

Intellectual property after 1 January 2021

The transition period has ended. On 1 January 2021 there will be changes to UK intellectual property law to ensure the smooth departure from EU IP systems.

The following is a summary of the key changes.

Use of representatives and address requirements to represent

From 1 January 2021, UK attorneys will be unable to represent clients on new applications or new proceedings at the EU Intellectual Property Office (EUIPO). UK trade mark owners will need to appoint an EEA attorney to represent them on new applications and proceedings before the EUIPO.

However, the Withdrawal Agreement (WA) ensures that UK legal representatives can continue to represent their clients before the EUIPO in cases that are ongoing at the end of the transition period.

From the end of the transition period, the IPO will no longer provide certification for legal representatives to be added to EUIPO's list of professional representatives. The EUIPO will no longer introduce representatives to the list on the basis of a UK certification.

UK Address for Service (AfS)

The Intellectual Property Office (IPO) has published [business guidance](#), following publication of the government response to the outcome of the [Address for Service call for views](#) published earlier this year. Views were invited on removing reference to the European Economic Area.

From 1 January 2021, subject to legislative implementation, only an address for service in the UK (which for these purposes includes the Isle of Man), Gibraltar or the Channel Islands will be accepted for new applications and new requests to start contentious proceedings before the IPO.

The change will apply across all the registered IP rights (patents, trade marks and designs).

Changes to IP rights

Trade marks

Comparable UK trade mark and Design rights were created at the end of the transition period under the terms of the Withdrawal Agreement.

On 1 January 2021, The IPO created a comparable UK trade mark for every registered EU trade mark (EUTM). Each of these UK rights will:

- be recorded on the UK trade mark register
- have the same legal status as if you had applied for and registered it under UK law
- keep the original EUTM filing date
- keep the original priority or UK seniority dates
- be a fully independent UK trade mark that can be challenged, assigned, licensed or renewed separately from the original EUTM

You will not:

- need to file an application for this right or pay an application fee. There will be as little administration involved as possible
- receive a UK registration certificate, but you will be able to access details about the trade mark on GOV.UK and can take a screen shot from there as evidence of your right.

Businesses, organisations or individuals that had applications for EUTMs that were not registered at the end of the transition period had a period of nine months to apply in the UK for the same protection. In these cases, UK application fees were payable, and the application was subject to UK examination and publication requirements.

Our digital and paper forms were amended to include a new section for claiming the earlier filing date of the corresponding EUTM application.

For information on renewals, opt out process and numbering as well as more detail on subjects covered in this section please refer to our business guidance

Please see section below on [Geographical Indications](#) for details on this IP right and the relationship with trade marks.

Designs

Re-registered UK designs were created at the end of the transition period under the terms of the Withdrawal Agreement.

On 1 January 2021, the IPO will create a re-registered design for every Registered Community design (RCD). Each of these rights will:

- be recorded on the UK designs register
- have the same legal status as if you had applied for and registered it under UK law
- keep the original RCD filing date
- keep the original priority date
- be a fully independent UK design that can be challenged, assigned, licensed or renewed separately from the original RCD

You will not:

- need to file an application for this right or pay an application fee. There will be as little administration involved as possible
- receive a UK registration certificate. You will be able to access

details about the design on GOV.UK and can take a screen shot from there as evidence of your right.

Businesses, organisations or individuals that has applications for RCDs which were either not registered or have deferred publication at the end of the transition period, had a period of nine months to apply in the UK for the same protection. In this case UK application fees were payable, and the application was subject to UK examination requirements

Our digital and paper forms will be amended to include a new section for claiming the earlier filing date of the corresponding RCD application.

For information on renewals, opt out process and numbering as well as more detail on subjects covered in this section please refer to our [business guidance](#).

International trade marks and designs

International trade marks and designs designating the EU will continue to have protection in the UK under the terms of the Withdrawal Agreement.

On 1 January 2021, the UK Intellectual Property Office created a comparable UK trade mark and re-registered UK design for every International (EU) trade mark and design , that was protected at the end of the transition period.

Where an international design designating the EU was applied for, but was not protected, or where the publication had been deferred, the holder had a period of nine months to apply for the same right as a UK design.

A provision also exists for international (EU) trade marks.

For information on renewals, opt out process and numbering please refer to UK IPO [trade mark business guidance](#) and [designs business guidance](#).

For further key information for customers and users of IP about how the IP system and the UK Intellectual Property Office will operate after the [end of the transition period](#).

Unregistered Designs

Unregistered community designs that arise before the end of the transition period will continue to be protected in the UK for the remainder of their three year term through continuing unregistered designs.

From 1 January 2021, a supplementary unregistered design (SUD) will become available in UK law.

The SUD will provide similar protection to that conferred by the unregistered Community design, but for the UK only.

The SUD will be established by first disclosure in the UK or another qualifying country. First disclosure in the EU will not establish a SUD right. It could destroy the novelty of the design should you later seek to

establish UK unregistered rights.

Business will need to consider carefully where to disclose their products to ensure they have adequate protection in their most important market.

More information is available in our [business guidance](#).

Patents

You can apply for a European patent through us or direct to the European Patent Office (EPO) to protect your patent in more than 30 countries in Europe, using the (non-EU) European Patent Convention (EPC).

As the EPO is not an EU agency, leaving the EU does not affect the current European patent system. Existing European patents covering the UK are also unaffected.

European patent attorneys based in the UK continue to be able to represent applicants before the EPO. See the notice on the EPO website [news story](#) for further information.

Supplementary Protection Certificates (SPCs)

SPCs are granted as national rather than EU-wide rights.

It was not necessary for the UK and the EU to agree the creation of a comparable right to ensure continued protection of existing SPCs in the UK at the end of the transition period.

The Withdrawal Agreement ensures that SPC applications which are pending at the end of the transition period will be examined under the current framework.

Any SPC which is granted based on those applications will provide the same protection as existing SPCs.

You will continue to apply for an SPC by submitting an application to the Intellectual Property Office.

Changes affecting SPCs due to the Northern Ireland Protocol

Due to regulatory changes for marketing authorisations there are some changes to the SPC application process which will come into effect from 1 January.

You will need to check whether your marketing authorisation is valid for the whole of the UK, or just Northern Ireland or Great Britain.

An application for an SPC must still be filed with the IPO within six months of your first authorisation.

Please check the [business guidance](#) to ensure you are submitting the correct forms and accompanying documentation.

Parallel trade between the UK and the EEA

The IP rights in goods placed on the UK market by, or with the consent of the right holder after the transition period may no longer be considered exhausted in the EEA.

This means that businesses parallel exporting these IP-protected goods from the UK to the EEA might need the right holder's consent.

The IP rights in goods placed on the EEA market by, or with the consent of the right holder after the transition period will continue to be considered exhausted in the UK.

This means that parallel imports into the UK from the EEA will be unaffected.

The UK government is currently considering what the UK's future IP exhaustion regime should be. The government ran a consultation for 12 weeks from June to August 2021 and is now carefully considering consultation responses. Once the analysis of consultation responses is complete, the government will make a decision and choose the option which best serves the UK economy, the UK public and the UK as a whole. We are aware that many businesses and consumers are interested on this matter so when that decision is made, we will work as quickly as possible to make an announcement.

Actions for parallel exporters of IP-protected goods to the EEA

Check whether you currently export legitimate, IP-protected goods to the EEA. These could be goods branded with a trade mark that have already been placed on the UK market.

The rights holder's permission to export those goods may not currently be required.

You may need to contact the rights holder to get permission to continue exporting these goods after 1 January 2021.

The IP rights holder may not provide permission for their IP-protected goods to be parallel exported to the EEA.

You may need to review your business arrangements, business model or supply chain based on the outcome of the discussion with the IP rights holder.

Actions for IP rights holders

Businesses that own IP rights (trade marks, patents, designs or copyright) may wish to seek legal advice if their IP-protected goods are parallel exported from the UK to the EEA.

You will need to consider if you want to allow parallel exports of your IP-protected goods from the UK to the EEA after 1 January 2021.

More information is available in our [business guidance](#).

Copyright

Most UK copyright works (such as books, films and music) will still be protected in the EU and the UK. This is because of the UK's continued participation in the international treaties on copyright.

For the same reason, EU copyright works will continue to be protected in the UK. This applies to works made before and after 1 January 2021.

However, certain cross-border copyright arrangements that are unique to EU member states no longer apply to the UK.

These include cross-border portability of online content services, copyright clearance for satellite broadcasts, reciprocal protection for database rights and the orphan works exception.

The effect of this change on UK copyright works and related services may vary and will depend on domestic legislation in each EU state as well as private contractual relationships.

More information is available in our [business guidance](#).

Geographical Indications

A geographical indication is an IP right used on products that have a specific geographical origin. They possess qualities or a reputation due to that origin, such as Scotch Whisky or Stilton cheese.

The Department for Environment, Food and Rural Affairs (Defra) leads on agricultural and food Geographical Indications (GIs) in the UK. They have [published guidance](#), including on the new UK GI schemes which will come into force on 1 January 2021.

The IPO has worked with Defra to ensure the new schemes are compatible with the wider IP framework. This will ensure the existing relationship between trade marks and GIs is maintained. More information is available in our [business guidance](#).

Protecting intellectual property rights at the UK border

The way in which businesses protect their IP rights at the UK border will change once the Transition Period ends on 31 December 2020. From this date all UK protection within the EU will cease to be recognised.

This means that:

- businesses that want to protect their IP rights in the EU and in the UK will need to hold two Applications for Action (AFA) – one in the EU and one in the UK
- businesses that made an application to the UK for IP rights protection in EU countries will need to check the [EU EUROPA website](#) for guidance on protecting IP rights in one or more EU member states
- if a business made an application in another EU country for IP

protection in the UK before the end of the transition period, they need to make a new UK AFA application to continue to protect their IP rights at the UK border

- HMRC have introduced a new application process to protect IP rights at the UK's borders. Businesses will need to complete the new [UK AFA form](#) which is available on GOV.UK
- the UK government will recognise existing applications for IP protection in the UK where an application was made in the UK and handled by HM Revenue & Customs (HMRC) Intellectual Property Approvals. These applications will be stored on a UK register at the end of the Transition Period. Businesses can continue to seek enforcement in the UK until their AFA expires and there is no requirement to re-submit a UK application after the transition period

For more information about the changes please refer to our business guidance [Application for Action](#).