

STATES OF JERSEY



DRAFT COMMUNITY PROVISIONS (GOODS INFRINGING INTELLECTUAL PROPERTY RIGHTS) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 27th November 2012
by the Minister for Home Affairs

STATES GREFFE



Jersey

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REPORT

Background

The draft Appointed Day Act to bring into force the Intellectual Property (Unregistered Rights) (Jersey) Law 2011 (IPURL) is due to be debated by the States on 11th December 2012. If the draft Act is approved by the States, it will bring the IPURL into force 7 days later.

Article 141 of IPURL contains provisions for Customs border measures. It allows the owner of a copyright to request that infringing copies be dealt with as prohibited goods on importation. As a result, they can then be seized as liable to forfeiture under the provisions of the Customs and Excise (Jersey) Law 1999.

Article 141 of IPURL, however, does not apply to goods referred to in Article 1(i) of Council Regulation (EC) No. 1383/2003 and which are suspected of infringing certain intellectual property rights. Article 1(i) of the Council Regulation relates to goods either being entered into free circulation into the Island or into a duty suspensive procedure subject to exportation.

Article 2(i) of the Council Regulation identifies “goods infringing an intellectual property right” as relating to –

- Trademarks
- Copyrights
- Patents
- Plant variatel rights
- Designation of origin or geographical indications and geographical designations.

To allow the requirements of Council Regulation (EC) No. 1383/2003 to have effect in the Island, the Community Provisions (Goods Infringing Intellectual Property Rights) (Jersey) Regulations 201- have been drafted.

For the purposes of this legislation it has been agreed with the Law Officers' Department that the Agent of the Impôts should be the competent Customs authority. On that basis, any right-holder will apply to the Agent for action by the Customs authorities where it is suspected that goods infringe such rights.

If approved, these Regulations will come into force 7 days after they are made.

Legal basis

The European Communities Legislation (Implementation) (Jersey) Law 1996 enables the States of Jersey to give effect by Regulations to legislation of the European Community.

Human Rights compatibility

The Minister for Home Affairs can confirm that these Regulations are Human Rights compliant.

Financial and manpower implications

It is not anticipated that there will be any financial implications arising out of the adoption of these Regulations. Any additional manpower requirements for the Jersey Customs and Immigration Service can be met from within existing resources.

Explanatory Note

These Regulations implement Council Regulation (EC) No. 1383/2003 (the “Council Regulation”). The Council Regulation is concerned with the exportation and importation of goods that infringe intellectual property rights.

Under the Council Regulation, where it is suspected that goods infringe such rights, the right-holder may apply to the competent customs department for action by customs authorities in the event that those authorities find the infringing goods. If the competent customs department makes a decision to grant an application, it must specify a period, of up to one year, during which customs authorities must take action. The period may be extended.

If a customs authority then finds goods that are suspected of infringing the intellectual property rights to which the decision relates, it must suspend the release of, or detain, the goods and inform the competent customs department. That department then informs the right-holder and the person who made the customs declaration in respect of, or is holding, the goods.

The period of detention ends after 10 working days, or 3 working days if the goods are perishable. If the right-holder has not commenced proceedings for infringement of the intellectual property right within that period, the goods are released. If proceedings are commenced, the goods owner may secure the release of the goods, provided he or she gives security to protect the interest of the right-holder.

Alternatively, there is a simplified procedure whereby both the right-holder and the owner of the suspected infringing goods may agree that the customs authority destroy the goods, without proceedings being commenced.

The provisions of these draft Regulations, then, supplement that procedure under the Council Regulation.

Regulation 1 is the interpretation provision.

Regulation 2 specifies the infringing goods to which the Regulations apply. These include counterfeit goods, pirated goods and patented goods produced otherwise than with the consent of the right-holder.

Regulation 3 designates the Agent of the Impôts as the competent customs department for Jersey.

Regulation 4 requires the right-holder who applied for a decision by the Agent of the Impôts to notify the Agent if the right-holder ceases to be such, or if there is a change in authorized use of the intellectual property right being protected, with the consequence that the goods are not infringing goods, or if the right-holder's rights expire.

Regulation 5 provides for the simplified procedure for destruction of the goods, if the right-holder and the goods owner agree to their destruction or if the right-holder so agrees and none of the interested parties has specifically opposed the destruction of the goods within the specified period. That period is 10 working days, or 3 working days in the case of perishable goods, but may be extended by a further 10 working days.

Regulation 6 makes it clear that the powers of detention or suspension of release do not derogate from any other such powers that the officers of the Impôts may have. It further provides that implementation of the Council Regulation is an assigned matter under the Customs and Excise (Jersey) Law 1999. Under that Law, the officers of the Impôts are required to discharge duties in relation to assigned matters and police officers are required to assist in the enforcement of the law relating to assigned matters. Also, it is an offence to obstruct an officer in the performance of his or her duties relating to assigned matters and it is an offence to make a false declaration or falsify a document etc., for the purpose of an assigned matter.

Regulation 7 enables the Agent of the Impôts to suspend a decision if he or she has grounds for believing that the right-holder has misused information supplied to the right-holder under the Council Regulation. The information would be the names and addresses of the consignee and the consignor of the goods suspected of infringing an intellectual property right and of the person who made the customs declaration for or who holds the goods, and the origin and provenance of the goods.

Regulation 8 amends Article 22 of the Trade Marks (Jersey) Law 2000. Article 22 enables the owner of a registered trade mark to give notice to the Agent of the Impôts that infringing goods that are expected to arrive in Jersey are to be treated as prohibited goods. Paragraph (3) of Article 22 already disapplies Article 22 if the goods may be the subject of an application under Council Regulation (EC) 1994 No. 3295. That Council Regulation was repealed and replaced by the Council Regulation being implemented by these Regulations and therefore the substituted paragraph (3) disapplies Article 22 if the goods may be the subject of an application under the Council Regulation being implemented.

Regulation 9 provides for the citation and commencement of these Regulations.



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Jersey

DRAFT COMMUNITY PROVISIONS (GOODS INFRINGEMENT INTELLECTUAL PROPERTY RIGHTS) (JERSEY) REGULATIONS 201-

Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of Article 2 of the European Communities Legislation (Implementation) (Jersey) Law 1996¹, have made the following Regulations –

1 Interpretation

(1) In these Regulations, unless the context otherwise requires –

“1999 Law” means the Customs and Excise (Jersey) Law 1999²;

“2011 Law” means the Intellectual Property (Unregistered Rights) (Jersey) Law 2011³;

“Agent of the Impôts” has the same meaning as in the 1999 Law;

“application” means an application under Article 5 of the Council Regulation;

“Council Regulation” means Council Regulation (EC) No. 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights (OJ L 196, 2.8.2003, p.7)⁴;

“decision” means a decision granting an application in accordance with Article 8 of the Council Regulation;

“declarant” means a person making a customs declaration in his or her own name or the person in whose name a customs declaration is made;

“goods infringing an intellectual property right” has the meaning given in Article 2(1) of the Council Regulation and related expressions shall be construed accordingly;

“officers of the Impôts” has the same meaning as in the 1999 Law;

“right-holder” has the meaning given in Article 2(2) of the Council Regulation;

“working day” means a day which is not a Saturday or Sunday or a day specified to be observed as a public holiday in the Public Holidays and Bank Holidays (Jersey) Act 2010⁵.

- (2) For the purposes of these Regulations, any reference in the Council Regulation to “copyright or related right” is to be construed as a reference to “copyright, rights in performances, publication right or database right as those rights subsist pursuant to the Intellectual Property (Unregistered Rights) (Jersey) Law 2011⁶ and any Order made under Article 399 of that Law”.
- (3) Other expressions used in these Regulations that are also used in the Council Regulation shall be construed in accordance with the Council Regulation.

2 Application

- (1) Subject to paragraph (2), these Regulations apply to goods which fall to be treated, by virtue of Article 2 of the Council Regulation, as being goods infringing an intellectual property right.
- (2) These Regulations do not apply to goods in relation to which the Council Regulation does not apply, by virtue of Article 3 of that Regulation.

3 Competent customs department

The Agent of the Impôts is the competent customs department in Jersey.

4 Right-holder ceasing to hold rights

- (1) The person whose application for a decision has been granted by the Agent of the Impôts shall notify the Agent of the Impôts, as soon as possible –
 - (a) if the person ceases to be a right-holder of the intellectual property right specified in the application;
 - (b) if, by virtue of a change in the authorized use of the intellectual property right specified in the application, the goods suspected of infringing that right do not infringe that right; or
 - (c) if the intellectual property right specified in the application expires.
- (2) A decision shall have no further effect upon the occurrence of any of the events described in paragraph (1)(a) to (c).

5 Simplified procedure

- (1) The Agent of the Impôts may treat as abandoned for destruction goods which have been suspended from release or detained by virtue of Article 9 of the Council Regulation where the right-holder has informed the Agent of the Impôts 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 Agent of the Impôts 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 Agent of the Impôts may not treat the goods as abandoned for destruction where one interested party has given its written agreement as mentioned in paragraph (1)(a), but either or both of the other interested parties has specifically opposed destruction within the specified period.
 - (3) The Agent of the Impôts may, at his or her discretion, accept the written agreement mentioned in paragraph (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; and
 - (b) the Agent of the Impôts 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” is 10 working days from receipt of the notification to the right-holder provided for in Article 9 of the Council Regulation, or 3 working days in the case of perishable goods.
 - (6) The Agent of the Impôts may, at his or her discretion, extend the specified period by a further 10 working days.

6 Relationship with other powers

- (1) These Regulations do not affect –
 - (a) any power of the officers of the Impôts conferred otherwise than by any provision of these Regulations to suspend the release of, or detain, any goods; or
 - (b) the power of any court to grant any relief, including any power to make an order by way of interim relief.
- (2) The implementation of the Council Regulation is an assigned matter, for the purposes of the 1999 Law.

7 Consequences of misuse of information by right-holder

- (1) Where the Agent of the Impôts has reasonable grounds for believing that there has been a misuse of information by a right-holder, the Agent may suspend the decision in force at the time of the misuse of information, in relation to a relevant intellectual property right, for the remainder of its period of validity.

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- (2) Where the Agent of the Impôts has reasonable grounds for believing that there has been a further misuse of information within 3 years of a previous misuse of information by that right-holder, the Agent of the Impôts may –
- (a) suspend the decision in force at the time of the further misuse of information, in relation to a relevant intellectual property right, for the remainder of its period of validity; and
 - (b) for a period of up to one year from its expiry, refuse to renew the decision in force at the time of the further misuse of information, or to accept a new application, in relation to a relevant intellectual property right.
- (3) In this Regulation –
- “misuse of information” means the use of information supplied to a right-holder pursuant to the first sub-paragraph of Article 9(3) of the Council Regulation, other than for the purposes specified in Articles 10, 11, and 13(1) of the Council Regulation or pursuant to an enactment or order of the court;
- “relevant intellectual property right” means any intellectual property right in relation to a suspected infringement of which information was supplied to a right-holder pursuant to the first sub-paragraph of Article 9(3) of the Council Regulation, and in relation to which the Agent of the Impôts has reasonable grounds for believing that there has been a misuse of that information.

8 Trade Marks (Jersey) Law 2000 amended

For Article 22(3) of the Trade Marks (Jersey) Law 2000⁷ there shall be substituted the following paragraph –

- “(3) This Article does not apply to goods placed in, or expected to be placed in, one of the situations referred to in Article 1(1) of Council Regulation (EC) No. 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights (OJ L 196, 2.8.2003, p.7)⁸, in respect of which an application may be made under Article 5(1) of that Regulation.”.

9 Citation and commencement

These Regulations may be cited as the Community Provisions (Goods Infringing Intellectual Property Rights) (Jersey) Regulations 201- and shall come into force 7 days after they are made.

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- ¹ *chapter 17.245*
² *chapter 24.660*
³ *L.29/2011*
⁴ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R1383:EN:NOT>
⁵ *chapter 15.560.20*
⁶ *L.29/2011*
⁷ *chapter 05.900*
⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003R1383:EN:NOT>