

**EXPLANATORY MEMORANDUM TO**  
**THE PROCEEDS OF CRIME ACT 2002 (LEGAL EXPENSES IN CIVIL**  
**RECOVERY PROCEEDINGS) (AMENDMENT) REGULATIONS 2008**

**2008 No. 523**

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1. This instrument relates to the payment of legal expenses out of property which is the subject of civil recovery proceedings. It amends the Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) Regulations 2005 (“the 2005 Regulations”).

2.2. This instrument replaces references to the Director of the Assets Recovery Agency (ARA) in the Regulations with references to “the relevant enforcement authority” following the abolition of the Assets Recovery Agency by the Serious Crime Act 2007 and the transfer of many of its functions to the Serious Organised Crime Agency and others.

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

3.1. None.

**4. Legislative Background**

4.1. These Regulations are made by the Parliamentary Under Secretary of State, by authority of the Lord Chancellor under sections 286A, 286B and 459(2) of the Proceeds of Crime Act 2002 and articles 198, 199 and 5(2) of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005.

4.2. The 2005 Regulations make provision for the Director of the Assets Recovery Agency to exercise a number of functions to enable funds that would otherwise be frozen property to be used to meet legal expenses.

4.3. The Serious Organised Crime Act 2007 abolishes the Assets Recovery Agency from 1 April 2008, and transfers its functions to the Serious Organised Crime Agency and others.

4.4. As a result, it is necessary to make minor, technical changes to the 2005 Regulations, removing references to the Director of the Assets Recovery Agency, and replacing them with references to the ‘relevant enforcement authority’. “Enforcement authority” is defined in the Proceeds of Crime Act 2002, as amended by the Serious Crime Act 2007. The ‘relevant enforcement authority’ is the enforcement authority conducting the civil recovery proceedings concerned.

4.5. The Home Office are making similar changes to other instruments which refer to the Director of the Assets Recovery Agency.

## **5. Extent**

- 5.1. The Regulations apply to England, Wales and 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 Assets Recovery Agency (ARA) will be abolished on 1 April 2008. SOCA will take on many of the existing ARA functions, notably civil recovery and taxation. As a consequence of this legislation, minor, technical changes are required to the 2005 regulations. All references to the “Director” of the soon to be defunct ARA will be replaced with references to “relevant enforcement authority”.

These regulations were introduced in 2005 to help ARA progress civil recovery cases through the courts, by allowing controlled access to restrained assets that were subject to civil recovery proceedings under Part 5 of the POCA for the purpose of meeting legal expenses. Problems had arisen in these cases as civil legal aid was inherently unsuitable to POCA respondents, who often did not meet the statutory financial eligibility requirements. The lack of representation was having an adverse impact on the work of the ARA, and also introduced the threat of an Article 6(1) ECHR (right to a fair trial) challenge to the whole civil recovery scheme.

- 7.2. Consultation took place in accordance with sections 286A(4), 286B(3) and 459(2) of the Proceeds of Crime Act 2002, and with articles 198(4) and 199(3) of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005. The consultation began on 1 February 2008, and a draft of the amended Regulations was sent to key practitioners’ groups, including the Law Society, Bar Council, and the Legal Aid Practitioners’ Group. At this time the policy intentions were clearly spelt out. Only one response was received, from the Bar Council, which stated that as the proposed changes were only minor and technical, they had no suggested amendments to the draft regulations.

## **8. Impact**

- 8.1. A full regulatory impact assessment has not been made for this instrument, as it has no significant impact on the cost of businesses, charities or voluntary bodies.

## **9. Contact**

- 9.1. Enquiries about the contents of this memorandum should be addressed to:

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