

**EXPLANATORY MEMORANDUM TO
THE PROCEEDS OF CRIME ACT 2002 (EXTERNAL REQUESTS AND
ORDERS) ORDER 2005**

2005 No. 3181

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

2. Description

2.1 This Order is made in exercise of the powers conferred under section 444 and 459(2) of the Proceeds of Crime Act 2002. It sets out the provisions for the United Kingdom to respond and co-operate with other countries in freezing and confiscating assets.

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

3.1 None.

4. Legislative Background

4.1 Section 444 of the Proceeds of Crime Act 2002 (“the Act) provides for the freezing of property in the United Kingdom which may be needed to satisfy overseas requests in relation to ongoing proceedings for the recovery of criminal proceeds. The section also provides for the registration and enforcement of overseas confiscation orders by the realisation of property in any part of the United Kingdom. Such provision is made by this Order in Council. These correspond to domestic provisions in the Act.

4.2 The Order provides for freezing and recovery for both confiscation following a criminal conviction, as available domestically in Parts 2 to 4 of the Act, and civil recovery which is not reliant on conviction, as available in Part 5 of the Act.

4.3 It should also be noted that, as in domestic cases under the Act, this Order in Council provides restraint orders to be granted from the start of a criminal investigation.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for the Home Department, Paul Goggins, has made the following statement regarding Human Rights:

In my view the provisions of The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 are compatible with the Convention rights.

7. Policy background

7.1 The objective is to provide the same level of international co-operation in freezing and confiscating the proceeds of crime, as is available in domestic cases. These provisions will apply to the proceeds of crime located in the United Kingdom which are subject to investigation or proceedings in an overseas jurisdiction.

7.2 The Cabinet Office report on June 2000 entitled 'Recovering the Proceeds of Crime' recommended that the United Kingdom's ability to co-operate with other countries in tracing, freezing and confiscating assets should be streamlined. Section 444 of the Act and this Order achieve that policy aim.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has negligible additional impact on business, charities or voluntary bodies than the previous equivalent legislation.

9. Contact

Stephen Goadby at the Home Office Tel: 020 7035 1559 or e-mail: stephen.goadby@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.