

**EXPLANATORY MEMORANDUM TO
THE RULES OF THE SUPREME COURT (NORTHERN IRELAND)
(AMENDMENT) 2009**

S.R. 2009 No. 207

1. 1.1 This explanatory memorandum has been prepared by the Ministry of Justice (Northern Ireland Court Service) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.
2. **Purpose of the instrument**
 - 2.1 The Rules of the Supreme Court (Northern Ireland) 1980 (S.R 1980 No. 346) (“the principal Rules”) govern the practice and procedure in the Supreme Court of Judicature in Northern Ireland.
 - 2.2 This instrument-
 - amends Order 116 of the principal Rules in respect of applications for restraint orders, under Schedule 4 of the Terrorism Act 2000 (“the 2000 Act”), to reflect amendments made by the Counter Terrorism Act 2008 (“the 2008 Act”). The amendments widen the range of offences for which a restraint order can be obtained and which are collectively defined as “relevant offences” (*restraint orders*);
 - amends Order 123 of the principal Rules to reflect amendments made to Part 5 of the Proceeds of Crime Act 2002 (“the 2002 Act”) by the Serious Crime Act 2007 (“the 2007 Act”), and to the Proceeds of Crime Act 2002 (External Requests and Orders) 2005, made by the Proceeds of Crime Act 2002 (External Requests and Orders) (Amendments) Order 2008 (“the 2008 Order”). These amendments allow for the appointment of a new type of receiver in civil proceedings, a “management receiver”, whose only function is to manage property subject to a property freezing order (*appointment of management receivers*);
 - inserts a new Order 124 into the principal Rules to prescribe the practice and procedure relating to an application to the High Court for a serious crime prevention order under Part 1 of the Serious Crime Act 2007 (“the 2007 Act”)(*serious crime prevention orders*).

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

3.1 These Rules shall come into operation on 30 June 2009. It is not considered that the delay between commencement of the relevant provisions of the primary legislation and the coming into operation of these Rules will be problematic. The Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2008 and Part 1 and sections 74-77,80 and 83 of and Schedules 8 and 10 to the Serious Crime Act 2007 came into force on 6th April 2008. Sections 34-39 of and Schedule 3 to the Counter Terrorism Act 2008 came into force on 15 June 2009.

4. Legislative Context

4.1 *The Terrorism Act 2000: Restraint Orders*
Paragraphs 33-38 to Schedule 4 to the 2000 Act provide for applications to be made for a restraint order where proceedings have been instituted for an offence under sections 15-18 of that Act. The procedure governing these applications is contained in Order 116 of the principal Rules.

4.2 Schedule 3 to the Counter Terrorism Act 2008 (“the 2008 Act”) amends the 2000 Act to widen the range of offences for which a restraint order may be made. A list of such further offences is set out at section 23A of the 2000 Act and is defined collectively along with offences under section 15-18 of the 2000 Act as ‘relevant offences’.

4.3 *Proceeds of Crime Act 2002: appointment of a management receiver*
Part 5 of 2002 Act allows “property freezing orders” to be made against any person whom the enforcement authority believes holds recoverable property. The procedure governing such applications is set out in Part II of Order 123 of the principal Rules.

4.4 The Serious Crime Act 2007 amends the 2002 Act by inserting a new section 245E-245G. This provides for the appointment of new type of receiver in civil recovery proceedings, whose only function is to manage property subject to a property freezing order-a management receiver. This receiver is distinct from the role of an “interim receiver” who has additional functions to that of a management receiver.

4.5 *Serious Crime Act 2007: serious crime prevention orders*
Part 1 of the 2007 Act makes provision for a new kind of civil injunctive order which is aimed at preventing serious crime, known as a “serious crime prevention order.” The purpose of a serious crime prevention order will be to protect the public by preventing, restricting or disrupting a person’s involvement in serious crime. These orders will be made on application to the High Court (or the Crown Court upon conviction), and a breach of the order will be a criminal offence.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland.

6. European Convention on Human Rights

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

7. Policy background

7.1 *The Terrorism Act 2000: Restraint Orders*

Schedule 4 to the 2000 Act allows forfeiture and restraint orders to be obtained against property where proceedings have been instigated in Northern Ireland for an offence under sections 15-18 of the Act.

7.2 The amendments made to the 2000 Act by the 2008 Act widen the range of offences for which a restraint order can be made. The underpinning policy is to increase the number of offences to which the legislation can be applied so as to prevent persons profiting from involvement in terrorist activity.

7.3 *Proceeds of Crime Act 2002: Appointment of management receivers*

Part 5 of the 2002 Act authorises the recovery of cash and property obtained by unlawful conduct through a variety of methods, including property freezing orders.

7.4 When provisions in respect of property freezing orders were first introduced, the legislation did not make provision for how property, subject to such an order, would be managed or maintained. The result was that, in certain circumstances, the value of the property could not always be maintained.

7.5 In order to remedy this, the 2007 Act amended the 2002 Act, to allow for the appointment of a “receiver”, whose only function is to manage the property subject to the freezing order. The intention is to maintain effective control of the retained assets and avoid a dissipation of its value pending the conclusion of court proceedings or police investigations.

7.6 *Serious Crime Act 2007: serious crime prevention orders*

The 2007 Act created a new kind of civil injunctive order, the serious crime prevention order, which aims to protect the public by preventing, restricting or disrupting a person’s involvement in serious crime. The policy objective is to reduce the impact of serious and organised crime on the general public.

8. Consultation outcome

8.1 Due to the representative nature of the Supreme Court Rules Committee (which makes these Rules with the agreement of the Lord Chancellor) and the fact that these Rules are procedural in nature (and therefore of limited public interest) no formal consultation was considered necessary on this occasion.

9. Guidance

9.1 These Rules will be published on the Northern Ireland Court Service website.

10. Impact

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

10.2 There is no impact on the public sector.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Rules will form part of the Rules of the Supreme Court (Northern Ireland) 1980 which are kept under review by the Supreme Court Rules Committee. Any subsequent amendment to these Rules will be made by the Supreme Court Rules Committee with the agreement of the Lord Chancellor.

13. Contact

13.1 Angela Bell at the Northern Ireland Court Service (Criminal Policy Division) Tel: 028 9041 2201 or email angelabell@courtsni.gsi.gov.uk can answer any queries regarding the instrument.