

Proceeds of Crime (Amendment) Bill 2023

General Scheme

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PART 1 – PRELIMINARY AND GENERAL

Head 1 Short Title and Commencement

Provide that—

- (1) This Act may be cited as the Proceeds of Crime (Amendment) Act 2024.
- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.
- (3) The Proceeds of Crime Acts 1996 to 2016 and Part 2 may be cited as the Proceeds of Crime Acts 1996 to 2024.
- (4) The Criminal Assets Bureau Acts 1996 and 2005 and Part 3 may be cited as the Criminal Assets Bureau Act 1996 to 2024.

Explanatory Notes

These are standard provisions in respect of citation and commencement.

Head 2 Interpretation

Provide that—

(1) In this Act—

- “Minister” means the Minister for Justice;
- “Principal Act” means the Proceeds of Crime Act 1996;
- “proceeds of crime” means any property obtained or received, directly or indirectly, at any time (whether before or after the passing of this Act) by or as a result of or in connection with criminal conduct, and includes property acquired, with or in connection with property that is the proceeds of crime.

Explanatory Notes

This Head provides for definitions used in the Scheme. The definition of proceeds of crime is included for the purposes of the restraint provisions in Head 4, and the scope of its applicability will be considered in drafting.

PART 2 – AMENDMENTS TO THE PROCEEDS OF CRIME ACT 1996

Head 3 Amendment of section 1A (Extension of time for seizure and detention of property by District Court)

Provide that the Principal Act is amended, in section 1A—

- (1) In subsection (2), by the insertion of “unless its detention for a further period is authorised by an order under subsection (2A)” after “21 days”.
- (2) By the insertion of the following after subsection (2)—
 - “(2A) A judge of the District Court may, upon application by the Chief Bureau Officer, extend the authorisation referred to in subsection (2) for a further period specified, not exceeding 28 days, where he or she—
 - (a) is satisfied that there are reasonable grounds for suspecting that the property, in whole or in part, directly or indirectly, constitutes proceeds of crime,
 - (b) is satisfied that there are reasonable grounds for suspecting that the total value of the property is not less than €5,000,
 - (c) is satisfied that the Criminal Assets Bureau is carrying out an investigation into whether there are sufficient grounds to make an application to the Court for an interim order or an interlocutory order in respect of the property, and
 - (d) has reasonable grounds for believing that the property, in whole or in part, may in the absence of the extension of the authorisation, be disposed of or otherwise dealt with, or have its value diminished, before such an application may be made.
 - (2B) An application under subsection (2A) may be made ex parte and otherwise than in public.
 - (2C) An extension under subsection (2A) may be made on more than one occasion, provided that the total time that a property is detained under this section does not exceed 90 days in aggregate.”
- (3) By the insertion of the following after subsection (3)—
 - “(3A) Notice shall be given of the extension of an authorisation under subsection (2A) in accordance with the directions of the Court.”

Explanatory Notes

This Head amends section 1A of the Proceeds of Crime Act 1996. It provides that where the Chief Bureau Officer (CBO) has authorised the detention of property for a 21-day period in accordance with section 1A (2), the CBO may apply to the District Court on an ex parte basis for the continued detention of the property, if it is subject to an ongoing proceeds of crime investigation, for a further 28-day repeatable period.

Head 4 Restraint Orders

Provide that the Principal Act is amended by the insertion of a new section to the effect—

- (1) A bureau officer who is a member of the Garda Síochána not below the rank of Superintendent, may, by notice in writing, direct a person not to carry out any specified service or transaction during the period specified in the direction, not exceeding 7 days, if he or she is satisfied that, on the basis of information obtained or received by the Bureau, that such a direction is necessary to enable the Bureau to carry out preliminary investigations into whether or not there are reasonable grounds to suspect that the property to which the service or transaction directly or indirectly relates is the proceeds of crime.
- (2) A judge of the District Court may order a person not to carry out any specified service or transaction during the period specified in the order, not exceeding 28 days, if satisfied by information on oath of a bureau officer who is a member of the Garda Síochána that—
 - (a) there are reasonable grounds to suspect that the service or transaction relates, directly or indirectly, to property that is proceeds of crime;
 - (b) the Criminal Assets Bureau is carrying out an investigation into whether there are sufficient grounds to make an application to the Court for an interim order or an interlocutory order in respect of the property, and
 - (c) there are reasonable grounds to believe that the property, in whole or in part, may in the absence of an order, be disposed of or otherwise dealt with, or have its value diminished, before such an application may be made.
- (3) An order may be made, under subsection (2), in relation to a particular service or transaction on more than one occasion.
- (4) An application for an order under subsection (2)—
 - (a) shall be made ex parte and shall be heard otherwise than in public, and
 - (b) shall be made to a judge of the District Court assigned to the district in which the order is proposed to be served.
- (5) A person who fails to comply with a direction or order under this section commits an offence and is liable on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months (or both).
- (6) Any act or omission by a person in compliance with a direction or order under this section shall not be treated, for any purpose, as a breach of any requirement or restriction imposed by any other enactment or rule of law.
- (7) As soon as practicable after a direction is given or order is made under subsection (1) or (2), the bureau officer who gave the direction or applied for the order shall ensure that any

person the bureau officer is aware is affected by the direction or order is given notice, in writing, of the direction or order unless—

- (a) it is not reasonably practicable to ascertain the whereabouts of the person, or
 - (b) there are reasonable grounds for believing that disclosure to the person would prejudice the investigation in respect of which the direction or order is given.
- (8) Notwithstanding subsection (7)(b), the bureau officer shall give notice, in writing, of a direction or order under subsection (1) or (2) to any person who is, or appears to be, affected by it as soon as practicable after the bureau officer becomes aware that the person is aware that the direction has been given or order has been made.
- (9) Nothing in subsection (7) or (8) requires notice to be given to a person to whom a direction is given or order is addressed under this section.
- (10) A notice given under subsection (7) or (8) shall include the reasons for the direction or order concerned and advise the person to whom the notice is given of the person's right to make an application under subsections (7) or (8).
- (11) The reasons given in the notice under subsection (7) or (8) need not include details the disclosure of which there are reasonable grounds for believing would prejudice the investigation in respect of which the direction is given or order is made.
- (12) At any time while a direction or order is in force under subsection (1) or (2), a judge of the District Court may revoke the direction or order if the judge is satisfied, on the application of a person affected by the direction or order, as the case may be, that the matters referred to in subsection (1) or (2) do not, or no longer, apply.
- (13) At any time while a direction or order is in force under subsection (1) or (2) a judge of the District Court may, on application by any person affected by the direction or order concerned, as the case may be, make any order that the judge considers appropriate in relation to any of the property concerned if satisfied that it is necessary to do so for the purpose of enabling the person—
- (a) to discharge the reasonable living and other necessary expenses, including legal expenses in or in relation to legal proceedings, incurred or to be incurred in respect of the person or the person's dependants, or
 - (b) to carry on a business, trade, profession or other occupation to which any of the relevant property relates.
- (14) An application under subsection (12) or (13) may be made only if notice has been given to the Criminal Assets Bureau in accordance with any applicable rules of court.
- (15) A direction or order under subsections (1) or (2) shall cease to have effect on the cessation of an investigation into whether the property to which the service or transaction the subject of the direction or order relates is proceeds of crime.

- (16) Where subsection (15) applies, to have effect, a bureau officer shall give notice in writing of the fact that the direction or order has ceased to have effect to—
- (a) the person to whom the direction or order has been given, and
 - (b) any other person who the member is aware is affected by the direction or order.
- (17) This section is without prejudice to any enactment or rule of law conferring a power to issue a warrant for the search of any place or person.

Explanatory Notes

The purpose of this Head is to provide for a power to enable a bureau officer to issue an order, and a court to extend such an order, restraining services or transactions in relation to property suspected on reasonable grounds to be the proceeds of crime. It further provides for the applicable notice requirements, and provisions to vary and revoke orders.

Head 5 Amendment of section 4 (Reduction of time for which an interlocutory order must be in place prior to a disposal order being made; Prevention of reopening of whether property constitutes proceeds)

Provide that the Principal Act is amended—

- (1) By the substitution of the following for subsection (1)—
 - “(1) Where an interlocutory order has been in force for not less than 2 years in relation to specified property, the Court, on application to it by the applicant, shall make an order (“a disposal order”), directing that the whole or, if appropriate, a specified part of the property be transferred, subject to such terms and conditions as the Court may specify, to the Minister or to such other person as the Court may determine.”
- (2) By the repeal of subsection (2).
- (3) By the substitution of the following for subsection (6)—
 - “(6) In considering whether to make a disposal order, the Court shall—
 - (a) Give an opportunity to be heard and to show cause why the order should not be made to any person claiming ownership of any of the property concerned;
 - (b) Be bound by the determinations of the Court in making an interlocutory order, and in particular that the property in question is the proceeds of crime.”
- (4) In subsection (7), by the substitution of “6 months” for “2 years”.

Explanatory Notes

This Head substitutes section 4 (1) of the Principal Act in order to reduce the period that a section 3 ‘interlocutory’ order must be in place prior to disposal from 7 years to 2 years.

This Head also clarifies the nature of the section 4 disposal order, ensuring that matters finally determined in the section 3 order are not relitigated.

Given the reduced deferral period for the making of a section 4 order, this Head proposes that the maximum adjournment period in section 4(7) is reduced.

Head 6 Amendment of section 4A (Time limit for making of consent disposal order)

Provide that the Principal Act is amended—

- (1) In section 4A (1), by the substitution of “an interlocutory order is in force, and” for “an interlocutory order has been in force for a period of less than 7 years, and.”

Explanatory Notes

This Head provides for the removal of the limitation that a consent disposal order under section 4A of the Act may only be made within the 7 year period prior to the availability of a section 4 order. While the relevant period is reduced to 2 years for section 4, the existing limitation in section 4A serves no clear purpose and this amendment allows for the uncontested 4A process to be used where the parties consent even when a section 4 process has become available.

Head 7 Amendment of section 6 (Orders in respect of property subject to interlocutory orders)

Provide that the Proceeds of Crime Act 1996 is amended—

- (1) In section 6(1)(b), by the insertion of “(other than where a receiver has been appointed in respect of property subject to an interlocutory order)” after “(b)”.

Explanatory Notes

This Head flows from the approach to the appointment of a receiver under Head 8. It limits the benefit that a person may seek from property that is the subject of an interlocutory order.

Head 8 Amendment of section 7 (Appointment of Receiver)

Provide that the Proceeds of Crime Act 1996 is amended—

- (1) In section 7(1) and 7(2)(a), by the deletion of “or an interlocutory order”;
- (2) By the insertion of the following after subsection 7(1)—
 - “(1A) Where an interlocutory order is in force, the Court shall, on application to it in that behalf by the applicant, appoint a receiver—
 - (a) to take possession of any property to which the order relates,
 - (b) to deprive the respondent of the ongoing benefit and use of the property to which the order relates,
 - (c) in accordance with the Court's directions, to manage, keep possession or dispose of or otherwise deal with any property in respect of which he or she is appointed,subject to such exceptions and conditions (if any) as may be specified by the Court, and may require any person having possession or control of property in respect of which the receiver is appointed to give possession of it to the receiver.
 - (1B) The Court shall not make an order under subsection (1A) if it is satisfied that there would be a serious risk of injustice.
 - (1C) The applicant or any person who appears to be or is affected by the appointment of a receiver under this section may make an application to the High Court to vary or discharge the appointment and any exceptions or conditions applicable thereto.”

Explanatory Notes

The purpose of this Head is to provide for the appointment of a receiver solely for the purpose of depriving the respondent of the property. The Court is required to make the appointment if CAB applies unless satisfied that there is a serious risk of injustice to do so.

This Head also provides for revoking or varying the appointment of the receiver and for setting the conditions and exceptions that may apply.

Head 9 Amendment of section 16 (Compensation)

Provide that the Principal Act is amended—

(1) In section 16, by the insertion of the following paragraph after paragraph (1)(c)—

“(d) otherwise, within [3] years of the making of a disposal order”

Explanatory Notes

This Head amends section 16 to provide for the circumstances where compensation may be payable after a disposal order is made.

PART 3 – AMENDMENTS TO THE CRIMINAL ASSETS BUREAU ACT 1996

Head 10 Amendment of section 8(6A) (Attendance at interviews)

Provide that the Criminal Assets Bureau Act 1996 is amended—

- (1) In section 8(6A), by the insertion of the following paragraph after paragraph (b)—
- “(c) section 50 of the Criminal Justice Act 2007”

Explanatory Notes

This Head will allow non-Garda bureau officers to attend interviews of persons detained under section 50 of the Criminal Justice Act 2007. Such officers are already permitted to attend interviews of persons detained under section 4 of the Criminal Justice Act 1984 or section 2 of the Criminal Justice (Drug Trafficking) Act 1996.

Head 11 Amendment of section 8(7) (Information exchange)

Provide that the Criminal Assets Bureau Act 1996 is amended—

- (1) In section 8(7),
 - (a) In paragraph (e), by the insertion of “, statutory body” after “Minister of Government”
 - (b) By the insertion of the following paragraph after paragraph (e):
 - “(f) with the consent of the Chief Bureau Officer, pursuant to an international agreement or instrument to which the State is subject, any police force, or any authority, being an authority with functions related to the recovery of proceeds of crime, a tax authority or social security authority, of a territory or state other than the State”

Explanatory Notes

Section 8(7) of the Criminal Assets Bureau Act 1996, as amended, provides the Bureau with the power to share information with other Government Departments. However, this provision does not provide for information sharing by the Bureau with other independent statutory agencies such as the Director of Public Prosecutions (DPP) and the Garda Síochána Ombudsman Commission. The purpose of this Head is to amend section 8(7) of Criminal Assets Bureau Act 1996 to allow the Bureau to share information with such bodies.

Additionally, this Head clarifies Bureau’s power to exchange information with law enforcement agencies in other jurisdictions.

Head 12 Amendment of section 10 (Anonymity of former bureau officers)

Provide that the Criminal Assets Bureau Act 1996 is amended—

(1) In section 10(8), by the insertion of a new paragraph—

“In subsections (5), (6) and (7), references to “bureau officer” and “member of the staff of the Bureau” shall include current and former bureau officers and members of the staff of the Bureau respectively.

Explanatory Notes

This Head would extend the existing anonymity provisions in place to protect CAB officers and staff to cover former officers and staff.

At present, the Criminal Asset Bureau Act 1996 makes no specific provision safeguarding the anonymity of former Bureau officers and other Bureau staff required to give evidence in Court in relation to their former functions with the Bureau.

The provision is intended to operate in parallel to the provisions of Part 7 of the Criminal Justice (Miscellaneous Provisions) Act 2023 where the latter applies.