EU Exit Business Readiness Forum: Focus on Employing EU Citizens and Intellectual Property

Thursday 21 February
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How things work today

Freedom of Movement (no visa restrictions for EU citizens) vs. Non-EU/EEA migration system

EU citizens and their family members can move, live and work within the EU without applying for permission

Non-EU nationals need permission to enter, work and study in the UK

Sources: EU citizens' rights and Brexit - Available here; The UK's future skills-based immigration system - Available here
Employing EU citizens: What is changing

30th March 2019

In a no deal scenario, there will be changes on 30 March 2019

EU Citizens already in the UK will be able to apply to the EU Settlement Scheme to continue living, working and studying in the UK

From 30 March 2019 in a no deal scenario, newly arriving EU/EEA/Swiss citizens will still be able to enter the UK to visit, work and study for up to 3 months, without requiring a visa

Newly arriving EU/EEA/Swiss citizens will need to apply for Temporary Leave to Remain (from within the UK), if they wish to stay, work and study in the UK beyond 3 months
EU Citizens can apply for settled/pre-settled status

Eligibility for settled status generally requires 5 years’ continuous residence in the UK

Those with less than 5 years’ continuous residence will be eligible for pre-settled status

Test phase currently open - scheme fully open by 30 March 2019; Deadline for application is 31 December 2020 in no deal

The Scheme will be free when its fully live, but currently there is a £65 for adults & £32.50 for under 16s during the pilot stage. These costs will be refunded

Sources: Settled and pre-settled status for EU citizens and their families - Available [here](#); Apply to stay in the UK after it leaves the EU - Available [here](#)
Newly arrived EU citizens will be able to apply for European Temporary Leave to Remain

This will enable EU/EEA/Swiss citizens to remain in the UK for an additional 36 months after their initial 3 month visa-free stay. They must apply from within the UK.

European Temporary Leave to Remain is not extendable and will not guarantee a route to settlement in the UK.

EU citizens who want to stay in the UK beyond 36 months will need to make an application to, and qualify under, the new skills-based immigration system, which will begin from 2021.

In a deal or no deal scenario, employers will continue to conduct the same right to work checks they do currently, until 2021.

Sources: Settled and pre-settled status for EU citizens and their families - Available here; Apply to stay in the UK after it leaves the EU - Available here; European Temporary Leave to Remain - Available here
Further advice and guidance on action to take

**Source of material in this section**

- EU Settlement Scheme for EU citizens and their families - [here](#)
- EU citizens' rights and Brexit - [here](#)
- European Temporary Leave to Remain - [here](#)

**Additional information beyond this presentation**

- There may be other issues not addressed in this material
- In some areas, further information will be made available on GOV.UK
- Please visit [gov.uk/euexit](http://gov.uk/euexit) for the latest information
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2 Intellectual Property
Five topics on Intellectual Property

- Copyright
- Trade marks and registered designs
- Unregistered Community designs
- Patents
- Exhaustion
Copyright: How things work today

Copyright protects original artistic, musical, literary, and dramatic works, as well as sound recordings, broadcasts, films, and typographical arrangements.

UK membership of international agreements on copyright ensure reciprocal protection for signatory countries.

EU Directives on copyright go beyond these international treaties to further harmonise copyright law within the EU and remove barriers to cross-border access to copyright content.
Copyright: what is staying the same

UK and EU copyright works will still receive reciprocal protection
UK and EU copyright works will continue to receive reciprocal protection

- The UK will continue to be a member of international copyright treaties and agreements.

- Reciprocal protection of UK and EU copyright works (e.g. books, films and music) will not change after EU Exit because it is underpinned by international treaties.

- Both new and existing UK copyright works will continue to be protected internationally following EU Exit.
Copyright: what could change

Some reciprocal cross-border copyright mechanisms will change.
Some reciprocal cross-border copyright mechanisms between the EU and UK will change or cease

The following cross-border copyright mechanisms will no longer be reciprocated:

- UK-EU portability of online streaming or rental services
- Mutual recognition of sui generis database rights
- The country-of-origin rule for copyright clearance in satellite broadcasts
- The EU-wide copyright exception for orphan works

Cross-border exchange of accessible format copies of copyright works between the UK and Marrakesh Treaty countries may pause until the UK independently ratifies the Treaty.
Five topics on Intellectual Property

- Copyright
- Trade marks and registered designs
- Unregistered Community designs
- Patents
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Trade marks and designs: How things work today

- Businesses can register trade marks and designs in national, EU or international systems (Madrid and Hague systems).

- UK membership of EU means EU trade marks (EUTMs) and Registered Community Designs (RCDs) are currently valid and enforceable in UK.

- International trade marks (Madrid system) and international registered designs (Hague system) are valid in multiple territories, including UK and EU.
Trade marks and designs: what is staying the same

UK-owned EU and international trade marks and registered designs will still be valid in the EU

UK business can still protect new trade marks and designs in the EU through the EU and international systems
Existing international and EU rights owned by UK right holders will continue to be valid in the EU

Existing registered EUTMs and EU RCDs will continue to be valid in EU member states

The Madrid and Hague systems allow members to protect rights in multiple territories including the EU, with one application and fee

The UK will continue to have access to the Madrid and Hague systems following EU Exit
For new rights, UK businesses will continue to be able to use EU and international systems for protection in the EU and internationally.

After the UK leaves the EU, UK businesses will continue to be able to apply for EU trade marks and Registered Community Designs for protection in the EU.

UK businesses will also continue to have access to the Madrid and Hague systems when looking to protect their trade marks and registered designs internationally (incl. UK).
Trade marks and registered designs: what will change?

Existing EUTMs and EU RCDs will receive new, equivalent UK rights

New and pending EU applications will need to file separately with the UK IPO
Existing EUTMs and EU RCDs will receive new, equivalent UK rights for continued UK protection

Existing registered EUTMs and EU RCDs will receive an equivalent trade mark or design registered in the UK

These equivalent UK trade marks and designs will come into force on exit day

These equivalent UK trade marks and designs will be subject to UK law, regulation and renewal fees (where applicable) going forward
New and pending EU applications following EU Exit will need to be filed separately with the UK IPO.

The UK will temporarily recognise filing dates and claims to earlier priority on currently ongoing EU applications for up to 9 months.

Rights holders refiling applications in the UK will need to comply with UK application fees.
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Unregistered Community Designs: How things work today:

- Unregistered Community designs are IP rights governed by EU regulation in the UK and EU.
- Unregistered designs receive three years of protection in the UK and EU after disclosure.
- Separate UK design rights protect product shape and configuration for up to 15 years in the UK.
Unregistered Community Designs: what is staying the same?

Existing design rights will still be protected in the UK and EU

New designs disclosed in the UK after EU Exit will still be protected under current terms in the UK
System for protecting unregistered designs remains unchanged in the UK and EU

Existing unregistered Community designs in the EU will still be protected in the EU 27 states

Existing unregistered Community designs in the UK will continue to be protected for their duration with an equivalent right

No additional actions are required by right holders to ensure continuity of UK protection
New designs disclosed in the UK after EU Exit will be protected under terms similar to the current system.

- The UK will create a new supplementary unregistered design right.
- The supplementary unregistered design right will mirror the current unregistered Community design system.
- Designs disclosed in the UK after EU Exit will still be protected in the UK under this system.
Majority of UK patent law is set by the European Patent Convention, independent from EU law.

European patent attorneys based in the UK can represent applicants before the EPO. The UK remains a member of the EPO.

EU law provides additional patent protection for pharmaceutical products and agro-chemicals via Supplementary Protection Certificates (SPCs).
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Patents: what is staying the same

European patents will still be granted covering UK, EU MS and beyond

UK attorneys still able to represent at EPO

UK will retain EU legislation in UK law
European patents will still be available in EU MS and UK as part of the European Patent Convention (EPC)

- Current European patent system is governed by the non-EU European Patent Convention

- EU Exit will not affect the current European patent system and UK membership thereof

- UK businesses can still apply to the European Patent Office; existing patents unaffected

- Existing patents in the UK will remain in force automatically after EU Exit; no action required
The UK will retain EU legislation in equivalent UK law and UK patent regime

- EU legislation on patents and SPCs will be retained and supported under UK law
- Existing patent systems, conditions and requirements will remain in place in the UK
- The UK’s Supplementary Protection Certificate regime will continue, under the retained EU laws
- Existing UK Supplementary Protection Certificates will continue to be valid in the UK
Supplementary Protection Certificates

While the UK remains a full member of the EU, businesses can continue to apply for and be granted Supplementary Protection Certificates (SPCs) for patented pharmaceutical and plant protection products using the current SPC system. Existing UK SPCs granted under that system continue to be valid.

Once the UK leaves the EU, UK businesses will still be able to apply for SPCs in all remaining EU Member States under the existing system. And they will be able to apply for a UK SPC under the retained EU laws.
The Unified Patent Court (UPC) and Unitary Patent

If the UPC is not ratified by Germany, no changes are required for UK or EU businesses after EU Exit.

The UK will explore staying in the Unified Patent Court and Unitary Patent system but may need to withdraw.

If the UK needs to withdraw, businesses will not be able to use the UPC or Unitary Patents to protect rights in the UK.

If the UK needs to withdraw, UK businesses would be able to use the UPC and Unitary Patents in relation to the remaining contracting EU states.
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Exhaustion: How things work today

- IP framework allows rights holders the exclusive right to control distribution of an IP-protected product.

- The exhaustion of IP rights refers to the loss of the right to control the distribution and resale of a product once it has been placed on the market in a specific territory by, or with the permission of, the rights holder.

- The UK is currently part of a regional EEA exhaustion regime
Businesses may need additional rights holder approval to export goods from the UK to the EEA

Goods already put on the market before exit will remain exhausted.

In the short term, IP rights in parallel imports from the EEA into the UK will be exhausted in the UK pending further analysis and consultation.

Businesses wishing to continue to parallel export goods from the UK to the EEA will need to check with owners of rights in the EEA.
Further information

Source of material in this section

IPO factsheet on IP and Brexit - Available here

Patents if there's no Brexit deal - Available here

Trade marks and designs if there's no Brexit deal - Available here

Exhaustion of intellectual property rights if there's no Brexit deal - Available here

Changes to copyright law in the event of no deal - Available here

Copyright if there's no Brexit deal - Available here

Business guidance will be published shortly.

European Commission notice to holders of and applicants for European Union trade marks - Available here

Additional information beyond this presentation

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If you have questions about the EU Exit Business Readiness forum, please contact sed@beis.gov.uk