

**EXPLANATORY MEMORANDUM TO
THE RULES OF THE SUPREME COURT (NORTHERN IRELAND)
(AMENDMENT) 2006**

Statutory Rule 2006 No. 10

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs (Northern Ireland Court Service) and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 The Rules of the Supreme Court (Northern Ireland) 1980 (S.R. 1980 No. 346 – “the principal Rules”) regulate the practice and procedure of proceedings before the Supreme Court.
 - 2.2 This instrument amends Order 123 of the principal Rules to prescribe the practice and procedure relating to –
 - a) an application for a property freezing order;
 - b) exclusions from property freezing orders and interim receiving orders to enable a person to meet reasonable legal expenses; and
 - c) an application to give effect in Northern Ireland to an external order.
3. **Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments.**
 - 3.1 There will be a short delay between the coming into force of the relevant primary legislation provisions (i.e. 1st January 2006) and the coming into operation of these Rules. It is not anticipated that the delay will present any difficulty to the operation of the primary legislation.
4. **Legislative Background**
 - 4.1 Under Part 5 of the Proceeds of Crime Act 2002 (“POCA”), the Assets Recovery Agency (“ARA”) may bring proceedings in the High Court to recover property that has been obtained by unlawful conduct. As well as bringing proceedings for a ‘recovery order’ in relation to that property, ARA may apply for an ‘interim receiving order’ which appoints an interim receiver to secure the property pending the outcome of the recovery proceedings. From 1st January 2006, amendments to POCA made by the Serious Organised Crime and Police Act 2005 (“SOCAP”) enable ARA to apply for a ‘property freezing order’ which prohibits any dealing with the property.
 - 4.2 As originally enacted, section 252 of POCA provided that the High Court could make an ‘exclusion’ from an interim receiving order to enable a person to meet his living expenses. However, it prohibited the Court from making an exclusion to enable a person to meet legal expenses in relation to the civil recovery proceedings. SOCAP amends section 252 to remove this prohibition, but places a number of restrictions on the Court’s power to make such an exclusion (and section 245C places the same restrictions on exclusions from property freezing orders).

4.3 Under section 444 of POCA, an Order in Council may make provision for realising property within the United Kingdom for the purpose of giving effect to an ‘external order’ (i.e. an order of an overseas court which recognises that property was obtained through criminal conduct). The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (“the Order in Council”) has been made under section 444 and came into force on 1st January 2006. It contains provisions which are in all material respects identical to the provisions of POCA described above.

5. Extent

5.1 This instrument applies to Northern Ireland only

6. European Convention on Human Rights

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

7. Policy background

7.1 POCA established the Assets Recovery Agency. Part 5 of POCA authorised ARA to recover property and cash that had been obtained by unlawful conduct, regardless of whether the owner had been convicted of a criminal offence. It also allowed ARA to apply for an interim receiving order and SOCAP has inserted an additional power to apply for a property freezing order.

7.2 When introducing POCA, the government decided to prevent access to restrained assets to pay for legal representation in these cases, in order to prevent the purposeful dissipation of assets in legal fees. At the time, the Government’s preferred method to ensure representation in these cases was through civil legal aid, but experience shows that civil legal aid is ill-suited to this kind of cases, in particular due to the financial eligibility limits.

7.3 The Lord Chancellor has introduced a scheme which will allow civil recovery cases to proceed with proper representation for respondents, while maintaining effective control over legal expenses so as to minimise the risk of dissipation of assets. This scheme is provided for in the Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) Regulations 2005.

7.4 In relation to external orders, it is intended that these should be given effect by way of civil recovery proceedings in broadly the same way as applies to orders made within the United Kingdom.

7.5 The Northern Ireland Supreme Court Rules Committee is responsible for making Rules regulating the practice and procedure of any proceedings before the High Court and Court of Appeal. In making these Rules, the Committee has tried, where possible, to replicate the procedures which currently apply to interim receiving order applications to the new applications for property freezing orders and for the enforcement of external orders.

7.6 The Rules are procedural in nature and are therefore of limited public interest. It is not considered that the amendments made by these Rules are politically or legally important.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 This instrument has no impact on the public sector.

9. Contact

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