

Brexit & Designs:

Our handy guide in the event of a “no-deal” Brexit and how we can help

We know that extended Brexit debate and negotiations can be unsettling for our UK and international clients and colleagues and we have produced this handy guide to reassure you of the facts.

Non-UK agents can contact john.austin-brooks@abelimray.com to request a Word version of this guide to use with their client communications

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Existing rights

What you have	What you want	What to know and how we can help
<p>We have an existing Registered European Community Design (“RCD”)</p>	<p>Not to lose our rights in the UK</p>	<p>Do not worry as the UK will unilaterally create new UK registrations with exactly the same details, including the same filing date and, where appropriate, the same international priority date. Your RCD will continue to be protected in the remaining 27 Member States of the EU (“EU27”).</p> <p>The number of the new UK design registrations derived from RCDs will be as follows:</p> <p>The 13-digit RCD number prefixed with the digit 9. E.g. RCD No. 004048098-0004 will become 90040480980004</p>
<p>We have an existing UK Design registration</p>	<p>Not to lose our rights in the UK</p>	<p>Do not worry as Brexit will not affect UK designs.</p>
<p>We have an existing EU designation under an International Design Registration filed under the Hague system</p>	<p>Not to lose our rights in the UK</p>	<p>Do not worry as the UKIPO will create national UK registrations (not new UK designations) corresponding to EU designations under Hague.</p> <p>The number of the new UK design registrations derived from EU designations under Hague will be as follows:</p> <p>The full IR (EU) design prefixed with the digit 8. E.g. Hague Registration No. DM/069 640 (the first design of which is recorded at the EUIPO as D069640-0001) will become 806964000010000 in the UK.</p>

<p>We have an existing UK designation under an International Design Registration filed under the Hague system</p>	<p>Not to lose our rights in the UK</p>	<p>Do not worry as these rights will remain in place and are not affected by Brexit.</p>
<p>An RCD registration which is due for renewal after Brexit</p>	<p>To know whether I will have to renew the new UK registration separately.</p>	<p>Yes, it will be necessary to pay the renewal fee for the new UK registration which is due for renewal after Brexit even if you have paid the EU renewal fee for the RCD before Brexit. The UK has said that it will not charge any additional “late” fee in the first six months after Brexit for the renewal of any new UK registration.</p>
<p>An RCD registration which was due for renewal before Brexit but where we have not paid the renewal fee</p>	<p>To know whether paying the renewal fee and the official surcharge for late payment to the EUIPO will effectively renew the new UK registration</p>	<p>Yes, once the corresponding RCD registration has been renewed, that will automatically renew the new UK design registration.</p>

Pending applications

What you have	What you want	What to know and how we can help
<p>We have a recently-filed RCD application which is unlikely to reach registration before Brexit</p>	<p>We want to register our design in the UK and preferably with rights back to the filing date of the RCD application</p>	<p>Do not worry. You have time to plan.</p> <p>Whenever Brexit takes place, you will have a nine-month period following Brexit to file a new UK application with exactly the same details as the corresponding RCD application. The new UK Application will have the same filing date and, where appropriate, the same international priority date.</p> <p>The UKIPO will not remind you so you need to ensure that you take action before the end of the nine-month period.</p> <p>For designs where we are the responsible Attorneys for the EU application we will contact you with further details.</p>
<p>An RCD Registration filed with a request for deferred publication that will not be published until after Brexit.</p>	<p>To register the design in the UK, keep the filing date of the RCD Registration, and continue to defer publication.</p>	<p>Do not worry. You have time to plan.</p> <p>Whenever Brexit takes place, you will have a nine-month period following Brexit to file a new UK Application with exactly the same details as the corresponding, unpublished RCD Registration. The new UK Application will have the same filing date and, where appropriate, the same international priority date.</p> <p>The UKIPO will not remind you so you need to ensure that you take action before the end of the nine-month period.</p> <p>It will be possible to continue to defer publication for a maximum of 12 months following the date that the new UK application is filed, or until the end of the RCD Application deferment period if that expires earlier. It will not be necessary to</p>

		<p>request early publication of the RCD Registration, which will continue as normal for the EU27.</p> <p>For designs where we are the responsible Attorneys for the EU Registration, we will contact you with further details.</p>
<p>An International Design Registration designating the EU filed under the Hague system that has been published but will not be issued a Statement of Grant of Protection in the EU before Brexit.</p>	<p>To register the design in the UK and keep the filing date of the International Design Registration.</p>	<p>Do not worry. You have time to plan.</p> <p>Whenever Brexit takes place, you will have a nine-month period following Brexit to file a new UK Application with exactly the same details as the corresponding International Design Registration. The new UK Application will have the same filing date and, where appropriate, the same international priority date.</p> <p>The UKIPO will not remind you so you need to ensure that you take action before the end of the nine-month period.</p> <p>For designs where we are the responsible Attorneys for the International Design Registration, we will contact you with further details.</p>
<p>An International Design Application designating the EU filed under the Hague system with a request for deferred publication that will not be published until after Brexit.</p>	<p>To register the design in the UK, keep the filing date of the International Design Application, and continue to defer publication.</p>	<p>Do not worry. You have time to plan.</p> <p>Whenever Brexit takes place, you will have a nine-month period following Brexit to file a new UK Application with exactly the same details as the corresponding International Design Registration. The new UK Application will have the same filing date and, where appropriate, the same international priority date.</p> <p>The UKIPO will not remind you so you need to ensure that you take action before the end of the nine-month period.</p>

		<p>It will be possible to continue to defer publication for a maximum of 12 months following the date that the new UK Application is filed, or until the end of the International Application deferment period if that expires earlier. It will not be necessary to request early publication of the International Application, and the EU designation will continue as normal for the EU27.</p> <p>For designs where we are the responsible Attorneys for the International Application, we will contact you with further details.</p>
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Unregistered design rights

What you have	What you want	What to know and how we can help
We own an unregistered design right in the EU	To know what will happen	<p>The UK has confirmed that all unregistered Community designs which exist as of the date of Brexit will continue to be protected in the UK for the remaining period of protection of the right. Such designs will continue to be protected in the EU27 under the EU Design Regulation.</p> <p>Moreover, the UK will create a new unregistered design right in the UK which will mirror the unregistered Community design right so that designs disclosed in the UK after Brexit will be protected.</p>
We have a new design we are planning to disclose after Brexit.	How best to protect it	By far the best way of protecting the design is to register it. Please discuss with us design registration at the UKIPO and the EUIPO where we will continue to be able to represent clients directly.

		<p>If the design is not registered, what unregistered design protection you achieve, if any, will depend in part on where the design is disclosed. If it is disclosed first in the UK, it is likely that it will not receive unregistered design protection in the EU.</p> <p>Some companies are considering whether to try to disclose a design simultaneously by live-streaming an event in the UK and in one of the EU countries. Please let us know if you wish to discuss this possibility with us, although our advice remains that it is preferable to register your designs rather than seek to rely on unregistered rights.</p>
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How we can help

Our team of experienced patent and trade mark attorneys, includes members who are European and Chartered UK patent attorneys, European and Chartered UK trade mark attorneys and registered trade mark agents in Ireland. We work with and protect the intellectual property for numerous organisations and brands around the world.

Please contact brexit@abelimray.com to start a conversation to understand your requirements.