

2010 No. 324

CUSTOMS

**The Goods Infringing Intellectual Property Rights (Customs)
(Amendment) Regulations 2010**

<i>Made</i> - - - -	<i>15th February 2010</i>
<i>Laid before Parliament</i>	<i>16th February 2010</i>
<i>Coming into force</i> - -	<i>10th March 2010</i>

The Commissioners for Her Majesty's Revenue and Customs^(a) make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972^(b).

The Commissioners have been designated^(c) for the purposes of section 2(2) in relation to counterfeit and pirated goods, goods infringing a patent, goods infringing a supplementary protection certificate, goods infringing plant breeders' rights, designations of origin, geographical indications and geographical designations, and goods infringing Community plant variety rights.

Citation and commencement

1. These Regulations may be cited as the Goods Infringing Intellectual Property Rights (Customs) (Amendment) Regulations 2010 and come into force on 10th March 2010.

Amendment of the Goods Infringing Intellectual Property Rights (Customs) Regulations 2004

2. The Goods Infringing Intellectual Property Rights (Customs) Regulations 2004^(d) are amended as follows:

- (1) Omit regulations 3, 4(2), 8 and 9.
- (2) For regulation 7 substitute—

(a) The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(b) 1972 c. 68; section 2(2) has been amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and by section 3(3) of the European Union (Amendment) Act 2008 (c. 7).

(c) S.I. 1995/751 (in relation to counterfeit and pirated goods), S.I. 1999/654 (in relation to goods infringing a patent and goods infringing a supplementary protection certificate), and S.I. 2004/706 (in relation to goods infringing plant breeders' rights, designations of origin, geographical indications and geographical designations, and goods infringing Community plant variety rights).

(d) S.I. 2004/1473.

“Simplified procedure

7.—(1) The Commissioners may treat as abandoned for destruction goods which have been suspended from release or detained by virtue of regulation 4(1)(c) where the right-holder has informed the Commissioners in writing within the specified period that those goods infringe an intellectual property right and either of the following conditions applies—

- (a) the right-holder has provided the Commissioners with the written agreement of the declarant, the holder or the owner of the goods (“the interested parties”) that the goods may be destroyed; or
- (b) none of the interested parties has specifically opposed the destruction of the goods within the specified period.

(2) The Commissioners may not treat the goods as abandoned for destruction where one interested party has given its written agreement as mentioned in regulation 7(1)(a), but either or both of the other interested parties has specifically opposed destruction within the specified period.

(3) The Commissioners may, at their discretion, accept the written agreement mentioned in regulation 7(1)(a) directly from the interested party.

(4) Where goods are treated as abandoned for destruction by virtue of paragraph (1)—

- (a) the right-holder must bear the expense and the responsibility for the destruction of the goods, unless otherwise specified by the Commissioners; and
- (b) the Commissioners must retain a sample of the goods in such conditions that it can be used if required as evidence in legal proceedings.

(5) The specified period means ten working days from receipt of the notification to the right-holder provided for in regulation 4(1)(b), or three working days in the case of perishable goods. The Commissioners may, at their discretion, extend this period by a further ten working days.

(6) A reference in this regulation to the Commissioners is to be construed as a reference to the Secretary of State^(a).”.

Dave Hartnett
Mike Eland

15th February 2010

Two of the Commissioners for Her Majesty’s Revenue and Customs

(a) Section 1(1) of the Borders, Citizenship and Immigration Act 2009 (c.11) provides that the functions of the Commissioners in relation to general customs matters are exercisable by the Secretary of State concurrently with the Commissioners.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Goods Infringing Intellectual Property Rights (Customs) Regulations 2004 (the 2004 Regulations).

Regulation 2(1) revokes regulations 3, 4(2), 8 and 9 of the 2004 Regulations. The effect of these revocations is to remove the link in the 2004 Regulations with the forfeiture and seizure regime in the Customs and Excise Management Act 1979, and to remove the difference in treatment between different classes of intellectual property rights.

Regulation 2(2) gives effect to Article 11 of Council Regulation (EC) No 1383/2003 (OJ L 196, 2.8.03, p 7) (the Council Regulation). It inserts a simplified procedure to enable the Commissioners to treat as abandoned for destruction goods suspected of infringing an intellectual property right with the agreement of the owner. The agreement of the owner will be presumed to be accepted where the declarant, holder or owner fail to provide any response when offered the opportunity to abandon the goods.

In all other cases, such as where a declarant, holder or owner objects to the destruction of the goods, the procedure set out in Article 13 of the Council Regulation applies.

A full Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

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