

Treasury
Customs and Excise Division

Notice 34A (MAN)

Intellectual Property Rights
on Importation



March 2015
(updated to 20 August 2018)



Isle of Man
Government

Reiltsy Ellan Vannin

Notice 34A (MAN)

This Notice cancels and replaces Notice 34A (MAN) dated August 2010.

The information in this Notice was up to date at the month shown on the cover.

The purpose of this Notice is to provide general advice to persons who may import goods that could infringe intellectual property rights.

The law includes—

- EU Parliament and Council Regulation (EU) No. 608/2013
- the European Communities (Customs Enforcement of Intellectual Property Rights) (Application) Order 2015
- [the Customs Enforcement of Intellectual Property Rights Regulations 2015
- the Customs and Excise Management Act 1986
- the Performers' Protection Act 1996
- the Trade Marks Act 1994 (of Parliament), as it has effect in the Isle of Man
n.b. section 89 of this Act was amended by the 2015 Order above, with a new subsection (3) being substituted
- section 110 of the Copyright Act 1991 (of Parliament)
n.b. section 110 was amended by the 2015 Order above, with a new subsection (6) being substituted.
- Copyright Etc (Amendment) Act 2014 which, when fully in operation will facilitate the adoption in the Isle of Man of necessary developments in UK and EU law.

NOTHING IN THIS NOTICE MAY BE TAKEN TO CHANGE THIS, OR ANY OTHER, LAW.

If you have any doubt about the law, or have any queries about anything in this Notice please contact:



Isle of Man
Government

Reiltys Ellan Vannin

The Advice Centre
Isle of Man Customs and Excise
PO Box 6, Custom House
North Quay, Douglas
Isle of Man, IM99 1AG

Tel: (01624) 648114
Fax: (01624) 648117
Email: customs@gov.im
Website: <http://www.gov.im/categories/tax-vat-and-your-money/customs-and-excise/>

If you have any questions about the purchase or sale of goods that may infringe intellectual property rights in the Island please contact—

Isle of Man Office of Fair Trading
Head Office
Thie Slieau Whallian
Foxdale Road
St John's
Isle of Man
IM4 3AS

Text: (07624) 166638 or 166 OFT
Email: iomfairtrading@gov.im
Website: <http://www.gov.im/oft>
Tel: Trading Standards (01624) 686520
Consumer Advice (01624) 686500
Administration (01624) 686530

NOTE

This Notice has been reissued following the application in Island law of EU Regulation 608/2013, and the revocation of the previous legislation applying and implementing Council Regulation (EU) No 1383/2003, which had itself been repealed in EU law.

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Annex Form C.1340 (MAN)

GLOSSARY

BMS criteria	Parallel trade within the EEA is possible with “further commercialisation” may only be prevented where the trade mark owner can show “legitimate reasons” to do so. These legitimate reasons are governed by the “BMS criteria” (after the case of <i>Bristol Myers Squibb v Paranova</i> in the European Court of Justice in 1996).
Community Intellectual Property Rights	See Section ? of this Notice.
Copyright	Gives the creator of a range of published material (e.g. literature, music, art, sound recordings, film, broadcasts) economic rights enabling them to control use of their material and, from 2013, communication to the public by means of electronic transmission (as a “making available right”, e.g. podcasts).
Counterfeit goods	<ol style="list-style-type: none"> 1. Goods, including packaging, bearing without authorisation a trade mark which is identical to, or cannot be distinguished in its essential elements from, a validly registered domestic or EU trade mark for the same type of goods. 2. Any symbol (including a logo, label, sticker, brochure, instruction manual or guarantee document bearing a symbol), whether presented separately or not, carrying a trade mark without authorisation. 3. Packaging materials, presented separately, bearing the trade marks of counterfeit goods. 4. Goods bearing a geographical indication and which bear, or are described by, a name or term protected in national law as that geographical indication. <p>But also see “Falsified medicines” below - the term “falsified” refers to all forms of falsification, while the term “counterfeit” specifically refers to an infringement of intellectual property rights.</p>
Declarant (or holder of the goods)	<p>The ‘declarant’ is the person making a summary declaration or a re-export notification to Customs or making a Customs declaration in his own name or the person in whose name such a declaration is made.</p> <p>The ‘holder’ means the person who is the owner of the goods or who has a similar right of disposal over them or who has physical control over them.</p>
Destruction	The physical destruction, recycling, or disposal of goods outside of commercial channels in such a way as to preclude damage to the right holder.

EEA	The European Economic Area - the EU Member States plus Iceland, Liechtenstein and Norway.
EU customs territory	This includes the Isle of Man and the Channel Islands. Entry into the EU includes placing goods under customs supervision, declaration for free circulation, placing goods under a customs suspensive regime, or placing the goods in a free zone or warehouse.
Falsified medicines	Falsified medicines are fake medicines that pass themselves off as real, authorised medicines. Falsified medicines might contain ingredients, including active ingredients, which are of bad quality or in the wrong dose - either too high or too low. As they have not been properly evaluated to check their quality, safety and efficacy this could be detrimental to your health. Falsified medicines are a major threat to public health (the term "falsified" refers to all forms of falsification, while the term "counterfeit" specifically refers to an infringement to intellectual property rights).
Goods in free circulation	Goods are in free circulation within the EU if they are— <ul style="list-style-type: none"> • wholly the produce of the EU, unless a CAP export refund has been claimed on them or • have been exported from a non-EU country and all import formalities have been complied with and any customs charges have been paid and not refunded wholly or in part.
Grey market goods	Goods manufactured with the consent of the rights-holder, but marketed without such consent, or produced in excess of an agreed quantity or amount, and sometimes also referred to as "parallel trade" goods.
Intellectual property	This allows people to own their creativity and innovation in the same way as they can own physical property.
Intellectual property rights	Includes trade marks, design rights, copyright or any related rights, geographical indications, patents, supplementary protection certificates (SPC), plant variety rights, topography of a semi-conductor. See Article 2 of EU Regulation 608/2013 for descriptions of these rights. Note that EU Regulation 608/2013 includes utility model and trade name in the list of intellectual property rights. However, Island law does not include a utility model as an intellectual property right, and a trade name is not recognised as an exclusive intellectual property right. Therefore, no customs intervention is possible for these rights.

Parallel trade goods	See "Grey market goods".
Patent	This gives an inventor the right for a limited period to prevent others from making, using or selling an invention without permission.
Patent infringing goods	Goods that will infringe a patent under domestic law, or a supplementary protection certificate (SPC) under EU law.
Perishable goods	Goods likely to deteriorate by being kept for up to 20 working days from the date of their detention by Customs.
Pirated goods	Goods which are (or embody) copies made without the consent of the rights-holder of the copyright, right in performance or design right (whether registered or unregistered), or of a person authorised by the rights-holder in the country of production, where the making of these copies would have constituted an infringement of the right in question under Island or EU law.
Rights-holder	Holder of an intellectual property right, or any person authorised to use those rights, or an authorised representative.
Small consignment	A postal or courier shipment which contains 3 units or less, or has a gross weight of less than 2 kg.
Supplementary Protection Certificates (CPC)	Concerned with rights in a medical product or plant protection products under EU law. It extends the duration of the exclusive right. It enters into force after expiry of a patent upon which it is based, and is available for various regulated, biologically active agents, namely human or veterinary medicaments and plant protection products.
Suspect goods	Goods where there are reasonable indications that they are the subject of a breach of intellectual property rights.
Trade mark	Any sign that can distinguish the goods and services of one trader from that of another.

Section 1 - Introduction

1.1 What this Notice is about

This Notice explains how Customs and Excise implements domestic and EU law concerned with the enforcement of intellectual property rights at importation, including—

- counterfeit and pirated goods (including falsified medicines)
- goods infringing a trade mark, patent, or other design rights
- goods infringing national or EU plant variety rights
- goods infringing EU geographical designation rules.

It also explains action Customs and Excise may take where goods infringe a trade mark or copyright (grey market goods).

Section 2 explains how rights-holders may apply to Customs and Excise for enforcement action at importation to assist them in their enforcement of their intellectual property rights.

Customs enforcement action is possible where the intellectual property right protection has been granted by an appropriate organisation or, in the case of any copyright, related right or unregistered design, where it arises by operation of law.

Customs enforcement action may also be taken in respect of “falsified medicines” (the term “falsified” refers to all forms of falsification, while the term “counterfeit” specifically refers to an infringement to intellectual property rights). Such action may be on the grounds that the goods are misdescribed (a false or untrue declaration), because they are “fake” (and treated as if counterfeit), and/or because they do not meet the relevant health or safety requirements.

Note that the EU Regulation 608/2013 includes utility model and trade name in the list of intellectual property rights. However, Island law does not include a utility model as an intellectual property right, and a trade name is not recognised as an exclusive intellectual property right. Therefore, no customs intervention is possible for these rights.

General customs powers dealing with import and export matters are found in the Customs and Excise Management Act 1986.

However, the Council Regulation and its associated enforcement action do not apply in relation to grey market goods. For these goods section 89 of the Trade Marks Act 1994 or section 110 of the Copyright Act 1991 may be used.

1.2 What goods will Customs not take enforcement action against?

Enforcement action will not be taken against—

- goods of a non-commercial nature contained in a traveller’s personal luggage

where there is nothing to suggest commercial traffic is involved and they are intended for private or domestic use

- goods in free circulation moving within the EU customs territory (which includes the UK and the Isle of Man)

Enforcement action against grey market goods is also more limited in nature, see Section 5 below.

With effect from 23 March 2016, goods infringing IP rights -

- in transit; or
- being transhipped (i.e. imported into the Island and UK for re-export to another place outside the EU),

through the Isle of Man became liable to be detained following the coming into force of EU Regulation 2015/2424/EU. This changed the rules in respect of transit goods in the light of several European court decisions.

However, if the shipper can prove that the trademark in question is not protected in the country of final destination, then detention may not be required.

1.3 What is the relevant law?

The main legislation used by Customs and Excise will be EU Regulation No. 608/2013, as it applies in the Island. General customs powers dealing with import and export matters are found in the Customs and Excise Management Act 1986.

However, the EU Regulation and its associated enforcement action do not apply in relation to grey market goods. For these goods section 89 of the Trade Marks Act 1994 or section 110 of the Copyright Act 1991 may be used.

Where any goods are detected that are or may be falsified medicines, Customs and Excise will liaise with the Department of Health and Social Care. If the legislation concerned with intellectual property rights has no application, the law that may be utilised may be the Medicines Act 2003 and/or customs law relating to the lack of, or false or untrue, declarations. If the product represents a risk to human, animal or plant health, or other health and safety provisions, Customs and Excise may use the relevant law for those areas to detain the goods.

1.4 European Union legislation

Regulation (EU) 608/2013

Regulation (EU) No 608/2013 of the European Parliament and of the Council (from this point simply referred to as the "EU Regulation") applies both, in part, by virtue of Protocol 3 (which governs the Island's relationship with the EU), and as applied by the European Union (Customs Enforcement of Intellectual Property Rights) Order 2015.

The EU Regulation establishes mandatory rules and other procedures which customs authorities use to facilitate the enforcement of certain IP rights at the external frontier of the EU. The Regulation is procedural in nature and does not introduce, amend or in any way affect national or EU law on IP or law relating to criminal procedures.

Significant elements of the Regulation include:

- the scope of customs intervention
- goods excluded from the scope of the Regulation
- list of IP rights included and their definitions
- application for action process
- simplified destruction procedure for infringing goods
- obligations of the IP rights applicant including sanctions where appropriate
- procedure for the notification of detention to both sides involved plus a clear time line of events
- use of information by the right holder
- procedure for the destruction of counterfeit or pirated goods in small consignments without reference to the right holder
- establishment and use of a central database
- legal authority for an implementing act to designate new forms for application for action, request for extension and so on.

1.5 Working day

In calculating any time limits mentioned in this Notice, all days other than public holidays, Sundays and Saturdays are regarded as working days. The day upon which an event takes place shall not be considered as falling within the period in question. The period for responding to a detention begins the first working day after the detention was notified and ends with the expiry of the last hour of the last day of the period.

1.6 Initiation of proceedings

For the purpose of proceedings required by Articles 16 and 29 of the Regulation the 'initiating process' is complied with when the claim form is issued by the court. This is regardless of whether or not it contains (or is accompanied by) the particulars of claim at that time. To ensure the continuation of a detention the claimant must serve the claim on the defendant no later than the date allowed under the relevant rules of court.

1.7 Will Customs seize suspect goods?

Customs and Excise may detain suspect goods in order to clarify their status. It will also detain goods if the rights-holder has applied to have such goods treated as prohibited, or to allow it to ask the rights-holder if they wish to make such an application.

Customs and Excise will only seize goods (as being forfeit) if -

- a court has declared the goods to be infringing goods; or
- the owner (importer) has agreed to abandon the goods - this being communicated by either the owner or vis the rights-holder.

1.8 Which other agency is concerned with intellectual property rights in the Island?

The Office of Fair Trading is the lead agency for intellectual property rights in the Island.

1.9 What other information is available?

HM Revenue and Customs has produced a comprehensive Public Notice, Notice 34, dealing with the import and export of intellectual property goods in the UK. It may be found at <https://www.gov.uk/government/publications/notice-34-intellectual-property-rights>

The European Commission has produced a Manual that provides comprehensive guidance on national and Community applications for enforcement of intellectual property rights - Intellectual Property Rights Manual for Lodging of Applications in the Customs Area. This can be accessed http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/customs/customs_controls/counterfeit_piracy/right_holders/manual-application-for-action_en.pdf

Section 2 - Application procedures

2.1 I hold an intellectual property (IP) right; how do I apply for protection?

If you:

- want Customs action at the border in the Island only you should complete a National IP Rights Application for Action ("National AFA") - see Form C.1340 (MAN), a copy of which is included in this Notice;
- hold an EU IP Right and you want Customs action in two or more Member States, you should complete an EU "Union AFA" and send it to HMRC in the UK. You must use the appropriate form as set out in the relevant EU legislation and which is available at https://ec.europa.eu/taxation_customs/business/customs-controls/counterfeit-piracy-other-ipr-violations/defend-your-rights_en

2.2 Will Customs and Excise act on a Union AFA?

If a rights-holder provides evidence that a Union AFA has been lodged and accepted by HMRC or a competent customs authority in another Member State, and includes coverage of the UK (or the UK and the Isle of Man), Customs and Excise can take action to detain any goods involved.

2.3 Who can submit an AFA?

A full description of the persons and entities entitled to submit either a national or Union AFA can be found in Article 3 of the EU Regulation and includes:

- right holders
- IP collective rights management bodies
- professional defence bodies
- in respect of geographical indicators; groups of producers or similar groups, inspection bodies or similar competent authorities
- persons or entities duly authorised by the right holder to initiate proceedings in order to determine whether an IP right has been infringed
- holders of exclusive licences duly authorised by the right holder to initiate proceedings in order to determine whether an IP right has been infringed.

2.4 What information will the applicant be asked to provide?

As set out in Article 6 of the EU Regulation you must provide:

- name, address and contact details along with your status within the meaning of Article 3 of the EU Regulation
- IP rights or rights to be protected
- documentary evidence that you hold the relevant rights or are authorised to act on behalf of the owner
- for a Union AFA you must also list the Member States in which you require action to be taken, as well as the contact details of the right-holder for each Member State concerned
- a sufficiently detailed description of the goods to enable us to recognise them
- specific technical data on the authentic goods, for example markings, bar codes, and images as appropriate
- the name and contact details of your appointed legal and technical experts
- agreement that data provided may be processed by the Commission and other

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- Member States
 - whether you wish to request the use of the “small consignment” procedure and agree to cover the costs of goods destroyed under that procedure.

The applicant will also be required to provide undertakings as follows:

- to notify the IP Authorisation Unit (IPAU) where an IP right ceases to have effect
- forward and update information that will enable customs authorities to analyse and assess the risk of an IP infringement
- to assume liability towards the holder of the goods where, following detention:
 - (a) action is discontinued due to an act or omission on the part of the applicant
 - (b) samples are either not returned or are damaged and beyond use due to an act or omission on the part of the applicant
 - (c) the goods in question are found not to infringe an IP right
- to reimburse, where requested, the costs incurred by customs authorities or other persons acting on their behalf, from the moment of detention. This includes costs associated with the storage and handling of the goods and, if appropriate, their destruction.

2.5 Additional information

Wherever applicable and if known you should also include within the application:

- any specific information concerning the type or pattern of fraud
- the port or country from which the goods are consigned and their intended port of arrival
- details identifying the consignment of packages; for example descriptions, marks and numbers, the container number, waybill or manifest details
- the expected date of arrival or departure of the goods
- the means of transport and the identity of the carrier, logistics operator and/or customs broker/agent involved
- the identity (including address and post code) of the importer or exporter. If known please also supply their Economic Operator Registration and Identification (EORI) number
- the country or countries of production and the routes used by traffickers
- the technical differences, if known, between the authentic and suspected infringing goods

- the pre-tax value of the original goods on the legitimate market in the country in which the application for action is lodged

You should also provide details on the form, no matter how trivial, of any other intelligence you may have about the trade in infringing goods in order to help us intercept such goods. Any information that you wish to make available after the acceptance of the application for action can be sent by post or email.

2.6 When should I send my application?

Wherever possible you should send completed AFA 30 working days before you expect the infringing goods to be imported or exported, or you want the monitoring period to commence.

If you have not submitted an AFA, Customs and Excise may notify you of any suspected infringing goods it discovers during the course of its checks and invite you to submit an application (*ex officio* action). Customs and Excise is only authorised to detain these goods for 4 working days following the notification of detention to allow you to submit an application, and cannot extend this period.

2.7 Where should I send the completed application?

1. You should send the completed National AFA to Customs and Excise.
2. You should send completed Union AFA to:

HM Revenue and Customs
IP Rights AFA Approvals Team
Room 13s
Ty-Glas
Llanishen, Cardiff
CF14 2BD

Telephone: General Office 03000 322 7067
Email: approvals.ip@hmrc.gsi.gov.uk

You should also send a copy of your Union AFA application to Customs and Excise if you want imports into the Island to be monitored.

2.8 Administrative fees, validity periods and renewals

You will not be charged a fee for new applications, or requests for extensions, submitted under the EU Regulation for National AFA and Union AFA notified to Customs and Excise.

However, Customs and Excise reserves the right to pass on to you any costs incurred from the moment of detention including handling, storage and for destroying the suspect goods.

The validity period of an AFA shall not exceed 1 year but may be extended upon request. To ensure continuity of coverage the renewal should be received at least 30

working days before expiry of the application and in any event must be received before the expiry date or a new AFA may be required. The request shall be forwarded using the appropriate form.

Please note that an AFA granted under the previous EU Council Regulation 1383/2003 cannot be renewed beyond its expiry date by a simple extension request. A new AFA must be submitted under the provisions of the 2013 EU Regulation. Thereafter the AFA may be renewed on request.

Should an IP right cease to have effect you must inform Customs and Excise so the AFA can be amended or revoked. Similarly where an applicant ceases for any reason to be entitled to submit an AFA they must inform the appropriate Customs and Excise; the AFA will be revoked.

Where an AFA is submitted in response to an *ex-officio* detention which does not contain all of the mandatory information regarding technical data etc it shall be granted only for the detention period of the goods in question.

A comprehensive manual covering completion of the AFA as well as copies of the various forms can be found on the [European Commission's website](#).

2.9 Liability for costs

When you submit an application the right-holder is required to complete an undertaking to pay all costs and liabilities incurred under the EU Regulation. These may include:

- storage and other handling charges for correctly detained and abandoned goods
- costs incurred in the destruction of the goods, including those destroyed under the small consignment procedure.

Additionally, Article 28 establishes a civil liability in respect of legal costs and compensation for any loss suffered by the owner of the goods if you or the court confirm that the goods are not infringing or the action is discontinued owing to an act or omission on your part.

2.10 Disclosure of information

The EU Regulation establishes a gateway that allows for disclosure to a third party of information that would otherwise be confidential. This information is disclosed on the understanding that it may only be used for the following purposes:

- to initiate proceedings to determine whether an IP right has been infringed and in the course of those proceedings;
- in connection with criminal investigations related to the infringement of an IP right undertaken by a public body in the Island (for example, the OFT);
- for criminal proceedings;

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- to seek compensation from the infringer or other persons;
 - to agree with the declarant or holder that goods may be abandoned for destruction;
 - to agree with the declarant or holder an appropriate level of security allowing early release of goods suspected of infringing a design, patent, semi-conductor topography, or plant variety.

Misuse of the information provided under the terms of the Regulation may result in the revocation or suspension of the application in force or a refusal to extend the period of validity of the AFA.

Customs and Excise may also disclose information to HMRC or Border Force in the UK in connection with the goods and/or importation involved.

Section 3 - Action taken when suspect goods are detected at the border

When goods are intercepted that there is reason to believe are infringing and are covered by a valid application or notice, Customs and Excise will deal with them in accordance with the relevant EU or Island legislation.

3.1 If an application for action (AFA) is in place

When suspect goods are detected at the border Customs and Excise will:

- (a) detain the goods;
- (b) notify the declarant or holder of the goods of their detention within one working day of the decision to detain and give them 10 working days in which to either consent or object to their abandonment for destruction;
- (c) notify the right holder of the detention on the same working day or promptly after. Invite them to confirm whether or not they believe the goods to be infringing and if so whether they agree to their destruction, they will be given 10 working days to respond;
- (d) provide in the notification the consignment details allowed under Article 17.4 of the EU Regulation and the consequences of failing to respond within 10 working days;
- (e) give all parties the opportunity to inspect the goods; in the case of goods suspected of being counterfeit or pirated, the right holder may request a sample for further analysis;
- (f) detain the goods pending a response from all parties or the expiry of both of the respective detention periods.

Goods can be considered as abandoned for destruction under the following conditions:

- the right holder confirms in writing that, in their opinion, the goods infringe an

IP right covered by the AFA and consents to destruction; plus

- the declarant or holder of the goods confirms in writing that they agree to their destruction.

Customs and Excise may deem that consent has been given where:

- the right holder confirms in writing that, in their opinion, the goods infringe an IP right covered by the AFA and consents to destruction; plus
- the declarant or holder of the goods has not confirmed his agreement to destruction nor notified his opposition to it; for example, by failing to respond within the period set out.

Destruction is carried out under customs control and under the responsibility of the right holder. Samples may be taken and retained.

The prescribed detention period is 10 working days from the notification of detention. In the case of perishable goods this is reduced to 3 working days.

If the declarant or holder of the goods objects to their destruction Customs and Excise will notify the right holder accordingly. If the right holder has not provided satisfactory evidence to CUSTOMS AND EXCISE that they have initiated proceedings to determine whether their IP right has been infringed before the end of the detention period, including any extension, the goods must be released from detention; subject to the completion of all other customs formalities.

Except in the case of perishable goods Customs and Excise may, at the request of the right holder and where it agrees it is justified, extend the detention period by a maximum of a further 10 working days. The total period cannot exceed 20 working days.

3.2 When no application for action (AFA) is in place (*ex-officio* detention)

Except where they are perishable when goods suspected of infringing an IP right are detected by Customs and Excise but no valid AFA is in place Customs and Excise:

- (a) may, prior to detention seek to identify the relevant right holder. Customs and Excise can give basic information to a likely right holder but cannot disclose anything that may identify an individual or company;
- (b) must release the goods if no right holder has been identified within 1 day of the detection; subject to the completion of all other customs formalities;
- (c) will detain the goods if an entitled right holder is identified and he expresses an intention to lodge an AFA covering any IP right he believes is infringed by the consignment;
- (d) will notify the declarant or holder of the goods of their detention within one working day of the decision to detain, give them 10 working days in which to either consent or object to their abandonment for destruction and informing

them of the consequences of failing to respond;

- (e) notify the right holder of the detention on the same working day or promptly after and:
- invite them to submit a National AFA covering the goods and the right in question;
 - to confirm whether or not they believe the goods to be infringing and if so whether they agree to their destruction;
 - given 10 working days to respond but must send an acceptable national AFA before the end of 4 working days;
 - informed of the consequences of failing to respond within the deadlines set out;
- (f) will not disclose names and addresses of any party involved to the right holder until a valid AFA has been received;
- (g) must release the goods, subject to the completion of all other customs formalities, if after 4 working days of the detention the right holder has not lodged an acceptable AFA;
- (h) will on request disclose all available information as set out in Article 18.5 of the EU Regulation to the right holder if an AFA is accepted. The case proceeds as from (e) above.

3.3 Procedure for the destruction of goods in small consignments

The EU Regulation establishes an option procedure whereby goods in small consignments may be abandoned for destruction at the right holder's expense without reference to the right holder or the need for the right holder to commence legal proceedings.

3.4 Eligibility for use of the small consignment procedure

Before the small consignment procedure can be used all of the following conditions must be fulfilled:

- the goods are suspected of being counterfeit or pirated;
- the goods are not perishable;
- there is an extant AFA already in place covering the goods in question;
- the right holder has requested the use of the procedure when they submitted their AFA;

- the goods are transported as a small consignment.

3.5 Initial detention and offer to the declarant or holder of the goods

When suspect goods eligible for the small consignment procedure are detected at the border Customs and Excise will:

- (a) detain the goods and notify the declarant or holder of the goods that it intends to destroy the goods unless they oppose the destruction. The right holder is not notified of the detention at this stage;
- (b) give the declarant or holder 10 working days from the notification of detention to express their points of view and informing them of the consequences of failing to respond before the deadline expires;
- (c) if consent to destroy the goods is given they will be considered as abandoned and destroyed;
- (d) if the declarant or holder of the goods has neither confirmed his agreement to destruction nor notified his opposition at the close of the 10 day detention period, for example by failing to respond to the request; Customs and Excise may deem that consent to destroy the goods has been given;
- (e) destruction is carried out under customs control and under the responsibility of the right holder. At the request of the right holder Customs and Excise may provide information about the quantity and nature of the goods destroyed but are unable to provide any other details concerning the goods.

3.6 Procedure if the declarant or holder objects to destruction

If the declarant or holder has notified his opposition to destruction or, in the absence of an objection, Customs and Excise has chosen not to deem that consent has been given; the right holder must be given the opportunity of initiating proceedings to protect his IP right.

- (a) Customs and Excise will detain the goods for 10 working days, notify the right holder and invite him to initiate proceedings to determine whether an IP right has been infringed. There is no facility to further extend this period.
- (b) Customs and Excise will disclose full consignment details to the right holder as set out in Article 26.8 of the EU Regulation and inform them of the consequences of failing to respond within the deadline set.
- (c) If upon expiry of the deadline Customs and Excise has not received confirmation from the right holder that he has initiated proceedings then the goods must be released; subject to the completion of all other customs formalities.

3.7 Information for the right holder following detention

When suspect goods are detained by Customs and Excise, it will write to you giving details of the consignment and explaining your options under the EU Regulation. It is important that you act and respond with alacrity and ensure that any time limits

notified to you are strictly observed.

On receipt of the detention notice from Customs and Excise consider the status of the goods and your options.

You only have 10 working days from notification of the detention (3 working days in the case of perishable goods) to complete all of the following:

- decide whether you believe the goods infringe any of your IP rights and if so what course of action you wish to take;
- if infringing notify Customs and Excise of the fact and whether you agree to their destruction;
- should you believe the goods do infringe your IP rights but you do not consent to their destruction you must either initiate court proceedings or the goods will be released;
- if Customs and Excise notifies you that the declarant or holder of the goods has objected to their destruction you must initiate court proceedings and inform Customs and Excise accordingly or the goods must be released.

Contact Customs and Excise if you require further consignment information, wish to exercise your right to inspect the goods or to receive a sample.

Should the goods not infringe your IP rights, or you do not intend to take any action, inform Customs and Excise without delay so that early release can be arranged.

If you believe that the goods do infringe your IP rights, write to Customs and Excise confirming this, identifying the specific right concerned and whether or not you wish the goods to be destroyed. You also have the option of contacting the declarant or holder of the goods to seek their consent to destroy the goods.

Should the declarant or holder of the goods object to their destruction, or where Customs and Excise has not exercised its right to deem consent to destruction has been given, Customs and Excise will inform you. In such a case the goods will be released from detention unless you initiate court proceedings to determine whether your IP right has been infringed and notify Customs and Excise of this fact before expiry of the detention period.

As an alternative to the procedure leading to voluntary abandonment of the goods for destruction you may wish instead to immediately initiate court proceedings. If this is the case, write to Customs and Excise withholding consent for destruction and confirm that proceedings are to be undertaken. Before expiry of the detention period you must show that proceedings have been commenced by providing, for example:

- a court issued claim form;
- proof that the proceedings cover the goods in question.

Release is automatic unless abandonment is agreed by both parties, is deemed by

Customs and Excise or you have given notice of proceedings before the expiry of the detention period, including any extension.

Except in the case of perishable goods or where the goods were originally dealt with under the small consignment procedure you may seek an extension of the detention period by writing to the case officer and setting out your reasons. You must do this before the expiry of the 10th working day.

Should Customs and Excise notify you of *ex-officio* detection or detention you should decide whether you hold the right in question and if so whether you wish to take action.

If you do not intend to lodge an AFA, you believe the goods do not infringe, or you are not the right holder; inform Customs and Excise immediately so that the goods can be released.

If you intend to lodge an AFA inform Customs and Excise, which will take steps to detain (or continue to detain) the goods. You must then complete a national AFA.

You have only 4 working days to lodge an acceptable AFA or the goods must be released; there is no facility to extend this lodgement period.

In signing the AFA you have given an undertaking to assume certain liabilities and bear the costs arising out of the detention and disposal of the goods. Your attention is drawn to Article 16 of the EU Regulation concerning the failure to fulfil certain obligations including the misuse of information provided by Customs. Failure to abide by the conditions set out may lead to the revocation or suspension of your AFA.

If you have opted in to the small consignment procedure and Customs and Excise detects a consignment that fulfils the conditions set out in the EU Regulation it will follow the procedure as set out above. If the declarant or holder consents to the destruction of the goods, or Customs and Excise deems that consent has been given, the goods will be destroyed at your expense.

You may request information about the actual or estimated quantity of the destroyed goods and their nature but we are unable to provide the names and addresses of any third party.

Should the declarant or holder not agree to the destruction of the goods Customs and Excise will detain them for 10 working days and disclose the information set out in Article 26.8 of the EU Regulation to allow you to initiate proceedings if you so desire. There is no facility to extend this period further.

3.8 Information for the declarant or holder of the goods following detention

When suspect goods are detained Customs and Excise is required to inform the declarant or the holder of the goods; there is no requirement to inform all interested parties.

Customs and Excise will write to one or more of the interested parties giving details of the consignment and your options under the Regulation and the date by which you must reply. It is important that the recipient acts and responds with alacrity, ensuring

any time limits notified are strictly observed.

On receipt of the detention notice from Customs and Excise consider whether you believe the goods infringe your IP right and your options. If you do not have title to the goods immediately bring the situation to the attention of the owner.

You only have 10 working days from notification of the detention (3 working days in the case of perishable goods) to complete all of the following:

- decide if you believe the goods infringe an IP right and the course of action you wish to take;
- if applicable notify Customs and Excise that you agree to abandon the goods for destruction;
- if you do not believe that an IP right has been infringed and you do not agree to their destruction; immediately inform Customs and Excise that you withhold consent for their disposal.

Contact Customs and Excise if you require further consignment information or wish to exercise your right to inspect the goods.

If you do not believe that the goods infringe an IP right and thus intend to object to their destruction you must respond to the case officer setting out your objection before the expiry of the detention period.

You may contact the right holder, or the right holder may contact you to discuss options.

The right holder may seek an extension to the detention period to complete their investigations but there is no facility for you to seek an extension. It is important therefore that you respond to the case officer within the 10 working day period allocated to you.

Customs and Excise may deem that consent to destroy the goods has been given and arrange for their disposal without further reference to you if you:

- do not respond to Customs and Excise or object to their disposal before the expiry of the detention period;
- the right holder asserts that the goods infringe their IP right and give consent for their destruction.

Costs for the storage and destruction for detained goods are the responsibility of the right holder although they may exercise their right to initiate civil proceedings against you to recover their costs.

As part of the AFA process the right holder must provide an undertaking accepting liability towards the holder of the goods or declarant should the detention be discontinued or where the goods are found not to infringe an IP right. Should you wish to take advantage of this option you must contact the right holder or their

representative.

If the right holder has opted in to the small consignment procedure and Customs and Excise detects a consignment that fulfils the conditions set out in the EU Regulation they will follow the procedure as set out above and detain the goods for 10 working days.

You will be given the option of abandoning the goods for destruction under customs control and at the expense of the right holder.

No information about the consignment that could identify you or any other third party is provided to the right holder unless you object to the destruction of the goods.

It is important you respond to Customs and Excise before expiry of the 10 day detention period or they may deem that you have agreed to the destruction of the goods.

If you inform Customs and Excise that you object to the destruction of the goods it will disclose the consignment details to the right holder and detain the consignment for a further 10 working days.

This is to give the right holder the opportunity to decide whether an IP right has been infringed and to initiate court proceedings, should they so desire.

Section 4 - Additional information

4.1 Early release of goods

Where a right holder has initiated proceedings to determine whether a design right, patent, topography semiconductor product or plant variety right has been infringed the declarant or holder of the goods may request their release from detention before the completion of the proceedings.

Release will only be allowed where:

- a sufficient level of security has been agreed with the right holder;
- no precautionary measures have been imposed by the court or other competent body;
- all customs formalities have been complied with.

The declarant or holder should reach an agreement with the right holder on the level and nature of the security and inform Customs and Excise accordingly. Customs and Excise will not hold the security.

4.2 Storage and destruction of goods

The conditions of storage of the goods shall be determined by Customs and Excise.

Goods to be destroyed shall not be:

-
- released for free circulation however Customs and Excise, with the agreement of the right holder, may allow goods to be recycled or disposed of outside of commercial channels including for the purposes of publicity, training or education. The conditions under which goods can be released for free circulation shall be determined by the customs authorities;
 - brought out of the customs territory of the Union;
 - exported;
 - re-exported;
 - placed under a suspensive procedure;
 - placed in a free zone or free warehouse.

Goods may be moved under customs supervision between different places within the customs territory to facilitate their destruction under customs control.

4.3 Liability of the customs authority

Article 27 of the EU Regulation specifies that the granting of an AFA shall not entitle the right holder concerned to compensation in the event that goods suspected of infringing an IP right are not detected and are released or no action is taken to detain them.

Section 5 - Action against grey market goods

5.1 Law

The EU Regulation does not apply to grey market goods.

However, section 89 of the Trade Marks Act 1994 (TMA), as amended, allows the proprietor or the licensee of a registered trade mark to give notice in writing that goods expected to arrive in the Island will infringe their trade mark and should therefore be treated as prohibited.

Section 110 of the Copyright Act 1991 allows the owner of a copyright to give notice in writing that infringing copies of certain types of works expected to arrive in the Island on a specified date, are to be treated as prohibited.

These sections apply only to infringing goods arriving from outside the European Economic Area, or from within that area but not having been entered for free circulation. Goods that are prohibited are liable to forfeiture and may be seized under national customs law.

5.2 Exclusions

Section 89 and section 110 do not apply to:

- goods for which action may be undertaken using the EU Regulation;

-
- infringing goods intended for the private and domestic use of the importer;
 - goods already in free circulation within the European Economic Area;
 - goods which have already arrived in the Island, irrespective of their customs status.

5.3 Application and enforcement procedures

You should use Form C.1340 (MAN) and send it to Customs and Excise. You are required, on request, to provide as much specific information about the expected shipment as possible, otherwise Customs and Excise may be unable to target it successfully.

Having accepted an application under these arrangements Customs and Excise will seek to target and intercept infringing consignments arriving. Any detention or seizure of goods at the frontier will be carried out under the Customs and Excise Management Act 1986.

5.4 Fees

You are required to pay an administration fee of £30 (plus VAT) in respect of each notice you lodge under section 89 or section 110. You should make payment at the time the notice is given.

5.5 Indemnity

Both Acts specify that the person giving the notice shall keep Customs and Excise indemnified against any liability and expense incurred as a result of activities carried out in relation to the goods that are specified in the notice.

5.6 Security

Customs and Excise can, under the Acts, at any time require a security by cash deposit or guarantee in respect of the notice and the goods to which it relates. Customs and Excise will notify you if and when it requires security.

5.7 Action following detection of goods included in a notice

When Customs and Excise intercepts goods covered by a notice lodged under either section 89 or section 110 it will inform the applicant and upon confirmation that the goods are infringing we will seize them under the Customs and Excise Management Act 1986 as being liable to forfeiture.

The goods will be destroyed under customs supervision unless the owner of the goods objects to this course of action by lodging a Notice of Claim.

5.8 Liability

Customs and Excise does not accept liability for any infringing goods covered by applications or notices under either EU or Island legislation which it does not detect

and are released or no action is taken to detain them.

5.9 Are there any restrictions on enforcement action?

Yes. Under the EU Trade Mark Directive a trade mark owner may not automatically prohibit use of a trade mark in relation to goods put on the market in the EEA by the owner of the trade mark, or with their consent.

Therefore "parallel trade" within the EEA (including the Isle of Man) is normally permitted. Parallel trade is a complex area, and Customs and Excise would only consider taking action where the goods are arriving from outside the EEA and provided with full information and evidence of prohibition under the so-called "BMS criteria".

Section 6 - Other Enforcement Action

6.1 What other law deals with imports of counterfeit material etc?

There are a number of pieces of legislation that prohibit the importation into the Isle of Man of goods that are counterfeit. For example -

Customs Consolidation Act 1874

- counterfeit of unfit money
- goods with false assay marks
- goods wrongly marked as being sanctioned by the UK or Isle of Man Governments

Post Office Act 1993

- any facsimile, imitation or representation (on paper or otherwise) of any stamp for denoting any rate of postage, whether of the Isle of Man or any overseas administration
- any die, plate, instrument or materials for making such a facsimile etc

Consumer Protection (Trade Descriptions) Act 1970

- false trade descriptions applied outside the Island to goods imported into the Island
- false indication of place of manufacture, production, processing etc

Performers Protection Act 1996

- imports without sufficient consent, otherwise than for their private and domestic use, a recording which is, or that the importer has reason to believe, is an illicit

recording

Forgery Act 1952

- possession of a forged document, seal or die is an offence, and importation of any paper or implements for such a forgery is also prohibited.

Coinage Offences Act 1980

- importing or exporting counterfeit coin is prohibited

Customs and Excise Management Act 1986

- false passport or other identity documents

This list is not exhaustive, and is provided for information only.

6.2 What about counterfeit cash?

The Forgery Act 1952 also applies to counterfeit currency.

The Coinage Act 1980 prohibits the import or export of counterfeit coin.

Under section 76A of the Customs and Excise Management Act 1986 any forged or counterfeit monetary instrument or currency has to be included in the “cash” declared by a person entering or leaving the Island - where the total cash exceeds €10,000. See Notice 9011 MAN for further information.

Amendments to this Notice

14 June 2016	Paragraph 1.2 amended to reflect change in treatment of infringing goods in transit or transshipment with effect from 23 March 2016 and in light of EU Regulation 2015/2424.
22 September 2016	OFT address amended, IP Rights Team address amended and various hyperlinks amended. Minor typos also corrected.
4 November 2016	In the Glossary, the definition of “Counterfeit goods” amended and one for “Falsified medicines” inserted. Associated amendments made to paragraphs 1.1 and 1.3.
2 July 2018	Amended version of Form C1340 MAN inserted.
20 August 2018	Deletion of fax number for OFT, Telephone number for IP Right Approval Team updated, and various EU hyperlinks updated.

Privacy Notice

To find out more about how we collect and use personal information, contact any of our offices or visit our website at: <https://www.gov.im/about-the-government/departments/the-treasury/privacy-notice/> We will send you a paper copy if you telephone us or write to us using the contact details provided in this notice.

Annex
Form C.1340 (MAN) - Intellectual Property Rights Application Form



**Intellectual Property Rights
Application For Action (AFA)
“National AFA”**

Please complete and return this application form to Isle of Man Customs & Excise, PO Box 6, Custom House, North Quay, Douglas, Isle of Man, IM99 1AG. Email – customs@gov.im

1. Details of the person making the application

(See Note 1)

Postcode

Telephone Number

--

Fax Number

--

Email

--

Legal status of applicant

limited company / PLC / LLC / partnership / sole proprietor / other _____
--

2. Declaration

I (full name)

--

declare that

--

is/are the holder or authorised user of the intellectual property rights shown below, or is an authorised representative.

3. Details of the right(s)

Trade mark(s)

Copyright or rights in performance

Design right(s)

Patent(s) or supplementary protection certificate(s)
--

4. Description of the goods to be covered

This is a request to Customs and Excise to detain these type(s) of goods that you have reason to believe are being counterfeited or pirated or infringe rights.

Also enclose any component parts of counterfeit goods (e.g. buttons, labels, packaging materials, guarantee documents) you wish to be included in this application.

Description of goods	Commodity Code

5. Details of the Customs Officer that invited the application

(See Note 6)

Name

Telephone No.

This is a declaration that you have been informed by this Officer that suspect counterfeit, pirated or patent infringing goods have been discovered during the course of checks and you are lodging this application accordingly.

6. Details of expected movements of suspected pirated or patent infringing goods (where known)

Place of customs declaration

Consignment details

Date of expected arrival/departure

Means of transport

Importer/exporter details

7. Details of authorised traders in legitimate product

These persons or companies are authorised to trade in the legitimate product(s) within or outside the UK and Isle of Man.

These details are required to avoid unnecessary disruption to legitimate trade.

Name	Address	VAT No.

8. Details of suspected countries of origin and consignment (where known)

I have reason to believe that infringing goods are being sent from/to the following countries—

9. Details of suspected importers/exporters (where known)

This is a declaration that you have reason to believe that these persons or companies are involved in the import/export of infringing goods.

Name	Address	VAT No.

10. Details of suspected suppliers (where known)

This is a declaration that you have reason to believe that these persons or companies are supplying infringing goods to importers/exporters.

Name	Address	VAT No.

11. Details of monitoring period

Start date

Period of monitoring months

DECLARATION

I, declare that the information given in this application form is true and accurate to the best of my knowledge. I have also completed the undertaking in the Annex.

Signature Date

Print name

Status

Privacy Notice

The Treasury collects information about you in order to administer taxation and carry out other functions for which it is responsible (e.g. National Insurance, customs and excise duties, property rates, social security benefits, state pensions and legal aid etc.), and for the detection and prevention of crime. Whilst that information will primarily be provided by you, where the law allows we may also get information about you from other organisations, or give information about you to them. This may be to check the accuracy of the information provided, prevent or detect crime or protect public funds in other ways. These organisations may include other government departments, the police and other agencies.

To find out more about how we collect and use personal information, contact any of our offices or visit our website at: <https://www.gov.im/about-the-government/departments/the-treasury/privacy-notice/>

C.1340 MAN Intellectual Property Rights

DECLARATION IN ACCORDANCE WITH ARTICLE 6 OF COUNCIL REGULATION (EU) 608/2013

I, the undersigned right-holder, within the meaning of Article 2(8) of Regulation of the European Parliament and Council (EU) No. 608/2013 (hereinafter "the basic Regulation"), of the intellectual property rights certified by the attached documents, hereby undertake in accordance with Article 29 of the Regulation to assume liability towards the persons involved in a situation referred to in Article 1 in the event that a procedure initiated pursuant to present Regulation is discontinued owing to an act or omission on my part or in the event that the goods in question are subsequently found not to infringe an intellectual property right.

- I hereby undertake to pay all costs incurred under the basic Regulation by keeping goods under customs control pursuant to Chapter III, including costs occasioned by the destruction of goods infringing an intellectual property right pursuant to Article 23.
- I confirm that I have taken note of Article 15 of the basic Regulation and undertake to notify the department of any alteration to or loss of my intellectual property rights.

Done at on,/...../20.....

Signature

C.1340 MAN Intellectual Property Rights

NOTES

You should also read Notice 34A (MAN)

1. You may make an application if you are the holder or authorised user of intellectual property right, or you are an authorised representative of a holder or user.
2. This is an application for Customs and Excise to intercept goods that you declare infringe a right of which you are a holder or user, or are their authorised representative.
3. Applications by holders of a Union AFA for action in the UK and other Member States of the EU should be made to HM Revenue and Customs.
4. The proof that must accompany this application is detailed in section 2 of Notice 34A (MAN).
5. There are certain types of goods against which Customs and Excise cannot take action under this application. These are listed in section 1 of Notice 34A (MAN).
6. IF THIS APPLICATION IS LODGED IN RESPONSE TO AN INVITATION FROM A CUSTOMS OFFICER, PLEASE COMPLETE QUESTION 5.
7. The more information you can provide, the greater the chance Customs and Excise will have of intercepting infringing goods.
8. Allow at least 3 days for your application to be considered and processed prior to implementation.
9. There is no fee for a national AFA application, but if the application is accepted YOU WILL BE LEGALLY OBLIGED TO INDEMNIFY THE TREASURY AGAINST ANY LIABILITY OR EXPENSE IT MAY INCUR AS A RESULT OF ANY ACTION IN RELATION TO GOODS COVERED BY THIS APPLICATION. See the Annex to this application form.
10. There is a fee of £30 (plus VAT) for a section 89 or section 110 application in respect of certain 'grey market' goods.
11. If this application is rejected you will be advised of the reason, and will be given the opportunity to ask for the decision to be reconsidered.
12. You may apply to extend the monitoring period by giving notice in writing to Customs and Excise at least 10 days before the end of the initial period. You will only be asked to complete a further application form if the initial period has expired.
13. If there is insufficient space to answer any of the questions, or you wish to provide any further details, continue on a separate sheet ensuring that the additional information is clearly marked with the relevant question number.
14. Questions 1, 2, 3, 4 and 11 must be completed. If they are not completed your application will be returned.
15. This application serves as a notice for the purposes of the Copyright Act 1991, the Trade Marks Act 1994, Regulation (EU) No. 608/2013 and the Customs Enforcement of Intellectual Property Rights Regulations 2015.

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Isle of Man
Government

Reilts Ellan Vannin