

Statutory Document No. 2008/0750



Proceeds of Crime Act 2008

PROCEEDS OF CRIME ACT 2008 (LEGAL EXPENSES IN CIVIL RECOVERY PROCEEDINGS) REGULATIONS 2008¹

Approved by Tynwald: 22nd October 2008
Coming into Operation: 1st November 2008

The Department of Home Affairs, after consulting such persons as it considers appropriate, in exercise of the powers conferred by sections 39 and 40 of the Proceeds of Crime Act 2008¹, hereby makes the following Regulations: —

PART 1

INTRODUCTION

1 Citation and commencement

These Regulations may be cited as the Proceeds of Crime Act 2008 (Legal Expenses in Civil Recovery Proceedings) Regulations 2008 and, subject to section 223(3), shall come into operation on 1st November 2008.

2 Interpretation

In these Regulations —

“**the 2008 Act**” means the Proceeds of Crime Act 2008;

“**civil recovery proceedings**” means proceedings under Part 1 of the 2008 Act;

“**notice**” means notice in writing.

¹ 2008 c.13

PART 2

REQUIRED CONDITIONS: GENERAL

3 Effect of this Part

This Part specifies the required conditions for the purposes of sections 8(5) and 18(5) of the 2008 Act.

4 Condition relating to work covered by exclusion

An exclusion from a property freezing order or interim receiving order must specify —

- (a) the stage or stages in civil recovery proceedings to which it relates; and
- (b) the maximum amount which may be released in respect of legal expenses for each stage to which it relates.

5 Condition relating to notification

If the advocate acting for the person to whose legal expenses the exclusion relates becomes aware that —

- (a) 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
- (b) that person's total legal expenses in respect of all stages to which the exclusion relates have exceeded or will exceed the total amount that may be released pursuant to the exclusion,

the advocate must give notice to the Attorney General and the court as soon as reasonably practicable.

6 Condition relating to payment of expenses

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

7 Effect of this Part

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

8 Request for Attorney General's agreement to release of interim payment

- (1) A request for the Attorney General's agreement to the release of a sum in respect of legal expenses pursuant to an exclusion must be made in writing to the Attorney General by the person 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.

9 Attorney General's response to request

- (1) Not later than 21 days after he receives the request, the Attorney General 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 Attorney General 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 Attorney General must have regard to the provisions of Part 5 which would apply on the assessment of those expenses by the court.

10 Release of interim payment

- (1) The sum which may be released pursuant to the exclusion is the greater of –
 - (a) the amount which the Attorney General agrees may be released; and
 - (b) 65% of the requested sum.
- (2) The sum may only be released to –
 - (a) the advocate who is instructed to act in the civil recovery proceedings for the person whose legal expenses the exclusion relates; or
 - (b) where appropriate, to the advocate 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

11 Effect of this Part

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.

12 Agreement of expenses by the Attorney General

- (1) This regulation applies where a person seeks the Attorney General's agreement to the payment of a sum in respect of his legal expenses pursuant to section 22(9)(a) of the 2008 Act.
- (2) In determining the amount which may be paid in respect of legal expenses with his agreement, the Attorney General must have regard to the provisions of Part 5 which would apply on the assessment of those expenses by the court.
- (3) Where the Attorney General 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.

13 Expenses to be assessed if not agreed

- (1) Unless the Attorney General 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, he must commence proceedings for the detailed assessment of those expenses in accordance with any relevant rules of court. Where no rules of court have been made, the court may adopt such practice and procedure as it thinks fit.
- (3) The court will assess the person's legal expenses in accordance with the provisions of Part 5 and any relevant rules of court (or, where no rules have been made, according to such practice and procedure as the court thinks fit), and the sum payable in respect of those expenses shall be the assessed amount.

14 Payment of expenses

- (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 35(1) of the 2008 Act;
 - (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 advocate who is instructed to act for that person; or
 - (b) where appropriate, the advocate who was so instructed when the legal expenses to which the sum relates were incurred.

PART 5

BASIS FOR ASSESSMENT OF LEGAL EXPENSES

15 Effect of this Part

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.

16 General principles

- (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 rules of court.

17 Rates of remuneration

Remuneration for work done by a legal representative may only be allowed at the appropriate hourly rate shown in the Table below.

TABLE: RATES OF REMUNERATION FOR LEGAL REPRESENTATIVES

<i>Category of fee earner²</i>	<i>Hourly rate (excluding VAT)</i>
Advocates and their employees	
Senior advocate (of at least 8 years standing)	£225.00
Advocate (of at least 4 years' and less than 8 years' standing)	£187.50
Junior advocate (of less than 4 years' standing)	£131.25
Trainee advocate, paralegal or other fee earner	£93.75
Counsel	
Queen's Counsel	£275.00
Senior junior counsel (of at least 10 years' standing)	£225.00
Junior counsel (of less than 10 years' standing)	£150.00

² A reference to a number of years' standing as an advocate or counsel is to be interpreted as referring to that number of years' general qualification.

MADE

22ND OCTOBER 2008

ENDNOTES

Table of Endnote References

¹ The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.