

Customs Enforcement of Intellectual Property Rights Manual

Office of the Revenue Commissioners

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1. Introduction

1.1. Revenue is empowered to take action against infringements of Intellectual Property Rights (IPR), at points of importation to the State. The circumstances in which action may be taken, and the procedures to be followed in taking it, are governed by:

- [Regulation \(EU\) 608/2013 of the European Parliament and of the Council concerning customs enforcement of IPR \(the European Regulation\)](#), and
- [The European Union \(Customs Enforcement of Intellectual Property Rights\) Regulations 2013 \(S.I. No. 562 of 2013\)](#).

These notes provide guidance for staff on the procedures to be followed where goods suspected of infringing an IPR are detected.

- 1.2. **Section 2** gives an overview of the Application for Action (AFA) process, under which holders of IP rights can request customs to take action against infringements of those rights. Except in the specific circumstances of the **ex officio** procedure outlined in section 4, enforcement action may be taken only where the holder of an IPR has made an AFA and a decision granting it has been made.
- 1.3. **Section 3** sets out the standard enforcement procedure. This allows goods suspected of infringing an IPR to be destroyed without recourse to legal proceedings, where the agreement of both the person whose AFA has been granted (the decision-holder) and the declarant or holder of the goods is, or is deemed to be, forthcoming. It provides for the situation where the decision-holder might choose to initiate proceedings instead of agreeing to destruction of the goods. It also covers the scenario where the declarant or holder of the goods objects to their destruction; in such an event, the goods will fail to be released unless the decision-holder initiates proceedings to determine whether an IPR has been infringed. Strict time limits are laid down for the various elements of this procedure, in accordance with the European Regulation, and must be adhered to.
- 1.4. **Section 4** outlines the **ex officio** procedure, under which certain goods suspected of infringing an IPR may be detained where an AFA has not been granted. The continuation of a detention made under this procedure is dependent on a person entitled to make an AFA doing so within 4 working days of the issuing of notice of the detention of the goods. If this does not occur, or if the AFA is rejected, the goods must be released.

- 1.5. **Section 5** outlines a procedure introduced by the European Regulation for small consignments goods that are suspected of infringing an IPR. In such cases, the decision-holder must have indicated use of the small consignment procedure when making an AFA and officers should confirm this information through COPIS.
- 1.6. **Section 6** addresses a number of other matters relating to the enforcement of IPR, including; the recording of actions taken; the storage of detained goods; the inspection and taking of samples of detained goods and; arrangements for the destruction of detained goods.
- 1.7. It should be noted that the procedures described in these guidelines cover the full range of actions that may be taken to enforce IPR. These procedures are provided for by EU Regulation 608/2013, and powers of detention and seizure under customs law are not applicable.
- 1.8. In accordance with Article 1.3 and 1.4 of the European Regulation, the enforcement procedures **do not apply** to:
 - goods that have been released for free circulation under the end-use regime, and
 - goods of a non-commercial nature contained in passenger's personal luggage.

The regulation does not apply, also, in the case of goods manufactured with the consent of the right-holder, or to goods manufactured by a person duly authorised by a right-holder to manufacture a certain quantity of goods. The limits and quantities in relation to such goods are agreed between that person and the right-holder.

2. Applications for Action

Except in the case of the **ex officio** procedure outlined in Section 4, customs enforcement of an IPR may be carried out only where an application for action (AFA), requesting that action be taken with respect to goods suspected of infringing the IPR, has been granted to the person holding the IPR.

The rules governing AFAs are set out in Chapter II of the European Regulation.

AFAs can be either national or Union applications. A national application is an application requesting the authorities of a Member State to take action against infringements of a specified IPR in that Member State. A Union application requests the authorities of the Member State with which it is lodged, and the authorities of one or more other Member State(s), to take action in their respective jurisdictions against infringements of a specified IPR.

In Ireland, AFAs are submitted to the Prohibitions and Restrictions Unit of Customs Division (CD). Where decisions granting AFAs are made, details are recorded by Customs Division on COPIS, the EU Anti-Counterfeiting and Piracy System. Details of all AFAs (national and Union) granted in all Member States can be found on COPIS. Where officers suspect that goods in a consignment are counterfeit, they should check COPIS to establish whether a decision granting an AFA in respect of goods of the kind concerned has been made in respect of the right-holder.

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[...]

Article 16 of the European Regulation sets out the obligations of rights-holders in the customs enforcement of IPR and provides for, among other things, for the revocation or suspension of decisions granting AFAs in the following circumstances:

- Misuse of the information provided by Revenue in relation to the declarant;
- Failure to notify Revenue regarding changes to the IP rights covered by the decision;
- Failure to return samples of the goods detained, and;
- Failure to initiate proceedings under Article 23(3) or Article 26(9) EU Regulation 608/2013.

3. Standard Enforcement Procedure

- 3.1. Where goods suspected of infringing an IPR are detected at the point of importation, and a valid AFA is in place, the goods should be detained and notice of the detention issued to the declarant or holder of the goods (see letter at **Appendix 1**). This letter must be issued within one working day of the detention. Before goods are detained, the decision-holder should be asked to provide any relevant information about the goods to determine if an IPR infringement has occurred. Likewise, Revenue may provide the decision-holder with information about the actual or estimated quantity of the goods, their actual or presumed nature and images of them.

- 3.2. The recipient of the notice of detention has a period of 10 working days from the date of the notification to reply and can either 1) agree to the destruction of the goods, or 2) object to their destruction. As indicated in the letter at **Appendix 1**, the grounds for objection must be that the goods concerned do not infringe an IPR.
- 3.3. The decision-holder must also be notified of the detention, on the same day as, or as soon as possible after, the notice of detention issues to the declarant or holder of the goods (letter at **Appendix 2** should be used for that purpose). This letter informs the decision-holder that there is a period of 10 working days in which to indicate:
 1. whether or not the decision-holder believes that the goods infringe any of the decision-holder's IP rights,
 2. where it is believed that the goods infringe an IPR, whether the decision-holder agrees to their destruction, and
 3. if appropriate, that the decision-holder has initiated proceedings to determine whether an IPR has been infringed.

If the decision-holder so requests, and if the information is available, the following should be provided:

1. names and addresses of the consignee
 2. the consignor, and the declarant or holder of the goods
 3. the customs procedure involved and,
 4. the origin, provenance and destination of the detained goods must be provided. (See Section 6.4 and 6.5 as to the limitations on the use a decision-holder may make of such information.)
- 3.4. The response period of 10 working days granted to the declarant or holder of the goods and to the decision-holder is reduced to 3 working days in the cases of perishable goods (i.e. goods which would deteriorate by being held for up to 20 days from the date of their detention).
 - 3.5. Detained goods may be destroyed where:
 - The decision-holder confirms in writing within the required period as referred to in the letter issued by Revenue (see section 3.3 above) that it is the decision-holder's belief that the goods infringe an IPR and they agree to their destruction, and

- The declarant or holder of the goods gives written confirmation of agreement to their destruction, or does not respond within the specified period (in which case agreement to destruction will be deemed to have been given).
- 3.6. The decision-holder may decide not to agree to the destruction of detained goods but instead initiate legal proceedings to determine whether an IPR has been infringed. In such events, the decision-holder must notify Revenue of the chosen course of action within the period allowed for response noted in the letter referred to in section 3.3. Where no response is received from the decision-holder within the permitted time period, the detained goods must be released on completion of all customs formalities.
- 3.7. Where a declarant or holder of goods objects to the destruction of detained goods, on the grounds that they do not infringe an IPR, the decision-holder must be notified immediately. It is then open to the decision-holder to initiate legal proceedings to determine whether an IPR has been infringed. These proceedings by the decision-holder may necessitate formal engagement with the legal system. If the decision-holder does not provide confirmation, within the response period allowed in the letter issued in accordance with section 3.3, that proceedings have been initiated, the detained goods must be released on completion of all customs formalities.
- 3.8. Circumstances may arise where a declarant or holder of goods objects to the destruction of detained goods at a late stage in the permitted response period. In such a situation, it might not be possible for the decision-holder to initiate legal proceedings within the response period allowed in the letter issued in accordance with section 3.3. In such cases, an extension of not more than 10 working days may be permitted with a duly justified request (except in the case of perishable goods, in respect of which no extension may be granted).

Any request for an extension should be examined by reference to the circumstances of each particular case. If it is concluded that the circumstances justify an extension, the decision-holder should be notified of the additional period (not exceeding 10 working days) being allowed, and informed that no further extension is possible.

If the decision-holder provides the documentary evidence from the courts of having initiated the legal proceedings before the end of the extended period allowed for doing so, the goods should continue to be detained until the conclusion of those proceedings. If the decision-holder does not provide confirmation, the goods must be released on completion of all customs formalities.

4. Ex Officio Procedure

- 4.1. The **ex officio** procedure permits the detention of goods which are suspected of infringing an IPR where they are **not** covered by a decision granting an AFA. It does not apply in the case of perishable goods (i.e. goods that will deteriorate by being kept for up to 20 days from the date of their detention).
- 4.2. Where goods are encountered which are suspected of infringing an IPR, enquiries may be made with **any** person potentially entitled to make an AFA concerning the alleged infringement of the goods. The only information that can be provided to any such person when making enquiries is; the actual or estimated quantity of the goods; their actual or presumed nature or; images of the goods. Nothing further can be disclosed at this stage that might identify the declarant, such as the name of an individual or company.
- 4.3. Notice of the detention of goods must be given to the declarant or holder of the goods within one working day of the detention. The letter at **Appendix 1** should be used for this purpose. Notice of the detention must also be given to the decision-holder of the AFA concerning the alleged infringement of IPR, on the same day or as soon as possible after notice of the detention issues to the declarant or holder of the goods. The letter at **Appendix 2** should be used for that purpose.
- 4.4. Subject to section 4.5, the procedures to be followed in **ex officio** cases are the same as those for cases falling under the standard enforcement procedure set out in Section 3.
- 4.5. A person entitled to make an AFA must make a national AFA within 4 working days of the notification given to that person in accordance with section 4.4. If an AFA is not made within that period, or if an application is rejected, the goods must be released on completion of all customs formalities. The detaining officer should check with Prohibitions and Restrictions Unit, Customs Division, as to whether the required AFA has been made.
- 4.6. Where an AFA is granted under the **ex officio** procedure, Prohibitions and Restrictions Unit, will notify the detaining officer concerned. Where an AFA has been granted, the decision-holder may then request the names and addresses of the consignee, the consignor and the declarant or holder of the goods, the customs procedure and the origin, provenance and destination of the detained goods. This information should be provided, where available. (See Section 6.4 and 6.5 as to the limitations on the use a right-holder may make of such information.)

5. Small Consignment Procedure

5.1. A small consignment is defined by the European Regulation as a postal or express courier consignment which-

- contains three units or less, or
- has a gross weight of less than 2 kilograms.

The European Regulation establishes a procedure that allows goods in such consignments to be regarded as abandoned for destruction without any reference to the right-holder or the need for the right-holder to initiate legal proceedings, in defined circumstances.

5.2. The small consignment procedure (SCP) applies only where all the following conditions are fulfilled:

- the goods in the consignment are suspected of being counterfeit or pirated,
- the goods are not perishable goods (i.e. goods which would deteriorate by being kept for up to 20 days from the date of their detention),
- there is a decision in place granting an AFA covering the goods in question, and
- the decision-holder, in making the AFA, requested the use of the SCP.

Officers should establish, through the COPIS database mentioned in Section 2, whether the use of the small consignments procedure was requested in the decision-holders AFA.

5.3. Where goods in a small consignment which are suspected of infringing an IPR are detected at the point of importation, they should be detained and notice of the detention should be given to the declarant or holder of the goods, using the letter at **Appendix 1**. This letter should be issued within one working day of the detention. **No notification is issued to the decision-holder at this point.**

5.4. The recipient of the notice of detention has a period of 10 working days from the date of the notification to reply indicating either 1) agreement to the destruction of the goods, or 2) objection to their destruction. As indicated in the letter at **Appendix 1**, the grounds for objection must be that the goods concerned do not infringe an IPR.

- 5.5. If the recipient of the notice of detention responds, within the period specified in the notice, indicating agreement to their destruction, arrangements should be made for their removal to the State Warehouse for destruction. If no response is received within the specified time, it should be deemed that agreement to destruction has been given, and arrangements for destruction should proceed accordingly.
- 5.6. If the recipient of the notice of detention opposes the destruction of the goods, the decision-holder must be notified of the position as soon as possible, using the letter at **Appendix 3**. The decision-holder has a period of 10 working days from that notification in which to advise Revenue that in their opinion the goods infringe an IPR and that proceedings have been initiated seeking confirmation that this is the case.
- 5.7. A decision-holder to whom a notice under section 5.6 is issued may also, on request and where the information is available, be provided with names and addresses of the consignee, the consignor and the declarant or the holder of the goods. The decision-holder may also be informed of the customs procedure and of the origin, provenance and destination of the detained goods. (See Section 6.4 and 6.5 as to the limitations on the use that a right-holder may make of such information.)
- 5.8. In the case of the small consignment procedure. the period of 10 working days allowed for the decision-holder to respond **cannot** be extended. If no confirmation has been received by the end of that period that the decision-holder has initiated proceedings to determine whether an IPR has been infringed, the goods must be released, subject to the completion of all customs formalities. If confirmation is received, the goods should continue to be detained until the conclusion of the proceedings.

6. Other Matters Relating to Operation of Enforcement Procedures

Storage of detained goods

- 6.1. Where goods are detained because they are suspected of infringing an IPR, they must be stored safely and securely at the place of detention until the enforcement process that is being applied to them has been completed. Where a decision is made to end the detention and return the goods to the declarant, arrangements for their release should be made as soon as possible. If the outcome is that the goods are to be destroyed, they should be bagged and sealed and their availability for removal to the State Warehouse should be indicated on CNET.

Inspection and sampling of detained goods

- 6.2. There is an obligation under the European Regulation to give the decision-holder and the declarant or holder of the goods an opportunity to inspect detained goods. Such requests should be facilitated within a reasonable timeframe and in agreement with the detaining officer.
- 6.3. Except in cases where the small consignment procedure applies, Revenue may take a representative sample of the detained goods and may provide or send the samples to the decision-holder, where requested. This is strictly for the purposes of analysis and to facilitate any subsequent procedure in relation to counterfeit or pirated goods. Any analysis of the samples is the sole responsibility of the decision-holder, who must (unless it is shown that circumstances do not allow) return the samples when the analysis is completed.

Permitted use of certain information

- 6.4. Articles 17(4), 18(5) and 26(8) of the European Regulation provide that a decision-holder may, on request and where the information is available, be provided with the names and addresses of the consignee, the consignor and the declarant or holder of the detained goods, the customs procedure involved, and the origin, provenance and destination of the goods.
- 6.5. Article 21 of the European Regulation provides that information obtained under those provisions, or through sampling and analysis of the detained goods, may only be used for specific purposes, such as:
 - during legal proceedings to determine whether an IPR has been infringed
 - in connection with criminal investigations related to the infringement of an IPR, and
 - to seek compensation from the infringer or other persons.

Under Regulation 5 of the European Union (Customs Enforcement of Intellectual Property Rights) Regulations 2013, a holder of a decision who contravenes Article 21 of the European Regulation commits a summary offence and is liable on summary conviction to a monetary fine. Misuse of information could also, in accordance with Article 16 of the European Regulation, lead to the revocation or suspension of a decision granting an AFA.

Early release of detained goods

- 6.6. Where notice has been received that proceedings have been initiated to determine whether an IPR has been infringed in respect of detained goods, the declarant or holder of the goods may request their release. In that event, the goods may be released only where:
- The declarant or holder of the goods has provided a guarantee that is of an amount sufficient to protect the interests of the decision-holder.
 - The authority competent to determine whether an IPR has been infringed has not authorised precautionary measures.
 - All customs formalities have been completed.
- 6.7. It is a matter for the declarant or holder of the goods to reach agreement with the decision-holder on the level and nature of the security to be provided and to inform Revenue of the agreement. Revenue will not hold the security.
- 6.8. It is anticipated that there will be few cases in which the question of early release of detained goods arises. If a request for early release is received, the IPR Coordination Unit in Investigations and Prosecutions Division should be consulted.

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[...]

Liability of Customs Authorities

- 6.12. Article 27 of the European Regulation provides that, without prejudice to national law, a decision granting an AFA does not entitle the decision-holder to compensation in the event that goods suspected of infringing an IPR are not detected, are released, or no action is taken to detain them.

Costs

- 6.13. Article 29 of the European Regulation allows for the recovery of costs, including costs of destruction, from decision-holders. The arrangements to be operated in this regard are under consideration and will be the subject to a further communication. Any queries in relation to costs of destruction should be directed to Prohibitions and Restrictions Unit.

Risk Information Form

- 6.14. The Risk Information Form (RIF), which is part of the Customs Risk Management System, should be used by staff to inform customs authorities in other EU Member

States of any irregularities which have come to light in respect of the import or export of goods in contravention of the European Regulation. This could include, for example, information on consignors of counterfeit goods, or on new types of counterfeit goods that have been encountered. For further information the RIF officers should e-mail: CustomsRiskUnitGroup@revenue.ie

Appendix 1: Letter to declarant/holder of goods, standard enforcement procedure.

To:

Notice of Detention

Detention ID:	Date of Detention:
Place of Detention	Place of Origin
Perishable: YES / NO	Tracking No:

Dear Sir/Madam

In accordance with EU Regulation 608/2013 and Statutory Instrument No 562/2013 goods imported as described in the attached Appendix and addressed to you have been detained by Customs pending investigation. The goods referenced are suspected of infringing an Intellectual Property Right (IPR) of a Right Holder and who has or will be contacted by Customs. IPR Infringing goods include counterfeit or pirated goods and goods which infringe registered designs or patents.

The Regulation allows for the goods to be destroyed under customs supervision if:

- (1) the intellectual property right holder confirms that they believe the goods infringe their intellectual property right, and
- (2) both you and the right holder give your agreement to their destruction.

Accordingly, if you consent to the destruction please advise me by completing the attached consent form and returning to the above address. A scanned signed copy of this form sent by email is also acceptable.

If you object to the destruction of the goods on the grounds that they do not infringe an IPR, you must reply in writing to this office no later than **10 working days, (3 working days in the case of perishable goods)** from the date of this notification, Where such an objection is made we will notify the Right Holder who may contact you directly. It is a matter for the Right Holder to decide if they will take legal proceedings against you to protect the rights that have allegedly been infringed.

If you do not notify this office of your opposition to the destruction of the goods on or before the reply date, we may deem that agreement has been given and destroy the goods.

Yours faithfully

Signature Officer Name:

Date:

Detention ID:

I agree to the goods in question being destroyed

Name _____

Signature _____

E-mail address _____

Phone no _____ Date _____

Notes

EU Regulation 608/2013 and other information can be viewed and downloaded at:

http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/combating/index_en.htm

Appendix 1 contd

Description of Goods Detained:

Appendix 2: Letter to decision-holder, standard enforcement procedure.

To:

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Advice of Detention

Detention ID:	Date of Detention:
Place of Detention:	Tracking No:
AFA:	Perishable: YES / NO
Origin of Goods:	

Dear Sir/Madam

I am writing to inform you that the consignment outlined in the Appendix to this letter has been detained on suspicion of infringing one or more of your Intellectual Property (IP) rights. Under the procedures set out in Regulation (EU) 608/2013 you have **10 working days (three working days for perishable goods)** from the date of this notification, in which to advise this Office in writing:

- whether or not you believe the goods infringe your IP rights;
- if you believe the goods infringe an IP right, your agreement to their destruction and;
- where appropriate, evidence that that you have commenced proceedings.

I attach for your convenience a notice of confirmation which you are requested to complete and return to this office. A scanned signed copy of the form sent by e-mail is also acceptable. If written confirmation is not received as per paragraph one the detained goods will be released immediately. Requests for extension to time limits will only be considered where duly justified.

In cases where the ex-officio procedure applies, you must lodge an AFA with the IPR Unit, Revenue Commissioners, Customs Division, Treasury Building, Dublin Castle, Dublin 2 or at rcpr@revenue.ie by the close of the fourth day after detention. If you do not do so, the goods will be released. The IPR unit can be contacted by phone on +353 (0)1 6744342. Where the declarant or holder of the detained goods objects to their destruction we will inform you immediately. It is then open to you, if you have not already done so, to initiate proceedings to determine whether an IP right has been infringed.

Yours faithfully

Signature

Officer Name:

Date:

Confirmation Request

Detention ID:

We confirm that in our opinion the goods infringe an IP right and give agreement for their destruction.

We believe that the goods **do not** infringe an intellectual property right and understand that they will be released.

We confirm that in our opinion the goods infringe an IP right and that we have initiated proceedings to determine whether an IP right has been infringed.

We believe that the goods may infringe an intellectual property right **but on this occasion do not wish to pursue further action**. We understand that they will be released.

Threshold Option:

With your instruction, Customs will not take action on any shipment below a threshold amount provided by you: _____

Please indicate the IP right(s) infringed by the goods: _____

Please insert estimated retail value of equivalent genuine product _____

Name _____

Position _____

Signature _____

Date _____

Notes

EU Regulation 608/2013 and other information can be viewed and downloaded at:

http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/combating/index_en.htm

Appendix 2 contd

Description of Goods Detained:

Appendix 3: Letter to decision-holder, small consignments procedure.

To:

Advice of Detention

Detention ID:	Date of Detention:	Tracking No:
Place of Detention:	Perishable: YES / NO	Origin:
AFA:		

Dear Sir/Madam

I am writing to inform you that the consignment outlined in the Appendix to this letter has been detained on suspicion of infringing one or more of your intellectual property (IP) rights. The declarant or owner of the goods concerned has not agreed (and has not been deemed to have agreed) to their destruction. Under the procedures on small consignments as set out in Regulation (EU) 608/2013 you have **10 working days (three working days for perishable goods)** from the date of this notification in which to advise this office in writing:

- whether or not you believe the goods infringe your IP rights; ;
- where appropriate, evidence that you have commenced proceedings

I attach for your convenience a notice of confirmation which you are requested to complete and return to this office. A scanned signed copy of the form sent by e-mail is also acceptable. If written confirmation is not received as per paragraph one, the detained goods will be released immediately. Requests for extension to time limits of the detained goods will only be considered where duly justified.

Yours faithfully

Signature

Officer Name:

Date:

Confirmation Request

Detention ID:

We believe that the goods **do not** infringe an intellectual property right and understand that they will be released.

We confirm that in our opinion the goods infringe an IP right and that we have initiated proceedings to determine whether an IP right has been infringed.

We believe that the goods may infringe an intellectual property right **but on this occasion do not wish to pursue further action**. We understand that they will be released.

Please indicate the IP right(s) infringed by the goods: _____

Please insert estimated retail value of equivalent genuine product _____

Name _____

Position _____

Signature _____

Date _____

Notes

EU Regulation 608/2013 and other information can be viewed and downloaded at:
http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/combating/index_en.htm

Appendix 3contd

Description of Goods Detained: