# The UK’s future regime for the exhaustion of IP rights Consultation Response Form

After you have read the consultation document, please consider the questions below. There is no expectation or requirement that all questions are completed. You are welcome to only answer the questions that are relevant to you, your business or organisation.

There are two sections on this form:

1. Questions arising from this consultation
2. Information about you, your business or organisation

When you are ready to submit your response, please email this form and any other supporting documentation to IPExhaustion@ipo.gov.uk.

The closing date for responses is at 23:45 on 31 August 2021.

**SECTION A**

*Parallel trade to and from the UK*

Q1: Is there parallel trade*[[1]](#footnote-2)* in your sector?

Q1a: If so, how do parallel imports from the EEA impact on your organisation in terms of (a) choice, (b) availability of supply and (c) competition in your marketplace?

Q2: If you are able to, please provide the current volume or value of total imports to your organisation in the UK. If possible, please estimate the percentage of the total imports accounted for by parallel imports?

Q3: In your business, how do you exert control over supply chains?

Q4: For your business or organisation, how do right holders become aware and seek to stop their products being parallel imported from outside the EEA without permission?

*Prices*

Q5: Are there international price differentials for goods in your sector? If yes, what are the factors that influence differences in prices between countries?

*UK’s current exhaustion regime*

Q6: Are you or your business/organisation aware of the change to the UK’s exhaustion regime that came into effect on 1 January 2021 following the end of the transition period?

Q7: What are the costs and benefits of the current regime to your organisation? For example, in terms of choice and availability of suppliers, prices paid and regulatory standards.

Q8: If possible, please provide examples if your business:

1. has prohibited or has considered prohibiting parallel exports or
2. has been prevented from parallel exporting from the UK to the EEA since 1 January 2021.

*Assessment of options for the UK’s future exhaustion regime*

The government is assessing other regimes compared to the current UK+ regime (option 1): (2) national regime, (3) international regime, or (4) a mixed regime.[[2]](#footnote-3)

Q9: If the government was able to change from the current unilateral regional regime (UK+ regime), would your business or organisation prefer a model which either allowed parallel imports from anywhere in the world (without the rights holder’s permission)[[3]](#footnote-4) or prohibited parallel imports into the UK (unless the rights holder’s permission is obtained)[[4]](#footnote-5)? Please outline the regime your business or organisation would prefer and explain the benefits, costs of change and risks of that change.

Q10: Of the 4 options that the government is assessing, which exhaustion regime would you be most opposed to for your business or organisation? Please explain the reasons and set out the costs to your business or organisation and risks of that change.

Q11: Is there clear and verifiable evidence in favour of different treatment for specific sectors, goods or IP rights to the UK economy?

Q12: What new activities would your business have to undertake if the government changed the current exhaustion regime? What would be the costs and benefits of such activities?

*Overall impact on consumers, society and the economy*

Q13: Please outline any other issues that the government should consider when deciding on what exhaustion regime to implement, including economic, trade, consumer or societal impacts.

*Implementation of any change*

Q14: If the government were to change its exhaustion regime, what factors would affect the amount of time your business or organisation would need to implement a change? This may include but is not limited to changes to supply chains, contracts, product development, manufacturing processes or investment decisions. Please provide information to support your comments.

Q15: If the government were to change its exhaustion regime, what length of time would your business or organisation need to implement the change (for example, 1 year or 3 years)? Please provide information to support your answer.

*Legal*

Q16: Do you have any views on the government’s assessment[[5]](#footnote-6) of UK legislation and international treaties that are relevant to the UK’s choice and implementation of an exhaustion regime?

Q17: Do you have any views on the government’s assessment[[6]](#footnote-7) that the Northern Ireland Protocol will mean that the regime ultimately selected by the UK government will need to allow parallel imports into Northern Ireland from the Republic of Ireland and other EEA countries?

**SECTION B: Respondent information**

Q1: Please give your name (name of individual, business or organisation).

Q2: Are you responding as an individual, business or on behalf of an organisation?

1. Business – please provide the name of your business
2. Organisation – please provide the name of the organisation that you are responding on behalf of
3. Individual – please provide your name

Q2a: If you are a responding on behalf of an organisation, please tell us the name of the group and give a summary of the people that you represent.

Q3: If you are an individual, which of the following statements best describes you?

1. Academic
2. Employer/employed in the private sector
3. General public
4. Law professional
5. Professional in another sector
6. Public sector official
7. Other – please specify:

Q4: If you are responding on behalf of your business or organisation, which of the following statements best describes your business or organisation? Please select all that apply

1. Academic institution
2. Distributor of goods
3. Distributor of licensed goods
4. IP rights holder
5. Manufacturer reliant on IP-protected goods
6. Retailer
7. Trade body representing ‘IP rights holders’
8. Other – please specify:

Q5: If you are responding on behalf of a business or organisation, which of the following best describes your organisation?

1. UK only based organisation (if so, please specify whether your organisation’s head office is based in England, Scotland, Wales or Northern Ireland).
2. Multinational organisation based in the UK (if so, please specify whether your organisation’s head office is based in England, Scotland, Wales or Northern Ireland).
3. Multinational organisation based in an EEA country outside of the UK, which operates in the UK (if so, please specify the country your organisation’s head office is based in).
4. Multinational organisation based in a non-EEA country outside of the UK, which operates in the UK (if so, please specify the country your organisation’s head office is based in).
5. Other (please specify).

Q6: If your business or organisation trades in IP protected goods, which one of the following best describes the destination of IP goods?

1. Trade with EEA countries only
2. Trade with non-EEA countries only
3. Trade with both EEA and non-EEA countries

Q7: If your business or organisation trades in IP-protected goods, which one of the following best describes your organisation’s trade?

1. Importer of IP-protected goods
2. Exporter of IP-protected goods
3. Importer and exporter of IP-protected goods (both finished goods and transformed goods)

Q8: Which one of the following best describes the sector of your business or organisation?

1. Agriculture, forestry & fishing
2. Automotive or Aerospace
3. Business administration
4. Civil society
5. Construction
6. Creative industries
7. Distribution
8. Education / Academia
9. Finance
10. Food and drink
11. Health (human or animal)
12. Information technology
13. Production/ Manufacturing
14. Public administration & defence
15. Retail
16. Transport & Storage
17. Wholesale
18. Other – please specify

Q9: How many people work for your business or organisation across the UK as a whole? Please estimate if you are unsure.

1. Fewer than 10 people
2. 10–49
3. 50–249
4. 250–999
5. 1,000 or more

Q10: The Intellectual Property Office may wish to contact you to discuss your response. Would you be happy to be contacted to discuss your response?

Q11: If you are happy to be contacted by the Intellectual Property Office, please provide a contact email address.

Q12: Would you like an acknowledgement of receipt of your response? Yes/No

# Data table

In addition to the questions in this consultation, the government currently holds some of the information listed in this table but would welcome further information on these topics if it is available. If you are providing information in relation to this table, please mark any information to correspond to the numbered section as below and include attachments with your response form in your email to IPExhaustion@ipo.gov.uk.

|  |  |
| --- | --- |
|  | **THE ECONOMY**  |
| i | Openness of UK economy to trade and the extent of trade in IP-protected products.  |
| ii | Value of the IP-protected sector in the UK economy.  |
| iii | Value and scale of parallel trade to the UK economy (including parties involved in parallel trade and effects on those parties). |
| iv | Prevalence of parallel importation in the UK economy (including number of affected businesses and number of jobs).  |
|  | **CONSUMERS** |
| v | Current welfare impacts on consumers from parallel importation: price, availability of choice, quantity and quality consumed.  |
| vi | Opportunities for arbitrage based on UK consumer price levels in relation to the rest of the world.  |
| vii | Potential impact on consumers following a change in the UK’s exhaustion regime: change in price, availability of choice, quantity and quality consumed.  |
|  | **BUSINESSES THAT RELY ON PARALLEL IMPORTS** |
| viii | Transition activities and associated costs of moving to a new exhaustion regime, e.g. legal fees.  |
|  | **PRACTICES BY RIGHTS HOLDERS** |
| ix | Management of first sale of goods by rights holder (or licensee): information on supply controls or sale through wholesalers.  |
| x | Costs of current controls on distribution channels (e.g. monitoring and legal enforcement costs).  |
|  | **INTERNATIONAL COMPARISONS** |
| xi | Evidence on impact in countries which changed exhaustion regimes (for example, change in the US on textbooks, change in copyright in Australia and New Zealand and change on pharmaceuticals in Switzerland).  |

1. The government defines parallel goods as goods that are lawfully manufactured by the rights holder or under licence and are lawfully first placed on the market then moved across territorial borders. [↑](#footnote-ref-2)
2. Please see ‘Options for the UK’s future exhaustion regime’ section in the consultation document for descriptions of the different regimes. [↑](#footnote-ref-3)
3. That is, an international regime. [↑](#footnote-ref-4)
4. That is, a national regime. [↑](#footnote-ref-5)
5. Please see ‘Current legislation and treaties’ section in the consultation document outlining the relevant legislation and treaties. [↑](#footnote-ref-6)
6. The government considers that the Northern Ireland Protocol preserves the position of allowing parallel goods to travel into Northern Ireland from the Republic of Ireland and any other EU member state. [↑](#footnote-ref-7)