

2019 No.

EXITING THE EUROPEAN UNION

CUSTOMS

**The Customs (Enforcement of Intellectual Property Rights)
(Amendment) (EU Exit) Regulations 2019**

Sift requirements satisfied ***
Made - - - - - ***
Laid before Parliament ***
Coming into force in accordance with regulation 1(2)

The Commissioners for Her Majesty's Revenue and Customs make these Regulations exercising the powers in section 8(1) of, and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018(a).

The requirements of paragraph 3(2) of Schedule 7 to the European Union (Withdrawal) Act 2018 (relating to the appropriate Parliamentary procedure for these Regulations) have been satisfied.

Citation, commencement and effect

- 1.—(1) These Regulations may be cited as the Customs (Enforcement of Intellectual Property Rights) (Amendment) (EU Exit) Regulations 2019.
- (2) These Regulations come into force on exit day(b).
- (3) The amendments made by these Regulation do not have effect in relation to goods entering Northern Ireland from the Republic of Ireland or exiting Northern Ireland to the Republic of Ireland.

Amendment of Regulation (EU) No 608/2013 concerning customs enforcement of intellectual property rights

2. Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No. 1383/2003 is amended as follows.

3. In Article 1—
 - (a) in paragraph (1)—

(a) 2018 c. 16. Section 20(1) of the Act defines “Minister of the Crown” as including the Commissioners for Her Majesty’s Revenue and Customs.
(b) “Exit day” is defined in the European Union (Withdrawal) Act 2018 as 29 March 2019 at 11.00 pm.

- (i) omit the words from “within the customs territory” to “the Community Customs Code”, and
- (ii) in point (b), for “Union” substitute “United Kingdom,
- (b) in paragraph (2), for “Union” substitute “United Kingdom, and
- (c) in paragraph (6) “for national or Union law on intellectual property or the laws of the Member States” substitute “the law on intellectual property”.

4.—(1) Article 2 is amended as follows.

(2) Before paragraph (1) insert—

“(A1) References to “the customs authorities” or “the competent customs department” shall be read as references to the Commissioners for Her Majesty’s Revenue and Customs;”

(3) In paragraph (1)—

- (a) in point (c), omit “national or Union”,
- (b) in point (e), omit “national or Union”,
- (c) in point (f), for “as provided for in Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products” substitute “which is recognised in law”,
- (d) in point (g), for “as provided for in Regulation (EC) No 1609/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products” substitute “which is recognised in law”,
- (e) omit point (h),
- (f) omit point (k),
- (g) in point (i), for “as provided for by national” substitute “which is recognised in”, and
- (h) in points (j) and (l), omit “national or Union”.

(4) For paragraphs (2) and (3) substitute—

“(2) “trade mark” means a trade mark registered in the United Kingdom or under international arrangements which has effect in the United Kingdom;

(3) “design” means a design registered in the United Kingdom or under international arrangements which has effect in the United Kingdom;”.

(5) For paragraph (4) substitute—

“(4) “geographical indication” means a geographical indication for products in so far as it is established as an exclusive intellectual property right by law;”.

(6) In paragraph (5)(a) and (b), for “Member State where they are found” substitute “United Kingdom”.

(7) In paragraph (6), for “Member State where the goods are found” substitute “United Kingdom”.

(8) In paragraph (7)—

- (a) for “Member State where those goods are found” substitute “United Kingdom”, and
- (b) in points (a), (b) and (c), omit “in that Member State”.

(9) In paragraph (10), for “a Member State to take action in that Member State” substitute “the United Kingdom to take action”.

(10) Omit paragraph (11).

(11) In paragraph (15), for “point (18) of Article 4 of Regulation (EEC) No 2913/92” substitute “section 159(4B)(a) or (b) of the Customs and Excise Management Act 1979(a)”.

(a) 1979 c. 2. Subsection (4B) was inserted by paragraph 107(3) of Schedule 7 to the Taxation (Cross-border Trade) Act 2018.

(12) Omit paragraph (17).

(13) In paragraph (18), for “as defined in point (20) of Article 4 of Regulation (EEC) No 2913/92” substitute “within the meaning of paragraph 17(6) of Schedule 1 to the Taxation (Cross-border Trade) Act 2018(a)”.

(14) In paragraph (19)—

- (a) for the words from “Combined Nomenclature” to “Common Customs Tariff” substitute “Harmonized Commodity Description and Coding System (“the Harmonized System”) provided for under the International Convention on the Harmonized System as done in Brussels on 14 June 1983 and as amended from time to time(b)”, and
- (b) in the last paragraph, for “Combined Nomenclature”, both times it appears, substitute “Harmonized System”.

5. In Article 3—

- (a) in the introductory words—
 - (i) for “Member State or Member States where the customs authorities are requested to take action” substitute “United Kingdom”, and
 - (ii) after “submit” insert “an application”, and
- (b) for paragraphs (1) to (3) substitute—
 - “(1) right-holders;
 - (2) intellectual property rights management collective bodies;
 - (3) persons or entities authorised to use intellectual property rights, which have been authorised formally by the right-holder to initiate proceedings in order to determine whether the intellectual property right has been infringed.”,

6. Omit Article 4

7. In Article 5—

- (a) omit paragraph 1,
- (b) in paragraph 3 omit point (b),
- (c) for paragraph 4 substitute—
 - “4. Only one application may be submitted for the same intellectual property right.”,
- (d) omit paragraph 5
- (e) in paragraph 6, omit the second sentence.

8.—(1) In Article 6—

- (a) for paragraph 1 substitute—
 - “1 The Commissioners for Her Majesty’s Revenue and Customs shall establish an application form.”,
- (b) in paragraph 2, for “Regulation (EC) No 45/2001 and national laws implementing Directive 95/46/EC” substitute “Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation).”, and
- (c) in paragraph 3—
 - (i) in the introductory words, omit “Commission shall ensure that the”,

(a) 2018 c. 22.

(b) Available from www.wcoomd.org/en/topics/nomenclature/instrument-and-tools/hs_nomenclature_previous_editions/hs_nomenclature_table_2012.aspx. A copy may be inspected free of charge by arrangement with HM Revenue and Customs at 100 Parliament Street, London SW1A 2BQ.

- (ii) in point (d), for “Member State in which the application is submitted” substitute “United Kingdom”,
- (iii) omit point (f),
- (iv) in point (j) omit “in accordance with Article 31(5)”, and
- (v) in point (p), for “Commission and by the Member States” substitute “United Kingdom”.

9. In Article 10—

- (a) in paragraph 1—
 - (i) for the first paragraph substitute—

“(1) A decision granting an application and any decision revoking it or amending it shall take effect in the United Kingdom from the day following the date of adoption.”, and
 - (ii) in the second paragraph for “Member State” substitute “United Kingdom”, and
- (b) omit paragraph 2.

10. In Article 12, for paragraph 7 substitute—

“(7) The Commissioners for Her Majesty’s Revenue and Customs shall establish an extension request form.”.

11. In Article 13, omit the third sentence.

12. In Article 14—

- (a) in paragraph 1, omit “of its Member State”,
- (b) omit paragraphs 2 and 3
- (c) in paragraph 4, omit “point (b) of Article 16(1) and” and “of its Member State”.

13. In Article 16—

- (a) in paragraph 1—
 - (i) omit “of the Member State where the information was provided or misused”,
 - (ii) in point (a) for “a national” substitute “an”, and
 - (iii) omit point (b), and
- (b) in paragraph 2, omit the words from “In the case of a Union application,” to the end.

14. In Article 21(b), for “Member State where the goods are found” substitute “United Kingdom”.

15. In Article 22—

- (a) in paragraph 1—
 - (i) for “Union” substitute “United Kingdom”,
 - (ii) omit “the Commission and”, and
 - (iii) for “Member States” substitute “United Kingdom”,
- (b) in paragraph 2, omit “through the territory of the Union”.
- (c) for paragraph 3 substitute—

“(3) The Commissioners for Her Majesty’s Revenue and Customs shall make the necessary practical arrangements concerning the exchange of data and information referred to in paragraphs 1 and 2 of this Article.”.

16. In Article 23—

- (a) in paragraph 1, for “Member State where the goods are found” substitute “United Kingdom”, and

- (b) In paragraph 2, omit “, unless otherwise specified in the national law of the Member State where the goods are destroyed”.
17. In Article 24(1), omit “utility model.”
18. In Article 25(1)(b) and (2), for “Union” substitute “United Kingdom”.
19. Omit Article 26(10).
20. In Article 27, for “Without prejudice to national law, the” substitute “The”.
21. Omit Article 29(3).
22. Omit Article 30.
23. In Article 31—
- (a) in the heading for “the Member States” substitute “the United Kingdom”,
 - (b) in paragraph 1 for “shall notify without delay” substitute “may notify”,
 - (c) in paragraph 2—
 - (i) for “Without prejudice to point (g) of Article 24 of Regulation (EC) No 515/97, where”, substitute “Where”, and
 - (ii) for “shall” substitute “may”,
 - (d) omit paragraphs 3 and 4,
 - (e) for paragraph 5 substitute—

“5 Upon request by the Commission, the customs authorities may share such information with the Commission as they consider necessary for the application of this Regulation.”,

and
 - (f) omit paragraphs 6 and 7.
24. Omit Article 32.
25. In Article 33—
- (a) omit paragraphs 1 and 4 to 6, and
 - (b) for paragraph 2 substitute—

“2. Processing of personal data by the Commissioners for Her Majesty’s Revenue and Customs shall be carried out in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation).”.
26. Omit Articles 34 to 37.
27. Omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States” where they appear after Article 40.

Commissioner 1
Commissioner 2

Date

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No. 1383/2003. That Regulation becomes

part of domestic law on exit day by virtue of section 3 of the European Union (Withdrawal) Act 2018 (c. 16) and these Regulations ensure that the former continues to operate effectively without deficiency as part of UK law in the event that the UK leaves the EU without a withdrawal agreement.

This instrument is one of a group of instruments will be covered by a single overarching HMRC impact assessment which was published on 25 February 2019 and is available on the website at <https://www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal>.

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