

**EXPLANATORY MEMORANDUM TO**  
**THE CUSTOMS DISCLOSURE OF INFORMATION AND MISCELLANEOUS**  
**AMENDMENTS REGULATIONS 2012**

**2012 No. 1848**

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by Command of Her Majesty.

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

2. **Purpose of the instrument**

2.1 The main purpose of the instrument is to protect from unauthorised disclosure customs information provided to a market surveillance authority by specified persons listed in the Regulations. The specified persons are the Secretary of State, a general customs official, a customs revenue official, the Commissioners for Her Majesty's Revenue and Customs and an officer of Her Majesty's Revenue and Customs.

2.2 Regulation (EC) No 765/2008 of the European Parliament and of the Council of 9 July 2008 which sets out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93 ("RAMS") (OJ No L128, 13.8.2008 p30). Article 27(2) of Regulation 765/2008 requires bodies in charge of external border controls and market surveillance authorities in a Member State to share information with each other. Regulation 3 of this instrument provides that it is an offence if a recipient of the information discloses it otherwise than for the purposes of market surveillance in respect of a product.

2.3 Additionally the Regulation makes a consequential amendment to the General Product Safety Regulations 2005 (SI 2005/1083) and miscellaneous unconnected amendments to three other instruments (the Personal Protective Equipment Regulations 2002, the Electromagnetic Compatibility Regulations 2006 and the Pyrotechnic Articles (Safety) Regulations 2010. The amendments to the Pyrotechnic Articles Regulations remove the offence of supplying to countries outside the United Kingdom pyrotechnic articles that are permitted to be supplied in the United Kingdom for a transitional period.

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

3.1 The Committee reported the Personal Protective Equipment Regulations 2002 in its 30th Report for 2001-02 for failure to comply with proper legislative practice and defective drafting. It reported the Electromagnetic Compatibility Regulations 2006 in its 8th Report for 2006-07 for defective drafting. These Regulations correct the drafting in each of these instruments.

#### **4. Legislative Context**

4.1 This instrument is being made as a result of the requirement to share information in Article 27(2) of Regulation (EC) No 765/2008.

#### **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**

7.1 Regulation (EC) No 765/2008 is a directly applicable Regulation and applied from 1 January 2010. It is part of a package of measures designed to strengthen the EU internal market in goods. It establishes a legal framework for accreditation, establishes an EU framework to ensure that non-compliant or unsafe goods are removed from the market, contains strengthened procedures for the controls of products imported from outside the EU and sets new rules for use and protection of CE marking. The accreditation provisions have been implemented previously.

7.2 The Department for Business, Innovation and Skills carried out a public consultation on 10 March 2010 on the Regulations intended to implement certain requirements from EU Regulation (EC) No 765/ 2008. As well as the disclosure of customs information, other measures related to providing certain UK enforcement authorities with the ability to recall, withdraw, prohibit, restrict, destroy or render inoperable products on the grounds of their non-compliance with EU harmonisation legislation. There were also measures relating to the general principles for the use of CE marking on products. The responses to the consultation were broadly supportive of the Regulation.

7.3 However, following careful consideration and analysis the Government decided not to proceed with the enforcement powers and CE marking elements in this instrument. Many of the EU Directives across which Regulation (EC) No 765/2008 operates are currently either in the process of being revised or are planned to be revised via the “Alignment Package” under the EU’s New Legislative Framework.

7.4 This Package covers a suite of EU Proposals to align nine product safety or performance EC Directives to ensure consistency of implementation processes and market surveillance powers. BIS have produced a public consultation document on the UK’s approach and implementation of the Alignment Package. The Government concluded that it will therefore implement the Regulation’s market surveillance provisions individually for each Directive when transposing them into UK law.

7.5 The Government also concluded that the rules in individual product specific legislation together with existing general legislation, i.e. the Consumer Protection from Unfair Trading Regulations 2008 and the Business Protection from Misleading Marketing Regulations 2008, should address the misuse of CE marking satisfactorily. The Government believes that this is the appropriate way forward, and one which involves less regulation.

## **8. Consultation outcome**

8.1 BIS published its response to the March 2010 consultation. BIS consulted closely with HMRC, customs and the market surveillance authorities on the provisions to protect information disclosed under RAMS.

## **9. Guidance**

9.1 The statutory instrument is self-explanatory and BIS have therefore decided not to issue guidance.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 No impact assessment has been prepared because these Regulations have no effect on the costs of business and the voluntary sector.

## **11. Regulating small business**

11.1 The legislation does not apply to small business.

## **12. Monitoring & review**

12.1 Regulation 5 requires the Secretary of State to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following each review it will fall to the Secretary of State to consider whether the Regulations should remain as they are, or be revoked or be amended. A further instrument would be needed to revoke the Regulations or to amend them.

## **13. Contact**

13.1 Carol Wheeler at the Department for Business, Innovation and Skills Tel: 020-7215 5993 or email: [carol.wheeler@bis.gsi.gov.uk](mailto:carol.wheeler@bis.gsi.gov.uk) can answer any queries regarding the instrument.

