

**EXPLANATORY MEMORANDUM TO**  
**THE GOODS INFRINGING INTELLECTUAL PROPERTY RIGHTS (CUSTOMS)**  
**(AMENDMENT) REGULATIONS 2010**

**2010 No. 324**

**1.** This Explanatory Memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This instrument amends SI 2004 No 1473, the Goods Infringing Intellectual Property Rights (Customs) Regulations 2004 (the 2004 Regulation) to bring it fully into line with Council Regulation 1383/2003 (the Council Regulation).

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

**4. Legislative Context**

4.1 The Council Regulation provides a facility for owners of intellectual property rights to apply to customs administrations for action to help them protect their rights in respect of consignments of goods crossing the European Community's external frontier. Under these arrangements goods suspected of infringing an intellectual property right are detained by the customs authority for a limited period to enable rights holders to take any action they consider necessary to protect their rights.

4.2 Where required, certain procedures set out in the Regulation are given further effect in domestic law in the 2004 Regulations. However, in a recent decision a domestic court found that the time limits set out in the 2004 Regulations did not match those required by the Council Regulation. This instrument therefore modifies the 2004 Regulations to achieve full compliance with the requirements of the Council Regulation. This instrument also gives full effect to Article 11 of the Council Regulation, which provides a simplified procedure for the destruction of goods suspected of infringing an intellectual property right, in certain circumstances.

4.3 The text of the Council Regulation is followed as far as possible to ensure clarity of purpose.

**5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- *What is being done and why*

7.1 This instrument is made in response to a finding by a domestic court that the 2004 Regulations did not correctly give effect to the Council Regulation. This failure concerned the time limits for administering intellectual property rights cases provided in the 2004 Regulations which were found to be inconsistent with the time limit requirements of the Council Regulation. This instrument is required to remedy the incorrect implementation.

7.2 This instrument addresses the issue of time limits under the Council Regulation 1383/2003 by placing the responsibility on the intellectual property rights holder, as envisaged by the Regulation, to take action to pursue their rights within the time limits.

7.3 In addition, this instrument gives full effect in domestic law to the procedure set out in Article 11 of the Council Regulation. Under the ‘simplified procedure’, officers at the border may destroy goods suspected of infringing an intellectual property right at the request of the right-holder either with the agreement of one of the interested parties, or where the interested parties cannot be traced or fail to provide any response when offered the opportunity to agree or object to the abandonment of the goods. Article 11 envisages that, in most cases, permission to abandon will be given by the interested party to the right holder. Therefore, in the absence of a response permission is presumed to have been given to the right holder who should inform the customs authority that it is “presumed to be accepted”.

7.4 Regulation 7(6) specifies that the destruction of goods under the simplified procedure will be at the expense and under the responsibility of the right holder. This wording, which mirrors that in the Council Regulation, places the accountability for the decision to destroy on the right holder.

- *Consolidation*

7.5 There are no plans to consolidate the relevant legislation until Council Regulation 1383/2003 is replaced. The European Commission is expected to make a formal proposal for a replacement Council Regulation during 2010.

## **8. Consultation outcome**

8.1 Formal consultation was not considered necessary as this instrument amends existing UK legislation to make it compatible with the requirements of directly-applicable Community law.

## **9. Guidance**

9.1 Information about changes to intellectual property right enforcement procedures at the border has been disseminated to stakeholders. A replacement Public Notice will be published on the HMRC website, and a Customs Information Paper will be issued to trade members of the Joint Customs Consultation Committee and other interested business representatives, to coincide with the instrument coming into force.

## **10. Impact**

10.1 No regulatory impact on business, charities or voluntary bodies is foreseen.

10.2 The impact on the public sector is negligible. The measure will generate modest savings of legal and administrative staff time.

10.3 An Impact Assessment has not been prepared for this instrument.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 HM Revenue and Customs will continually monitor the practical application of the new Regulations.

## **13. Contact**

Pamela Rogers at HM Revenue and Customs Tel: 0207 147 0318 or e-mail: [pamela.rogers@hmrc.gsi.gov.uk](mailto:pamela.rogers@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.