



CUSTOMS (ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS) (MODIFICATIONS) REGULATIONS 2019

Index

Regulation	Page
1 Title	3
2 Commencement	3
3 Interpretation.....	3
4 Modification of the retained EU regulation	4
5 Revocation	4
SCHEDULE	5
MODIFICATION OF RETAINED EU REGULATION	5

Statutory Document No. 2019/0198



European Union and Trade Act 2019

CUSTOMS (ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS) (MODIFICATIONS) REGULATIONS 2019

Approved by Tynwald: 22nd May 2019
Coming into Operation: in accordance with Regulation 2

The Council of Ministers makes the following Regulations under sections 7, 12 and 15 of, and paragraph 7 of Schedule 4 to, the European Union and Trade Act 2019. The Council of Ministers is of the opinion that, by reason of urgency, it is necessary to make these Regulations subject to the affirmative Tynwald procedure set out in section 31 of the Legislation Act 2015.

1 Title

These Regulations are the Customs (Enforcement of Intellectual Property Rights) (Modifications) Regulations 2019.

2 Commencement

If approved by Tynwald, these Regulations come into operation on exit day¹.

3 Interpretation

In these Regulations —

“**retained EU regulation**” means Regulation (EU) No 608/2013² 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, as it forms part of Manx law on and after exit day³; and

“**exit day**” has the same meaning as in the European Union and Trade Act 2019.

¹ Tynwald procedure – affirmative under paragraph 7 of Schedule 4 to the European Union and Trade Act 2019.

² OJ L181, 29.6.2013, p.15.

³ Regulation (EU) No 608/2013 forms part of Manx law by virtue of SD 2019/0064.

4 Modification of the retained EU regulation

- (1) The retained EU regulation is modified in accordance with the Schedule.
- (2) For the purposes of the retained EU regulation, regulation 4(1) of the European Union and Trade Act 2019 (Retained Direct EU Legislation) (Customs) Regulations 2019⁴ is disapplied.

5 Revocation

The European Union (Customs Enforcement of Intellectual Property Rights) Order 2015⁵ is revoked.

MADE 9TH APRIL 2019

W GREENHOW
Chief Secretary

⁴ SD 2019/0064.

⁵ SD 2015/0065.

SCHEDULE

[Regulation 4]

MODIFICATION OF RETAINED EU REGULATION

1 Modification of retained EU Regulation

- (1) The retained EU Regulation is modified as follows.
- (2) In Article 1 —
 - (a) in paragraph (1) —
 - (i) omit the words from “within the customs territory” to “the Community Customs Code”; and
 - (ii) in sub-paragraph (b), for “Union” substitute **13** Island and the United Kingdom **12**;
 - (b) in paragraph (2) —
 - (i) for “Article 13(1) and Article 72 of Regulation (EEC) No 2913/92”, substitute **13** Articles 46 and 192 of Regulation (EU) No 952/2013 of 9 October 2013 laying down the Union Customs Code **12**; and
 - (ii) for “Union”, substitute **13** Island and the United Kingdom **12**; and
 - (c) in paragraph (6), for “national or Union law on intellectual property or the laws of the Member States”, substitute **13** the law on intellectual property **12**.
- (3) In Article 2 —
 - (a) before paragraph (1) insert —

13 (A1) References to “the customs authorities” or “the competent customs department” shall be read as references to the Treasury; 12 ;

 - (b) in paragraph (1) —
 - (i) in point (c), omit “national or Union”;
 - (ii) in point (e), omit “national or Union”;
 - (iii) 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 **13** which is recognised in law **12**;
 - (iv) 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 **43** which is recognised in law **22**;
- (v) omit point (h);
- (vi) in point (i), for “as provided for by national” substitute **43** which is recognised in **22**;
- (vii) in point (j), omit “national or Union”;
- (viii) omit point (k); and
- (ix) in point (l), omit “national or Union”;
- (c) for paragraphs (2) and (3), substitute —
- 43**(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. **22**;
- (d) for paragraph (4), substitute —
- 43**(4) “Geographical indication” means a geographical indication for products in so far as it is established as an exclusive intellectual property right by law. **22**;
- (e) in paragraph (5)(a) and (b), for “Member State where they are found”, substitute **43** Island **22**;
- (f) in paragraph (6), for “Member State where the goods are found”, substitute **43** Island **22**;
- (g) in paragraph (7) —
- (i) for “Member State where those goods are found”, substitute **43** Island **22**; and
- (ii) in points (a), (b) and (c), omit “in that Member State”;
- (h) in paragraph (10), for “a Member State to take action in that Member State”, substitute **43** the Island to take action **22**;
- (i) omit paragraph (11);
- (j) in paragraph (15), for “point (18) of Article 4 of Regulation (EEC) No 2913/92”, substitute **43** section 166(4C)(a) or (b) of the Customs and Excise Management Act 1986⁶ **22**;
- (k) omit paragraph (17);
- (l) in paragraph (18), for “as defined in point (20) of Article 4 of Regulation (EEC) No 2913/92”, substitute **43** within the meaning of

⁶ Subsection (4C) was inserted by paragraph 96 of the Schedule to the Customs and Excise Management Act 1986 (Amendment) Order 2019 [SD 2019/0081].

- paragraph 17(6) of Schedule 1 to the Taxation (Cross-border Trade) Act 2018, as it has effect in the Island⁷ **22**;
- (m) in paragraph (19) —
- (i) for the words from “Combined Nomenclature” to “Common Customs Tariff”, substitute **23**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 time⁸ **22**; and
- (ii) in the last paragraph, for “Combined Nomenclature”, both times it appears, substitute **23**Harmonized System **22**; and
- (n) after paragraph (21), insert —
- 23**(22) “Data protection legislation” has the meaning given in regulation 5(1) of the GDPR and LED Implementing Regulations 2018⁹. **22**.
- (4) 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 **23**Island **22**; and
- (ii) after “submit”, insert **23**an application **22**; and
- (b) for paragraphs (1) to (3), substitute —
- 23**(1) right-holders;
- (2) intellectual property rights management collective bodies; and
- (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. **22**.
- (5) Omit Article 4.
- (6) In Article 5 —
- (a) omit paragraph (1);
- (b) in paragraph (3), omit point (b);

⁷ The Taxation (Cross-border Trade) Act 2018 was applied in the Island by SD 2019/0080.

⁸ 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.

⁹ SD 2018/0145.

- (c) for paragraph (4), substitute —
 | **44**(4) Only one application may be submitted for the same
 | intellectual property right. **44**;
- (d) omit paragraph (5); and
- (e) in paragraph (6), omit the second sentence.
- (7) In Article 6 —
- (a) for paragraph (1), substitute —
 | **44**(1) The Treasury shall establish an application form. **44**;
- (b) in paragraph (2), for “Regulation (EC) No 45/2001 and national laws implementing Directive 95/46/EC”, substitute **44** data protection legislation **44**; and
- (c) in paragraph (3) —
- (i) in the introductory words, omit “Commission shall ensure that the”;
- (ii) in point (d), for “Member State in which the application is submitted”, substitute **44** Island **44**;
- (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 **44** Island **44**.
- (8) In Article 10 —
- (a) in paragraph (1) —
- (i) for the first paragraph, substitute —
 | **44**(1) A decision granting an application and any decision
 | revoking it or amending it shall take effect in the
 | Island from the day following the date of
 | adoption. **44**; and
- (ii) in the second paragraph, for “Member State”, substitute **44** Island **44**; and
- (b) omit paragraph (2).
- (9) In Article 12, for paragraph (7), substitute —
 | **44**(7) The Treasury shall establish an extension request form. **44**.
- (10) In Article 13, omit the third sentence.
- (11) Omit Article 14.
- (12) 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.
- (13) In Article 21(b), for “Member State where the goods are found”, substitute “Island”.
- (14) In Article 22 —
 - (a) in paragraph (1) —
 - (i) for “Union”, substitute “Island”;
 - (ii) omit “the Commission and”; and
 - (iii) omit “of the Member States”;
 - (b) in paragraph (2), omit “through the territory of the Union”; and
 - (c) for paragraph (3), substitute —
 - “(3) The Treasury shall make the necessary practical arrangements concerning the exchange of data and information referred to in paragraphs 1 and 2 of this Article.”
- (15) In Article 23 —
 - (a) in paragraph (1), for “Member State where the goods are found”, substitute “Island”; and
 - (b) in paragraph (2), omit “, unless otherwise specified in the national law of the Member State where the goods are destroyed”.
- (16) In Article 24(1), omit “utility model,”.
- (17) In Article 25(1)(b) and (2), for “Union”, substitute “Island and the United Kingdom”.
- (18) Omit Article 26(10).
- (19) In Article 27, for “Without prejudice to national law, the”, substitute “The”.
- (20) Omit Article 29(3).
- (21) Omit Article 30.
- (22) In Article 31 —
 - (a) in the heading for “the Member States”, substitute “the Island”;
 - (b) in paragraph (1) for “shall notify without delay”, substitute “may notify”;
 - (c) in paragraph (2) —
 - (i) for “Without prejudice to point (b) of Article 24 of Regulation (EC) No 515/97, where”, substitute “Where”;

- (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 it considers necessary for the application of this Regulation.”**; and
 - (f) omit paragraphs (6) and (7).
- (23) Omit Article 32.
- (24) In Article 33 —
- (a) omit paragraphs (1) and (4) to (6); and
 - (b) for paragraph (2), substitute —
 - “(2) Processing of personal data by the Treasury shall be carried out in accordance with data protection legislation.”**
- (25) Omit Articles 34 to 40.
- (26) Omit the words “This Regulation shall be binding in its entirety and directly applicable in all Member States”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations modify one retained EU regulation, which forms part of Manx law on and after exit day relating to the customs enforcement of intellectual property rights, in order to ensure that the retained EU regulation continues to operate effectively in the Island after the United Kingdom leaves the European Union.

Under the terms of the Customs and Excise Agreement between the United Kingdom and the Isle of Man Governments, the Island is obliged to keep its customs law correspondent with that of the United Kingdom.