

EXPLANATORY MEMORANDUM

THE GOODS INFRINGING INTELLECTUAL PROPERTY RIGHTS (CUSTOMS) REGULATIONS 2004 No. 1473

This explanatory memorandum is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

Submitted by HM Customs and Excise.

Description

These Regulations reflect the changes which Council Regulation (EC) No 1383/2003 (“the Council Regulation”) introduces to the European regime for customs action against goods infringing intellectual property rights with effect from 1st July 2004. In doing so, these Regulations revoke and replace four statutory instruments.

Matters of special interest to the Joint Committee on Statutory Instruments

Article 12 of the Council Regulation provides that sanctions may be applied in the event of a misuse of information by a right-holder. This new provision reflects the fact that, under the Council Regulation, the holder of an intellectual property right (“right-holder”) will receive additional information in relation to suspected infringing goods, at an earlier stage than at present. Article 12 invites national implementation. Regulation 11 creates a new power for the Commissioners of Customs and Excise (“the Commissioners”) to impose sanctions in appropriate circumstances.

In the event of a misuse of information the decision (granting the right-holder’s application for action by the customs authorities) may be suspended for the remainder of its period of validity (which cannot exceed one year). This is the sanction envisaged in the second paragraph of Article 12.

If the right-holder has misused information in the previous three years then, in addition to the possible suspension of the decision, the renewal of the decision may be refused for up to one year from the date of its expiry. The Commissioners believe that the three year and one year periods create a dissuasive and proportionate sanction; the relevant periods are not specified in the further sanction envisaged by the third paragraph of Article 12.

Legislative background

These Regulations, made under section 2(2) of the European Communities Act 1972, amend United Kingdom legislation to reflect the updating and extension of the European regime to prevent international trade in goods infringing intellectual property rights.

The principal changes to the European regime effected by the Council Regulation are:

- The extension of the European regime to cover goods infringing a national plant breeders' right, a Community plant variety right, a designation of origin, a geographical indication, or a geographical designation.
- The provision, by the customs authorities to a right-holder, of additional information in relation to suspected infringing goods, at an earlier stage.
- The introduction of sanctions which may be applied if the right-holder misuses the information supplied to him.

The HM Customs and Excise Explanatory Memorandum in relation to the European Commission's proposal for the Council Regulation was considered by the EU Scrutiny Committees in February 2003.

These Regulations are confined to those areas in which national implementation is invited, and those areas where national legislation is required to produce a coherent, workable, national regime.

These Regulations are based upon existing United Kingdom legislation, in particular the Goods Infringing Intellectual Property Rights (Consequential Provisions) Regulations 1999 (S.I. 1999/1618). These Regulations:

- Replace relevant existing legislation, amending that legislation to reflect the updating and extension of the European regime.
- Revoke existing legislation which is rendered otiose by the changes to the European regime.
- Introduce new provisions in relation to the provision of samples to a right-holder (regulation 6), and as to the sanctions applicable in the event of a misuse of information by a right-holder (regulation 11).
- Make consequential amendments to primary legislation (regulations 12 and 13).
- Revoke and replace four statutory instruments (regulation 14 and the Schedule).

Extent

These Regulations apply to the whole of the United Kingdom.

European Convention on Human Rights

These Regulations make consequential amendments to primary legislation. It is the view of the Commissioners that these Regulations are compatible with the Convention Rights.

Policy background

The Council Regulation updates and extends the existing European regime to prevent international trade in goods infringing intellectual property rights, with effect from 1st July 2004.

International trade in goods infringing intellectual property rights is very significant. For example:

- It is estimated that such trade accounts for between 5% and 7 % of all world trade which, in turn, has a direct impact upon investment and employment within the European Community.
- Under the existing European regime, customs authorities seized 50 million counterfeit or pirated articles at the European Community's external borders in the first six months of 2003.

Insofar as is necessary, these Regulations give effect to the Council Regulation by amending United Kingdom legislation to reflect the updating and extension of the European regime.

As referred to above, the impact of trade in goods infringing intellectual property rights is very significant. It is not however an area in which there is a significant level of public interest. In contrast, holders of intellectual property rights, anti-counterfeiting groups and importers are aware of, and have taken an interest in, the changes which have been made to the European regime and in the consequential changes being made to United Kingdom legislation.

The changes made to United Kingdom legislation by these Regulations are not politically or legally important.

Impact

No Regulatory Impact Assessment has been produced because it is not anticipated that these Regulations will have any impact on the costs of business, charities or voluntary bodies. Nor is it anticipated that these Regulations will have an impact upon the Exchequer.

Contact

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