

**EXPLANATORY MEMORANDUM TO
THE PROCEEDS OF CRIME ACT 2002 (EXTERNAL REQUESTS AND
ORDERS) (AMENDMENT) ORDER 2013**

2013 No. 2604

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

2. Purpose of the instrument

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 a framework for the United Kingdom to co-operate with overseas authorities in civil cases for the freezing of property in anticipation of a future external (recovery) order.

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

3.1 None

4. Legislative Context

4.1 This Order is made in exercise of the powers conferred under sections 444 and 459(2) of the Proceeds of Crime Act 2002. It sets out how the United Kingdom may assist an overseas authority by freezing property which may become the subject of an external (recovery) order in that country.

4.2 The Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005 (SI 2005 No. 3181) (the 2005 order) provides for the deprivation of property in cases following a criminal conviction and for the deprivation of property in civil cases. However, there is no mechanism in the 2005 Order for the United Kingdom to freeze property on an interim basis in civil cases in the absence of a final (recovery) order. Internationally such civil cases are known as NCB (non conviction based) confiscation cases. The United Kingdom has NCB under Part 5 of the Proceeds of Crime Act 2002; this is known as civil recovery.

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister of State for Crime Prevention has made the following statement regarding Human Rights:

In my view the provisions of the Proceeds of Crime Act 2002 (External Requests and Orders) (Amendment) Order 2013 are compatible with the Convention rights.

7. Policy background

7.1 Part 5 of the Proceeds of Crime Act 2002 provides the power to freeze and remove the proceeds of unlawful conduct.

7.2 The purpose behind the Order is to ensure that the United Kingdom can, as an interim measure, freeze property which relates to an ongoing civil investigation or proceedings by an overseas authority. The Secretary of State would receive the request for assistance from the overseas authority and may refer the request to an enforcement authority to process it.

7.3 Such an interim mechanism was not needed under the 2005 Order but a growing number of international partners are now seeking an interim prohibition on dealing with property whilst they investigate and obtain a final order to remove the proceeds of criminal conduct. This alternative civil form of deprivation of assets may be necessary where, for example the person is dead or missing. In order to be able to fully assist in these cases, the 2005 Order requires amendment.

7.4 Government policy is that we should be able to assist overseas authorities in freezing and recovering the proceeds of criminal conduct and that this should be streamlined. Section 444 of the Proceeds of Crime Act 2002 and this Order delivers that policy aim in respect of freezing assets as an interim measure in civil cases.

8. Consultation outcome

8.1 Drafting of the Order was developed in consultation with the Crown Prosecution Service, the Serious Fraud Office, the Serious Organised Crime Agency (whose functions, from October 2013, will be performed by the National Crime Agency) and the Devolved Administrations.

9. Guidance

9.1 Guidance is not necessary and will not be issued.

9.2 The Order makes provision corresponding to provisions in Part 5 of the Proceeds of Crime Act 2002 and so judges and legal representatives will be familiar with the provisions.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An Impact Assessment has not been prepared for this instrument. The amount of requests to undertake assistance will be low because other routes are utilised and NCB confiscation is not widely available amongst international partners.

11. Regulating small business

11.1 Small businesses will be subject to the same requirements and liabilities as they are under the operation of the domestic power under Part 5 of the Proceeds of Crime Act 2002. The impact on small businesses is negligible.

12. Monitoring & review

12.1 Requests for assistance in the freezing of property will be made to the Secretary of State. The Home Office will therefore be able to closely monitor the number of cases and the standard of these requests with the burden they place on law enforcement agencies, the courts and respondents to the freezing orders.

13. Contact

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