

EXPLANATORY MEMORANDUM TO
THE GOODS INFRINGING THE OLYMPICS AND PARALYMPICS ASSOCIATION
RIGHTS (CUSTOMS) REGULATIONS 2007

2007 No.1508

1. This Explanatory Memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs and is laid before Parliament by Command of Her Majesty.

2. Description

These Regulations prescribe the forms of notice to be given by the proprietors of Olympic and Paralympic association rights to Her Majesty's Revenue and Customs, authorising the detention of goods infringing such rights.

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

None.

4. Legislative Background

4.1 Subsections 12A(1) and 12A(8)(a) of the Olympic Symbol etc. (Protection) Act 1995 ("OSPA"), which were inserted by paragraph 14 of Schedule 3 to the London Olympic Games and Paralympic Games Act 2006, include provision for the proprietor to give notices to the Commissioners for Her Majesty's Revenue and Customs in relation to the detention of goods infringing the Olympics or the Paralympics association rights.

4.2 Section 12B(1) of OSPA, also inserted by paragraph 14 of Schedule 3, provides that the power under section 90 of the Trade Marks Act 1994 ("TMA") (for the Commissioners of Customs and Excise to make regulations as to form of notice, etc) has effect in relation to the notices to be given under subsections 12A(1) and 12A(8)(a) OSPA as in relation to a notice under section 89(1) TMA.¹ These Regulations represent the first exercise of that power in relation to notices given under subsections 12A(1) and 12A(8)(a).

4.3 These Regulations prescribe the forms of the two notices and require the proprietor giving such notice to indemnify the Commissioners against any liability or expense which they may incur as a consequence of the notice or of the detention of the goods.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

¹ The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005.

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 During the bidding process for the Olympic and Paralympic Games of 2012, the Government made legally binding commitments to the International Olympic Committee, among which was a pledge to protect the integrity and value of the 2012 Games and the Olympic and Paralympic movements. The London Organising Committee of the Olympic Games (LOCOG) is charged with fulfilling this commitment by preventing ambush marketing and by protecting the UK from an influx of counterfeit Olympic branded goods.

7.2 LOCOG must raise money to fund the Games by selling rights of association to the 2012 Games to sponsors. One of the ways in which this can be achieved is through the sale of official merchandise. In order to maximise sponsorship revenue, LOCOG must be able to prevent others from creating an unauthorised association with the Games thereby profiting from the Games for free to the detriment of those who have lawfully acquired such rights. LOCOG must also be able to ensure that counterfeit and other unofficial merchandise is not put on the market, as this would prejudice its ability to raise funds from the sale of official merchandise.

7.3 The Department of Culture Media and Sport (DCMS), in considering how to fulfil these commitments, included sections in the London Olympic and Paralympic Games Act 2006 which amended the Olympic Symbols Protection Act 1995. These amendments confer enforcement powers upon HM Revenue and Customs at the frontier, in respect of goods and articles that infringe Olympic or Paralympic rights held by the proprietors of such rights.

7.4 The Regulations provide the proprietors of Olympic and Paralympic association rights with forms of notice to submit to HM Revenue and Customs in order to protect these rights.

7.5 DCMS worked in full consultation with HM Revenue and Customs and LOCOG to produce these Regulations. DCMS also notified the European Commission of the proposed legislation to ensure that it did not affect European Community regulations in respect of intellectual property rights. These Regulations only apply to goods entering the United Kingdom from territories outside of the European Community. Trading Standards have confirmed that infringing goods produced domestically or from within the EU will be subject to their own controls.

8. Impact

No Regulatory Impact Assessment has been prepared because there is no regulatory impact on the private or voluntary sectors. There are no implications for the Exchequer either.

9. Contact

Pamela Rogers at HM Revenue and Customs Tel: 0207 147 0318 or e-mail: pamela.rogers@hmrc.gsi.gov.uk can answer any queries regarding the instrument.