

1999 No. 1601

CUSTOMS AND EXCISE

**The Goods Infringing Intellectual Property Rights (Customs)
Regulations 1999**

<i>Made - - - -</i>	<i>9th June 1999</i>
<i>Laid before Parliament</i>	<i>10th June 1999</i>
<i>Coming into force</i>	<i>1st July 1999</i>

The Commissioners of Customs and Excise, being a Department designated **(a)** for the purposes of section 2(2) of the European Communities Act 1972 **(b)** in relation to measures relating to counterfeit and pirated goods, goods infringing a patent and goods infringing a supplementary protection certificate, in exercise of the powers conferred upon them by the said section 2(2) and of all other powers enabling them in that behalf, hereby make the following Regulations:

1. These Regulations may be cited as the Goods Infringing Intellectual Property Rights (Customs) Regulations 1999 and shall come into force on 1st July 1999.

2. In these Regulations—

“application” means an application under Article 3(1) of the Council Regulation, and “applicant” shall be construed accordingly;

“business day” has the meaning given in section 92 of the Bills of Exchange Act 1882 **(c)**;

“the Commissioners” means the Commissioners of Customs and Excise;

“Community trademark” means a trade mark as defined in Council Regulation (EC) No. 40/94 **(d)**;

“the Council Regulation” means Council Regulation (EC) No. 3295/94 **(e)**, as amended by Council Regulation (EC) No. 241/1999 **(f)**, laying down measures concerning the entry into the Community and the export and re-export from the Community of goods infringing certain intellectual property rights;

“decision” means a decision granting an application in accordance with Article 3(5) of the Council Regulation;

“goods infringing an intellectual property right” has the meaning given by Article 1(2)(a) of the Council Regulation (counterfeit goods, pirated goods and goods infringing a patent or supplementary protection certificate), and “intellectual property right” shall be construed accordingly.

(a) S.I. 1995/751 (in relation to counterfeit and pirated goods) and S.I. 1999/654 (in relation to goods infringing a patent and goods infringing a supplementary protection certificate).

(b) 1972 c. 68.

(c) 1882 c. 61 (45 & 46 Vict); section 92 was amended by sections 3 and 4 of the Banking and Financial Dealings Act 1971 (c. 80).

(d) OJ No. L011, 4.1.1994, p. 1.

(e) OJ No. L341, 30.12.94, p. 8.

(f) OJ No. L271, 2.2.99, p. 1.

3. Except where it specifies a Community trademark which the applicant holds or is authorised to use and seeks action by the customs authorities of another member State, an application made to the Commissioners shall be in the form set out in the Schedule to these Regulations, or a form to the like effect approved by the Commissioners, containing full particulars of the matters specified therein.

4.—(1) The applicant shall give to the Commissioners such security or further security, within such time and in such manner, whether by deposit of a sum of money or guarantee, as the Commissioners may require, against the matters mentioned in paragraph (2) below.

(2) The matters against which security or further security shall be given are all actions, proceedings, claims and demands whatsoever which may be taken or made against, or costs and expenses which may be incurred by, the Commissioners in consequence of the detention of, or anything done in relation to, any goods to which the application or decision relates.

5. In every case, whether any security or further security is given or not, the applicant shall keep the Commissioners indemnified against all such liability and expense as is mentioned in regulation 4(2) above and in particular shall repay to them all expense which may be incurred by them in consequence of the detention of, or anything done in relation to, any goods to which the application or decision relates.

6.—(1) Where a decision is given, the applicant shall pay the Commissioners a fee of the relevant amount in relation to each of the following—

- (a) the period specified in the decision; and
- (b) any period by which that period is extended.

(2) The fee mentioned in paragraph (1) above shall be payable notwithstanding that the application is not made to the Commissioners but—

- (a) the application specifies a Community trademark which the applicant holds or is authorised to use;
- (b) the application has been made to the customs authorities of another member State;
- (c) the application seeks action by the Commissioners; and
- (d) a decision granting the application has been forwarded to the Commissioners in accordance with Article 5(2) of the Council Regulation.

(3) For the purposes of this regulation the relevant amount is—

- (a) for a period not exceeding one month, £200 plus VAT;
- (b) for a period not exceeding three months, £400 plus VAT;
- (c) for a period not exceeding six months, £700 plus VAT;
- (d) for a period not exceeding twelve months, £1,200 plus VAT; or
- (e) for a period of or exceeding twelve months—
 - (i) £1,200 plus VAT for each complete period of twelve months, and
 - (ii) an amount calculated in accordance with sub-paragraphs (a) to (d) above for any additional period.

7. In the event that the Commissioners require the applicant to examine a sample of detained goods which appear to them both to correspond to the description of goods contained in a decision and to be goods infringing an intellectual property right the applicant shall, within 10 business days from the date of the request by the Commissioners, or within such further time, not exceeding 10 business days, as the Commissioners may allow, provide such information as the Commissioners may require in order to be satisfied that the sample is comprised of goods infringing an intellectual property right.

8. A decision shall have no effect or no further effect where—

- (a) the applicant has failed to comply with any of the requirements of these Regulations;

- (b) any change, following the making of the application, which takes place in the ownership or authorised use of the intellectual property right specified in the application, is not communicated in writing to the Commissioners; or
- (c) the intellectual property right specified in the application expires.

9. The Counterfeit and Pirated Goods (Customs) Regulations 1995^(a) are hereby revoked.

New King's Beam House
22, Upper Ground
London SE1 9PJ

9th June 1999

A.R. Rawsthorne
Commissioner of Customs and Excise

^(a) S.I. 1995/1430.

**Intellectual Property Rights: Application Form**

Please read Notice 34 and the Notes below before you complete this form.

NOTES

- 1** You may apply under this scheme if you are the holder or authorised user of a trade mark, copyright, rights in a performance, a design right, a patent or a supplementary protection certificate, or an authorised representative, and you wish Customs to intercept suspected infringing goods.
- 2** If you are the holder of a Community Trade Mark and wish to apply for customs action in the United Kingdom only, you should use this form. If you want action in more than one Member State, you must use Form C1340A.
- 3** The proof which must accompany this application is detailed in paragraph 1.4 of Notice 34.
- 4** There are certain categories of goods against which Customs cannot take action under this scheme. These are listed in paragraph 1.3 of Notice 34.
- 5** If this application is lodged in response to an invitation from a customs officer, you are asked to complete part 4.
- 6** The more intelligence information you can provide, the greater chance Customs will have of intercepting infringing goods.
- 7** Allow at least ten days for consideration and processing of your application, prior to its intended implementation.
- 8** If this application is accepted, you will be required to pay a fee and be legally obliged to indemnify the Commissioners of Customs and Excise against any liability or expense they may incur as a result of any action taken in relation to goods covered by the application and subsequent decision. Further details are set out in paragraphs 1.5, 1.6 and 1.7 of Notice 34.
- 9** If this application is rejected, you will be advised of the reason and given the opportunity to ask for the decision to be reconsidered.
- 10** You may apply to extend the period for which Customs will take action by writing to us at least ten days before the expiry of the current period. You need not duplicate any details already provided unless they require amendment. If your request to amend or extend your application is received after its expiry date we will ask you to complete another copy of this form.
- 11** If there is insufficient space in any of the sections, or you wish to include any further pertinent details, continue on a separate sheet ensuring that the additional information is clearly marked with the relevant paragraph number.
- 12** **The completion of parts 1, 2, 3 and 10 of the application, together with the declaration, is compulsory.** If they are not completed, the application will be returned and consequently delayed.

Part 8 - Details of suspected importers/exporters (where known)		
I have reason to believe that the following persons or companies are involved in the *importation/exportation of infringing goods.		
Name	Address	VAT Number
.....
.....
.....
.....
.....

Part 9 - Details of suspected suppliers (where known)		
I have reason to believe that the following persons or companies are supplying infringing goods to *importers/exporters.		
Name	Address	VAT Number
.....
.....
.....
.....
.....

Part 10 - Details of monitoring period
Date of commencement
Period of monitoring month(s).

DECLARATION

I declare that:

- all the details given in this application are true and accurate to the best of my knowledge and belief,
- I have read and understood Notice 34,
- I will abide by the provisions of all the legal instruments and application conditions mentioned in that Notice.

Signature

Name (print)

Status Date

Please send this form to: HM Customs and Excise
 Enforcement and Trade Restrictions Team
 First Floor Central
 New King's Beam House
 22 Upper Ground
 LONDON SE1 9PJ

**Delete as necessary*

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Counterfeit and Pirated Goods (Customs) Regulations 1995. Those earlier Regulations had made provision consequential upon Council Regulation (EC) No. 3295/94, laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods. That Council Regulation has since been amended by Council Regulation (EC) No. 241/1999, which from 1st July 1999 extends the scope of the prohibitions to goods infringing patents and supplementary protection certificates and to goods under all forms of customs supervision. It also provides a procedure enabling holders of Community trademarks to make a single application for customs intervention in any number of member States.

These Regulations introduce a revised form of application to be completed by the holder or authorised user of the relevant intellectual property right. The Regulations also deal with certain associated aspects of the procedure to be followed by an applicant seeking customs interception of suspected infringing goods, in particular introducing a new scale of fees payable when a decision granting an application has been given.

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