is different. If a Brexit agreement is reached, the equivalent UK national rights will be created following the end of the transition period. If no Brexit agreement is reached, the equivalent UK national rights will be created on Brexit day.

## Will I receive a new registration certificate when my new comparable UK right is created?

**No**, the UKIPO are not planning to issue new registration certificates. You will be able to view details of your new comparable UK right on the UKIPO website.

## What if I have a pending EUTM on the Brexit date?

The situation here is the same regardless of whether or not a Brexit deal is agreed. If your EU right is still pending on Brexit date, an equivalent right will not be created automatically. You will have a period of 9 months following Brexit date during which you can apply to register your EU right as an equivalent UK right. The normal UK filing fees will apply, and the equivalent right will retain the same EU filing/priority date. These new applications for equivalent rights will be examined in the same way as normal new UK applications.

## Will Brexit affect my International Registration?

**Yes.** After Brexit day, any International Registration designating the EU will only be valid in the EU 27 Member States, and will no longer have effect in the UK.

The UK will automatically create UK equivalent rights (NOT designations under the IR) for International registrations designating the EU. These equivalent rights will retain the

filing dates of the original International registrations, and will also retain any priority and/or seniority dates.

For pending International applications, owners will have nine months to file for equivalent UK rights while retaining the filing/priority date of the pending IR designating the EU. The normal UK application fees will apply, and the new applications for equivalent rights will be examined in the same way as normal new UK applications.

The position is the same with or without an agreed Brexit deal.

The other change relating to International Registrations is that following Brexit, a UK national who is domiciled in the UK will not be entitled to file an international application through the EUIPO as the office of origin.

## Will I need to appoint an EU based attorney after Brexit?

**No**, Forresters will still be able to represent you. Not all UK firms will be able to continue their representation before the EUIPO but Forresters already has measures in place whereby we will continue to represent our clients seamlessly before the EUIPO going forward.

## What can I do to reduce the risk?

The UK government appears to have robust procedures in place to ensure that holders of EU trade mark and EU registered designs will continue to receive equivalent protection following the UK's exit from the EU. Therefore, we do not necessarily recommend making duplicate UK filings of all EU trade mark and EU registered designs.

**In certain circumstances, you or your clients may wish to consider** filing UK national trade mark applications for those marks which are of particular importance in respect of the UK. While the additional UK filings for “doubling up” on existing EU applications and registrations may be seen as superfluous, this strategy of filing UK applications now will remove any uncertainty.

We are offering heavily discounted fees for UK national applications which mirror EU applications and existing EU registrations.

## Do I need to take action now?

No, it is not essential to take any action now especially as existing rights should now be safeguarded.

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