

EXPLANATORY MEMORANDUM TO
THE GOODS INFRINGING INTELLECTUAL PROPERTY RIGHTS (CUSTOMS)
(AMENDMENT) (No. 2) REGULATIONS 2010

2010 No. 992

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 Regulations) to provide the vires that will enable Customs fully to operate a simplified disposal procedure for goods that is permitted under Article 11 of Council Regulation 1383/2003 (the Council Regulation).

2.2 This instrument is necessary because of a drafting omission in the wording of SI 2010 No. 324, the Goods Infringing Intellectual Property Rights (Customs) (Amendment) Regulations 2010 (the 2010 Regulations) that restricts its scope so that it does not fully achieve its intended purpose; specifically, it does not permit the general application of the simplified procedure permitted by the Council Regulation. Also, the opportunity is being taken to remove from the 2004 Regulations two regulations that unnecessarily reproduce provisions in the Council Regulation that are directly applicable together with a number of redundant definitions, and to rectify a minor typographical error in the 2010 Regulations.

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 Council 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. The 2010 Regulations were intended to modify the 2004 Regulations to achieve full compliance with the requirements of the Council Regulation and also to make available a simplified procedure permitted by the Council Regulation. However, a drafting omission in the 2010 Regulations

prevented the full introduction of the simplified procedure as envisaged. This instrument therefore further amends the 2004 Regulations to make the simplified procedure permitted under Article 11 of the Council Regulation (which provides for the destruction of goods suspected of infringing an intellectual property right in certain circumstances) generally available.

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 The 2010 Regulations were 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. The 2010 Regulations were intended to remedy the incorrect implementation in full and, as a consequence, to introduce a simplified procedure contained in the Council Regulation permitting Customs officers at the border, in certain circumstances, to destroy goods suspected of infringing an intellectual property right.

7.2 While the 2010 Regulations did ensure compliance with EC law, a drafting omission means that the circumstances in which the simplified procedure can be applied are limited. This instrument is therefore necessary to give full effect in domestic law to the simplified procedure set out in Article 11 of the Council Regulation so that it can be made generally available.

- *Consolidation*

7.3 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 can answer any queries regarding the instrument.