
STATUTORY INSTRUMENTS

1995 No. 1447

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PERFORMANCESTRIDE MARKS**

**The Counterfeit and Pirated Goods
(Consequential Provisions) Regulations 1995**

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| <i>Made</i> | - - - - | <i>7th June 1995</i> |
| <i>Laid before Parliament</i> | | <i>8th June 1995</i> |
| <i>Coming into force</i> | - - | <i>1st July 1995</i> |

The Secretary of State, being designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽¹⁾ in relation to measures relating to counterfeit and pirated goods, in exercise of powers conferred on him by the said section 2(2), and of all other enabling powers, hereby makes the following Regulations:

1.—(1) These Regulations may be cited as the Counterfeit and Pirated Goods (Consequential Provisions) Regulations 1995 and shall come into force on 1st July 1995.

(2) In these Regulations:

“the Council Regulation” means Council Regulation (EC) No. 3295/94⁽²⁾ laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods;

“application” means an application under Article 3(1) of the Council Regulation;

“counterfeit goods”, “pirated goods” and “holder of a right” have the same meanings as in the Council Regulation;

“offending goods” means counterfeit goods or pirated goods or goods which are to be treated as counterfeit goods or pirated goods by virtue of Article 1(3) of the Council Regulation;

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

(3) For the purposes of the Council Regulation, any reference in it to “copyright, or neighbouring rights” is to be construed as a reference to “copyright, or rights in performances”.

2. Counterfeit and pirated goods which correspond to the description of goods contained in a decision under Article 3(5) of the Council Regulation granting an application shall be liable to

(1) S.I.1995/751.

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(2) O.J. No. L341, 30.12.94, p.8.

forfeiture if an entry thereof for free circulation, export, re-export or for a suspensive procedure is delivered during the period specified in the decision as that during which the Commissioners shall take action.

3.—(1) If, in the course of checks carried out in relation to goods which are entered for free circulation, export, re-export or entry for a suspensive procedure and before an application is lodged in respect of those goods under Article 3(1), or, if lodged, before a decision granting the application is given, it appears evident to the Commissioners that goods are offending goods, the Commissioners may, in accordance with Article 4 of the Council Regulation—

- (a) notify the holder of the right, where known, of the possible infringement of the right; and
- (b) suspend the release of, or detain, those goods; and
- (c) if they do so suspend or detain, invite the holder of the right, in the absence of an existing application, to make an application within three days of the date of suspension or detention.

(2) If at any time during the period of suspension or detention under paragraph (1), an application is granted under Article 3(5) of the Council Regulation in respect of the goods, regulation 2 above shall apply accordingly.

(3) Where no application in respect of the goods is or has been made by the holder of the right within three days of the date of suspension or detention of the goods, the suspension or detention shall cease for the purposes of Article 4 of the Council Regulation.

4.—(1) Section 139 of, and Schedule 3 to, the Customs and Excise Management Act 1979⁽³⁾ (detention, seizure and condemnation of goods) shall apply in respect of any goods liable to forfeiture under regulation 2 above as they apply in respect of goods liable to forfeiture under the customs and excise Acts; and, accordingly—

- (a) section 144 of the said Act (protection of officers, etc., in relation to seizure and detention of goods) shall apply in respect of seizure or detention effected by virtue of this paragraph; and
- (b) sections 145, 146 and 152 to 155 of the said Act (general provisions as to condemnation proceedings) shall apply in respect of condemnation proceedings brought by virtue of this paragraph.

(2) Where in any condemnation proceedings brought by virtue of paragraph (1) above any question arises as to whether or not any goods are or were liable to forfeiture under regulation 2 above, the burden of proof shall lie upon the party alleging that they are not or were not so liable.

5. The Counterfeit Goods (Consequential Provisions) Regulations 1987⁽⁴⁾ are hereby revoked.

Department of Trade and Industry
7th June 1995

Ian Taylor
Parliamentary Under Secretary of State for Trade
and Technology,

⁽³⁾ 1979 c. 2.
⁽⁴⁾ S.I. 1987/1521.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Counterfeit Goods (Consequential Provisions) Regulations 1987 made provision consequential upon Council Regulation (EEC) No. 3842/86 laying down measures to prohibit the release for free circulation of counterfeit goods (O.J. 357, 18.12.86, p.1). That Regulation applied only to counterfeit goods ie. goods bearing infringing trade marks.

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, comes into force on 1st July 1995. It applies both to pirated goods and counterfeit goods as defined in Article 1(2) of the Council Regulation. It also revokes the earlier Council Regulation.

These Regulations make provision consequential upon Council Regulation (EC) No. 3295/94. Counterfeit and pirated goods entered for free circulation, export, re-export or for a suspensive procedure, are rendered liable to suspension, detention and forfeiture; sections 139, 144 – 146 and 152 – 155 of and Schedule 3 to the Customs and Excise Management Act 1979 (detention, seizure and condemnation of goods) are applied and additional provision about burden of proof is made similar to section 154(2)(f) of that Act.

A compliance cost assessment is available, copies of which have been placed in the libraries of both Houses of Parliament. Copies of the assessment are also available from the Intellectual Property Policy Directorate of the Patent Office, Room 3/13, Hazlitt House, 45 Southampton Buildings, London WC2A 1AR.