
STATUTORY INSTRUMENTS

2005 No. 3382

**PROCEEDS OF CRIME, ENGLAND AND WALES
PROCEEDS OF CRIME, NORTHERN IRELAND**

**The Proceeds of Crime Act 2002 (Legal Expenses
in Civil Recovery Proceedings) Regulations 2005**

<i>Made</i>	- - - -	<i>3rd December 2005</i>
<i>Laid before Parliament</i>		<i>8th December 2005</i>
<i>Coming into force</i>	- -	<i>1st January 2006</i>

The Lord Chancellor makes the following Regulations in exercise of the powers conferred upon him by sections 286A, 286B and 459(2) of the Proceeds of Crime Act 2002⁽¹⁾ and articles 198, 199 and 5(2) of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005⁽²⁾.

He has consulted in accordance with sections 286A(4) and 286B(3) of that Act and articles 198(4) and 199(3) of that Order.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Proceeds of Crime Act 2002 (Legal Expenses in Civil Recovery Proceedings) Regulations 2005 and shall come into force on 1st January 2006.

Interpretation

2.—(1) In these Regulations—

“the 1990 Act” means the Courts and Legal Services Act 1990⁽³⁾;

(1) 2002 c. 29. Sections 286A and 286B were inserted by the Serious Organised Crime and Police Act 2005 (c. 15), section 109 and Schedule 6, paragraphs 4 and 20.
(2) S.I. 2005/3181.
(3) 1990 c. 41. Relevant amendments were made by the Access to Justice Act 1999 (c. 22), section 43 and Schedule 6, paragraphs 4, 9 and 10.

“the 2002 Act” means the Proceeds of Crime Act 2002(4);

“CPR” means the Civil Procedure Rules 1998(5);

“the Order in Council” means the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005;

“RSC (NI)” means the Rules of the Supreme Court (Northern Ireland) 1980(6);

“civil recovery proceedings” means proceedings under Part 5 of the 2002 Act or Part 5 of the Order in Council;

“notice” means notice in writing;

“solicitor” means a solicitor of the Supreme Court and, in relation to England and Wales, includes any other person who is an authorised litigator within the meaning of section 119(1) of the 1990 Act.

(2) Any reference in these Regulations to the assessment of legal expenses by the court shall, in relation to Northern Ireland, be interpreted as referring to the taxation of those expenses by the Master (Taxing Office).

PART 2

Required conditions: general

Effect of this part

3. This Part specifies the required conditions for the purposes of sections 245C(5) and 252(4) of the 2002 Act and articles 149(5) and 157(4) of the Order in Council.

Condition relating to work covered by exclusion

4. An exclusion from a property freezing order or interim receiving order must specify—
- the stage or stages in civil recovery proceedings to which it relates; and
 - the maximum amount which may be released in respect of legal expenses for each stage to which it relates.

Condition relating to notification

5. If the solicitor acting for the person to whose legal expenses the exclusion relates becomes aware that—

- that person’s legal expenses in respect of any stage in civil recovery proceedings have exceeded or will exceed the maximum amount specified in the exclusion for that stage; or
- that person’s total legal expenses in respect of all the stages to which the exclusion relates have exceeded or will exceed the total amount that may be released pursuant to the exclusion,

the solicitor must give notice to the Director and the court as soon as reasonably practicable.

(4) 2002 c. 29. Relevant amendments were made by the Serious Organised Crime and Police Act 2005 (c. 15), sections 98, 99 and 109, and Schedule 6.

(5) S.I. 1998/3132. Relevant amendments were made by S.I. 1999/1008; S.I. 2000/940; S.I. 2000/1317 and S.I. 2002/2058.

(6) S.R. 1980 No. 346. The most recent relevant amendments were made by S.R. 1988 No. 70; S.R. 1996 No. 283 and S.R. 2001 No. 254.

Condition relating to payment of expenses

6. Where a person has incurred legal expenses in relation to a stage in civil recovery proceedings specified in an exclusion—

- (a) during any period when the property freezing order or interim receiving order has effect, a sum may only be released in respect of those expenses in accordance with Part 3;
- (b) where the court makes a recovery order which provides for the payment of that person's reasonable legal expenses in respect of civil recovery proceedings, the sum payable in respect of his legal expenses shall be determined in accordance with Part 4, regardless of whether a sum has been released in respect of any of those expenses under Part 3.

PART 3

Required conditions: release of interim payments

Effect of this Part

7. This Part applies where, during a period when a property freezing order or interim receiving order has effect, a person to whose property the order applies seeks the release of a sum in respect of his legal expenses pursuant to an exclusion from the order.

Request for Director's agreement to release of interim payment

8.—(1) A request for the Director's agreement to the release of a sum in respect of legal expenses pursuant to an exclusion must be made in writing to the Director by the person to whose expenses the exclusion relates.

- (2) The request must—
 - (a) describe the stage or stages in the civil recovery proceedings in relation to which the legal expenses were incurred;
 - (b) summarise the work done in connection with each stage;
 - (c) be accompanied by any invoices, receipts or other documents which are necessary to show that the expenses have been incurred; and
 - (d) identify any item or description of property from which the person making the request wishes the sum to be released.
- (3) A person may not make a request under this regulation—
 - (a) in respect of legal expenses which he has not yet incurred; or
 - (b) more than once in any 2 month period.

Director's response to request

9.—(1) Not later than 21 days after he receives the request, the Director must give notice to the person who made the request stating—

- (a) whether he agrees to the release of the requested sum; and
- (b) if he does not agree to the release of the requested sum—
 - (i) the amount (if any) which he agrees may be released; and
 - (ii) the reasons for his decision.

(2) Where an interim receiving order applies to the property from which it is proposed that the requested sum should be released, the Director must at the same time send copies of the request and the notice referred to in paragraph (1) to the interim receiver.

(3) In determining the amount which may be released in respect of legal expenses with his agreement, the Director must have regard to the provisions of Part 5 which would apply on the assessment of those expenses by the court.

Release of interim payment

10.—(1) The sum which may be released pursuant to the exclusion is the greater of—

- (a) the amount which the Director agrees may be released; and
- (b) 65% of the requested sum.

(2) The sum may only be released to—

- (a) the solicitor who is instructed to act in the civil recovery proceedings for the person to whose legal expenses the exclusion relates; or
- (b) where appropriate, to the solicitor who was so instructed when the legal expenses to which the sum relates were incurred.

PART 4

Agreement or assessment of expenses at conclusion of civil recovery proceedings

Effect of this Part

11. This Part specifies the procedure for determining the amount payable in respect of a person's reasonable legal expenses in civil recovery proceedings, where the court has made a recovery order which provides for the payment of those expenses.

Agreement of expenses by the Director

12.—(1) This regulation applies where a person seeks the Director's agreement to the payment of a sum in respect of his legal expenses pursuant to section 266(8B)(a) of the 2002 Act or article 177(11)(a) of the Order in Council.

(2) In determining the amount which may be paid in respect of legal expenses with his agreement, the Director must have regard to the provisions of Part 5 which would apply on the assessment of those expenses by the court.

(3) Where the Director agrees to the payment of the sum which a person seeks in respect of his legal expenses—

- (a) he shall give that person and the trustee for civil recovery notice of the agreed sum; and
- (b) the sum payable in respect of those expenses shall be the agreed sum.

Expenses to be assessed if not agreed

13.—(1) Unless the Director agrees to the payment of the sum which a person seeks in respect of his legal expenses pursuant to provision made in a recovery order, that person must commence proceedings for the assessment of those expenses in accordance with paragraph (2).

(2) Where paragraph (1) requires a person to commence proceedings for the assessment of his legal expenses—

- (a) in relation to civil recovery proceedings in England and Wales, he must commence proceedings for the detailed assessment of those expenses in accordance with CPR Part 47, subject to the modifications that—
 - (i) rule 47.7 shall have effect as if it provided that he must commence those proceedings not later than 2 months after the date of the recovery order; and
 - (ii) rule 47.14(2) shall have effect as if it provided that he must file a request for a detailed assessment hearing not later than 2 months after the expiry of the period for commencing the detailed assessment proceedings;
 - (b) in relation to civil recovery proceedings in Northern Ireland, he must begin proceedings for the taxation of those expenses in accordance with RSC (NI) Order 62, subject to the modification that rule 29(1) shall have effect as if it provided that he must begin those proceedings not later than 4 months after the date of the recovery order.
- (3) The court will assess the person's legal expenses in accordance with the provisions of Part 5 and the relevant rules of court, and the sum payable in respect of those expenses shall be the assessed amount.

Payment of expenses

- 14.**—(1) Where the sum payable in respect of a person's legal expenses—
- (a) exceeds the total amount which has been released in respect of those expenses in accordance with Part 3, the trustee for civil recovery must pay the balance out of the sums referred to in section 280(1) of the 2002 Act or article 191(1) of the Order in Council;
 - (b) is less than the total amount which has been released in respect of those expenses in accordance with Part 3, the person to whose expenses the sum relates must repay the balance to the trustee.
- (2) The trustee for civil recovery may only make a payment in respect of a person's legal expenses to—
- (a) the solicitor who is instructed to act for that person; or
 - (b) where appropriate, the solicitor who was so instructed when the legal expenses to which the sum relates were incurred.

PART 5

Basis for assessment of legal expenses

Effect of this Part

15. This Part sets out the basis on which the court must assess the amount payable in respect of a person's reasonable legal expenses of civil recovery proceedings pursuant to provision made in a recovery order.

General principles

- 16.**—(1) Subject to regulation 17, the court will assess a person's legal expenses on the standard basis.
- (2) The court must give effect to—
- (a) any provision made in the recovery order for the purpose of enabling the person to meet his reasonable legal expenses of civil recovery proceedings; and

- (b) subject to sub-paragraph (a), the terms of any exclusion made for the purpose of enabling that person to meet those legal expenses (including the required conditions).
- (3) In paragraph (1), “the standard basis” has the meaning given in—
- (a) CPR rule 44.4 in relation to proceedings in England and Wales;
- (b) RSC (NI) Order 62 rule 12 in relation to proceedings in Northern Ireland.

Rates of remuneration

17.—(1) Subject to the following paragraphs of this regulation, remuneration for work done by a legal representative may only be allowed at the appropriate hourly rate shown in the Table below.

(2) The higher hourly rates specified in the third column of the Table may only be allowed where the case involves substantial novel or complex issues of law or fact.

- (3) The rates specified in the Table will be increased by—
- (a) 20% for legal representatives whose offices are situated in Central London; and
- (b) 10% for legal representatives whose offices are situated in Outer London.
- (4) In paragraph (3)—
- (a) “Central London” means postcode districts EC1–4, SW1, W1 and WC1–2;
- (b) “Outer London” means all other postcode districts in postcode areas BR, CR, DA, E, N, NW, SE, SW, UB and W.

and “postcode area” and “postcode district” shall be construed in accordance with the Postcode Address File within the meaning given in section 116 of the Postal Services Act 2000(7).

Table: rates of remuneration for legal representatives

<i>Category of fee earner⁽¹⁾</i>	<i>Standard hourly rate (excluding VAT)</i>	<i>Higher hourly rate (excluding VAT)</i>
Solicitors and their employees		
Senior solicitor (of at least 8 years' standing)	£187.50	£225.00
Solicitor (of at least 4 years' and less than 8 years' standing)	£150.00	£187.50
Junior solicitor (of less than 4 years' standing)	£107.50	£131.25
Trainee solicitor, paralegal or other fee earner	£75.00	£93.75
Counsel		
Queen's Counsel		£275.00
Senior junior counsel (of at least 10 years' standing)	£150.00	£225.00
Junior counsel (of less than 10 years' standing)	£100.00	£150.00

(1) In relation to England and Wales, a reference to a number of years' standing as a solicitor or counsel to be interpreted as referring to that number of years' general qualification (within the meaning of section 71 of the 1990 Act).

(7) 2000 c. 26.

Signed by authority of the Lord Chancellor

Dated 3rd December 2005

Bridget Prentice
Parliamentary Under Secretary of State
Department for Constitutional Affairs

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision relating to the payment of legal expenses out of property which is the subject of civil recovery proceedings under Part 5 of the Proceeds of Crime Act 2002 (“the 2002 Act”) or Part 5 of the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (“the Order in Council”). The Regulations extend to England and Wales and Northern Ireland.

Where the Director of the Assets Recovery Agency (“the Director”) may bring proceedings for a recovery order under Part 5 of the 2002 Act or Part 5 of the Order in Council, he may also apply to the High Court for a property freezing order or interim receiving order, which prohibits any person to whose property the order applies from dealing with the property. The Court may make exclusions from that prohibition for certain purposes, which include meeting reasonable legal expenses.

Part 2 of the Regulations specifies certain “required conditions” which must apply to any exclusion from a property freezing order or interim receiving order which the Court makes for the purpose of enabling a person to meet his reasonable legal expenses in civil recovery proceedings.

Part 3 sets out the procedure for the release of frozen property to make interim payments of legal expenses during civil recovery proceedings. Once expenses have been incurred, a person may seek the Director’s agreement to the release of an interim payment in respect of those expenses. The amount which may be released is the amount which the Director agrees or 65% of the amount claimed, whichever is the greater.

Part 4 sets out the procedure for determining the amount payable in respect of legal expenses once the High Court has made a recovery order which vests property in the trustee for civil recovery and provides for the payment of those expenses out of that property. If the expenses are not agreed with the Director, proceedings must be commenced for them to be assessed by the Court. Part 4 applies regardless of whether any interim payments have been made under Part 3, and the amount which must be paid is reduced by the amount of any interim payments.

Part 5 provides that the Court is to assess legal expenses on the standard basis (which is defined in rules of court). It also specifies the hourly rates of remuneration which may be allowed in respect of work done by legal representatives. Higher rates may be allowed for cases involving substantial novel or complex issues of law or fact, and the rates are increased for legal representatives whose offices are situated in certain London postcode areas and districts.

Postcode areas and districts are identified in the Postcode Address File maintained by the Royal Mail. The current postcode for an address may be established by contacting the Royal Mail Postcode Enquiries Office (telephone 0906 302 1222 or 08457 111 222) or visiting the Royal Mail website (www.royalmail.com).

A full regulatory impact assessment of the effect of this instrument on the costs of business can be obtained from the Civil Legal Aid Strategy Division, Department for Constitutional Affairs, Selborne House, 54-60 Victoria Street, London SW1E 6QW. It is also available on the Department’s website (www.dca.gov.uk).