



Criminal Proceeds (Recovery) Amendment Regulations 2023

Cindy Kiro, Governor-General

Order in Council

At Wellington this 26th day of June 2023

Present:

The Hon Carmel Sepuloni presiding in Council

These regulations are made under section 173 of the Criminal Proceeds (Recovery) Act 2009 on the advice and with the consent of the Executive Council.

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Regulations

1 Title

These regulations are the Criminal Proceeds (Recovery) Amendment Regulations 2023.

2 Commencement

These regulations come into force on 27 July 2023.

3 Principal regulations

These regulations amend the Criminal Proceeds (Recovery) Regulations 2009.

4 Regulation 4 amended (Restraining orders)

- (1) In regulation 4(1)(a), replace “section 24 or 25 (or both)” with “section 24, 24A, or 25 (or any combination of those sections)”.
- (2) In regulation 4(1)(a), replace “form 1” with “form 1 or 1A (as applicable)”.
- (3) In regulation 4(1)(b), replace “section 24 or 25 (or both)” with “section 24, 24A, or 25 (or any combination of those sections)”.
- (4) In regulation 4(1)(b), replace “form 2” with “form 2 or 2A (as applicable)”.
- (5) In regulation 4(3), after “section 24,”, insert “24A,”.

5 Regulation 5 amended (Orders associated with restraining orders)

- (1) Before regulation 5(1)(a), insert:

(aaa) an application by the Commissioner, under section 17A of the Act, to have the respondent’s effective control over property treated as an interest in property—form 27:

- (2) Replace regulation 5(1)(e) with:

(e) an application by the Commissioner, under section 109A of the Act, to have the respondent to whom a restraining order under section 24 of the Act relates give the Commissioner the source information—form 31.

- (3) Before regulation 5(2)(a), insert:

(aaa) an order under section 17A of the Act that the respondent’s effective control over property be treated as an interest in property—form 28:

- (4) Replace regulation 5(2)(e) with:

- (e) an order under section 109A of the Act that the respondent to whom a restraining order under section 24 of the Act relates give the Commissioner the source information—form 32.

6 Regulation 6 amended (Civil forfeiture orders)

- (1) In regulation 6(1)(a), replace “an assets forfeiture order” with “a type 1 assets forfeiture order”.
- (2) After regulation 6(1)(a), insert:
 - (aa) an application under section 50A of the Act for a type 2 assets forfeiture order—form 14A:
- (3) In regulation 6(3)(c), replace “an assets forfeiture order” with “a type 1 assets forfeiture order”.
- (4) After regulation 6(3)(c), insert:
 - (ca) a type 2 assets forfeiture order under section 50C of the Act—form 18A:

7 Regulation 7 amended (Orders associated with civil forfeiture orders)

- (1) Replace regulation 7(2) with:
- (2) An application, by the Commissioner, of the kind specified in one of the following paragraphs must be in the form specified in that paragraph:
 - (a) an application under section 17A of the Act to have the respondent’s effective control over property treated as an interest in property—form 27:
 - (b) an application under section 54 of the Act to vary the maximum recoverable amount under a profit forfeiture order—form 25.
- (2) Before regulation 7(4)(a), insert:
 - (aaa) an order under section 17A of the Act that the respondent’s effective control over property be treated as an interest in property—form 28:
- (3) Revoke regulation 7(4)(d).

8 Schedule, new form 1A inserted

In the Schedule, after form 1, insert the form 1A set out in Part 1 of the Schedule to these regulations.

9 Schedule, new form 2A inserted

In the Schedule, after form 2, insert the form 2A set out in Part 2 of the Schedule to these regulations.

10 Schedule, form 6 amended

In the Schedule, form 6, replace paragraph 2(b) with:

- (b) *For this paragraph select the statement that applies.*

Statement A (for a restraining order made or to be made under section 24 or 25 of the Act)

the applicant has not unlawfully benefited from the significant criminal activity to which the application or restraining order relates.

Statement B (for a restraining order made or to be made under section 24A of the Act)

the applicant has not unlawfully benefited from significant criminal activity in which any persons (as members of or participants in the organised criminal group that is referred to in section 24A(1)(a)) have been involved at any time.

Statement C (for a restraining order made or to be made under section 26 of the Act)

the applicant was not involved in the qualifying instrument forfeiture offence to which the application or restraining order relates.

11 Schedule, form 14 heading replaced

In the Schedule, replace the form 14 heading with:

Application for type 1 assets forfeiture order

12 Schedule, new form 14A inserted

In the Schedule, after form 14, insert the form 14A set out in Part 3 of the Schedule to these regulations.

13 Schedule, form 18 amended

(1) In the Schedule, replace the form 18 heading with:

Type 1 assets forfeiture order

(2) In the Schedule, form 18, paragraph 1, replace “an assets forfeiture order” with “a type 1 assets forfeiture order”.

14 Schedule, new form 18A inserted

In the Schedule, after form 18, insert the form 18A set out in Part 4 of the Schedule to these regulations.

15 Schedule, form 27 amended

(1) In the Schedule, form 27, replace “Section 58” with “Section 17A”.

(2) In the Schedule, form 27, paragraph 1, replace “section 58” with “section 17A”.

(3) In the Schedule, form 27, paragraph 1, replace “any profit forfeiture order and in any restraining order” with “any profit forfeiture order, in any restraining order, and in any type 2 assets forfeiture order”.

- (4) In the Schedule, form 27, paragraph 2, replace “section 58” with “section 17A”.

16 Schedule, form 28 amended

In the Schedule, form 28, replace “*Section 58*” with “*Section 17A*”.

17 Schedule, form 29 amended

In the Schedule, form 29, replace paragraph 2(a)(ii) with:

- (ii) has not unlawfully benefited from any significant criminal activity to which the civil forfeiture order or proposed civil forfeiture order relates:

18 Schedule, new forms 31 and 32 inserted

In the Schedule, after form 30, insert the forms 31 and 32 set out in Part 5 of the Schedule to these regulations.

Schedule Schedule amended

rr 8–18

Part 1 New form 1A inserted

Form 1A

On-notice application for restraining order (before type 2 assets forfeiture order)

Section 24A, Criminal Proceeds (Recovery) Act 2009

To the Registrar

and

To the respondent

and

***To** *[full name of any other person who, to the applicant's knowledge, has an interest in the proposed restrained property]*

***Omit** if, to the applicant's knowledge, no other person has an interest in the proposed restrained property.

and

To the Official Assignee

This document notifies you that—

- 1 The applicant will on *[date]* apply to the court for an order that the property specified in paragraph 2—
 - (a) is not to be disposed of, or dealt with, other than as is provided for in the restraining order; and
 - (b) is to be under the Official Assignee's custody and control.
- 2 The property referred to in paragraph 1 is as follows: *[specify and, if there is more than 1 item of property, number (a), (b), etc, the proposed restrained property, including the full legal description where appropriate, and including the full name of every person who, to the applicant's knowledge, has an interest in the particular property (including, if applicable, the respondent), and the nature and extent of that interest, if known]*
- 3 The grounds on which the order is sought are as follows:
 - (a) when the respondent acquired the property specified in paragraph 2, the respondent was an associate of 1 or more members of or participants in an organised criminal group:

- (b) all or any of those members or participants have, as members of or participants in the group,—
 - (i) been involved in significant criminal activity at any time; or
 - (ii) unlawfully benefited from significant criminal activity at any time:
 - (c) the respondent's convertible legitimate property for their acquisition of the property specified in paragraph 2 would have been insufficient to enable them to acquire the property at or near reasonable market value:
 - (d) if this application relates to a single item of property, the amount calculated in accordance with the formula set out in section 24A(2) of the Criminal Proceeds (Recovery) Act 2009 is at least the threshold amount as defined in section 5(1) of that Act:
 - (e) if this application relates to more than 1 item of property, the sum of the amounts calculated in accordance with the formula set out in section 24A(2) of the Criminal Proceeds (Recovery) Act 2009 for each item of specific property is at least the threshold amount as defined in section 5(1) of that Act.
- 4 The application is to be made in reliance on sections 21 and 24A of the Criminal Proceeds (Recovery) Act 2009 [*specify any particular provision of any other enactment, principle of law, or judicial decision relied on*].

Date:

Signature:

(solicitor for applicant/counsel for applicant/applicant*)

*Select one.

Part 2
New form 2A inserted

Form 2A

Without-notice application for restraining order (before type 2 assets forfeiture order)

Section 24A, Criminal Proceeds (Recovery) Act 2009

To the Registrar

and

To the Official Assignee

This document notifies you that—

- 1 The applicant applies to the court for an order that the property specified in paragraph 2—
 - (a) is not to be disposed of, or dealt with, other than as is provided for in the restraining order; and
 - (b) is to be in the Official Assignee’s custody and control.
- 2 The property referred to in paragraph 1 is as follows: [*specify and, if there is more than 1 item of property, number (a), (b), etc, the proposed restrained property, including the full legal description where appropriate, and including the full name of every person who, to the applicant’s knowledge, has an interest in the particular property (including, if applicable, the respondent), and the nature and extent of that interest, if known*]
- 3 The grounds on which the order is sought are as follows:
 - (a) when the respondent acquired the property specified in paragraph 2, the respondent was an associate of 1 or more members of or participants in an organised criminal group:
 - (b) all or any of those members or participants have, as members of or participants in the group,—
 - (i) been involved in significant criminal activity at any time; or
 - (ii) unlawfully benefited from significant criminal activity at any time:
 - (c) the respondent’s convertible legitimate property for their acquisition of the property specified in paragraph 2 would have been insufficient to enable them to acquire the property at or near reasonable market value:
 - (d) if this application relates to a single item of property, the amount calculated in accordance with the formula set out in section 24A(2) of the Criminal Proceeds (Recovery) Act 2009 is at least the threshold amount as defined in section 5(1) of that Act:

- (e) if this application relates to more than 1 item of property, the sum of the amounts calculated in accordance with the formula set out in section 24A(2) of the Criminal Proceeds (Recovery) Act 2009 for each item of specific property is at least the threshold amount as defined in section 5(1) of that Act.

- 4 The application is made in reliance on sections 22 and 24A of the Criminal Proceeds (Recovery) Act 2009 [*specify any other enactment, principle of law, or judicial decision relied on*].

As required by rule 19.10(1)(e) of the High Court Rules 2016, I certify that this application complies with the rules.

Date:

Signature:

(solicitor for applicant/counsel for applicant/applicant*)

*Select one.

Part 3

New form 14A inserted

Form 14A

Application for type 2 assets forfeiture order

Sections 43, 44, and 50A, Criminal Proceeds (Recovery) Act 2009

To the Registrar

and

To the respondent(s)

and

To the Official Assignee

and

**To [full name of any other person who, to the Commissioner's knowledge, has an interest in the proposed forfeited property]*

**Omit if, to the Commissioner's knowledge, no other person has an interest in the proposed forfeited property.*

This document notifies you that—

- 1 The Commissioner will on *[date]* apply to the court for an order that—
 - (a) the reasonable market value of the property specified in paragraph 2, as determined by the Commissioner, was,—
 - (i) on the date on which it was acquired by the respondent, *[specify reasonable market value as determined by the Commissioner]*; and
 - (ii) on the date of this application, *[specify market value as determined by the Commissioner]*;
 - (b) the following property was the respondent's convertible legitimate property for the respondent's acquisition of the property specified in paragraph 2 (*see* section 50B of the Criminal Proceeds (Recovery) Act 2009): *[specify the respondent's convertible legitimate property for the respondent's acquisition of the property specified in paragraph 2]*
 - (c) the value of the property described in paragraph (b), as determined by the Commissioner, at the relevant time before the respondent acquired the property specified in paragraph 2, was: *[specify the value of the property described in paragraph (b) as determined by the Commissioner]*
 - (d) the following property, as determined by the Commissioner, is excluded legitimate property: *[specify excluded legitimate property as determined by the Commissioner]*
 - (e) the value of the property described in paragraph (d), as determined by the Commissioner, at the relevant time before the respondent acquired

the property specified in paragraph 2, was: [*specify the value of the property described in paragraph (d) as determined by the Commissioner*]

- (f) the property specified in paragraph 2—
 - (a) vests in the Crown absolutely to the extent of the interest specified in the order; and
 - (b) is to be in the Official Assignee’s custody and control.

2 The property referred to in paragraph 1 is as follows: [*specify the proposed forfeited property, including the full legal description where appropriate, and including the full name(s) of the respondent(s) (if any) and of every person who, to the Commissioner’s knowledge, has an interest in the particular property and, if known, the nature and extent of that interest*]

3 The order is sought on the grounds that—

- (a) when the respondent acquired the property specified in paragraph 2, the respondent was an associate of 1 or more members of or participants in an organised criminal group:
- (b) all or any of those members or participants have, as members of or participants in the group,—
 - (i) been involved in significant criminal activity at any time; or
 - (ii) unlawfully benefited from significant criminal activity at any time:
- (c) the respondent’s convertible legitimate property for their acquisition of the property specified in paragraph 2 would have been insufficient to enable them to acquire the property at or near reasonable market value:
- (d) if this application relates to a single item of property, the amount calculated in accordance with the formula set out in section 50C(4) of the Criminal Proceeds (Recovery) Act 2009 is at least the threshold amount as defined in section 5(1) of that Act:
- (e) if this application relates to more than 1 item of property, the sum of the amounts calculated in accordance with the formula set out in section 50C(4) of the Criminal Proceeds (Recovery) Act 2009 for each item of specific property is at least the threshold amount as defined in section 5(1) of that Act.

4 The application is made in reliance on sections 43, 44, and 50A of the Criminal Proceeds (Recovery) Act 2009 [*specify any other enactment, principle of law, or judicial decision relied on*].

Date:

Signature:

(solicitor for applicant/counsel for applicant/applicant*)

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*Select one.

Part 4

New form 18A inserted

Form 18A

Type 2 assets forfeiture order

Sections 50C and 59(1), Criminal Proceeds (Recovery) Act 2009

To the Commissioner

and

**To [every other party who has given an address for service and any other person affected by the order]*

**Omit if no other parties have given an address for service and no other person is affected by the order.*

and

To the Official Assignee

1 The application for a type 2 assets forfeiture order made by the Commissioner on [date] was determined by the Honourable Justice [name] on [date].

2 *For this paragraph select the statement that applies.*

Statement A

The determination was made following a hearing held on [date(s)] at which the following people appeared: [list names of counsel or solicitors who represented the respective parties at the hearing and state whether any party appeared in person at the hearing]

Statement B

The determination was made without a hearing.

Statement C

The determination was made with the consent of the parties.

3 As a result of the determination, the High Court made the following order:

The property to which this order applies—

(a) vests in the Crown absolutely to the extent of the interest specified in the order; and

(b) is to be in the Official Assignee's custody and control.

This order applies to the following property: [specify in a comprehensive list the forfeited property, with description adequate to identify each asset]

The interest that vests in the Crown is: [specify the proportion of the value of the forfeited property that remains after excluding the exempt proportion (if any) of that property].

4 *Include this paragraph only if the court makes any further declarations or directions not already set out above.*

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The court made the following declarations or directions: [*specify and, if more than 1, number (a), (b), etc, the further declarations or directions made in accordance with section 59(1) of the Criminal Proceeds (Recovery) Act 2009*]

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Sealed: [*date*]

Part 5

New forms 31 and 32 inserted

Form 31

Application for disclosure of source order

Section 109A, Criminal Proceeds (Recovery) Act 2009

To the Registrar

This document notifies you that—

1 The Commissioner will on [*date*] apply to the court for a disclosure of source order against the respondent named in a restraining order made by this court under section 24 of the Criminal Proceeds (Recovery) Act 2009.

2 *For this paragraph select the statement that applies.*

Statement A

The grounds on which the order is sought are that the Commissioner has reason to believe that the respondent, [*full name*], is residing outside New Zealand (whether temporarily or permanently) or is absent from New Zealand.

Statement B

The grounds on which the order is sought are that the Commissioner has reason to believe that the respondent, [*full name*], is a corporation that is incorporated outside New Zealand (other than an overseas company that is registered under Part 18 of the Companies Act 1993).

3 The disclosure of source order is sought to require [*full name*] to produce the source information by [*specify period*] after the date on which the order is made.

4 The source information (as defined in section 109A of the Criminal Proceeds (Recovery) Act 2009) sought by the Commissioner is the following information in respect of each item of property specified in the restraining order identified in paragraph 1:

- (a) the name of each person who the respondent knows holds, or believes may hold, an interest in the property and the nature of that interest;
- (b) the circumstances in which the respondent acquired the property, including—
 - (i) how they acquired it; and
 - (ii) the source of any funds or other property used for that acquisition;
- (c) if the property is tangible and movable property that the respondent acquired outside New Zealand and, after that acquisition, was brought into New Zealand,—
 - (i) the country or place in which they acquired the property; and

- (ii) any countries or places through which the property transited before being moved into New Zealand:

Include this paragraph only if the Commissioner seeks other information in accordance with section 109A(4)(d) of the Criminal Proceeds (Recovery) Act 2009

- (d) the following information: *[specify any additional information sought to be produced]*

Include this paragraph only if the Commissioner seeks any documents of a specified kind to substantiate the information referred to in paragraph (a), (b), (c), or (d), as applicable

- (e) documents of the following kind to substantiate the information referred to in paragraph (a), (b), (c), or (d), as applicable: *[specify the kind of documents sought to be produced]*

5 The application is made in reliance on section 109A of the Criminal Proceeds (Recovery) Act 2009 *[specify any other enactment, principle of law, or judicial decision relied on]*.

6 The evidence relied on for the purpose of this application is as follows: *[specify all matters relevant to this application or to any thing that must be established before the order may be issued]*

Date:

Signature:

(solicitor for applicant/counsel for applicant/applicant*)

*Select one.

Form 32

Disclosure of source order

Section 109A, Criminal Proceeds (Recovery) Act 2009

To the Commissioner
and

To *[full name of person from whom disclosure of source is sought]*

1 The application for a disclosure of source order made by the Commissioner on *[date]* was determined by the Honourable Justice *[name]* on *[date]*.

2 The Judge has reasonable grounds to believe that—

- (a) you, *[full name of person from whom disclosure of source is sought]*—
 - (i) are residing outside New Zealand (whether temporarily or permanently) or are absent from New Zealand; or
 - (ii) are a corporation that is incorporated outside New Zealand (other than an overseas company that is registered under Part 18 of the Companies Act 1993); and

- (b) you, *[full name of person from whom disclosure of source is sought]*, are the respondent named in a restraining order made by this court on *[date]* under section 24 of the Criminal Proceeds (Recovery) Act 2009.

3 *[Full name]* is required by this order to produce to the Commissioner or to any constable the following source information (as defined in section 109A of the Criminal Proceeds (Recovery) Act 2009) in respect of each item of property specified in the restraining order identified in paragraph 2(b):

- (a) the name of each person who the respondent knows holds, or believes may hold, an interest in the property and the nature of that interest;
- (b) the circumstances in which the respondent acquired the property, including—
 - (i) how they acquired it; and
 - (ii) the source of any funds or other property used for that acquisition;
- (c) if the property is tangible and movable property that the respondent acquired outside New Zealand and, after that acquisition, was brought into New Zealand,—
 - (i) the country or place in which they acquired the property; and
 - (ii) any countries or places through which the property transited before being moved into New Zealand.

Include this paragraph only if the court orders the respondent to produce other information in accordance with section 109A(4)(d) of the Criminal Proceeds (Recovery) Act 2009

- 4 [Full name] is required by this order to produce to the Commissioner or to any constable the following information: [*specify any additional information required to be produced*]

Include this paragraph only if the court orders the respondent to produce any documents of a specified kind to substantiate the information referred to in paragraphs 3 and 4, as applicable

- 5 [Full name] is required by this order to produce to the Commissioner or to any constable any documents of the following kind to substantiate the information referred to in paragraphs 3 and 4, as applicable: [*specify the kind of documents required to be produced*]

- 6 This disclosure of source order, made under section 109A of the Criminal Proceeds (Recovery) Act 2009, requires [full name] to produce the source information by [date].

- 7 Non-compliance with this disclosure of source order—

- (a) may result in a rebuttable presumption that the property subject to the restraining order referred to in paragraph 2(b) is tainted property, and may risk being forfeited under section 50 of the Criminal Proceeds (Recovery) Act 2009;
- (b) may be liable for an offence under section 152 of the Criminal Proceeds (Recovery) Act 2009 for failure to comply with orders;
- (c) is not excused on the grounds that doing so may be incriminating, in accordance with section 163 of the Criminal Proceeds (Recovery) Act 2009.

However, compliance with this disclosure of source order that includes any self-incriminating statement is not admissible in any civil or criminal proceedings, in accordance with section 165A of the Criminal Proceeds (Recovery) Act 2009, except for proceedings under section 10(1) or 152 of the Criminal Proceeds (Recovery) Act 2009, or section 109 of the Crimes Act 1961 (which relates to perjury).

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Sealed: [date]

Diana Hawker,
Acting Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 27 July 2023, amend the Criminal Proceeds (Recovery) Regulations 2009 (the **principal regulations**). The amendments align the principal regulations with changes made to the Criminal Proceeds (Recovery) Act 2009 (the **Act**) by the Criminal Proceeds (Recovery) Amendment Act 2023 by—

- updating cross-references in regulation 4 to refer to section 24A and *new forms 1A and 2A*;
- updating cross-references in regulation 5 and provide for disclosure of source orders (as set out in *new forms 31 and 32*);
- updating references to assets forfeiture orders in regulation 6 to type 1 assets forfeiture orders, and provide for the new type 2 assets forfeiture orders;
- updating cross-references in regulation 7;
- inserting *new form 1A* (on-notice application for restraining order (before type 2 assets forfeiture order));
- inserting *new form 2A* (without-notice application for restraining order (before type 2 assets forfeiture order));
- amending form 6 to provide for the new type 2 assets forfeiture orders;
- amending the heading of form 14 to refer to type 1 assets forfeiture orders only;
- inserting *new form 14A* (application for type 2 assets forfeiture order);
- amending form 18 to refer to type 1 assets forfeiture orders only;
- inserting *new form 18A* (type 2 assets forfeiture order);
- updating cross-references in forms 27 and 28;
- updating form 29 to align with amendments made to section 67 of the Act;
- inserting *new form 31* (application for disclosure of source order) and *new form 32* (disclosure of source order).

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement on 9 December 2020 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

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Explanatory note

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- <https://www.justice.govt.nz/justice-sector-policy/regulatory-stewardship/regulatory-impact-assessments/>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 29 June 2023.

These regulations are administered by the Ministry of Justice.