

EXPLANATORY MEMORANDUM TO
THE COMMUNITY TRADE MARK REGULATIONS 2006

2006 No. 1027

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations consolidate the amendments made to the Community Trade Mark Regulations 1996 (SI 1996/1908, as amended by SI 2004/949, 2004/2332 and 2005/440). They also include extra provision to make clear what remedies are available to the Community Trade Mark Court for infringement of a Community Trade Mark.

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

3.1 None.

4. Legislative background

4.1 These Regulations are made under section 52 of the Trade Marks Act 1994.

5. Extent

5.1 This instrument extends to England and Wales, Scotland and Northern Ireland.

6. European Convention on Human Rights

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

7. Policy Background

7.1 The Regulations consolidate the amendments made to the Community Trade Mark Regulations 1996. Further, certain provisions have also been restated to reflect modern drafting practices.

7.2 Article 98(2) of the Community Trade Mark Regulation (EC) Regulation No. 40/1994 (sanctions) provides that the Community Trade Mark court shall apply national law to the acts of infringement (or threatened infringement). It has been assumed that this simply means that the remedies for infringement of a Community Trade Mark are the same as those for infringement of a mark registered under the Trade Marks Act 1994. To put this matter beyond doubt regulation 5 specifies that the same remedies are available for infringement of a Community trade mark as for the infringement of any other property right, and that sections 15 to 19 of the Trade Marks Act 1994 apply to Community trade marks as they apply to marks registered under that Act. However, regulation 5(1) makes it clear that this is without prejudice to the specific duty of the court under Article 98(1) of Regulation No 40/94 (which requires an injunction to be granted “unless there are special reasons for not doing so”).

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared as these Regulations merely provide a consolidation of previous Regulations and set out how certain Community provisions apply in Community Trade Mark Courts. Insofar as they relate to the enforcement of intellectual property right the Assessment provided for the Intellectual Property (Enforcement, etc) Regulations 2006 (SI 2006/1028) will be relevant.

9. Contact

Jeff Watson at the Patent Office: tel: 01633 813650 or e-mail jeff.watson@patent.gsi.gov.uk can answer any questions on the Regulations.