

Appendix B

Proceeds of Crime (Amendment) Bill 2024 Regulatory Impact Analysis

1. Summary RIA

Summary of Regulatory Impact Analysis (RIA)	
Department/Office: Department of Justice	Title of Legislation: Proceeds of Crime (Amendment) Bill 2024
Stage: Approval of General Scheme of Bill	Date: December 2023
Related Publications: None	
Available to view or download at: gov.ie - Search results (www.gov.ie) (when published)	
Contact for enquiries: Criminal Legislation Department of Justice	
Policy Objectives being pursued: Ongoing review of the operation of the civil forfeiture regime in Ireland (grounded in the Proceeds of Crime Act 1996), has identified a number of areas of possible improvement. The ultimate policy objective is to strengthen the State's ability to target the proceeds of crime through evolutionary refinements to the regime, informed by legal and operational developments. Policy options considered: 1. Retention of the status quo 2. Targeted changes to areas set out. Preferred option: Option 2.	

Summary of Option 1 – Retain Status Quo		
COSTS	BENEFITS	IMPACTS
No additional cost to Exchequer or to businesses.	Retains existing system which has worked effectively and avoids instability and legal challenge.	Retaining the status quo would not address issues identified, and failure to evolve the regime may lead to long-term losses in effectiveness.

Summary of Option 2 – Targeted changes		
COSTS	BENEFITS	IMPACTS
Requires changes to existing system which has worked effectively. Risk of legal challenge to new changes.	Changes will increase the efficiency of the operation of the regime, and provide for stronger incentives for respondents to cooperate with the Criminal Assets Bureau. Changes will ensure that the benefit of assets is not retained once a determination is made that assets are the proceeds of crime.	Changes are likely to increase the scope and effectiveness of the operation of the POC Act 1996.

2. Policy Context and Objectives

Organised crime represents a significant threat to national and international security and preys on the most vulnerable in communities. Organised crime is driven by financial gain and criminals generate significant income from crime. The confiscation of criminal proceeds is an essential means of combatting organised crime as it deprives criminals of illicit profits, preventing the further investment of criminal proceeds in either the legitimate economy or criminal enterprises.

The civil non-conviction based model used in Ireland for the confiscation of the proceeds of crime was introduced into in the Proceeds of Crime Act 1996. The same year, the Criminal Assets Bureau Act 1996, establishing the Criminal Assets Bureau (CAB), was enacted. These Acts together are internationally recognised as a model of best practice. However, they require continual evolution and enhancement based to ensure that they remain as effective as possible, and the Acts have been substantially amended twice (in 2005 and 2016).

As part of the gradual enhancement of the law in this area, the Proceeds of Crime (Amendment) Bill 2024 aims to strengthen CAB’s ability to target the proceeds of crime and improve the efficiency of their processes.

3. Identification and Description of Options

The following options were considered:

- A.** Retention of status quo
- B.** Targeted changes to identified areas.

4. Analysis of Costs, Benefits and Impacts for ALL Options

Option A. Retention of status quo

The non-conviction model operated under the Proceeds of Crime Act 1996 is internationally recognised as effective. While it faced a number of legal challenge when it was introduced, it has consistently been upheld as constitutional and consistent with Ireland’s human rights obligations.

The most significant benefit to not amending the Act is to minimise the risk of further legal challenges.

However, not amending the Act brings ongoing risk. The importance of asset confiscation has increased as a means of targeting organised crime, as has the sophistication of those engaged in organised crime in attempting to launder and place assets beyond reach. It has also become evident that those targeted by the regime have sought to delay and frustrate its operation. A failure to update and improve the legislation is likely to result in a diminution in its effectiveness over time.

Option B: Legislate to amend the Proceeds of Crime Act 1996

The issues identified for amendment in the General Scheme have arisen from a process of ongoing consultation and review by the Department of Justice with key stakeholders. Together they represent an evolution of the regime to improve its responsiveness, effectiveness and efficiency.

The changes identified have been subject to ongoing legal review, and while the risk of challenge cannot be discounted, the likelihood of any of the changes proposed undermining the structure of the regime as a whole is considered low. Conversely, the impact of the changes will be significant and beneficial.

Assessment of key proposals

Proposal	Rationale	Assessment
<p>Allow court-mandated extension of seizure under section 1A of the Proceeds of Crime Act 1996.</p> <p>This 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 up to 90 days in total.</p>	<p>It has been identified by stakeholders that the current 21-day detention period provided for under section 1A(2) of the Proceeds of Crime legislation is too short in many cases and is an insufficient period of time for CAB to mount a proper proceeds of crime investigation given the typical complexity of such cases.</p>	<p>The change would increase the benefit, utility and application of the section 1A powers.</p> <p>The role of the Court in considering whether to grant an extension provides important oversight and protection for the subjects of s. 1A orders and reduces legal risk.</p>
<p>Provide for a standalone restraint power exercisable by CAB independently of money laundering investigations.</p> <p>Provides 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</p>	<p>The provisions of section 17 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (2010 Act) allow the restraint of services and transactions where in a money laundering context.</p> <p>These provisions, while important, may not be applicable in all proceeds of crime situations</p>	<p>The change will increase the tools at CAB’s disposal to ensure that suspected proceeds are held in situ while investigations are ongoing.</p> <p>The restraint powers are analogous to other freezing provisions in use, and are subject to appropriate safeguards. The</p>

<p>grounds to be the proceeds of crime. It further provides for the applicable notice requirements, and provisions to vary and revoke orders.</p>	<p>and their use may be limited due to legal concerns in relation to their scope.</p> <p>Given the civil nature of the proceedings, it is more appropriate that a standalone power is available where needed.</p>	<p>likelihood of successful challenge is considered low.</p>
<p>Reduction in period that assets must be subject to a section 3 order before disposal.</p> <p>At present, a section 3 “interlocutory order” must be in place prior to disposal from 7 years. It is proposed to reduce this to two years.</p> <p>The proposal also clarifies the nature of the section 4 disposal order, ensuring that matters finally determined in the section 3 order are not re-litigated.</p> <p>In addition, section 16 of the Act is amended to extent the circumstances under which compensation may be paid.</p>	<p>Once a determination is made that property is the proceeds of crime, further delays before disposal should be limited to those required to provide procedural safeguards.</p> <p>The reduction in time will serve to deprive individuals of the benefit of criminal proceeds more quickly, and will reduce the litigation involved.</p>	<p>The reduction in the seven year period will have significant impact on burden of litigation, and on the timeliness of the forfeiture process.</p> <p>While legal challenge may arise, appropriate safeguards are in place, and the change is viewed as appropriate in light of the established caselaw of Irish and European courts.</p>
<p>Provide for the appointment of a receiver solely for the purpose of depriving the respondent of the property.</p> <p>The appointment would be automatic on the application of CAB unless the court is satisfied that there is a serious risk of injustice.</p>	<p>The appointment of a receiver will serve to immediately deprive individuals of the benefit of criminal proceeds.</p> <p>It would further encourage the engagement of respondents with the court process and encourage respondents to engage on the merits of the case rather than litigate technical issues.</p>	<p>The receivership provisions are expected to have a significant impact on the conduct of litigation.</p> <p>While legal challenge may arise, appropriate safeguards are in place, and the change is viewed as appropriate in light of the established caselaw of Irish and European courts.</p>

5. Consultation

The draft Scheme reflects a detailed process of consultation with the Criminal Assets Bureau, and with other stakeholders. Publication of the General Scheme will facilitate wider stakeholder input and scrutiny including by the Oireachtas.

6. Enforcement and compliance

The changes to be introduced by the General Scheme will be implemented through changes in the practices of the Criminal Assets Bureau and, where necessary, the Courts.

7. Review

The operation of the proceeds of crime regime is continually reviewed, both by the Department and by CAB. It is noted that a proposed Directive is under development at EU level with respect to asset recovery and confiscation, and it is anticipated that consideration of an opt-into, and possible transposition of this Directive will require further detailed review of this area. The Department will prepare a post-enactment report, as referenced in Standing Orders of both Houses of the Oireachtas, to review the functioning of an Act 12 months subject to, and following, enactment of the Bill.

8. Publication

The Department is publishing the General Scheme and this Regulatory Impact Analysis on its website.