# Overview Report: Asset Forfeiture in Ireland and Selected Writings of Dr. Colin King

## I. Scope of Overview Report

1. This overview report attaches materials related to asset forfeiture in Ireland, including legislation and the 2019 annual report of the Irish Criminal Assets Bureau as well as selected writings by Dr. Colin King.

## II. Legislation

a. Appendix A:

*Proceeds of Crime Act 1996* (Revised)

b. Appendix B:

*Criminal Assets Bureau Act 1996* (Revised)

## III. Criminal Assets Bureau 2019 Annual Report

c. Appendix C:

Criminal Assets Bureau, *Criminal Assets Bureau Annual Report 2019*

## IV. Selected Writings of Dr. Colin King

d. Appendix D:

Martin Collins and Colin King, "The disruption of crime in Scotland through non-conviction based asset forfeiture" (2013) 16:4 Journal of Money Laundering Control 379.

e. Appendix E:

Colin King, "'Hitting Back' at Organized Crime: The Adoption of Civil Forfeiture in Ireland" in Colin King and Clive Walker, eds., *Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist Assets* (London: Routledge, 2014) 141.

f. Appendix F:

Colin King, "Civil Forfeiture in Ireland: Two Decades of the Proceeds of Crime Act and the Criminal Assets Bureau" in Katalin Ligeti and Michele Simonato, eds.

*Chasing Criminal Money: Challenges and Perspectives on Asset Recovery in the EU* (Oxford: Hart Publishing, 2017) 77.

g. Appendix G:

Colin King, “The Difficulties of Belief Evidence and Anonymity in Practice: Challenges for Asset Recovery” in Colin King, Clive Walker, and Jimmy Gurulé eds. *The Palgrave Handbook of Criminal and Terrorism Financing Laws* (Cham, Switzerland: Springer International Publishing AG, 2018) 565.

h. Appendix H:

Colin King, “International Asset Recovery: Perspectives from Ireland” in John L.M. McDaniel, Karlie E. Stonard and David J. Cox, eds. *The Development of Transnational Policing: Past, Present and Future* (London: Routledge, 2019) 290.

# Appendix A

*Proceeds of Crime Act 1996* (Revised)

*Number* 30 *of* 1996

# PROCEEDS OF CRIME ACT 1996

**REVISED**

**Updated to 30 July 2018**

This Revised Act is an administrative consolidation of the *Proceeds of Crime Act 1996*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Companies (Statutory Audits) Act 2018* (22/2018), enacted 25 July 2018, and all statutory instruments up to and including *Criminal Justice (Corruption Offences) Act 2018 (Commencement) Order 2018* (S.I. No. 298 of 2018), made 26 July 2018, were considered in the preparation of this Revised Act.

*Number* 30 *of* 1996

# PROCEEDS OF CRIME ACT 1996

**REVISED**

**Updated to 30 July 2018**

## Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was first passed.

## Related legislation

***Proceeds of Crime Acts 1996 to 2016***: this Act is one of a group of Acts included in this collective citation (*Proceeds of Crime (Amendment) Act 2016* (8/2016), s. 7(2)). The Acts in the group are:

- *Proceeds of Crime Act 1996* (30/1996)
- *Proceeds of Crime (Amendment) Act 2005* (1/2005), Part 2
- *Proceeds of Crime (Amendment) Act 2016* (8/2016)

## Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

## Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1984, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

**Acts which affect or previously affected this revision**

- *Criminal Justice (Corruption Offences) Act 2018* (9/2018)
- *Proceeds of Crime (Amendment) Act 2016* (8/2016)
- *Criminal Justice Act 2006* (26/2006)
- *Criminal Justice (Terrorist Offences) Act 2005* (2/2005)
- *Proceeds of Crime (Amendment) Act 2005* (1/2005)
- *Euro Changeover (Amounts) Act 2001* (16/2001)
- *International War Crimes Tribunals Act 1998* (40/1998)

All Acts up to and including *Companies (Statutory Audits) Act 2018* (22/2018), enacted 25 July 2018, were considered in the preparation of this revision.

**Statutory instruments which affect or previously affected this revision**

- *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011)
- *Registration of Deeds Rules 2008* (S.I. No. 52 of 2008)

All statutory instruments up to and including *Criminal Justice (Corruption Offences) Act 2018 (Commencement) Order 2018* (S.I. No. 298 of 2018), made 26 July 2018, were considered in the preparation of this revision.

*Number* 30 *of* 1996

# PROCEEDS OF CRIME ACT 1996

**REVISED**

**Updated to 30 July 2018**

ARRANGEMENT OF SECTIONS

Section

*Number* 30 *of* 1996

# PROCEEDS OF CRIME ACT 1996

**REVISED**

**Updated to 30 July 2018**

AN ACT TO ENABLE THE HIGH COURT, AS RESPECTS THE PROCEEDS OF CRIME, TO MAKE ORDERS FOR THE PRESERVATION AND, WHERE APPROPRIATE, THE DISPOSAL OF THE PROPERTY CONCERNED AND TO PROVIDE FOR RELATED MATTERS. [4*th August*, 1996]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

**Annotations**

**Modifications (not altering text):**

**C1** Application of Act confirmed not restricted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 10, commenced on enactment.

**Non-application to Principal Act of section 11(7) of Statute of Limitations 1957.**

**10.**—For the avoidance of doubt, it is hereby declared that section 11(7) of the Statute of Limitations 1957 does not apply in relation to proceedings under the Principal Act.

Interpretation.

**1.**—(1) In this Act, save where the context otherwise requires—

F1**[**'the applicant' means a person, being a member, an authorised officer or the Criminal Assets Bureau, who has applied to the Court for the making of an interim order or an interlocutory order and, in relation to such an order that is in force, means, as appropriate, any member, any authorised officer or the Criminal Assets Bureau;**]**

F2**[**"authorisation" means an authorisation for the detention of property granted under *section 1A*;**]**

"authorised officer" means an officer of the Revenue Commissioners authorised in writing by the Revenue Commissioners to perform the functions conferred by this Act on authorised officers;

F2**[**"bureau officer" has the same meaning as it has in the Criminal Assets Bureau Act 1996;**]**

F3**[**'consent disposal order' means an order under *section 3(1A)* or *4A(1)*;**]**

F3**[**'criminal conduct' means any conduct—

(*a*) which constitutes an offence or more than one offence, or

(*b*) which occurs outside the State and which would constitute an offence or more than one offence—

(i) if it occurred within the State,

(ii) if it constituted an offence under the law of the state or territory concerned, and

(iii) if, at the time when an application is being made for an interim order or interlocutory order, any property obtained or received at any time (whether before or after the passing of this Act) by or as a result of or in connection with the conduct is situated within the State;**]**

"the Court" means the High Court;

"dealing", in relation to property in the possession or control of a person, includes—

(*a*) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt,

(*b*) removing the property from the State, and

(*c*) in the case of money or other property held for the person by another person, paying or releasing or transferring it to the person or to any other person;

"disposal order" means an order under *section 4*;

"interest", in relation to property, includes right;

"interim order" means an order under *section 2*;

"interlocutory order" means an order under *section 3*;

"member" means a member of the Garda Síochána not below the rank of Chief Superintendent;

"the Minister" means the Minister for Finance;

F1**[**'proceeds of crime' means any property obtained or received at any time (whether before or after the passing of this Act) by or as a result of or in connection with criminal conduct;**]**

F1**[**'property', in relation to proceeds of crime, includes—

(*a*) money and all other property, real or personal, heritable or moveable,

(*b*) choses in action and other intangible or incorporeal property, and

(*c*) property situated outside the State where—

(i) the respondent is domiciled, resident or present in the State, and

(ii) all or any part of the criminal conduct concerned occurs therein,

and references to property shall be construed as including references to any interest in property;**]**

F1**[**'the respondent' means a person, wherever domiciled, resident or present, in respect of whom an interim order or interlocutory order, or an application for such an order, has been made and includes any person who, but for this Act, would become entitled, on the death of the first-mentioned person, to any property to which such an order relates (being an order that is in force and is in respect of that person);**]**

F4**[**(1A) (*a*) For the avoidance of doubt, a person shall be deemed for the purposes of this Act to be in possession or control of property notwithstanding that it (or any part of it)—

(i) is lawfully in the possession of any member of the Garda Síochána, any officer of the Revenue Commissioners or any other person, having been lawfully seized or otherwise taken by any such member, officer or person,

(ii) is subject to an interim order or interlocutory order or any other order of a court which—

(I) prohibits any person from disposing of or otherwise dealing with it or diminishing its value, or

(II) contains any conditions or restrictions in that regard,

or is to the like effect,

or

(iii) is subject to a letting agreement, the subject of a trust or otherwise occupied by another person or is inaccessible,

and references in this Act to the possession or control of property shall be construed accordingly.

(*b*) Paragraph (*a*)(ii) is without prejudice to sections 11(2) and 13(2).**]**

(2) In this Act—

(*a*) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other provision is intended, and

(*b*) a reference to a subsection, paragraph or subparagraph is a reference to a subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and

(*c*) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment.

**Annotations**

**Amendments:**

**F1** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 3(a)(i), commenced on enactment.

**F2** Inserted (12.08.2016) by *Proceeds of Crime (Amendment) Act 2016* (8/2016), s. 2, S.I. No. 437 of 2016.

**F3** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 3(a)(ii), commenced on enactment.

**F4** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 3(b), commenced on enactment.

F5**[Seizure and detention of property**

**1A.** (1) Where a bureau officer who is—

(a) in a public place,

(b) in any other place under a power of entry authorised by law or to which he or she was expressly or impliedly invited or permitted to be, or

(c) carrying out a search authorised by law,

finds or comes into possession of any property and he or she has reasonable grounds for suspecting that the property—

(i) in whole or in part, directly or indirectly, constitutes proceeds of crime, and

(ii) is of a total value of not less than €5,000,

he or she may seize and detain the property for a period not exceeding 24 hours.

(2) Where a bureau officer has seized and detained property in accordance with *subsection (1)*, the Chief Bureau Officer may, before the expiration of the relevant period of 24 hours, if 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 an authorisation, be disposed of or otherwise dealt with, or have its value diminished, before such an application may be made,

authorise the detention of the property by the Criminal Assets Bureau for a further period not exceeding 21 days.

(3) The Chief Bureau Officer shall give notice in writing of an authorisation to any person having possession or control of the property and any other person who appears to be or is affected by it, unless the Chief Bureau Officer is satisfied that it is not reasonably possible to ascertain his, her or their whereabouts.

(4) A notice given under this section shall include the reasons for the authorisation and inform the person to whom the notice is given of his or her right to make an application under *section 1B*.

(5) The reasons given in a notice under this section need not include details the disclosure of which there are reasonable grounds for believing would prejudice the investigation in respect of which the authorisation is given.

(6) The Chief Bureau Officer may vary or revoke an authorisation and shall revoke an authorisation if any of the grounds on which it was issued no longer exists.

(7) In this section, 'property' does not include land.**]**

**Annotations**

**Amendments:**

**F5** Inserted (12.08.2016) by *Proceeds of Crime (Amendment) Act 2016* (8/2016), s. 3, S.I. No. 437 of 2016.

F6**[Application to Court**

**1B.** (1) A person who has possession or control of property which is the subject of an authorisation, or who is affected by an authorisation, may at any time while the authorisation is in force apply to the Court to have the authorisation varied or revoked, and the Court may, if it is satisfied that—

(a) there are no reasonable grounds for suspecting that the property the subject of the authorisation may, in whole or in part, directly or indirectly, constitute proceeds of crime,

(b) there are no reasonable grounds for suspecting that the total value of the property is not less than €5,000,

(c) there is no reasonable prospect that an application to the Court for an interim order or an interlocutory order in respect of the property, in whole or in part, will be made before or upon the expiration of the authorisation, or

(d) there are no reasonable grounds for believing that the property, in whole or in part, would in the absence of the authorisation, be disposed of or otherwise dealt with, or have its value diminished, before an application for an interim order or an interlocutory order may be made in respect of it,

vary or revoke the authorisation.

(2) Without prejudice to the generality of *subsection (1)*, the Court in dealing with an application under that subsection may make such order that it considers appropriate 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 property relates.

(3) An application under *subsection (1)* may be made only if notice has been given to the Criminal Assets Bureau.

(4) Proceedings under this section shall be heard otherwise than in public.**]**

**Annotations**

**Amendments:**

**F6** Inserted (12.08.2016) by *Proceeds of Crime (Amendment) Act 2016* (8/2016), s. 3, S.I. No. 437 of 2016.

F7**[Compensation** **1C.** (1) Where property is detained under an authorisation and—

(a) an application to the Court for an interim order or an interlocutory order in respect of the property, in whole or in part, is not made before the expiration of the authorisation, or

(b) such an application is made but the Court does not make an interim order, or an interlocutory order, as the case may be, in respect of the property,

the Court may, on application to it in that behalf by a person who shows to the satisfaction of the Court that he or she is the owner of the property, award to the person such (if any) compensation payable by the Minister as it considers just in the circumstances in respect of any loss incurred by the person by reason of the authorisation concerned.

(2) An application under *subsection (1)* may be made only if notice has been given to the Criminal Assets Bureau.**]**

**Annotations**

**Amendments:**

**F7** Inserted (12.08.2016) by *Proceeds of Crime (Amendment) Act 2016* (8/2016), s. 3, S.I. No. 437 of 2016.

Interim order.

**2.**—(1) F8**[**Where it is shown to the satisfaction of the Court on application to it *ex parte* in that behalf by a member, an authorised officer or the Criminal Assets Bureau**]**—

(*a*) that a person is in possession or control of—

(i) specified property and that the property constitutes, directly or indirectly, proceeds of crime, or

(ii) specified property that was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime,

and

(*b*) that the value of the property or, as the case may be, the total value of the property referred to in both *subparagraphs (i)* and *(ii)*, of *paragraph (a)* is not less than F9**[**€5,000**]**,

the Court may make an order ("an interim order") prohibiting the person or any other specified person or any other person having notice of the order from disposing of or otherwise dealing with the whole or, if appropriate, a specified part of the property or diminishing its value during the period of 21 days from the date of the making of the order.

(2) An interim order—

(*a*) may contain such provisions, conditions and restrictions as the Court considers necessary or expedient, and

(*b*) shall provide for notice of it to be given to the respondent and any other person who appears to be or is affected by it unless the Court is satisfied that it is not reasonably possible to ascertain his, her or their whereabouts.

(3) Where an interim order is in force, the Court, on application to it in that behalf by the respondent or any other person claiming ownership of any of the property concerned may, if it is shown to the satisfaction of the Court that—

(*a*) the property concerned or a part of it is not property to which *subparagraph (i)* or *(ii)* of *subsection (1)(a)* applies, or

(*b*) the value of the property to which those subparagraphs apply is less than F9**[**€5,000**]**,

discharge or, as may be appropriate, vary the order.

F10**[**(3A) Without prejudice to sections 3(7) and 6, where an interim order is in force, the Court may, on application to it in that behalf by the applicant or any other person, vary the order to such extent as may be necessary to permit—

(*a*) the enforcement of any order of a court for the payment by the respondent of any sum, including any sum in respect of costs,

(*b*) the recovery by a county registrar or sheriff of income tax due by the respondent pursuant to a certificate issued by the Collector-General under section

962 of the Taxes Consolidation Act 1997, together with the fees and expenses provided for in that section, or

(*c*) the institution of proceedings for, or relating to, the recovery of any other sum owed by the respondent.**]**

(4) The Court shall, on application to it in that behalf at any time by the applicant, discharge an interim order.

(5) Subject to *subsections (3)* and *(4)*, an interim order shall continue in force until the expiration of the period of 21 days from the date of its making and shall then lapse unless an application for the making of an interlocutory order in respect of any of the property concerned is brought during that period and, if such an application is brought, the interim order shall lapse upon—

(*a*) the determination of the application,

(*b*) the expiration of the ordinary time for bringing an appeal from the determination,

(*c*) if such an appeal is brought, the determination or abandonment of it or of any further appeal or the expiration of the ordinary time for bringing any further appeal,

whichever is the latest.

(6) Notice of an application under this section shall be given—

(*a*) in case the application is under *subsection (3)*, by the respondent or other person making the application to the applicant,

F11**[**(*b*) in case the application is under subsection (3A) or (4), by the applicant or other person making the application to the respondent, unless the Court is satisfied that it is not reasonably possible to ascertain the respondent's whereabouts,**]**

and, in either case, to any other person in relation to whom the Court directs that notice of the application be given to him or her.

F12**[**(7) An application under subsection (1) may be made by originating motion.**]**

**Annotations**

**Amendments:**

**F8** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 4(a), commenced on enactment.

**F9** Substituted (12.08.2016) by *Proceeds of Crime (Amendment) Act 2016* (8/2016), s. 4 (a) and (b), S.I. No. 437 of 2016.

**F10** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 4(b), commenced on enactment.

**F11** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 4(c), commenced on enactment.

**F12** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 4(d), commenced on enactment.

**Modifications (not altering text):**

**C2** Application of section extended with modifications (10.11.1998) by *International War Crimes Tribunals Act 1998* (40/1998), s. 31(3), commenced on enactment.

**Orders respecting property.**

**31.**— ...

(2) Where, on application by a member of the Garda Síochána not below the rank of Chief Superintendent, the High Court is satisfied that—

(a) an international tribunal order referred to in subsection (1)(a) has been received by the Minister, and

(b) at the time of making the interim order under this subsection the international tribunal order is in force and is not subject to appeal,

the Court, for the purposes of the preservation and protection of the property to which the international tribunal order relates, may, regardless of the value of the property but subject to subsection (5), make an interim order containing any terms that, under section 2 (1) and (2) of the Proceeds of Crime Act, 1996, could be included in an interim order made under that Act if the value of the property were not less than £10,000.

(3) For the purposes mentioned in subsection (2) of this section, sections 2 (3) to (6), 3 (1) to (6), 5, 6, 7, 8 and 10 to 16 of the Proceeds of Crime Act, 1996, shall apply with the following modifications and any other necessary modifications, as if an application made under this section had been made under that Act:

...

**Editorial Notes:**

**E1** Previous affecting provisions: subs. (1)(b) and (3)(b) amended (1.1.2002) by *Euro Changeover (Amounts) Act 2001* (16/2001), s. 1(3) and schs. 3 and 4, in effect as per s. 1(3); substituted as per F-note above.

Interlocutory order.

**3.**—(1) F13**[**Where, on application to it in that behalf by a member, an authorised officer or the Criminal Assets Bureau, it appears to the Court on evidence tendered by the applicant, which may consist of or include evidence admissible by virtue of section 8**]**—

(*a*) that a person is in possession or control of—

(i) specified property and that the property constitutes, directly or indirectly, proceeds of crime, or

(ii) specified property that was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime,

and

(*b*) that the value of the property or, as the case may be, the total value of the property referred to in both *subparagraphs (i)* and *(ii)* of *paragraph (a)* is not less than F14**[**€5,000**]**,

F13**[**the Court shall, subject to *subsection (1A)*, make**]** an order ("an interlocutory order") prohibiting the respondent or any other specified person or any other person having notice of the order from disposing of or otherwise dealing with the whole or, if appropriate, a specified part of the property or diminishing its value, unless, it is shown to the satisfaction of the Court, on evidence tendered by the respondent or any other person—

(I) that that particular property does not constitute, directly or indirectly, proceeds of crime and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime, or

(II) that the value of all the property to which the order would relate is less than F14**[**€5,000**]**:

Provided, however, that the Court shall not make the order if it is satisfied that there would be a serious risk of injustice.

F15**[**(1A) On such an application the Court, with the consent of all the parties concerned, may make a consent disposal order, and section 4A shall apply and have effect accordingly.**]**

(2) An interlocutory order—

(*a*) may contain such provisions, conditions and restrictions as the Court considers necessary or expedient, and

(*b*) shall provide for notice of it to be given to the respondent and any other person who appears to be or is affected by it unless the Court is satisfied that it is not reasonably possible to ascertain his, her or their whereabouts.

(3) Where an interlocutory order is in force, the Court, on application to it in that behalf at any time by the respondent or any other person claiming ownership of any of the property concerned, may, if it is shown to the satisfaction of the Court that the property or a specified part of it is property to which *paragraph (I)* of *subsection (1)* applies, or that the order causes any other injustice, discharge or, as may be appropriate, vary the order.

F16**[**(3A) Without prejudice to subsection (7) and section 6, where an interlocutory order is in force, the Court may, on application to it in that behalf by the applicant or any other person, vary the order to such extent as may be necessary to permit—

(*a*) the enforcement of any order of a court for the payment by the respondent of any sum, including any sum in respect of costs,

(*b*) the recovery by a county registrar or sheriff of income tax due by the respondent pursuant to a certificate issued by the Collector-General under section 962 of the Taxes Consolidation Act 1997, together with the fees and expenses provided for in that section, or

(*c*) the institution of proceedings for, or relating to, the recovery of any other sum owed by the respondent.**]**

(4) The Court shall, on application to it in that behalf at any time by the applicant, discharge an interlocutory order.

(5) Subject to *subsections (3)* and *(4)*, an interlocutory order shall continue in force until—

(*a*) the determination of an application for a disposal order in relation to the property concerned,

(*b*) the expiration of the ordinary time for bringing an appeal from that determination,

(*c*) if such an appeal is brought, it or any further appeal is determined or abandoned or the ordinary time for bringing any further appeal has expired,

whichever is the latest, and shall then lapse.

(6) Notice of an application under this section shall be given—

F17**[**(*a*) in case the application is under subsection (1), (3A) or (4), by the applicant or other person making the application to the respondent, unless the Court is satisfied that it is not reasonably possible to ascertain the respondent's whereabouts,**]**

(*b*) in case the application is under *subsection (3)*, by the respondent or other person making the application to the applicant,

and, in either case, to any other person in relation to whom the Court directs that notice of the application be given to him or her.

(7) Where a forfeiture order, or a confiscation order, under the Criminal Justice Act, 1994, or a forfeiture order under the Misuse of Drugs Act, 1977, relates to any property that is the subject of an interim order, or an interlocutory order, that is in force, ("the specified property"), the interim order or, as the case may be, the interlocutory order shall—

(*a*) if it relates only to the specified property, stand discharged, and

(*b*) if it relates also to other property, stand varied by the exclusion from it of the specified property.

F18**[**(8) An application under subsection (1) may be made by originating motion.**]**

**Annotations**

**Amendments:**

**F13** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 5(a)(i) and 5(a)(ii), commenced on enactment.

**F14** Substituted (12.08.2016) by *Proceeds of Crime (Amendment) Act 2016* (8/2016), s. 5 (a) and (b), S.I. No. 437 of 2016.

**F15** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 5(b), commenced on enactment.

**F16** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 5(c), commenced on enactment.

**F17** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 5(d), commenced on enactment.

**F18** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 5(e), commenced on enactment.

**Modifications (not altering text):**

**C3** Application of section extended with modifications (10.11.1998) by *International War Crimes Tribunals Act 1998* (40/1998), s. 31(3), commenced on enactment.

**Orders respecting property.**

**31.**— ...

(2) Where, on application by a member of the Garda Síochána not below the rank of Chief Superintendent, the High Court is satisfied that—

(a) an international tribunal order referred to in subsection (1)(a) has been received by the Minister, and

(b) at the time of making the interim order under this subsection the international tribunal order is in force and is not subject to appeal,

the Court, for the purposes of the preservation and protection of the property to which the international tribunal order relates, may, regardless of the value of the property but subject to subsection (5), make an interim order containing any terms that, under section 2 (1) and (2) of the Proceeds of Crime Act, 1996, could be included in an interim order made under that Act if the value of the property were not less than £10,000.

(3) For the purposes mentioned in subsection (2) of this section, sections 2 (3) to (6), 3 (1) to (6), 5, 6, 7, 8 and 10 to 16 of the Proceeds of Crime Act, 1996, shall apply with the following modifications and any other necessary modifications, as if an application made under this section had been made under that Act:

...

**Editorial Notes:**

**E2** Previous affecting provision: subs. (1)(b) and (1)(II) amended (1.1.2002) by *Euro Changeover (Amounts) Act 2001* (16/2001), s. 1(3) and schs. 3 and 4, in effect as per s. 1(3); substituted as per F-note above.

Disposal order.

**4.**—(1) Subject to *subsection (2)*, where an interlocutory order has been in force for not less than 7 years in relation to specified property, the Court, on application to it in that behalf by the applicant, may 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) Subject to *subsections (6)* and *(8)*, the Court shall make a disposal order in relation to any property the subject of an application under *subsection (1)* unless it is shown to its satisfaction that that particular property does not constitute, directly or indirectly, proceeds of crime and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime.

(3) The applicant shall give notice to the respondent (unless the Court is satisfied that it is not reasonably possible to ascertain his or her whereabouts), and to such other (if any) persons as the Court may direct of an application under this section.

(4) A disposal order shall operate to deprive the respondent of his or her rights (if any) in or to the property to which it relates and, upon the making of the order, the property shall stand transferred to the Minister or other person to whom it relates.

(5) The Minister may sell or otherwise dispose of any property transferred to him or her under this section, and any proceeds of such a disposition and any moneys transferred to him or her under this section shall be paid into or disposed of for the benefit of the Exchequer by the Minister.

(6) In proceedings under *subsection (1)*, before deciding whether to make a disposal order, the Court shall give an opportunity to be heard by the Court and to show cause why the order should not be made to any person claiming ownership of any of the property concerned.

(7) The Court, if it considers it appropriate to do so in the interests of justice, on the application of the respondent or, if the whereabouts of the respondent cannot be ascertained, on its own initiative, may adjourn the hearing of an application under *subsection (1)* for such period not exceeding 2 years as it considers reasonable.

(8) The Court shall not make a disposal order if it is satisfied that there would be a serious risk of injustice.

F19**[**(9) An application under subsection (1) may be made by originating motion.**]**

**Annotations**

**Amendments:**

**F19** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 6, commenced on enactment.

**Modifications (not altering text):**

**C4** Functions transferred and references to "Department of Finance" and "Minister for Finance" in section construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministe-*

*rial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3(a), 5 and sch. 1 part 2, in effect as per art. 1(2).

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of –

(*a*) the enactments specified in Schedule 1, and

...

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

| Number and Year (1) | Short Title (2) | Provision (3) |
|---|---|---|
| ... | ... | ... |
| No. 30 of 1996 | Proceeds of Crime Act 1996 | Sections 4, 4A, 16 (1)(c)(ii), 16(2) and 17 |
| ... | ... | ... |

F20[Consent disposal order.

**4A.**—(1) Where in relation to any property—

(*a*) an interlocutory order has been in force for a period of less than 7 years, and

(*b*) an application is made to the Court with the consent of all the parties concerned,

the Court may make an order (a 'consent disposal order') directing that the whole or a specified part of the property be transferred to the Minister or to such other person as the Court may determine, subject to such terms and conditions as it may specify.

(2) A consent disposal order operates to deprive the respondent of his or her rights (if any) in or to the property to which the order relates and, on its being made, the property stands transferred to the Minister or that other person.

(3) The Minister—

(*a*) may sell or otherwise dispose of any property transferred to him or her under this section, and

(*b*) shall pay into or dispose of for the benefit of the Exchequer the proceeds of any such disposition as well as any moneys so transferred.

(4) Before deciding whether to make a consent disposal order, the Court shall give to any person claiming ownership of any of the property concerned an opportunity to show cause why such an order should not be made.

(5) The Court shall not make a consent disposal order if it is satisfied that there would be a serious risk of injustice if it did so.

(6) Sections 3(7) and 16 apply, with any necessary modifications, in relation to a consent disposal order as they apply in relation to an interlocutory order.

(7) This section is without prejudice to section 3(1A).**]**

**Annotations**

**Amendments:**

**F20** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 7, commenced on enactment.

**Modifications (not altering text):**

**C5** Functions transferred and references to "Department of Finance" and "Minister for Finance" in section construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3(a), 5 and sch. 1 part 2, in effect as per art. 1(2).

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of –

(*a*) the enactments specified in Schedule 1, and

...

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

| Number and Year (1) | Short Title (2) | Provision (3) |
|---|---|---|
| ... | ... | ... |
| No. 30 of 1996 | Proceeds of Crime Act 1996 | Sections 4, 4A, 16 (1)(c)(ii), 16(2) and 17 |
| ... | ... | ... |

Ancillary orders and provision in relation to certain profits or gains, etc.

**5.**—(1) At any time while an interim order or an interlocutory order is in force, the Court may, on application to it in that behalf by the applicant, make such orders as it considers necessary or expedient to enable the order aforesaid to have full effect.

(2) Notice of an application under this section shall be given by the applicant to the respondent unless the Court is satisfied that it is not reasonably possible to ascertain his or her whereabouts and to any other person in relation to whom the Court directs that notice of the application be given to him or her.

(3) An interim order, an interlocutory order or a disposal order may be expressed to apply to any profit or gain or interest, dividend or other payment or any other property payable or arising, after the making of the order, in connection with any other property to which the order relates.

**Annotations**

**Modifications (not altering text):**

**C6** Application of section extended with modifications (10.11.1998) by *International War Crimes Tribunals Act 1998* (40/1998), s. 31(3), commenced on enactment.

**Orders respecting property.**

**31.**— ...

(2) Where, on application by a member of the Garda Síochána not below the rank of Chief Superintendent, the High Court is satisfied that—

(a) an international tribunal order referred to in subsection (1)(a) has been received by the Minister, and

(b) at the time of making the interim order under this subsection the international tribunal order is in force and is not subject to appeal,

the Court, for the purposes of the preservation and protection of the property to which the international tribunal order relates, may, regardless of the value of the property but subject to subsection (5), make an interim order containing any terms that, under section 2 (1) and (2) of the Proceeds of Crime Act, 1996, could be included in an interim order made under that Act if the value of the property were not less than £10,000.

(3) For the purposes mentioned in subsection (2) of this section, sections 2 (3) to (6), 3 (1) to (6), 5, 6, 7, 8 and 10 to 16 of the Proceeds of Crime Act, 1996, shall apply with the following modifications and any other necessary modifications, as if an application made under this section had been made under that Act:

...

Order in relation to property the subject of interim order or interlocutory order.

**6.**—(1) At any time while an interim order or an interlocutory order is in force, the Court may, on application to it in that behalf by the respondent or any other person affected by the order, make such orders as it considers appropriate in relation to any of the property concerned if it considers it essential to do so for the purpose of enabling—

F21**[**(*a*) the respondent or that other person to discharge the reasonable living and other necessary expenses (including legal expenses in or in relation to proceedings under this Act) incurred or to be incurred by or in respect of the respondent and his or her dependants or that other person, or**]**

(*b*) the respondent or that other person to carry on a business, trade, profession or other occupation to which any of that property relates.

(2) An order under this section may contain such conditions and restrictions as the Court considers necessary or expedient for the purpose of protecting the value of the property concerned and avoiding any unnecessary diminution thereof.

(3) Notice of an application under this section shall be given by the person making the application to the applicant and any other person in relation to whom the Court directs that notice of the application be given to him or her.

**Annotations**

**Amendments:**

**F21** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 8, commenced on enactment.

**Modifications (not altering text):**

**C7** Application of generality of section not restricted (8.03.2005) by *Criminal Justice (Terrorist Offences) Act 2005* (2/2005), s. 14(5), commenced on enactment.

**Interim order freezing certain funds.**

**14.**— ...

(4) On application by a member of the Garda Síochána or any other person, the Court may vary an interim order to such extent as may be necessary to permit—

(a) the enforcement of any order of a court for the payment by the respondent of any sum, including any sum in respect of costs,

(b) the recovery by a county registrar or sheriff of income tax due by the respondent pursuant to a certificate issued by the Collector-General under section 962 of the Taxes Consolidation Act 1997 , together with the fees and expenses provided for in that section, or

(c) the institution of proceedings for, or relating to, the recovery of any other sum owed by the respondent.

(5) Subsection (4) is not to be construed to limit the generality of section 6 of the Act of 1996 as made applicable by section 20 of this Act.

...

**C8** Application of generality of section not restricted (8.03.2005) by *Criminal Justice (Terrorist Offences) Act 2005* (2/2005), s. 15(7), commenced on enactment.

**Interlocutory order.**

**15.**— ...

(6) On application by a member of the Garda Síochána or any other person, the Court may vary an interlocutory order to such extent as may be necessary to permit—

(a) the enforcement of any order of a court for the payment by the respondent of any sum, including any sum in respect of costs,

(b) the recovery by a county registrar or sheriff of income tax due by the respondent pursuant to a certificate issued by the Collector-General under section 962 of the Taxes Consolidation Act 1997, together with the fees and expenses provided for in that section, or

(c) the institution of proceedings for, or relating to, the recovery of any other sum owed by the respondent.

(7) Subsection (6) is not to be construed to limit the generality of section 6 of the Act of 1996 as made applicable by section 20 of this Act.

...

**C9** Application of section extended with modifications (8.03.2005) by *Criminal Justice (Terrorist Offences) Act 2005* (2/2005), s. 20, commenced on enactment.

**Application of certain provisions of Act of 1996.**

**20.**—For the purposes of this Part, sections 6, 7 and 9 to 15 of the Act of 1996 apply with the following modifications and any other necessary modifications as if an interim order, an interlocu-

tory or a disposal order made under this Part, or an application for such an order, had been made under the Act of 1996:

(a) a reference in any of the applicable provisions of the Act of 1996 to applicant shall be construed as referring to the member of the Garda Síochána who applied to the High Court for the interim order, interlocutory order or disposal order;

(b) a reference in any of the applicable provisions of the Act of 1996 to respondent shall be construed as defined in section 12 of this Act;

(c) a reference in any of the applicable provisions of the Act of 1996 to property shall be construed as referring to funds.

**C10** Application of section extended with modifications (10.11.1998) by *International War Crimes Tribunals Act 1998* (40/1998), s. 31(3), commenced on enactment.

**Orders respecting property.**

**31.**— ...

(2) Where, on application by a member of the Garda Síochána not below the rank of Chief Superintendent, the High Court is satisfied that—

(a) an international tribunal order referred to in subsection (1)(a) has been received by the Minister, and

(b) at the time of making the interim order under this subsection the international tribunal order is in force and is not subject to appeal,

the Court, for the purposes of the preservation and protection of the property to which the international tribunal order relates, may, regardless of the value of the property but subject to subsection (5), make an interim order containing any terms that, under section 2 (1) and (2) of the Proceeds of Crime Act, 1996, could be included in an interim order made under that Act if the value of the property were not less than £10,000.

(3) For the purposes mentioned in subsection (2) of this section, sections 2 (3) to (6), 3 (1) to (6), 5, 6, 7, 8 and 10 to 16 of the Proceeds of Crime Act, 1996, shall apply with the following modifications and any other necessary modifications, as if an application made under this section had been made under that Act:

...

Receiver.

**7.**—(1) Where an interim order or an interlocutory order is in force, the Court may at any time appoint a receiver—

(*a*) to take possession of any property to which the order relates,

(*b*) 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.

(2) Where a receiver takes any action under this section—

(*a*) in relation to property which is not property the subject of an interim order or an interlocutory order, being action which he or she would be entitled to take if it were such property, and

(*b*) believing, and having reasonable grounds for believing, that he or she is entitled to take that action in relation to that property,

he or she shall not be liable to any person in respect of any loss or damage resulting from such action except in so far as the loss or damage is caused by his or her negligence.

**Annotations**

**Modifications (not altering text):**

**C11** Application of section extended with modifications (8.03.2005) by *Criminal Justice (Terrorist Offences) Act 2005* (2/2005), s. 20, commenced on enactment.

**Application of certain provisions of Act of 1996.**

**20.**—For the purposes of this Part, sections 6, 7 and 9 to 15 of the Act of 1996 apply with the following modifications and any other necessary modifications as if an interim order, an interlocutory or a disposal order made under this Part, or an application for such an order, had been made under the Act of 1996:

(a) a reference in any of the applicable provisions of the Act of 1996 to applicant shall be construed as referring to the member of the Garda Síochána who applied to the High Court for the interim order, interlocutory order or disposal order;

(b) a reference in any of the applicable provisions of the Act of 1996 to respondent shall be construed as defined in section 12 of this Act;

(c) a reference in any of the applicable provisions of the Act of 1996 to property shall be construed as referring to funds.

**C12** Application of section extended with modifications (10.11.1998) by *International War Crimes Tribunals Act 1998* (40/1998), s. 31(3), commenced on enactment.

**Orders respecting property.**

**31.**— ...

(2) Where, on application by a member of the Garda Síochána not below the rank of Chief Superintendent, the High Court is satisfied that—

(a) an international tribunal order referred to in subsection (1)(a) has been received by the Minister, and

(b) at the time of making the interim order under this subsection the international tribunal order is in force and is not subject to appeal,

the Court, for the purposes of the preservation and protection of the property to which the international tribunal order relates, may, regardless of the value of the property but subject to subsection (5), make an interim order containing any terms that, under section 2 (1) and (2) of the Proceeds of Crime Act, 1996, could be included in an interim order made under that Act if the value of the property were not less than £10,000.

(3) For the purposes mentioned in subsection (2) of this section, sections 2 (3) to (6), 3 (1) to (6), 5, 6, 7, 8 and 10 to 16 of the Proceeds of Crime Act, 1996, shall apply with the following modifications and any other necessary modifications, as if an application made under this section had been made under that Act:

...

Provisions in relation to evidence and proceedings under Act.

**8.**—(1) Where a member or an authorised officer states—

(*a*) in proceedings under *section 2*, on affidavit or, if the Court so directs, in oral evidence, or

F22**[**(*b*) in proceedings under section 3, on affidavit or, where the respondent requires the deponent to be produced for cross-examination or the court so directs, in oral evidence,**]**

that he or she believes either or both of the following, that is to say:

(i) that the respondent is in possession or control of specified property and that the property constitutes, directly or indirectly, proceeds of crime,

(ii) that the respondent is in possession of or control of specified property and that the property was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime,

and that the value of the property or, as the case may be, the total value of the property referred to in both *paragraphs (i)* and *(ii)* is not less than F23**[**5,000**]**, then, if the Court is satisfied that there are reasonable grounds for the belief aforesaid, the statement shall be evidence of the matter referred to in *paragraph (i)* or in *paragraph (ii)* or in both, as may be appropriate, and of the value of the property.

(2) The standard of proof required to determine any question arising under this Act shall be that applicable to civil proceedings.

(3) Proceedings under this Act in relation to an interim order shall be heard otherwise than in public and any other proceedings under this Act may, if the respondent or any other party to the proceedings (other than the applicant) so requests and the Court considers it proper, be heard otherwise than in public.

(4) The Court may, if it considers it appropriate to do so, prohibit the publication of such information as it may determine in relation to proceedings under this Act, including information in relation to applications for, the making or refusal of and the contents of orders under this Act and the persons to whom they relate.

(5) Production to the Court in proceedings under this Act of a document purporting to authorise a person, who is described therein as an officer of the Revenue Commissioners, to perform the functions conferred on authorised officers by this Act and to be signed by a Revenue Commissioner shall be evidence that the person is an authorised officer.

F24**[**(6) In any proceedings under this Act a document purporting to be a document issued by the Criminal Assets Bureau and to be signed on its behalf shall be deemed, unless the contrary is shown, to be such a document and to be so signed.**]**

**Annotations**

**Amendments:**

**F22** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 9(a), commenced on enactment.

**F23** Substituted (12.08.2016) by *Proceeds of Crime (Amendment) Act 2016* (8/2016), s. 6, S.I. No. 437 of 2016.

**F24** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 9(b), commenced on enactment.

**Modifications (not altering text):**

**C13** Application of section extended with modifications (10.11.1998) by *International War Crimes Tribunals Act 1998* (40/1998), s. 31(3), commenced on enactment.

**Orders respecting property.**

**31.**— ...

(2) Where, on application by a member of the Garda Síochána not below the rank of Chief Superintendent, the High Court is satisfied that—

(a) an international tribunal order referred to in subsection (1)(a) has been received by the Minister, and

(b) at the time of making the interim order under this subsection the international tribunal order is in force and is not subject to appeal,

the Court, for the purposes of the preservation and protection of the property to which the international tribunal order relates, may, regardless of the value of the property but subject to subsection (5), make an interim order containing any terms that, under section 2 (1) and (2) of the Proceeds of Crime Act, 1996, could be included in an interim order made under that Act if the value of the property were not less than £10,000.

(3) For the purposes mentioned in subsection (2) of this section, sections 2 (3) to (6), 3 (1) to (6), 5, 6, 7, 8 and 10 to 16 of the Proceeds of Crime Act, 1996, shall apply with the following modifications and any other necessary modifications, as if an application made under this section had been made under that Act:

...

**Editorial Notes:**

**E3** Previous affect provision: subs. (1) amended (1.1.2002) by *Euro Changeover (Amounts) Act 2001* (16/2001), s. 1(3) and schedules 3 and 4, in effect as per s. 1(3); substituted as per F-note above.

Affidavit specifying property and income of respondent.

**9.**—F25**[**(1)**]** At any time during proceedings under *section 2* or *3* or while an interim order or an interlocutory order is in force, the Court or, as appropriate, in the case of an appeal in such proceedings, the Supreme Court may by order direct the respondent to file an affidavit in the Central Office of the High Court specifying—

(*a*) the property of which the respondent is in possession or control, or

(*b*) the income, and the sources of the income, of the respondent during such period (not exceeding 10 years) ending on the date of the application for the order as the court concerned may specify,

or both.

F25**[**(2) Such an affidavit is not admissible in evidence in any criminal proceedings against that person or his or her spouse, except any such proceedings for perjury arising from statements in the affidavit.**]**

**Annotations**

**Amendments:**

**F25** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 11, commenced on enactment.

**Modifications (not altering text):**

**C14** Application of section extended with modifications (8.03.2005) by *Criminal Justice (Terrorist Offences) Act 2005* (2/2005), s. 20, commenced on enactment.

**Application of certain provisions of Act of 1996.**

**20.**—For the purposes of this Part, sections 6, 7 and 9 to 15 of the Act of 1996 apply with the following modifications and any other necessary modifications as if an interim order, an interlocutory or a disposal order made under this Part, or an application for such an order, had been made under the Act of 1996:

(a) a reference in any of the applicable provisions of the Act of 1996 to applicant shall be construed as referring to the member of the Garda Síochána who applied to the High Court for the interim order, interlocutory order or disposal order;

(b) a reference in any of the applicable provisions of the Act of 1996 to respondent shall be construed as defined in section 12 of this Act;

(c) a reference in any of the applicable provisions of the Act of 1996 to property shall be construed as referring to funds.

Registration of interim orders and interlocutory orders.

**10.**—(1) Where an interim order or an interlocutory order is made, the registrar of the Court shall, in the case of registered land, furnish the Registrar of Titles with notice of the order and the Registrar of Titles shall thereupon cause an entry to be made in the appropriate register under the Registration of Title Act, 1964, inhibiting, until such time as the order lapses, is discharged or is varied so as to exclude the registered land or any charge thereon from the application of the order, any dealing with any registered land or charge which appears to be affected by the order.

(2) Where notice of an order has been given under *subsection (1)* and the order is varied in relation to registered land, the registrar of the Court shall furnish the Registrar of Titles with notice to that effect and the Registrar of Titles shall thereupon cause the entry made under *subsection (1)* of this section to be varied to that effect.

(3) Where notice of an order has been given under *subsection (1)* and the order is discharged or lapses, the registrar of the High Court shall furnish the Registrar of Titles with notice to that effect and the Registrar of Titles shall cancel the entry made under *subsection (1)*.

(4) Where an interim order or an interlocutory order is made, the registrar of the Court shall, in the case of unregistered land, furnish the Registrar of Deeds with notice of the order and the Registrar of Deeds shall thereupon cause the notice to be registered in the Registry of Deeds pursuant to the Registration of Deeds Act, 1707.

(5) Where notice of an order has been given under *subsection (4)* and the order is varied, the registrar of the Court shall furnish the Registrar of Deeds with notice to that effect and the Registrar of Deeds shall thereupon cause the notice registered under *subsection (4)* to be varied to that effect.

(6) Where notice of an order has been given under *subsection (4)* and the order is discharged or lapses, the registrar of the Court shall furnish the Registrar of Deeds with notice to that effect and the Registrar of Deeds shall thereupon cancel the registration made under *subsection (4)*.

(7) Where an interim order or an interlocutory order is made which applies to an interest in a company or to the property of a company, the registrar of the Court shall furnish the Registrar of Companies with notice of the order and the Registrar of Companies shall thereupon cause the notice to be entered in the Register of Companies maintained under the Companies Acts, 1963 to 1990.

(8) Where notice of an order has been given under *subsection (7)* and the order is varied, the registrar of the Court shall furnish the Registrar of Companies with notice to that effect and the Registrar of Companies shall thereupon cause the notice entered under *subsection (7)* to be varied to that effect.

(9) Where notice of an order has been given under *subsection (7)* and the order is discharged or lapses, the registrar of the Court shall furnish the Registrar of Companies with notice to that effect and the Registrar of Companies shall thereupon cancel the entry made under *subsection (7)*.

**Annotations**

**Modifications (not altering text):**

**C15** Application of section extended with modifications (8.03.2005) by *Criminal Justice (Terrorist Offences) Act 2005* (2/2005), s. 20, commenced on enactment.

**Application of certain provisions of Act of 1996.**

**20.**—For the purposes of this Part, sections 6, 7 and 9 to 15 of the Act of 1996 apply with the following modifications and any other necessary modifications as if an interim order, an interlocutory or a disposal order made under this Part, or an application for such an order, had been made under the Act of 1996:

(a) a reference in any of the applicable provisions of the Act of 1996 to applicant shall be construed as referring to the member of the Garda Síochána who applied to the High Court for the interim order, interlocutory order or disposal order;

(b) a reference in any of the applicable provisions of the Act of 1996 to respondent shall be construed as defined in section 12 of this Act;

(c) a reference in any of the applicable provisions of the Act of 1996 to property shall be construed as referring to funds.

**C16** Application of section extended with modifications (10.11.1998) by *International War Crimes Tribunals Act 1998* (40/1998), s. 31(3), commenced on enactment.

**Orders respecting property.**

**31.**— ...

(2) Where, on application by a member of the Garda Síochána not below the rank of Chief Superintendent, the High Court is satisfied that—

(a) an international tribunal order referred to in subsection (1)(a) has been received by the Minister, and

(b) at the time of making the interim order under this subsection the international tribunal order is in force and is not subject to appeal,

the Court, for the purposes of the preservation and protection of the property to which the international tribunal order relates, may, regardless of the value of the property but subject to subsection (5), make an interim order containing any terms that, under section 2 (1) and (2) of the Proceeds of Crime Act, 1996, could be included in an interim order made under that Act if the value of the property were not less than £10,000.

(3) For the purposes mentioned in subsection (2) of this section, sections 2 (3) to (6), 3 (1) to (6), 5, 6, 7, 8 and 10 to 16 of the Proceeds of Crime Act, 1996, shall apply with the following modifications and any other necessary modifications, as if an application made under this section had been made under that Act:

...

**Editorial Notes:**

**E4** Rule for registration of order under section made (1.05.2008) by *Registration of Deeds Rules 2008* (S.I. No. 52 of 2008), r. 14(3).

Bankruptcy of respondent, etc.

**11.**—(1) Where a person who is in possession or control of property is adjudicated bankrupt, property subject to an interim order, an interlocutory order, or a disposal order, made before the order adjudicating the person bankrupt, is excluded from the property of the bankrupt for the purposes of the Bankruptcy Act, 1988.

(2) Where a person has been adjudicated bankrupt, the powers conferred on the Court by *section 2* or *3* shall not be exercised in relation to property of the bankrupt for the purposes of the said Act of 1988.

(3) In any case in which a petition in bankruptcy was presented, or an adjudication in bankruptcy was made, before the 1st day of January, 1989, this section shall have effect with the modification that, for the references in *subsections (1)* and *(2)* to the property of the bankrupt for the purposes of the Act aforesaid, there shall be substituted references to the property of the bankrupt vesting in the assignees for the purposes of the law of bankruptcy existing before that date.

**Annotations**

**Modifications (not altering text):**

**C17** Generality of subs. (2) not limited (8.03.2005) by *Criminal Justice (Terrorist Offences) Act 2005* (2/2005), s. 12(3), commenced on enactment.

**Interpretation of Part 4.**

**12.**— ...

(2) For the purposes of sections 14 to 20, a person is considered to be in possession or control of funds notwithstanding that all or part of them—

(a) are lawfully in the possession or control of a member of the Garda Síochána of any rank or any other person, having been lawfully seized or otherwise taken by any such member or person, or

(b) are subject to an interim order, an interlocutory order or any other order of a court that does either of the following or is to the like effect:

(i) prohibits any person from disposing of or otherwise dealing with the funds or diminishing their value;

(ii) contains any conditions or restrictions in that regard,

or

(c) are subject to a letting agreement, the subject of a trust or otherwise occupied by another person or are inaccessible.

(3) Subsection (2) is not to be construed to limit the generality of sections 11(2) and 13(2) of the Act of 1996 as made applicable by section 20 of this Act.

...

**C18** Application of section extended with modifications (8.03.2005) by *Criminal Justice (Terrorist Offences) Act 2005* (2/2005), s. 20, commenced on enactment.

**Application of certain provisions of Act of 1996.**

**20.**—For the purposes of this Part, sections 6, 7 and 9 to 15 of the Act of 1996 apply with the following modifications and any other necessary modifications as if an interim order, an interlocutory or a disposal order made under this Part, or an application for such an order, had been made under the Act of 1996:

(a) a reference in any of the applicable provisions of the Act of 1996 to applicant shall be construed as referring to the member of the Garda Síochána who applied to the High Court for the interim order, interlocutory order or disposal order;

(b) a reference in any of the applicable provisions of the Act of 1996 to respondent shall be construed as defined in section 12 of this Act;

(c) a reference in any of the applicable provisions of the Act of 1996 to property shall be construed as referring to funds.

**C19** Application of section extended with modifications (10.11.1998) by *International War Crimes Tribunals Act 1998* (40/1998), s. 31(3), commenced on enactment.

**Orders respecting property.**

**31.**— ...

(2) Where, on application by a member of the Garda Síochána not below the rank of Chief Superintendent, the High Court is satisfied that—

(a) an international tribunal order referred to in subsection (1)(a) has been received by the Minister, and

(b) at the time of making the interim order under this subsection the international tribunal order is in force and is not subject to appeal,

the Court, for the purposes of the preservation and protection of the property to which the international tribunal order relates, may, regardless of the value of the property but subject to subsection (5), make an interim order containing any terms that, under section 2 (1) and (2) of the Proceeds of Crime Act, 1996, could be included in an interim order made under that Act if the value of the property were not less than £10,000.

(3) For the purposes mentioned in subsection (2) of this section, sections 2 (3) to (6), 3 (1) to (6), 5, 6, 7, 8 and 10 to 16 of the Proceeds of Crime Act, 1996, shall apply with the following modifications and any other necessary modifications, as if an application made under this section had been made under that Act:

...

Property subject to interim order, interlocutory order or disposal order dealt with by Official Assignee.

**12.**—(1) Without prejudice to the generality of any provision of any other enactment, where—

(*a*) the Official Assignee or a trustee appointed under the provisions of Part V of the Bankruptcy Act, 1988, seizes or disposes of any property in relation to which his or her functions are not exercisable because it is subject to an interim order, an interlocutory order or a disposal order, and

(*b*) at the time of the seizure or disposal he or she believes, and has reasonable grounds for believing, that he or she is entitled (whether in pursuance of an order of a court or otherwise) to seize or dispose of that property,

he or she shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his or her negligence in so acting, and he or she shall have a lien on the property, or the proceeds of its sale, for such of his or her expenses as were incurred in connection with the bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his or her remuneration as may reasonably be assigned for his or her acting in connection with those proceedings.

(2) Where the Official Assignee or a trustee appointed as aforesaid incurs expenses in respect of such property as is mentioned in *subsection (1)(a)* and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to an order under this Act, he or she shall be entitled (whether or not he or she has seized or disposed of that property so as to have a lien) to payment of those expenses.

**Annotations**

**Modifications (not altering text):**

**C20** Application of section extended with modifications (8.03.2005) by *Criminal Justice (Terrorist Offences) Act 2005* (2/2005), s. 20, commenced on enactment.

**Application of certain provisions of Act of 1996.**

**20.**—For the purposes of this Part, sections 6, 7 and 9 to 15 of the Act of 1996 apply with the following modifications and any other necessary modifications as if an interim order, an interlocutory or a disposal order made under this Part, or an application for such an order, had been made under the Act of 1996:

(a) a reference in any of the applicable provisions of the Act of 1996 to applicant shall be construed as referring to the member of the Garda Síochána who applied to the High Court for the interim order, interlocutory order or disposal order;

(b) a reference in any of the applicable provisions of the Act of 1996 to respondent shall be construed as defined in section 12 of this Act;

(c) a reference in any of the applicable provisions of the Act of 1996 to property shall be construed as referring to funds.

**C21** Application of section extended with modifications (10.11.1998) by *International War Crimes Tribunals Act 1998* (40/1998), s. 31(3), commenced on enactment.

**Orders respecting property.**

**31.**— ...

(2) Where, on application by a member of the Garda Síochána not below the rank of Chief Superintendent, the High Court is satisfied that—

(a) an international tribunal order referred to in subsection (1)(a) has been received by the Minister, and

(b) at the time of making the interim order under this subsection the international tribunal order is in force and is not subject to appeal,

the Court, for the purposes of the preservation and protection of the property to which the international tribunal order relates, may, regardless of the value of the property but subject to subsection (5), make an interim order containing any terms that, under section 2 (1) and (2) of the Proceeds of Crime Act, 1996, could be included in an interim order made under that Act if the value of the property were not less than £10,000.

(3) For the purposes mentioned in subsection (2) of this section, sections 2 (3) to (6), 3 (1) to (6), 5, 6, 7, 8 and 10 to 16 of the Proceeds of Crime Act, 1996, shall apply with the following modifications and any other necessary modifications, as if an application made under this section had been made under that Act:

...

Winding up of company in possession or control of property the subject of interim order, interlocutory order or disposal order.

**13.**—(1) Where property the subject of an interim order, an interlocutory order or a disposal order made before the relevant time is in the possession or control of a company and an order for the winding up of the company has been made or a resolution has been passed by the company for a voluntary winding up, the functions of the liquidator (or any provisional liquidator) shall not be exercisable in relation to the property.

(2) Where, in the case of a company, an order for its winding up has been made or such a resolution has been passed, the powers conferred by *section 2* or *3* on the Court shall not be exercised in relation to any property held by the company in relation to which the functions of the liquidator are exercisable—

(*a*) so as to inhibit him or her from exercising those functions for the purpose of distributing any property held by the company to the company's creditors, or

(*b*) so as to prevent the payment out of any property of expenses (including the remuneration of the liquidator or any provisional liquidator) properly incurred in the winding up in respect of the property.

(3) In this section—

"company" means any company which may be wound up under the Companies Acts, 1963 to 1990;

"relevant time" means—

(*a*) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up,

(*b*) where such an order has been made and, before the presentation of the petition for the winding up of the company by the court, such a resolution had been passed by the company, the time of the passing of the resolution, and

(*c*) in any other case where such an order has been made, the time of the making of the order.

**Annotations**

**Modifications (not altering text):**

**C22** Generality of subs. (2) not limited (8.03.2005) by *Criminal Justice (Terrorist Offences) Act 2005* (2/2005), s. 12(3), commenced on enactment.

**Interpretation of Part 4.**

**12.**— ...

(2) For the purposes of sections 14 to 20, a person is considered to be in possession or control of funds notwithstanding that all or part of them—

(a) are lawfully in the possession or control of a member of the Garda Síochána of any rank or any other person, having been lawfully seized or otherwise taken by any such member or person, or

(b) are subject to an interim order, an interlocutory order or any other order of a court that does either of the following or is to the like effect:

(i) prohibits any person from disposing of or otherwise dealing with the funds or diminishing their value;

(ii) contains any conditions or restrictions in that regard,

or

(c) are subject to a letting agreement, the subject of a trust or otherwise occupied by another person or are inaccessible.

(3) Subsection (2) is not to be construed to limit the generality of sections 11(2) and 13(2) of the Act of 1996 as made applicable by section 20 of this Act.

...

**C23** Application of section extended with modifications (8.03.2005) by *Criminal Justice (Terrorist Offences) Act 2005* (2/2005), s. 20, commenced on enactment.

**Application of certain provisions of Act of 1996.**

**20.**—For the purposes of this Part, sections 6, 7 and 9 to 15 of the Act of 1996 apply with the following modifications and any other necessary modifications as if an interim order, an interlocutory or a disposal order made under this Part, or an application for such an order, had been made under the Act of 1996:

(a) a reference in any of the applicable provisions of the Act of 1996 to applicant shall be construed as referring to the member of the Garda Síochána who applied to the High Court for the interim order, interlocutory order or disposal order;

(b) a reference in any of the applicable provisions of the Act of 1996 to respondent shall be construed as defined in section 12 of this Act;

(c) a reference in any of the applicable provisions of the Act of 1996 to property shall be construed as referring to funds.

**C24** Application of section extended with modifications (10.11.1998) by *International War Crimes Tribunals Act 1998* (40/1998), s. 31(3), commenced on enactment.

**Orders respecting property.**

**31.**— ...

(2) Where, on application by a member of the Garda Síochána not below the rank of Chief Superintendent, the High Court is satisfied that—

(a) an international tribunal order referred to in subsection (1)(a) has been received by the Minister, and

(b) at the time of making the interim order under this subsection the international tribunal order is in force and is not subject to appeal,

the Court, for the purposes of the preservation and protection of the property to which the international tribunal order relates, may, regardless of the value of the property but subject to subsection (5), make an interim order containing any terms that, under section 2 (1) and (2) of the Proceeds of Crime Act, 1996 , could be included in an interim order made under that Act if the value of the property were not less than £10,000.

(3) For the purposes mentioned in subsection (2) of this section, sections 2 (3) to (6), 3 (1) to (6), 5, 6, 7, 8 and 10 to 16 of the Proceeds of Crime Act, 1996, shall apply with the following modifications and any other necessary modifications, as if an application made under this section had been made under that Act:

...

Immunity from proceedings.

**14.**—No action or proceedings of any kind shall lie against a bank, building society or other financial institution or any other person in any court in respect of any act or omission done or made in compliance with an order under this Act.

**Annotations**

**Modifications (not altering text):**

**C25** Application of section extended with modifications (8.03.2005) by *Criminal Justice (Terrorist Offences) Act 2005* (2/2005), s. 20, commenced on enactment.

**Application of certain provisions of Act of 1996.**

**20.**—For the purposes of this Part, sections 6, 7 and 9 to 15 of the Act of 1996 apply with the following modifications and any other necessary modifications as if an interim order, an interlocutory or a disposal order made under this Part, or an application for such an order, had been made under the Act of 1996:

(a) a reference in any of the applicable provisions of the Act of 1996 to applicant shall be construed as referring to the member of the Garda Síochána who applied to the High Court for the interim order, interlocutory order or disposal order;

(b) a reference in any of the applicable provisions of the Act of 1996 to respondent shall be construed as defined in section 12 of this Act;

(c) a reference in any of the applicable provisions of the Act of 1996 to property shall be construed as referring to funds.

**C26** Application of section extended with modifications (10.11.1998) by *International War Crimes Tribunals Act 1998* (40/1998), s. 31(3), commenced on enactment.

**Orders respecting property.**

**31.**— ...

(2) Where, on application by a member of the Garda Síochána not below the rank of Chief Superintendent, the High Court is satisfied that—

(a) an international tribunal order referred to in subsection (1)(a) has been received by the Minister, and

(b) at the time of making the interim order under this subsection the international tribunal order is in force and is not subject to appeal,

the Court, for the purposes of the preservation and protection of the property to which the international tribunal order relates, may, regardless of the value of the property but subject to subsection (5), make an interim order containing any terms that, under section 2 (1) and (2) of the Proceeds of Crime Act, 1996, could be included in an interim order made under that Act if the value of the property were not less than £10,000.

(3) For the purposes mentioned in subsection (2) of this section, sections 2 (3) to (6), 3 (1) to (6), 5, 6, 7, 8 and 10 to 16 of the Proceeds of Crime Act, 1996, shall apply with the following modifications and any other necessary modifications, as if an application made under this section had been made under that Act:

...

Seizure of certain property.

**15.**—(1) Where an order under this Act is in force, a member of the Garda Síochána or an officer of customs and excise may, for the purpose of preventing any property the subject of the order being removed from the State, seize the property.

(2) Property seized under this section shall be dealt with in accordance with the directions of the Court.

**Annotations**

**Modifications (not altering text):**

**C27** Application of section extended with modifications (8.03.2005) by *Criminal Justice (Terrorist Offences) Act 2005* (2/2005), s. 20, commenced on enactment.

**Application of certain provisions of Act of 1996.**

**20.**—For the purposes of this Part, sections 6, 7 and 9 to 15 of the Act of 1996 apply with the following modifications and any other necessary modifications as if an interim order, an interlocutory or a disposal order made under this Part, or an application for such an order, had been made under the Act of 1996:

(a) a reference in any of the applicable provisions of the Act of 1996 to applicant shall be construed as referring to the member of the Garda Síochána who applied to the High Court for the interim order, interlocutory order or disposal order;

(b) a reference in any of the applicable provisions of the Act of 1996 to respondent shall be construed as defined in section 12 of this Act;

(c) a reference in any of the applicable provisions of the Act of 1996 to property shall be construed as referring to funds.

**C28** Application of section extended with modifications (10.11.1998) by *International War Crimes Tribunals Act 1998* (40/1998), s. 31(3), commenced on enactment.

**Orders respecting property.**

**31.**— ...

(2) Where, on application by a member of the Garda Síochána not below the rank of Chief Superintendent, the High Court is satisfied that—

(a) an international tribunal order referred to in subsection (1)(a) has been received by the Minister, and

(b) at the time of making the interim order under this subsection the international tribunal order is in force and is not subject to appeal,

the Court, for the purposes of the preservation and protection of the property to which the international tribunal order relates, may, regardless of the value of the property but subject to subsection (5), make an interim order containing any terms that, under section 2 (1) and (2) of the Proceeds of Crime Act, 1996 , could be included in an interim order made under that Act if the value of the property were not less than £10,000.

(3) For the purposes mentioned in subsection (2) of this section, sections 2 (3) to (6), 3 (1) to (6), 5, 6, 7, 8 and 10 to 16 of the Proceeds of Crime Act, 1996, shall apply with the following modifications and any other necessary modifications, as if an application made under this section had been made under that Act:

...

Compensation.

**16.**—(1) Where—

(*a*) an interim order is discharged or lapses and an interlocutory order in relation to the matter is not made or, if made, is discharged (otherwise than pursuant to *section 3(7)*),

(*b*) an interlocutory order is discharged (otherwise than pursuant to *section 3(7)*) or lapses and a disposal order in relation to the matter is not made or, if made, is discharged,

(*c*) an interim order or an interlocutory order is varied (otherwise than pursuant to *section 3(7)*) or a disposal order is varied on appeal,

the Court may, on application to it in that behalf by a person who shows to the satisfaction of the Court that—

(i) he or she is the owner of any property to which—

(I) an order referred to in *paragraph (a)* or *(b)* related, or

(II) an order referred to in *paragraph (c)* had related but, by reason of its being varied by a court, has ceased to relate,

and

(ii) the property does not constitute, directly or indirectly, proceeds of crime or was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime, award to the person such (if any) compensation payable by the Minister as it considers just in the circumstances in respect of any loss incurred by the person by reason of the order concerned.

(2) The Minister shall be given notice of, and be entitled to be heard in, any proceedings under this section.

**Annotations**

**Modifications (not altering text):**

**Modifications (not altering text):**

**C29** Functions transferred and references to "Department of Finance" and "Minister for Finance" in subss. (1)(c)(ii) and (2) construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3(a), 5 and sch. 1 part 2, in effect as per art. 1(2).

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of –

(*a*) the enactments specified in Schedule 1, and

...

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

| Number and Year (1) | Short Title (2) | Provision (3) |
|---|---|---|
| ... | ... | ... |
| No. 30 of 1996 | Proceeds of Crime Act 1996 | Sections 4, 4A, 16 (1)(c)(ii), 16(2) and 17 |
| ... | ... | ... |

**C30** Application of section extended with modifications (10.11.1998) by *International War Crimes Tribunals Act 1998* (40/1998), s. 31(3), commenced on enactment.

**Orders respecting property.**

**31.**— ...

(2) Where, on application by a member of the Garda Síochána not below the rank of Chief Superintendent, the High Court is satisfied that—

(a) an international tribunal order referred to in subsection (1)(a) has been received by the Minister, and

(b) at the time of making the interim order under this subsection the international tribunal order is in force and is not subject to appeal,

the Court, for the purposes of the preservation and protection of the property to which the international tribunal order relates, may, regardless of the value of the property but subject to subsection (5), make an interim order containing any terms that, under section 2 (1) and (2) of the Proceeds of Crime Act, 1996, could be included in an interim order made under that Act if the value of the property were not less than £10,000.

(3) For the purposes mentioned in subsection (2) of this section, sections 2 (3) to (6), 3 (1) to (6), 5, 6, 7, 8 and 10 to 16 of the Proceeds of Crime Act, 1996, shall apply with the following modifications and any other necessary modifications, as if an application made under this section had been made under that Act:

...

F26[Admissibility of certain documents.

**16A.**—(1) The following documents are admissible in any proceedings under this Act, without further proof, as evidence of any fact therein of which direct oral evidence would be admissible:

(*a*) a document constituting part of the records of a business or a copy of such a document;

(*b*) a deed;

(*c*) a document purporting to be signed by a person on behalf of a business and stating—

(i) either—

(I) that a designated document or documents constitutes or constitute part of the records of the business or is or are a copy or copies of such a document or documents, or

(II) that there is no entry or other reference in those records in relation to a specified matter, and

(ii) that the person has personal knowledge of the matters referred to in subparagraph (i).

(2) Evidence that is admissible by virtue of subsection (1) shall not be admitted if the Court is of the opinion that in the interests of justice it ought not to be admitted.

(3) This section is without prejudice to any other enactment or any rule of law authorising the admission of documentary evidence.

(4) In this section—

'business' includes—

(*a*) an undertaking not carried on for profit, and

(*b*) a public authority;

'deed' means any document by which an estate or interest in land is created, transferred, charged or otherwise affected and includes a contract for the sale of land;

'document' includes a reproduction in legible form of a record in non-legible form;

'public authority' has the meaning given to it by section 2(1) of the Local Government Act 2001 and includes a local authority within the meaning of that section;

'records' includes records in non-legible form and any reproduction thereof in legible form.**]**

**Annotations**

**Amendments:**

**F26** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 12, commenced on enactment.

F27**[**Corrupt enrichment order.

**16B.**—(1) For the purposes of this section—

(*a*) a person is corruptly enriched if he or she derives a pecuniary or other advantage or benefit as a result of or in connection with corrupt conduct, wherever the conduct occurred;

F28**[**(b)'corrupt conduct' is any conduct which at the time it occurred was an offence under the Prevention of Corruption Acts 1889 to 2010, the Official Secrets Act 1963, the Ethics in Public Office Act 1995 or the Criminal Justice (Corruption Offences) Act 2018;**]**

(*c*) 'property' includes—

(i) money and all other property, real or personal, heritable or moveable,

(ii) choses in action and other intangible or incorporeal property, and

(iii) property situated outside the State,

and references to property shall be construed as including references to any interest in property.

(2) Where, on application to it in that behalf by the applicant, it appears to the Court, on evidence tendered by the applicant, consisting of or including evidence admissible by virtue of subsection (5), that a person (a 'defendant') has been corruptly enriched, the Court may make an order (a 'corrupt enrichment order') directing the defendant to pay to the Minister or such other person as the Court may

specify an amount equivalent to the amount by which it determines that the defendant has been so enriched.

(3) Where—

(*a*) the defendant is in a position to benefit others in the exercise of his or her official functions,

(*b*) another person has benefited from the exercise, and

(*c*) the defendant does not account satisfactorily for his or her property or for the resources, income or source of income from which it was acquired,

it shall be presumed, until the contrary is shown, that the defendant has engaged in corrupt conduct.

(4) In any proceedings under this section the Court may, on application to it *ex parte* in that behalf by the applicant, make an order prohibiting the defendant or any other person having notice of the order from disposing of or otherwise dealing with specified property of the defendant or diminishing its value during a period specified by the Court.

(5) Where in any such proceedings a member or an authorised officer states on affidavit or, where the respondent requires the deponent to be produced for cross-examination or the Court so directs, in oral evidence that he or she believes that the defendant—

(*a*) has derived a specified pecuniary or other advantage or benefit as a result of or in connection with corrupt conduct,

(*b*) is in possession or control of specified property and that the property or a part of it was acquired, directly or indirectly, as a result of or in connection with corrupt conduct, or

(*c*) is in possession or control of specified property and that the property or a part of it was acquired, directly or indirectly, with or in connection with the property referred to in paragraph (*b*),

then, if the Court is satisfied that there are reasonable grounds for the belief aforesaid, the statement shall be evidence of the matters referred to in any or all of paragraphs (*a*) to (*c*), as may be appropriate.

(6) (*a*) In any such proceedings, on an application to it in that behalf by the applicant, the Court may make an order directing the defendant to file an affidavit specifying—

(i) the property owned by the defendant, or

(ii) the income and sources of income of the defendant, or

(iii) both such property and such income or sources.

(*b*) Such an affidavit is not admissible in evidence in any criminal proceedings against the defendant or his or her spouse, except any such proceedings for perjury arising from statements in the affidavit.

(7) Sections 14 to 14C F29**[**of the Criminal Assets Bureau Act 1996**]** shall apply, with the necessary modifications, in relation to assets or proceeds deriving from unjust enrichment as they apply to assets or proceeds deriving from criminal conduct.

(8) The standard of proof required to determine any question arising in proceedings under this section as to whether a person has been corruptly enriched and, if so, as to the amount of such enrichment shall be that applicable in civil proceedings.

(9) The rules of court applicable in civil proceedings shall apply in relation to proceedings under this section.**]**

**Annotations**

**Amendments:**

**F27** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 12, commenced on enactment.

**F28** Substituted (30.07.2018) by *Criminal Justice (Corruption Offences) Act 2018* (9/2018), s. 24, S.I. No. 298 of 2018.

**F29** Inserted (1.08.2006) by *Criminal Justice Act 2006* (26/2006), s. 189, S.I. No. 390 of 2006

Expenses.

**17.**—The expenses incurred by the Minister and (to such extent as may be sanctioned by the Minister) by the Garda Síochána and the Revenue Commissioners in the administration of this Act shall be paid out of moneys provided by the Oireachtas.

**Annotations**

**Modifications (not altering text):**

**Modifications (not altering text):**

**C31** Functions transferred and references to "Department of Finance" and "Minister for Finance" in section construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3(a), 5 and sch. 1 part 2, in effect as per art. 1(2).

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of –

(*a*) the enactments specified in Schedule 1, and

...

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

Enactments

...

Part 2

1922 to 2011 Enactments

| Number and Year (1) | Short Title (2) | Provision (3) |
|---|---|---|
| ... | ... | ... |

| Number and Year<br>(1) | Short Title<br>(2) | Provision<br>(3) |
|---|---|---|
| No. 30 of 1996 | Proceeds of Crime Act 1996 | Sections 4, 4A, 16 (1)(c)(ii), 16(2) and 17 |
| ... | ... | ... |

Short title.

**18.**—This Act may be cited as the Proceeds of Crime Act, 1996.

ACTS REFERRED TO

| | |
|---|---|
| Bankruptcy Act, 1988 | 1988, No. 27 |
| Companies Acts, 1963 to 1990 | |
| Criminal Justice Act, 1994 | 1994, No. 15 |
| Misuse of Drugs Act, 1977 | 1977, No. 12 |
| Registration of Deeds Act, 1707 | 6. Anne c. 2 |
| Registration of Title Act, 1964 | 1964, No. 16 |

# Appendix B

*Criminal Assets Bureau Act 1996* (Revised)

*Number* 31 *of* 1996

# CRIMINAL ASSETS BUREAU ACT 1996

**REVISED**

**Updated to 28 May 2019**

This Revised Act is an administrative consolidation of the *Criminal Assets Bureau Act 1996*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Greyhound Racing Act 2019* (15/2019), enacted 28 May 2019, and all statutory instruments up to and including *European Communities (Sheep Identification) (Amendment) Regulations 2019* (S.I. No. 243 of 2019), made 28 May 2019, were considered in the preparation of this Revised Act.

Appendix B

*Number* 31 *of* 1996

# CRIMINAL ASSETS BUREAU ACT 1996

**REVISED**

**Updated to 28 May 2019**

## Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

## Related legislation

***Criminal Assets Bureau Acts 1996 and 2005***: this Act is one of a group of Acts included in this collective citation to be construed together as one (*Proceeds of Crime Act 2005*, s. 1(3)). The Acts in the group are:

- *Criminal Assets Bureau Act 1996* (31/1996)
- *Proceeds of Crime Act 2005* (1/2005), Part 3

## Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

## Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

## Acts which affect or previously affected this revision

- *Value-Added Tax Consolidation Act 2010* (31/2010)
- *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010)
- *Criminal Justice (Mutual Assistance) Act 2008* (7/2008)
- *Criminal Justice Act 2007* (29/2007)
- *Criminal Justice Act 2006* (26/2006)
- *Proceeds of Crime (Amendment) Act 2005* (1/2005)
- *Stamp Duties Consolidation Act 1999* (31/1999)
- *Taxes Consolidation Act 1997* (39/1997)

All Acts up to and including *Greyhound Racing Act 2019* (15/2019), enacted 28 May 2019, were considered in the preparation of this revision.

**Statutory instruments which affect or previously affected this revision**

- *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011)
- *Rules of the Superior Courts (Proceeds of Crime and Financing of Terrorism) 2006* (S.I. No. 242 of 2006)
- *Criminal Assets Bureau Act 1996 (Establishment Day) Order 1996* (S.I. No. 310 of 1996)

All statutory instruments up to and including *European Communities (Sheep Identification) (Amendment) Regulations 2019* (S.I. No. 243 of 2019), made 28 May 2019, were considered in the preparation of this revision.

*Number* 31 *of* 1996

# CRIMINAL ASSETS BUREAU ACT 1996

**REVISED**

**Updated to 28 May 2019**

ARRANGEMENT OF SECTIONS

Section

*Number* 31 *of* 1996

# CRIMINAL ASSETS BUREAU ACT 1996

**REVISED**

**Updated to 28 May 2019**

AN ACT TO MAKE PROVISION FOR THE ESTABLISHMENT OF A BODY TO BE KNOWN AS THE CRIMINAL ASSETS BUREAU AND TO DEFINE ITS FUNCTIONS AND TO AMEND THE FINANCE ACT, 1983, AND THE WAIVER OF CERTAIN TAX, INTEREST AND PENALTIES ACT, 1993, AND TO PROVIDE FOR RELATED MATTERS. [11*th October*, 1996]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

**1.**—(1) In this Act—

"the Bureau" means the Criminal Assets Bureau established by *section 3*;

"the bureau legal officer" means the legal officer of the Bureau;

"bureau officer" means a person appointed as a bureau officer under *section 8*;

"the Chief Bureau Officer" means the chief officer of the Bureau;

"the Commissioner" means the Commissioner of the Garda Síochána;

F1**[**'criminal conduct' means any conduct which—

(*a*) constitutes an offence or more than one offence, or

(*b*) where the conduct occurs outside the State, constitutes an offence under the law of the state or territory concerned and would constitute an offence or more than one offence if it occurred within the State;**]**

"the establishment day" means the day appointed by the Minister under *section 2*;

"Garda functions" means any power or duty conferred on any member of the Garda Síochána by or under any enactment (including an enactment passed after the passing of this Act) or the common law;

"member of the family", in relation to an individual who is a bureau officer or a member of the staff of the Bureau, means the spouse, parent, grandparent, step-parent, child (including a step-child or an adopted child), grandchild, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece of the individual or of the individual's spouse, or any person who is cohabiting or residing with the individual;

"the Minister" means the Minister for Justice;

F1**[**'place' includes a dwelling;**]**

"proceedings" includes any hearing before the Appeal Commissioners (within the meaning of the Revenue Acts) or before an appeals officer or the Social Welfare Tribunal under the Social Welfare Acts or a hearing before any committee of the Houses of the Oireachtas;

"Revenue Acts" means—

(*a*) the Customs Acts,

(*b*) the statutes relating to the duties of excise and to the management of those duties,

(*c*) the Tax Acts,

(*d*) the Capital Gains Tax Acts,

(*e*) the F2**[**Value-Added Tax Consolidation Act 2010**]**,

(*f*) the Capital Acquisitions Tax Act, 1976,

(*g*) the statutes relating to stamp duty and to the management of that duty,

(*h*) Part VI of the Finance Act, 1983,

(*i*) Chapter IV of Part II of the Finance Act, 1992,

and any instruments made thereunder and any instruments made under any other enactment and relating to tax;

"tax" means any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

(2) In this Act—

(*a*) a reference to a section is a reference to a section of this Act unless it is indicated that reference to some other enactment is intended,

(*b*) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs unless it is indicated that reference to some other provision is intended, and

(*c*) a reference to an enactment shall be construed as a reference to that enactment as amended or extended by any other enactment.

**Annotations**

**Amendments:**

**F1** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 13, commenced on enactment.

**F2** Substituted (1.11.2010) by *Value-Added Tax Consolidation Act 2010* (31/2010), s. 123(1) and sch. 7, commenced as per s. 125.

Establishment day.

**2.**—The Minister may, after consultation with the Minister for Finance, by order appoint a day to be the establishment day for the purposes of this Act.

**Annotations**

**Modifications (not altering text):**

**C1** Functions transferred and references to "Department of Finance" and "Minister for Finance" construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1. part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

...

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

| Number and Year | Short Title | Provision |
|---|---|---|
| ... | ... | ... |
| No. 31 of 1996 | Criminal Assets Bureau Act 1996 | s. 2, 6(1), 9 and 19(1) and 3 |
| ... | ... | ... |

**Editorial Notes:**

**E1** Power pursuant to section exercised (15.10.1996) by *Criminal Assets Bureau Act 1996 (Establishment Day) Order 1996* (S.I. No. 310 of 1996), art. 2.

2. The 15th day of October, 1996, is hereby appointed as the establishment day for the purposes of the *Criminal Assets Bureau Act, 1996* (No. 31 of 1996).

Establishment of Bureau.

**3.**—(1) On the establishment day there shall stand established a body to be known as the Criminal Assets Bureau, and in this Act referred to as "the Bureau", to perform the functions conferred on it by or under this Act.

(2) The Bureau shall be a body corporate with perpetual succession and an official seal and power to sue and be sued in its corporate name and to acquire, hold and dispose of land or an interest in land and to acquire, hold and dispose of any other property.

Objectives of Bureau.

**4.**—Subject to the provisions of this Act, the objectives of the Bureau shall be—

(*a*) the identification of the assets, wherever situated, of persons which derive or are suspected to derive, directly or indirectly, from F3**[**criminal conduct**]**,

(*b*) the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, and

(*c*) the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings arising from the objectives mentioned in *paragraphs (a)* and *(b)*.

**Annotations**

**Amendments:**

**F3** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 14, commenced on enactment.

Functions of Bureau.

**5.**—(1) Without prejudice to the generality of *section 4*, the functions of the Bureau, operating through its bureau officers, shall be the taking of all necessary actions—

(*a*) in accordance with Garda functions, for the purposes of, the confiscation, restraint of use, freezing, preservation or seizure of assets identified as deriving, or suspected to derive, directly or indirectly, from F4**[**criminal conduct**]**,

(*b*) under the Revenue Acts or any provision of any other enactment, whether passed before or after the passing of this Act, which relates to revenue, to ensure that the proceeds of F4**[**criminal conduct**]** or suspected F4**[**criminal conduct**]** are subjected to tax and that the Revenue Acts, where appropriate, are fully applied in relation to such proceeds or activities, as the case may be,

(*c*) under the Social Welfare Acts for the investigation and determination, as appropriate, of any claim for or in respect of benefit (within the meaning of section 204 of the Social Welfare (Consolidation) Act, 1993) by any person engaged in F4**[**criminal conduct**]**, and

(*d*) at the request of the Minister for Social Welfare, to investigate and determine, as appropriate, any claim for or in respect of a benefit, within the meaning of section 204 of the Social Welfare (Consolidation) Act, 1993, where the Minister for Social Welfare certifies that there are reasonable grounds for believing that, in the case of a particular investigation, officers of the Minister for Social Welfare may be subject to threats or other forms of intimidation,

and such actions include, where appropriate, subject to any international agreement, cooperation with any police force, or any authority, being F5**[**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.

(2) In relation to the matters referred to in *subsection (1)*, nothing in this Act shall be construed as affecting or restricting in any way—

(*a*) the powers or duties of the Garda Síochána, the Revenue Commissioners or the Minister for Social Welfare, or

(*b*) the functions of the Attorney General, the Director of Public Prosecutions or the Chief State Solicitor.

**Annotations**

**Amendments:**

**F4** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 15(a), commenced on enactment.

**F5** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 15(b), commenced on enactment.

Conferral of additional functions on Bureau.

**6.**—(1) The Minister may, if the Minister so thinks fit, and after consultation with the Minister for Finance, by order—

(*a*) confer on the Bureau or its bureau officers such additional functions connected with the objectives and functions for the time being of the Bureau, and

(*b*) make such provision as the Minister considers necessary or expedient in relation to matters ancillary to or arising out of the conferral on the Bureau or its bureau officers of functions under this section or the performance by the Bureau or its bureau officers of functions so conferred.

(2) The Minister may by order amend or revoke an order under this section (including an order under this subsection).

(3) Every order made by the Minister under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House has sat after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

(4) In this section "functions" includes powers and duties.

**Annotations**

**Modifications (not altering text):**

**C2** Functions transferred and references to "Department of Finance" and "Minister for Finance" construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1. part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

...

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

| Number and Year | Short Title | Provision |
|---|---|---|
| ... | ... | ... |
| No. 31 of 1996 | Criminal Assets Bureau Act 1996 | s. 2, 6(1), 9 and 19(1) and 3 |
| ... | ... | ... |

Chief Bureau Officer.

**7.**—(1) There shall be a chief officer of the Bureau who shall be known, and is referred to in this Act, as the Chief Bureau Officer.

(2) The Commissioner shall, from time to time, appoint to the Bureau the Chief Bureau Officer and may, at any time, remove the Chief Bureau Officer from his or her appointment with the Bureau.

(3) The Chief Bureau Officer shall carry on and manage and control generally the administration and business of the Bureau.

(4) The Chief Bureau Officer shall be responsible to the Commissioner for the performance of the functions of the Bureau.

(5) (*a*) In the event of incapacity through illness, or absence otherwise, of the Chief Bureau Officer, the Commissioner may appoint to the Bureau a person, who shall be known, and is referred to in this section, as the Acting Chief Bureau Officer, to perform the functions of the Chief Bureau Officer.

(*b*) The Commissioner may, at any time, remove the Acting Chief Bureau Officer from his or her appointment with the Bureau and shall, in any event, remove the Acting Chief Bureau Officer from that appointment upon being satisfied that the incapacity or absence of the Chief Bureau Officer has ceased and that the Chief Bureau Officer has resumed the performance of the functions of Chief Bureau Officer.

(*c*) *Subsections (3)* and *(4)* and *paragraph (a)* shall apply to the Acting Chief Bureau Officer as they apply to the Chief Bureau Officer.

(6) The Chief Bureau Officer shall be appointed from amongst the members of the Garda Síochána of the rank of Chief Superintendent.

(7) For the purposes of this Act other than *subsections (1), (3)* and *(9)* of *section 8*, the Chief Bureau Officer or Acting Chief Bureau Officer, as the case may be, shall be a bureau officer.

Bureau officers.

**8.**—(1) (*a*) The Minister may appoint, with the consent of the Minister for Finance, such and so many—

(i) members of the Garda Síochána nominated for the purposes of this Act by the Commissioner,

(ii) officers of the Revenue Commissioners nominated for the purposes of this Act by the Revenue Commissioners, and

(iii) officers of the Minister for Social Welfare nominated for the purposes of this Act by that Minister,

to be bureau officers for the purposes of this Act.

(*b*) An appointment under this subsection shall be confirmed in writing, at the time of the appointment or as soon as may be thereafter, specifying the date of the appointment.

(2) The powers and duties vested in a bureau officer for the purposes of this Act, shall, F6**[**subject to subsections (5), (6), (6A), (6B), (6C) and (7)**]**, be the powers and duties vested in the bureau officer, as the case may be, by virtue of—

(*a*) being a member of the Garda Síochána,

(*b*) the Revenue Acts or, any provision of any other enactment, whether passed before or after the passing of this Act, which relates to revenue, including any authorisation or nomination made thereunder, or

(*c*) the Social Welfare Acts, including any appointment made thereunder,

and such exercise or performance of any power or duty for the purposes of this Act shall be exercised or performed in the name of the Bureau.

(3) A bureau officer, when exercising or performing any powers or duties for the purposes of this Act, shall be under the direction and control of the Chief Bureau Officer.

(4) Where in any case a bureau officer (other than the Chief Bureau Officer) who, prior to being appointed a bureau officer, was required to exercise or perform any power or duty on the direction of any other person, it shall be lawful for the bureau officer to exercise or perform such power or duty for the purposes of this Act on the direction of the Chief Bureau Officer.

(5) A bureau officer may exercise or perform his or her powers or duties on foot of any information received by him or her from another bureau officer or on foot of any action taken by that other bureau officer in the exercise or performance of that other bureau officer's powers or duties for the purposes of this Act, and any information, documents or other material obtained by bureau officers under this subsection shall be admitted in evidence in any subsequent proceedings.

(6) (*a*) A bureau officer may be accompanied or assisted in the exercise or performance of that bureau officer's powers or duties by such other persons (including bureau officers) as the first-mentioned bureau officer considers necessary.

(*b*) A bureau officer may take with him or her, to assist him or her in the exercise or performance of his or her powers or duties, any equipment or materials as that bureau officer considers necessary.

(*c*) A bureau officer who assists another bureau officer under *paragraph (a)* shall have and be conferred with the powers and duties of the first-mentioned bureau officer for the purposes of that assistance only.

(*d*) Information, documents or other material obtained by any bureau officer under *paragraph (a)* or *(c)* may be admitted in evidence in any subsequent proceedings.

F7**[**(6A) Without prejudice to the generality of subsection (6), a bureau officer who is an officer of the Revenue Commissioners or an officer of the Minister for Social and Family Affairs may, if and for so long as he or she is accompanied by a bureau officer who is a member of the Garda Síochána, attend at, and participate in, the questioning of a person detained pursuant to—

(*a*) section 4 of the Criminal Justice Act 1984, or

(*b*) section 2 of the Criminal Justice (Drug Trafficking) Act 1996 (including that section as applied by section 4 of that Act),

in connection with the investigation of an offence but only if the second-mentioned bureau officer requests the first-mentioned bureau officer to do so and the second-mentioned bureau officer is satisfied that the attendance at, and participation in,

such questioning of the first-mentioned bureau officer is necessary for the proper investigation of the offence concerned.

(6B) A bureau officer who attends at, and participates in, the questioning of a person in accordance with subsection (6A) may not commit any act or make any omission which, if committed or made by a member of the Garda Síochána, would be a contravention of any regulation made under section 7 of the Criminal Justice Act 1984.

(6C) An act committed or omission made by a bureau officer who attends at, and participates in, the questioning of a person in accordance with subsection (6A) which, if committed or made by a member of the Garda Síochána, would be a contravention of any regulation made under the said section 7 shall not of itself render the bureau officer liable to any criminal or civil proceedings or of itself affect the lawfulness of the custody of the detained person or the admissibility in evidence of any statement made by him or her.**]**

(7) F8**[**Subject to section 5(1), any information**]** or material obtained by a bureau officer for the purposes of this Act may only be disclosed by the bureau officer to—

(*a*) another bureau officer or a member of the staff of the Bureau,

(*b*) any member of the Garda Síochána for the purposes of Garda functions,

(*c*) any officer of the Revenue Commissioners for the purposes of the Revenue Acts or any provision of any other enactment, whether passed before or after the passing of this Act, which relates to revenue,

(*d*) any officer of the Minister for Social Welfare for the purposes of the Social Welfare Acts, or

(*e*) with the consent of the Chief Bureau Officer, any other officer of another Minister of the Government or of a local authority (within the meaning of the Local Government Act, 1941) for the purposes of that other officer exercising or performing his or her powers or duties,

and information, documents or other material obtained by a bureau officer or any other person under the provisions of this subsection shall be admitted in evidence in any subsequent proceedings.

(8) A member of the Garda Síochána, an officer of the Revenue Commissioners or an officer of the Minister for Social Welfare, who is a bureau officer, notwithstanding his or her appointment as such, shall continue to be vested with and may exercise or perform the powers or duties of a member of the Garda Síochána, an officer of the Revenue Commissioners or an officer of the Minister for Social Welfare, as the case may be, for purposes other than the purposes of this Act, as well as for the purposes of this Act.

(9) The Chief Bureau Officer may, at his or her absolute discretion, at any time, with the consent of the Commissioner, remove any bureau officer from the Bureau whereupon his or her appointment as a bureau officer shall cease.

(10) Nothing in this section shall affect the powers and duties of a member of the Garda Síochána, an officer of the Revenue Commissioners or an officer of the Minister for Social Welfare, who is not a bureau officer.

**Annotations**

**Amendments:**

**F6** Substituted (18.05.2007) by *Criminal Justice Act 2007* (29/2007), s. 58(a), S.I. No. 236 of 2007.

**F7** Inserted (18.05.2007) by *Criminal Justice Act 2007* (29/2007), s. 58(b), S.I. No. 236 of 2007.

**F8** Substituted (1.09.2008) by *Criminal Justice (Mutual Assistance) Act 2008* (7/2008), s. 106, S.I. No. 338 of 2008.

Staff of Bureau.

**9.**—(1) (*a*) The Minister may, with the consent of the Attorney General and of the Minister for Finance, appoint a person to be the bureau legal officer, who shall be a member of the staff of the Bureau and who shall report directly to the Chief Bureau Officer, to assist the Bureau in the pursuit of its objectives and functions.

(*b*) The Minister may, with the consent of the Minister for Finance and after such consultation as may be appropriate with the Commissioner, appoint such, and such number of persons to be professional or technical members of the staff of the Bureau, other than the bureau legal officer, and any such member will assist the bureau officers in the exercise and performance of their powers and duties.

(2) A professional or technical member of the staff of the Bureau, including the bureau legal officer, shall perform his or her functions at the direction of the Chief Bureau Officer.

(3) The Minister may, with the consent of the Attorney General and of the Minister for Finance, at any time remove the bureau legal officer from being a member of the staff of the Bureau whereupon his or her appointment as bureau legal officer shall cease.

(4) The Commissioner may, with the consent of the Minister, at any time remove any professional or technical member of the staff of the Bureau, other than the bureau legal officer, from being a member of the staff of the Bureau whereupon his or her appointment as a member of the staff shall cease.

(5) (*a*) A professional or technical member of the staff of the Bureau, including the bureau legal officer, shall hold his or her office or employment on such terms and conditions (including terms and conditions relating to remuneration and superannuation) as the Minister may, with the consent of the Minister for Finance, and in the case of the bureau legal officer with the consent also of the Attorney General, determine.

(*b*) A professional or technical member of the staff of the Bureau, including the bureau legal officer, shall be paid, out of the moneys at the disposal of the Bureau, such remuneration and allowances for expenses incurred by him or her as the Minister may, with the consent of the Minister for Finance, determine.

**Annotations**

**Modifications (not altering text):**

**C3** Functions transferred and references to "Department of Finance" and "Minister for Finance" construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1. part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

...

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

| Number and Year | Short Title | Provision |
|---|---|---|
| ... | ... | ... |
| No. 31 of 1996 | Criminal Assets Bureau Act 1996 | s. 2, 6(1), 9 and 19(1) and 3 |
| ... | ... | ... |

Anonymity.

**10.**—(1) Notwithstanding any requirement made by or under any enactment or any other requirement in administrative and operational procedures, including internal procedures, all reasonable care shall be taken to ensure that the identity of a bureau officer, who is an officer of the Revenue Commissioners or an officer of the Minister for Social Welfare or the identity of any member of the staff of the Bureau, shall not be revealed.

(2) Where a bureau officer who is an officer of the Revenue Commissioners or an officer of the Minister for Social Welfare may, apart from this section, be required under the Revenue Acts or the Social Welfare Acts, as the case may be, for the purposes of exercising or performing his or her powers or duties under those Acts, to produce or show any written authority or warrant of appointment under those Acts or otherwise to identify himself or herself, the bureau officer shall—

(*a*) not be required to produce or show any such authority or warrant of appointment or to so identify himself or herself, for the purposes of exercising or performing his or her powers or duties under those Acts, and

(*b*) be accompanied by a bureau officer who is a member of the Garda Síochána and the bureau officer who is a member of the Garda Síochána shall on request by a person affected identify himself or herself as a member of the Garda Síochána, and shall state that he or she is accompanied by a bureau officer.

(3) Where, in pursuance of the functions of the Bureau, a member of the staff of the Bureau accompanies or assists a bureau officer in the exercise or performance of the bureau officer's powers or duties, the member of the staff shall be accompanied by a bureau officer who is a member of the Garda Síochána and the bureau officer who is a member of the Garda Síochána shall on request by a person affected identify himself or herself as a member of the Garda Síochána, and shall state that he or she is accompanied by a member of the staff of the Bureau.

(4) Where a bureau officer—

(*a*) who is an officer of the Revenue Commissioners exercises or performs any of his or her powers or duties under the Revenue Acts or any provision of any other enactment, whether passed before or after the passing of this Act, which relates to revenue, in writing, or

(*b*) who is an officer of the Minister for Social Welfare exercises or performs any of his or her powers or duties under the Social Welfare Acts in writing,

such exercise or performance of his or her powers or duties shall be done in the name of the Bureau and not in the name of the individual bureau officer involved, notwithstanding any provision to the contrary in any of those enactments.

(5) Any document relating to proceedings arising out of the exercise or performance by a bureau officer of his or her powers or duties shall not reveal the identity of any bureau officer who is an officer of the Revenue Commissioners or an officer of the Minister for Social Welfare or of any member of the staff of the Bureau, provided that where such document is adduced in evidence, *subsection (7)* shall apply.

(6) In any proceedings the identity of any bureau officer who is an officer of the Revenue Commissioners or an officer of the Minister for Social Welfare or of any member of the staff of the Bureau other than that he or she is a bureau officer or the member of such staff, shall not be revealed other than, in the case of a hearing before a court, to the judge hearing the case, or in any other case the person in charge of the hearing, provided that, where the identity of such a bureau officer or member of the staff of the Bureau is relevant to the evidence adduced in the proceedings, *subsection (7)* shall apply.

(7) In any proceedings where a bureau officer or a member of the staff of the Bureau may be required to give evidence, whether by affidavit or certificate, or oral evidence—

(*a*) the judge, in the case of proceedings before a court, or

(*b*) the person in charge of the proceedings, in any other case,

may, on the application of the Chief Bureau Officer, if satisfied that there are reasonable grounds in the public interest to do so, give such directions for the preservation of the anonymity of the bureau officer or member of the staff of the Bureau as he or she thinks fit, including directions as to—

(i) the restriction of the circulation of affidavits or certificates,

(ii) the deletion from affidavits or certificates of the name and address of any bureau officer or member of the staff of the Bureau, including the deponent and certifier, or

(iii) the giving of evidence in the hearing but not the sight of any person.

(8) In this section "member of the staff of the Bureau" means a member of the staff of the Bureau appointed under *section 9*.

Identification.

**11.**—(1) A person who publishes or causes to be published—

(*a*) the fact that an individual—

(i) being or having been an officer of the Revenue Commissioners or an officer of the Minister for Social Welfare, is or was a bureau officer, or

(ii) is or was a member of the staff of the Bureau,

(*b*) the fact that an individual is a member of the family F9**[**or the civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010**]** of—

(i) a bureau officer,

(ii) a former bureau officer,

(iii) a member of the staff of the Bureau, or

(iv) a former member of the staff of the Bureau,

or

(*c*) the address of any place as being the address where any—

(i) bureau officer,

(ii) former bureau officer,

(iii) member of the staff of the Bureau,

(iv) former member of the staff of the Bureau, or

(v) member of the family of any bureau officer, former bureau officer, member of the staff of the Bureau or former member of the staff of the Bureau,

resides,

shall be guilty of an offence under this section.

(2) A person guilty of an offence under this section shall be liable—

(*a*) on summary conviction, to a fine not exceeding F10**[**€3,000**]**, or to imprisonment for a term not exceeding 12 months, or to both, or

(*b*) on conviction on indictment, to a fine not exceeding £50,000, or to imprisonment for a term not exceeding 3 years, or to both.

(3) In this section references to bureau officer, former bureau officer, member of the staff of the Bureau and former member of the staff of the Bureau do not include references to the Chief Bureau Officer, the Acting Chief Bureau Officer or the bureau legal officer.

**Annotations**

**Amendments:**

**F9** Inserted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 169 and sch. pt. 5 item 15, S.I. No. 648 of 2010.

**F10** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 17, commenced on enactment.

Obstruction.

**12.**—(1) A person who delays, obstructs, impedes, interferes with or resists a bureau officer in the exercise or performance of his or her powers or duties under Garda functions, the Revenue Acts or the Social Welfare Acts or a member of the staff of the Bureau in accompanying or assisting a bureau officer shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable—

(*a*) on summary conviction, to a fine not exceeding F11**[**€3,000**]**, or to imprisonment for a term not exceeding 12 months, or to both, or

(*b*) on conviction on indictment, to a fine not exceeding £10,000, or to imprisonment for a term not exceeding 3 years, or to both.

**Annotations**

**Amendments:**

**F11** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 17, commenced on enactment.

Intimidation.

**13.**—(1) A person who utters or sends threats to or, in any way, intimidates or menaces a bureau officer or a member of the staff of the Bureau or any member of the family F12**[**or the civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010**]** of a bureau officer or of a member of the staff of the Bureau shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable—

(*a*) on summary conviction, to a fine not exceeding F13**[**€3,000**]**, or to imprisonment for a term not exceeding 12 months, or to both, or

(*b*) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 10 years, or to both.

**Annotations**

**Amendments:**

**F12** Inserted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 169 and sch. pt. 5 item 15, S.I. No. 648 of 2010.

**F13** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 17, commenced on enactment.

Search warrants.

**14.**—(1) A judge of the District Court, on hearing evidence on oath given by a bureau officer who is a member of the Garda Síochána, may, if he or she is satisfied that there are reasonable grounds for suspecting that evidence of or relating to assets or proceeds deriving from F14**[**criminal conduct**]**, or to their identity or whereabouts, is to be found in any place, issue a warrant for the search of that place and any person found at that place.

(2) A bureau officer who is a member of the Garda Síochána not below the rank of superintendent may, subject to *subsection (3)*, if he or she is satisfied that there are reasonable grounds for suspecting that evidence of or relating to assets or proceeds deriving from F14**[**criminal conduct**]**, or to their identity or whereabouts, is to be found in any place, issue a warrant for the search of that place and any person found at that place.

(3) A bureau officer who is a member of the Garda Síochána not below the rank of superintendent shall not issue a search warrant under this section unless he or she is satisfied that circumstances of urgency giving rise to the need for the immediate issue of the search warrant would render it impracticable to apply to a judge of the District Court under this section for a search warrant.

(4) Subject to *subsection (5)*, a warrant under this section shall be expressed to and shall operate to authorise a named bureau officer who is a member of the Garda Síochána, accompanied by such other persons as the bureau officer thinks necessary, to enter, F15**[**within a period to be specified in the warrant**]** (if necessary by the use of reasonable force), the place named in the warrant, and to search it and any person found at that place and seize and retain F15**[**any material (other than material subject to legal privilege) found at that place, or any such material**]** found in the possession

of a person found present at that place at the time of the search, which the officer believes to be evidence of or relating to assets or proceeds deriving from F14**[**criminal conduct**]**, or to their identity or whereabouts.

F16**[**(4A) The period to be specified in the warrant shall be one week, unless it appears to the judge that another period, not exceeding 14 days, would be appropriate in the particular circumstances of the case.**]**

(5) Notwithstanding *subsection (4)*, a search warrant issued under F17**[***subsection (2)***]** shall cease to have effect after a period of 24 hours has elapsed from the time of the issue of the warrant.

F18**[**(5A) The authority conferred by subsection (4) to seize and retain any material includes, in the case of a document or record, authority—

(*a*) to make and retain a copy of the document or record, and

(*b*) where necessary, to seize and retain any computer or other storage medium in which any record is kept.**]**

(6) A bureau officer who is a member of the Garda Síochána acting under the authority of a warrant under this section may—

(*a*) require any person present at the place where the search is carried out to give to the officer the person's name and address, and

(*b*) arrest without warrant any person who—

(i) obstructs or attempts to obstruct that officer or any person accompanying that officer in the carrying out of his or her duties,

(ii) fails to comply with a requirement under *paragraph (a)*, or

(iii) gives a name or address which the officer has reasonable cause for believing is false or misleading.

F19**[**(6A) A bureau officer who is a member of the Garda Síochána acting under the authority of a warrant under this section may—

(*a*) operate any computer at the place which is being searched or cause it to be operated by a person accompanying the member for that purpose, and

(*b*) require any person at that place who appears to the member to have lawful access to the information in the computer—

(i) to give to the member any password necessary to operate it,

(ii) otherwise to enable the member to examine the information accessible by the computer in a form in which it is visible and legible, or

(iii) to produce the information to the member in a form in which it can be removed and in which it is, or can be made, visible and legible,**]**

(7) A person who obstructs or attempts to obstruct a person acting under the authority of a warrant under this section, who fails to comply with a requirement under *subsection (6) (a)* or who gives a false or misleading name or address to a bureau officer who is a member of the Garda Síochána, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding F20**[**€3,000**]**, or to imprisonment for a period not exceeding 6 months, or to both.

(8) The power to issue a warrant under this section is in addition to and not in substitution for any other power to issue a warrant for the search of any place or person.

F21**[**(9) In this section—

'computer at the place which is being searched' includes any other computer, whether at that place or at any other place, which is lawfully accessible by means of that computer, and

'material' includes a copy of the material and a document or record.**]**

**Annotations**

**Amendments:**

**F14** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 16(a), commenced on enactment.

**F15** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 16(b), commenced on enactment.

**F16** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 16(c), commenced on enactment.

**F17** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 16(d), commenced on enactment.

**F18** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 16(e), commenced on enactment.

**F19** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 16(f), commenced on enactment.

**F20** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 17, commenced on enactment.

**F21** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 17, commenced on enactment.

**Editorial Notes:**

**E2** The comma at the end of subs. (6A) appears to be in place of a full stop.

**E3** Provision for applications for search warrants to be made otherwise than in public made (23.07.2010) by *Criminal Justice (Amendment) Act 2009* (32/2009), s. 26 (commenced on enactment).

F22**[**Order to make material available.

**14A.**—(1) For the purposes of an investigation into whether a person has benefited from assets or proceeds deriving from criminal conduct or is in receipt of or controls such assets or proceeds a bureau officer who is a member of the Garda Síochána may apply to a judge of the District Court for an order under this section in relation to making available any particular material or material of a particular description.

(2) On such an application the judge, if satisfied—

(*a*) that there are reasonable grounds for suspecting that the person has benefited from such assets or proceeds or is in receipt of or controls such assets or proceeds, and

(*b*) that the material concerned is required for the purposes of such an investigation,

may order that any person who appears to him or her to be in possession of the material shall—

(*i*) produce the material to the member so that he or she may take it away, or

(*ii*) give the member access to it within a period to be specified in the order.

(3) The period to be so specified shall be one week, unless it appears to the judge that another period would be appropriate in the particular circumstances of the case.

(4) (*a*) An order under this section in relation to material in any place may, on the application of the member concerned, require any person who appears to the judge to be entitled to grant entry to the place to allow the member to enter it to obtain access to the material.

(*b*) Where a person required under paragraph (*a*) to allow the member to enter a place does not allow him or her to do so, section 14 shall have effect, with any necessary modifications, as if a warrant had been issued under that section authorising him or her to search the place and any person found there.

(5) Where such material consists of information contained in a computer, the order shall have effect as an order to produce the material, or to give access to it, in a form in which it is visible and legible and in which it can be taken away.

(6) The order—

(*a*) in so far as it may empower a member of the Garda Síochána to take away a document or to be given access to it, shall authorise him or her to make a copy of it and to take the copy away,

(*b*) shall not confer any right to production of, or access to, any material subject to legal privilege, and

(*c*) shall have effect notwithstanding any other obligation as to secrecy or other restriction on disclosure of information imposed by statute or otherwise.

(7) Any material taken away by a member of the Garda Síochána under this section may be retained by him or her for use as evidence in any proceedings.

(8) A judge of the District Court may vary or discharge an order under this section on the application of any person to whom an order under this section relates or a member of the Garda Síochána.

(9) A person who without reasonable excuse fails or refuses to comply with any requirement of an order under this section is guilty of an offence and liable—

(*a*) on summary conviction, to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months or to both, or

(*b*) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years or to both.**]**

**Annotations**

**Amendments:**

**F22** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 18, commenced on enactment.

F23**[**Disclosure prejudicial to making available of material under section 14A.

**14B.**—(1) A person who, knowing or suspecting that an application is to be made, or has been made, under section 14A for an order in relation to making available any particular material or material of a particular description, makes any disclosure which is likely to prejudice the making available of the material in accordance with the order is guilty of an offence.

(2) In proceedings against a person for an offence under this section it is a defence to prove that the person—

(*a*) did not know or suspect that the disclosure to which the proceedings relate was likely to prejudice the making available of the material concerned, or

(*b*) had lawful authority or reasonable excuse for making the disclosure.

(3) A person guilty of an offence under this section is liable—

(*a*) on summary conviction, to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months or to both, or

(*b*) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years or to both.**]**

**Annotations**

**Amendments:**

**F23** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 18, commenced on enactment.

F24**[**Property held in trust.

**14C.**—(1) For the purposes of an investigation into whether a person has benefited from assets or proceeds deriving from criminal conduct or is in receipt of or controls such assets or proceeds the Chief Bureau Officer or an authorised officer may apply to a judge of the High Court for an order under this section in relation to obtaining information regarding any trust in which the person may have an interest or with which he or she may be otherwise connected.

(2) On such an application the judge, if satisfied—

(*a*) that there are reasonable grounds for suspecting that a person—

(i) has benefited from assets or proceeds deriving from criminal conduct or is in receipt of or controls such assets or proceeds, and

(ii) has some interest in or other connection with the trust,

(*b*) that the information concerned is required for the purposes of such an investigation, and

(*c*) that there are reasonable grounds for believing that it is in the public interest that the information should be disclosed for the purposes of the investigation, having regard to the benefit likely to accrue to the investigation and any other relevant circumstances,

may order the trustees of the trust and any other persons (including the suspected person) to disclose to the Chief Bureau Officer or an authorised officer such information as he or she may require in relation to the trust, including the identity of the settlor and any or all of the trustees and beneficiaries.

(3) An order under this section—

(*a*) shall not confer any right to production of, or access to, any information subject to legal privilege, and

(*b*) shall have effect notwithstanding any other obligation as to secrecy or other restriction on disclosure of information imposed by statute or otherwise.

(4) A judge of the High Court may vary or discharge an order under this section on the application of any person to whom it relates or a member of the Garda Síochána.

(5) A trustee or other person who without reasonable excuse fails or refuses to comply with an order under this section or gives information which is false or misleading is guilty of an offence and liable—

(*a*) on summary conviction, to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months or to both, or

(*b*) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years or to both.

(6) Any information given by a person in compliance with an order under this section is not admissible in evidence in any criminal proceedings against the person or his or her spouse, except in any proceedings for an offence under subsection (5).

(7) In this section 'information' includes—

(*a*) a document or record, and

(*b*) information in non-legible form.**]**

**Annotations**

**Amendments:**

**F24** Inserted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 18, commenced on enactment.

Assault.

**15.**—(1) A person who assaults or attempts to assault a bureau officer or a member of the staff of the Bureau or any member of the family F25**[**or the civil partner within the meaning of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010**]** of a bureau officer or of a member of the staff of the Bureau shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable—

(*a*) on summary conviction, to a fine not exceeding F26**[**€3,000**]**, or to imprisonment for a term not exceeding 12 months, or to both, or

(*b*) on conviction on indictment, to a fine not exceeding £100,000, or to imprisonment for a term not exceeding 10 years, or to both.

**Annotations**

**Amendments:**

**F25** Inserted (1.01.2011) by *Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010* (24/2010), s. 169 and sch., pt. 5, item 15, S.I. No. 648 of 2010.

**F26** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 17, commenced on enactment.

Arrest.

**16.**—(1) Where a bureau officer who is a member of the Garda Síochána has reasonable cause to suspect that a person is committing or has committed an offence under *section 12, 13* or *15* or under section 94 of the Finance Act, 1983, the bureau officer may—

(*a*) arrest that person without warrant, or

(*b*) require the person to give his or her name and address, and if the person fails or refuses to do so or gives a name or address which the bureau officer reasonably suspects to be false or misleading, the bureau officer may arrest that person without warrant.

(2) A person who fails or refuses to give his or her name or address when required under this section or gives a name or address which is false or misleading, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding F27**[**€3,000**]**.

**Annotations**

**Amendments:**

**F27** Substituted (12.02.2005) by *Proceeds of Crime (Amendment) Act 2005* (1/2005), s. 17, commenced on enactment.

Prosecution of offences under *section 13* or *15*.

**17.**—Where a person is charged with an offence under *section 13* or *15*, no further proceedings in the matter (other than any remand in custody or on bail) shall be taken except by or with the consent of the Director of Public Prosecutions.

Special leave and compensation, etc.

**18.**—(1) Any person appointed to the Bureau as a bureau officer or appointed under *section 9* or seconded to the Bureau as a member of the staff of the Bureau from the civil service (within the meaning of the Civil Service Regulation Act, 1956) shall, on being so appointed or seconded, be granted special leave with pay from any office or employment exercised by the person at the time.

(2) The Bureau shall, out of the moneys at its disposal, reimburse any Minister of the Government, the Revenue Commissioners or other person paid out of moneys provided by the Oireachtas for the full cost of the expenditure incurred by such Minister of the Government, the Revenue Commissioners or other person paid out of moneys provided by the Oireachtas, in respect of any person appointed or seconded to the Bureau for the full duration of that appointment.

(3) The provisions of the Garda Síochána (Compensation) Act, 1941, and the Garda Síochána (Compensation) (Amendment) Act, 1945, shall, with any necessary modifications, apply to—

(*a*) bureau officers and members of the staff of the Bureau, and

(*b*) the Chief State Solicitor and solicitors employed in the Office of the Chief State Solicitor, in respect of injuries maliciously inflicted on them because of anything done or to be done by any of them in a professional capacity for or on behalf of the Bureau,

as they apply to members of the Garda Síochána.

Advances by Minister to Bureau and audit of accounts of Bureau by Comptroller and Auditor General.

**19.**—(1) The Minister may, from time to time, with the consent of the Minister for Finance, make advances to the Bureau, out of moneys provided by the Oireachtas, in such manner and such sums as the Minister may determine for the purposes of expenditure by the Bureau in the performance of its functions.

(2) The First Schedule to the Comptroller and Auditor General (Amendment) Act, 1993, is hereby amended by the insertion before "Criminal Injuries Compensation Tribunal" of "Criminal Assets Bureau".

(3) The person who from time to time has been appointed by the Minister for Finance under the Exchequer and Audit Departments Act, 1866, as the Accounting Officer for the Vote for the Office of the Minister shall prepare in a format prescribed by the

Minister for Finance an account of the moneys provided to the Bureau by the Oireachtas in any financial year and submit it for examination to the Comptroller and Auditor General not later than 90 days after the end of that financial year.

(4) All of the duties specified in section 19 of the Comptroller and Auditor General (Amendment) Act, 1993, shall apply to the Accounting Officer for the Vote for the Office of the Minister in regard to the income, expenditure and assets of the Bureau.

**Annotations**

**Modifications (not altering text):**

**C4** Functions transferred and references to "Department of Finance" and "Minister for Finance" construed (29.07.2011) by *Finance (Transfer of Departmental Administration and Ministerial Functions) Order 2011* (S.I. No. 418 of 2011), arts. 2, 3, 5 and sch. 1. part 2, in effect as per art. 1(2), subject to transitional provisions in arts. 6-9.

2. (1) The administration and business in connection with the performance of any functions transferred by this Order are transferred to the Department of Public Expenditure and Reform.

(2) References to the Department of Finance contained in any Act or instrument made thereunder and relating to the administration and business transferred by paragraph (1) shall, on and after the commencement of this Order, be construed as references to the Department of Public Expenditure and Reform.

3. The functions conferred on the Minister for Finance by or under the provisions of —

(a) the enactments specified in Schedule 1, and

...

are transferred to the Minister for Public Expenditure and Reform.

...

5. References to the Minister for Finance contained in any Act or instrument under an Act and relating to any functions transferred by this Order shall, from the commencement of this Order, be construed as references to the Minister for Public Expenditure and Reform.

...

Schedule 1

| Number and Year | Short Title | Provision |
|---|---|---|
| ... | ... | ... |
| No. 31 of 1996 | Criminal Assets Bureau Act 1996 | s. 2, 6(1), 9 and 19(1) and 3 |
| ... | ... | ... |

Accounting for tax.

**20.**—On payment to the Bureau of tax in accordance with the provisions of *section 5 (1) (b)*, the Bureau shall forthwith—

(*a*) lodge the tax paid to the General Account of the Revenue Commissioners in the Central Bank of Ireland, and

(*b*) transmit to the Collector-General particulars of the tax assessed and payment received in respect thereof.

Reports and information to Minister.

**21.**—(1) As soon as may be, but not later than 6 months, after the end of each year, the Bureau shall through the Commissioner present a report to the Minister of its activities during that year and the Minister shall cause copies of the report to be laid before each House of the Oireachtas.

(2) Each report under *subsection (1)* shall include information in such form and regarding such matters as the Minister may direct.

(3) The Bureau shall, whenever so requested by the Minister through the Commissioner, furnish to the Minister through the Commissioner information as to the general operations of the Bureau.

Expenses.

**22.**—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Amendment of section 19A (anonymity) of Finance Act, 1983.

**23.**—F28**[...]**

**Annotations**

**Amendments:**

**F28** Repealed (6.04.1997) by *Taxes Consolidation Act 1997* (39/1997), s. 1098 and schedule 30, commenced (with restrictions) by s. 1097.

Amendment of certain taxation provisions.

**24.**—F29**[...]**

(2) F29**[...]**

(3) F30**[...]**

(4) The proviso to subsection (7) (as amended by the Disclosure of Certain Information for Taxation and Other Purposes Act, 1996) of section 39 of the Capital Acquisitions Tax Act, 1976, is hereby deleted.

(5) Subsection (2) (as amended by the Disclosure of Certain Information for Taxation and Other Purposes Act, 1996) of section 104 of the Finance Act, 1983, is hereby amended by the substitution of the following proviso for the proviso to that subsection:

> "Provided that the Commissioners may withdraw an assessment made under this subsection and make an assessment of the amount of tax payable on the basis of a return which, in their opinion, represents reasonable compliance with their requirements and which is delivered to the Commissioners within 30 days after the date of the assessment made by the Commissioners pursuant to this subsection.".

**Annotations**

**Amendments:**

**F29** Repealed (6.04.1997) by *Taxes Consolidation Act 1997* (39/1997), s. 1098 and schedule 30, commenced (with restrictions) by s. 1097.

**F30** Repealed (15.12.1999) by *Stamp Duties Consolidation Act 1999* (31/1999) ss. 160, 163 and sch. 3, commenced on enactment subject to transitional provisions in subss. (2) - (4).

Amendment of section 5 (enquiries or action by inspector or other officer) of the Waiver of Certain Tax, Interest and Penalties Act, 1993.

**25.**—Section 5 of the Waiver of Certain Tax, Interest and Penalties Act, 1993, is hereby amended in subsection (1), by the substitution for "arrears of tax, as the case may be" of "arrears of tax, as the case may be, or that the declaration made by the individual under section 2 (3) (*a*) (iv) is false".

Short title.

**26.**—This Act may be cited as the Criminal Assets Bureau Act, 1996.

ACTS REFERRED TO

| | |
|---|---|
| Capital Acquisitions Tax Act, 1976 | 1976, No. 8 |
| Civil Service Regulation Act, 1956 | 1956, No. 46 |
| Comptroller and Auditor General (Amendment) Act, 1993 | 1993, No. 8 |
| Corporation Tax Act, 1976 | 1976, No. 7 |
| Disclosure of Certain Information for Taxation and Other Purposes Act, 1996 | 1996, No. 25 |
| Exchequer and Audit Departments Acts, 1866 and 1921 | |
| Finance Act, 1983 | 1983, No. 15 |
| Finance Act, 1992 | 1992, No. 9 |
| Garda Síochána (Compensation) Act, 1941 | 1941, No. 19 |
| Garda Síochána (Compensation) (Amendment) Act, 1945 | 1945, No. 1 |
| Income Tax Act, 1967 | 1967, No. 6 |
| Local Government Act, 1941 | 1941, No. 23 |
| Social Welfare (Consolidation) Act, 1993 | 1993, No. 27 |
| Stamp Act, 1891 | 1891, c. 39 |
| Value-Added Tax Act, 1972 | 1972, No. 22 |
| Waiver of Certain Tax, Interest and Penalties Act, 1993 | 1993, No. 24 |

# Appendix C

Criminal Assets Bureau, *Criminal Assets Bureau Annual Report 2019*

# CRIMINAL ASSETS BUREAU Annual Report



# 2019

Appendix C

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Tá an tuarascáil seo ar fáil as Gaeilge freisin.
This report is also available in the Irish language.


This report was compiled and designed by the CAB Annual Report Committee 2019.

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# Letter forwarding report from the Garda Commissioner to the Minister for Justice and Equality

Dear Minister

In accordance with the provisions of section 21 of the Criminal Assets Bureau Act 1996, I am pleased to present to you the 2019 Annual Report of the Criminal Assets Bureau.

2019 was a very busy year for the Bureau. The Bureau brought thirty one new proceeds of crime cases in 2019, the highest number in its twenty four year history.

I note that the Bureau conducted fifty seven search operations consisting of two hundred and twenty seven searches in twenty counties and obtained High Court orders under the Proceeds of Crime Act 1996 in respect of assets in fourteen counties.

The unprecedented number of search operations is evidence of excellent co-operation between the Criminal Assets Bureau and all Garda Divisions

The Bureau has refocused its efforts towards strong co-operation with locally trained Garda Asset Profilers and continues to foster links with local communities and supporting local Garda management in enhancing the role of the Divisional Asset Profilers Network.

In addition, I recognise its extensive co-operation with law enforcement agencies in Northern Ireland, including the Police Service of Northern Ireland (PSNI), Her Majesty's Revenue and Customs (HMRC) and the National Crime Agency (NCA).

Internationally, the Bureau continues to liaise and conduct investigations with law enforcement and judicial authorities throughout Europe and worldwide and is effective at international level as the designated Asset Recovery Office (ARO) in Ireland.

The Bureau has promoted its activities through the Garda Press Office and social media and has demonstrated the utmost professionalism in this area which is welcomed by both the local communities and the media.

During 2019, the Bureau focused on all crimes involving wealth acquisition and returned in excess of €3.9 million to the Exchequer.

I wish the Criminal Assets Bureau every success in the future.

Yours sincerely

**J A Harris**
**COMMISSIONER**
**AN GARDA SÍOCHÁNA**

Letter forwarding report from the Garda Commissioner to the Minister for Justice and Equality

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# Letter forwarding report from Chief Bureau Officer to the Commissioner of An Garda Síochána

Dear Commissioner

It is my pleasure to deliver the 24th Annual Report of the Criminal Assets Bureau for the calendar year 2019. This report is submitted for presentation to the Minister for Justice and Equality pursuant to the provisions of section 21 of the Criminal Assets Bureau Act, 1996. In compliance with its statutory obligations, the report sets out the activities of the Bureau throughout the year in targeting the proceeds of crime.

During the year, the Bureau has continued to focus on the development of the Divisional Asset Profiler Network. The Bureau recognises the contribution of locally trained Asset Profilers in the early identification of suitable targets for action by the Bureau.

During 2019, thirty one new applications were brought before the High Court under the Proceeds of Crime legislation. This compares with thirty such applications in 2018 and marks a period of sustained growth in new cases being brought before the High Court by the Bureau since 2017.

Once again, the majority of these actions were taken arising from the proceeds of drug trafficking. The second most frequent crime type relates to frauds and thefts of various categories. The Bureau will commence an investigation that relates to any criminal conduct which involves the acquisition of wealth.

Under legislation introduced in 2016, the threshold for invoking the Proceeds of Crime Act reduced from €13,000 to €5,000. In 2019, the value of assets under the new proceeds of crime cases commenced by the Bureau ranged in value from €5,010 to €51.2 million. Proceeds of crime actions, together with actions under the Revenue and Social Protection provisions, yielded in excess of €3.9 million to the Exchequer in 2019.

The Bureau co-ordinates its activities in a manner which takes cognisance of the Policing Plan of An Garda Síochána and the strategies of the Office of the Revenue Commissioners, the Department of Employment Affairs and Social Protection and the Department of Justice and Equality. During 2019, the Bureau continued to support the nationwide anti-burglary initiative known as Operation Thor.

Many of the Bureau's investigations have an international dimension and involve co-operation with law enforcement agencies in other jurisdictions. The Bureau is currently participating in the first two Joint Investigation Team (JIT) agreements that Ireland has joined.

The Bureau continues to develop its relationships with Interpol, Europol and the Camden Assets Recovery Inter-Agency Network (CARIN) and continues to represent Ireland on the platform of the Asset Recovery Offices.

At all times, the Bureau receives excellent support from legislators, members of the public and the media. I wish to acknowledge the professional assistance provided to the Bureau by the Garda Press Office.

Staff of the Bureau have developed a significant social media presence through Facebook and Twitter resulting in the promotion of the activity of the Bureau and valuable information from members of the public. I wish also to personally acknowledge the efforts of the Bureau staff in promoting its work through social media.

In addition, the support and cooperation afforded to the Bureau throughout the year by An Garda Síochána, the Office of the Revenue Commissioners, the Department of Employment Affairs and Social Protection, the Department of Justice and Equality, the Department of Finance, the Department of Public Expenditure and Reform, the Office of the Attorney General and the Office of the Director of Public Prosecutions is greatly appreciated.

Likewise, I would also like to acknowledge the expertise and commitment of the solicitors and staff allocated by the Chief State Solicitor to the work of the Bureau. The value of in-house independent legal advice and support cannot be over emphasised in contributing to the success of the Bureau.

I am conscious that the increased activity of the Bureau over the past three years, in particular, has put extra pressure on the staff of the Chief State Solicitor's Office co-located within the Bureau.

The Bureau recognises the increased output of activities has resulted in significantly more demands on the services of the Chief State Solicitor's Office. We therefore support, by way of a joint business case, a request for an increase in staffing levels in that Office.

In addition, I want also to acknowledge the contribution of legal counsel engaged by the Bureau.

During the year, there were many personnel changes within the Bureau arising from the departure of a number of personnel on promotion, retirement and transfer. This is an inevitable reality given the structure of the Bureau and as a result it has given rise to an emphasis on maintaining a strong and well-resourced system for staff training which has been put in place in recent years.

The Bureau is committed to the continuous professional development of all personnel.

During 2019, considerable progress was made in obtaining approval for a Post Graduate Diploma in Proceeds of Crime and Asset Investigation. The Bureau has entered a strategic partnership with the University of Limerick and plans are in place to deliver the course in the academic year commencing in Autumn 2020.

I welcome our new Bureau Legal Officer, Mr Kevin McMeel, who took up his appointment on the 19th July 2019 and wish him luck in the new position.

I also wish to thank our previous Bureau Legal Officer, Mr Declan O'Reilly and our former Detective Superintendent Gearóid Begley for their hard work, commitment and dedication to the Bureau for the last number of years. I

would like to take this opportunity to wish them both every success for the future.

I am pleased that the Bureau has obtained approval for increased resources in 2019 with an increase in Social Welfare Bureau Officers from six to eight.

Finally, I wish to acknowledge the dedication and hard work of all personnel attached to the Bureau past and present. The nature of the work is such that, in many instances, it cannot be publicly acknowledged due to the necessity for anonymity and security requirements for the personnel concerned relating to their work.

Yours sincerely

**PATRICK CLAVIN**
**D/CHIEF SUPERINTENDENT**
**CHIEF BUREAU OFFICER**

Letter forwarding report from Chief Bureau Officer to
the Commissioner of An Garda Síochána

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# Foreword

## Section 21 Report

This is the 24th Annual Report on the activities of the Criminal Assets Bureau (hereinafter referred to as "the Bureau") and covers the period from 1st January 2019 to 31st December 2019 inclusive.

The Criminal Assets Bureau Act 1996 and the Proceeds of Crime Act 1996 have both been amended on a number of occasions but most substantially by way of the Proceeds of Crime (Amendment) Act, 2005.

For the purpose of this report, the Criminal Assets Bureau Act 1996 to 2005 will hereinafter be referred to as "the CAB Act" and the Proceeds of Crime Act 1996 to 2016 will hereinafter be referred to as "the PoC Act". The 1996 CAB Act, together with the 2005 and 2016 Acts, provide a collective title of amendments governing the powers and functions of the Bureau.

This report is prepared pursuant to section 21 of the CAB Act which requires the Bureau to present a report, through the Commissioner of An Garda Síochána, to the Minister for Justice and Equality outlining its activities during the year 2019.

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# Part One
# *Overview of the Criminal Assets Bureau, its Officers and Staff*

## The Bureau

On the 15th October 1996, the Bureau was formally established by the enactment of the CAB Act. The CAB Act provides for (among other matters):

- the objectives of the Bureau;
- the functions of the Bureau;
- the Chief Bureau Officer;
- Bureau Officers;
- staff of the Bureau;
- the Bureau Legal Officer;
- anonymity of staff of the Bureau;
- offences and penalties for identifying staff of the Bureau and their families;
- offences and penalties for obstruction and intimidation;
- CAB search warrants;
- CAB production orders.

## Governance

The interagency and multi-disciplinary structure of the Bureau, together with its multi-stranded governance and accountability pathways, means that the Bureau does not fall within the traditional definition of a State Body within the meaning of the Code of Practice for the Governance of State Bodies. The Bureau does, however, apply the Code of Practice for the Governance State Bodies as adapted to its structure.

The Bureau sets out its goals and commitments for the year in its annual Business Plan 2019. This plan took cognisance of the Statement of Strategy 2017–2019. An updated Strategic Plan covering the years 2020–2023 is currently being drafted.

The Department of Justice and Equality's Internal Audit Unit provides support to the Bureau in monitoring and reviewing the effectiveness of the Bureau's arrangements for governance, risk management and internal controls.

The Internal Audit Unit conducts an independent audit of the Bureau's procedures and processes on an annual basis.

A "Corporate Governance Assurance Agreement" has been signed between the Chief Bureau Officer and the Department of Justice and Equality covering the years 2017 - 2019. This Agreement sets out the broad governance and accountability framework within which the Bureau operates and defines key roles and responsibilities which underpin the relationship between the Bureau and the Department.

An Oversight Agreement between the Bureau and the Department of Justice and Equality is being drafted and will cover the period 2020 – 2022. A separate but related Performance Delivery Agreement is also being drafted for the year 2020.

## Environmental and Energy Issues

As set out in the requirements of the Public Sector Energy Efficiency Strategy 2017, the Chief Bureau Officer appointed Detective Superintendent Gerard Egan as Energy Performance Officer for the Bureau.

The Bureau will participate, progress, promote and report on all initiatives in relation to environmental and energy issues by year end in accordance with S.I. 426 of 2014 (European Union (Energy Efficiency) Regulations).

## Finance

During the course of the year the Bureau expended monies provided to it by the Oireachtas, through the Minister for Justice and Equality, in order to carry out its statutory functions and to achieve its statutory objectives.

All monies provided by the Oireachtas as outlined in the table are audited by the Comptroller and Auditor General, as is provided for under Statute.

Comparison of Accounts for years 2018 / 2019

| Year | Description | Amount € | |
|---|---|---|---|
| | | Budget Provision | Total Spent |
| 2018* | Pay | 7,247,000 | 7,257,000 |
| | Non-pay | 1,701,000 | 1,575,000 |
| | Total | 8,948,000 | 8,832,000 |
| | | | |
| 2019* | Pay | 8,152,000 | 7,712,000 |
| | Non-pay | 1,701,000 | **2,148,000 |
| | Total | 9,853,000 | 9,860,000 |

** Awaiting Audit – Subject to Change*
*** The excess expenditure in the Non Pay area relates mainly to the procurement of a long awaited digital forensics / eDiscovery tool which, when fully operational, will save considerable Bureau man-hours in analysing data.*

## Objectives and Functions

The objectives and functions of the Bureau are respectively set out in sections 4 and 5 of the CAB Act. These statutory objectives and functions are set out in full at Appendix A and may be summarised as:

1. Identifying and investigating the proceeds of criminal conduct;

2. Taking actions under the law to deny and deprive people of the benefits of assets that are the proceeds of criminal conduct by freezing, preserving and confiscating these assets;

3. The taking of actions under the Revenue Acts to ensure that the proceeds of criminal activity are subjected to tax;

4. Investigating and determining claims under the Social Welfare Acts.

## Chief Bureau Officer

The Bureau is headed by the Chief Bureau Officer, appointed by the Commissioner of An Garda Síochána from among its members of the rank of Chief Superintendent. The current Chief Bureau Officer is Detective Chief Superintendent Patrick Clavin who took up his appointment on 4th August 2016.

The Chief Bureau Officer has overall responsibility, under section 7 of the CAB Act, for the management, control and the general administration of the Bureau. The Chief Bureau Officer is responsible to the Commissioner for the performance of the functions of the Bureau.

This section also provides for the appointment of an Acting Chief Bureau Officer to fulfil the functions of the Chief

Bureau Officer in the event of incapacity through illness, absence or otherwise.

## Bureau Legal Officer

The Bureau Legal Officer reports directly to the Chief Bureau Officer and is charged under section 9 of the CAB Act with assisting the Bureau in the pursuit of its objectives and functions.

The current Bureau Legal Officer is Kevin McMeel who took up his appointment on 19th July 2019 following the departure of Declan O'Reilly who returned to the Chief State Solicitor's Office.

## A Body Corporate

The Bureau exists as an independent corporate body as provided for under section 3 of the CAB Act. The status of the Bureau was first considered in 1999 by the High Court in the case of *Murphy -v- Flood* [1999] IEHC 9.

Mr Justice McCracken delivered the judgment of the High Court on the 1st of July 1999. This judgment is pivotal to understanding the nature of the Bureau.

The court set out:

*"The CAB is established as a body corporate with perpetual succession. While the Chief Bureau Officer must be appointed from members of An Garda Síochána of the rank of Chief Superintendent, nevertheless the CAB is independent of An Garda Síochána, although it has many of the powers normally given to that body.*

*...*

*The CAB is a creature of Statute, it is not a branch of An Garda Síochána. It was set up by the Oireachtas as a body corporate primary for the purpose of ensuring that persons should not benefit from any assets acquired by them from any criminal activity. It is given power to take all necessary actions in relation to seizing and securing assets derived from criminal activity, certain powers to ensure that the proceeds of such activity are subject to tax, and also in relation to the Social Welfare Acts. However, it is not a prosecuting body, and is not a police authority. It is an investigating authority which, having investigated and used its not inconsiderable powers of investigation, then applies to the Court for assistance in enforcing its functions.*

*The Oireachtas, in setting up the CAB, clearly believed that it was necessary in the public interest to establish a body which was independent of An Garda Síochána, and which would act in an investigative manner. However, I do not think it is the same as An Garda Síochána, which investigates with an aim to prosecuting persons for offences. The CAB investigates for the purpose of securing assets which have been acquired as a result of criminal activities and indeed ultimately paying those assets over [to] the State."*

## Structure of the Bureau

The interagency and multi-disciplinary structure of the Bureau, which draws together various skill sets from the personnel involved, has the benefit of enhancing investigative capabilities in pursuit of the Bureau's statutory remit. This is possible under section 5 of the CAB Act detailing the functions of the Bureau.

Part One
*Overview of the Criminal Assets Bureau, its Officers and Staff*

## Bureau Officers and staff

Section 8 of the CAB Act provides for the appointment of officers of the Bureau. Members of staff of the Bureau are appointed under section 9 of the CAB Act. Officers of the Bureau are:

A. Members of An Garda Síochána;
B. Officers of the Revenue Commissioners;
C. Officers of the Department of Employment Affairs and Social Protection.

Officers are seconded from their parent agencies. Bureau Officers continue to be vested with their powers and duties notwithstanding their appointment as Bureau Officers.

Members of staff of the Bureau consist of:

- The Bureau Legal Officer;
- Professional members;
- Administrative and technical members.

The authorised staffing level at the Bureau comprising Bureau Officers and other staff stands at ninety three.

Following promotions and retirements during 2019, eight staff vacancies remain at the Bureau at 31st December 2019.

These vacancies include three Sergeant vacancies, two IT vacancies and one Forensic Accountant vacancy. The Bureau is liaising with the relevant bodies and it is anticipated that these vacancies will be filled by Quarter 2, 2020.

## Authorised Staffing Levels

Interagency & multi-disciplinary authorised levels

| | |
|---|---|
| An Garda Síochána | 47 |
| Department of Employment Affairs and Social Protection | 8 |
| Revenue – Cáin agus Custaim na hÉireann / Irish Tax and Customs | 21 |
| | 17 |

## Anonymity

In order to ensure the safety of certain Bureau Officers and staff, anonymity for those members is set out under section 10 of the CAB Act. Under this section, officers and staff of the Bureau execute their duties in the name of the Bureau.

Section 11 of the CAB Act provides for criminal offences relating to the identification of certain Bureau Officers, staff and their families.

The prohibition of identification does not extend to the Chief Bureau Officer, an Acting Chief Bureau Officer, the Bureau Legal Officer or the Bureau Officers who are members of An Garda Síochána.

## Intelligence & Assessment Office

The Intelligence and Assessment Office (IAO) was established in July 2017. Their remit is to analyse the ever increasing volume of business that the Divisional Asset Profilers submit for assessment and consideration.

The IAO is serviced by Bureau Officers covering all agencies within the Bureau. Since the creation of the IAO, the 2019 increase in cases is best illustrated by the number of cases submitted to the Bureau for consideration i.e., from 500 cases to in excess of 1,200 cases.

Once these cases are assessed they are formally submitted to an Admissions Group, serviced by the management of each agency and either accepted or declined as CAB targets based on the merits of each case. Should they be accepted as targets, they will be assigned to a team room for multi-agency investigation.

All operational team rooms receive new cases based on this selection process on a weekly basis. The higher the volume of cases processed through the IAO, the greater the number of cases that make their way into each operational team room.

Additional Gardaí have been allocated to the IAO to deal with the increased referrals.

## Asset Management Office

The Asset Management Office (AMO) was also established in 2017 in order to manage all assets under the control of the Bureau. The diverse range of assets over which the Bureau has responsibility necessitates the deployment of considerable resources to ensure each asset is managed to maintain its value, to fulfil the Bureau's legal obligations and to ensure the optimum value is realised when remitted to the Exchequer.

The AMO now fully manages the recovery of assets for all agencies within the Bureau. The increase in proceeds of crime cases has resulted in an increase in assets which this team has to manage.

The PoC Act requires that an asset is retained for a seven year period following the decision of the High Court (unless agreement is received from the parties involved for immediate disposal). In practice, this period can be considerably longer due to appeals and challenges to such orders. In the case of certain assets, such as properties, this can involve ongoing resources to maintain the property, including in some instances, the Bureau acting as landlord.

In addition to tangible assets retained by the Bureau, there are also considerable assets in respect of tax debts and repayment of social welfare claims which are payable to the Bureau. These debts are also managed by the AMO with a view to realising their worth. This office provides a higher level of governance for assets under the control of the Bureau.

### Asset Financial Management System (AFMS)

The Bureau introduced an Asset Financial Management System that records, manages, reports and monitors assets which have come under the control of the Bureau as a result of operational activities. The primary function of the system is to assist the AMO within the Bureau to efficiently and effectively manage and monitor assets of the Bureau.

A fundamental aspect to this system is the financial function which assist the AMO in the maintenance of Receivership Accounts.

The AMO are required to produce a final financial report on each asset, which once approved, will allow the remittance of funds to the Exchequer. The financial function also allows the reporting of movements of all Receivership bank accounts held by the Bureau.

### eDiscovery Project

The volume of data stored on digital devices has increased dramatically in the last ten years and the burden on investigators to effectively and efficiently review potentially millions of documents in a single case has become a major challenge.

In the same timeframe, the size and volume of cases taken on by the Bureau has increased substantially and has led to the Bureau collecting more and more digital devices and large amounts of paper documentation during investigations.

In order to address these challenges, the Bureau tendered to procure a digital forensics / eDiscovery tool that is capable of taking all of the information from digital items seized during an investigation, combining it with all of the paper documentation seized and presenting it to investigators in a coherent, searchable and easy to use format. This new system will save the Bureau considerable man-hours in analysing data.

The equipment has been purchased, the software is being installed and it is expected that the new eDiscovery tool will be operational in Quarter 1, 2020.

## Chief State Solicitor's Office

The Criminal Assets Section of the Chief State Solicitor's Office (hereinafter referred to as “the CSSO”) provides legal advice and solicitor services to the Bureau.

The CSSO represents the Bureau in both instituting and defending litigation in all court jurisdictions primarily, but not exclusively, with the assistance of Counsel. In addition, the CSSO provides representation for all tax and social welfare matters both before the respective appeal bodies and in the Circuit and Superior Courts.

Furthermore, the CSSO provides general legal advice and solicitor services at all stages of case progression from investigation to disposal, including the provision of both contract drafting and conveyancing services.

During 2019, the CSSO was staffed as follows:

- 3 Solicitors
- 1 Legal Executive
- 2 Clerical Officers

While the work of the CSSO is integral to the success of the Bureau, it is noted that the authorised staffing complement is no longer sufficient to maintain increasing Bureau outputs as evidenced in part by the increase in proceeds of crime cases in 2019.

The Bureau recognises the need for an increase in CSSO staff to support the higher volume of cases being proposed by the Bureau.

## Divisional Asset Profilers

In 2019, the Bureau continued its programme of engagement with Divisional Asset Profilers. During the year the Bureau trained an additional one hundred and five Garda Divisional Asset Profilers to fill vacancies within various Garda Divisions which arose from retirements and promotions. At year end, the total number of Divisional Asset Profilers stood at four hundred and seventy three, which included:

- 448 Gardaí
- 17 Officers of the Revenue Commissioners engaged in Customs and Excise duties;
- 8 Officers of the Department of Employment Affairs and Social Protection

In addition, representatives from the following agencies attended the Divisional Asset Profiler Courses:

- The Anti-Money Laundering Compliance Unit (AMLCU)
- The Competition and Consumer Protection Commission (CCPC)
- Her Majesty's Revenue and Customs (HMRC)
- The Police Service of Northern Ireland (PSNI)
- Health Products Regulatory Authority (HPRA)
- National Crime Agency (NCA)
- Policing Authority
- Department of Agriculture, Food and the Marine

As part of the development of the course, a Divisional Asset Profiler who had been previously trained and is experienced in submitting profiles on local targets has been utilised to give presentations on the course. This initiative received very positive feedback from participants.

### Presentations

In 2019, the Bureau provided a number of talks and training presentations to local District Detective Units and the Divisional Drug Unit in the Limerick Garda Division.

### CPD Event

A seminar was provided on the 17th June 2019 at the University of Limerick held by The Centre of Crime, Justice and Victim Studies on "*Investigating and Prosecuting White Collar Crime*". The Chief Bureau Officer and the Bureau Legal Officer both gave presentations.

## Part One
*Overview of the Criminal Assets Bureau, its Officers and Staff*

### CAB Presentations

During the course of 2019, the Bureau assisted the Crime Training Faculty at the Garda College in Templemore in the provision of Detective Training.

The Bureau delivered presentations to Garda personnel attending the Detective Garda Training Programme and the Senior Investigating Officer's Programme.

The Bureau delivered presentations to the Detective Garda Training Programme on nine occasions during 2019.

The Senior Investigating Officer's Programme was delivered twice over the course of 2019 and on each occasion, the Bureau attended and delivered a presentation.

In 2019, two hundred and twenty two asset profiles were received from Divisional Asset Profilers throughout Ireland as compared to one hundred and eighty four asset profiles received in 2018. Ongoing contact and close co-operation will be maintained both Regionally and Divisionally throughout 2020.

The engagement with Divisional and Regional management was followed up by a number of refresher training courses throughout the country.

Throughout 2019, Divisional Asset Profilers from the various Regions have continued to engage with the Bureau to develop and progress investigations that have significant financial impact on local criminals and, in turn, provide positive feedback within local communities suffering from the activities of these criminals.

The Divisional Asset Profiler Network will continue to be developed in 2020 through the training of additional Divisional Asset Profilers.

The following cases provide examples of Bureau investigations that originated from Divisional Asset Profilers:

### Case 1

Following a referral by a local Divisional Asset Profiler, the Bureau commenced an investigation into the assets of an individual in the Dublin 11 area who was suspected to be involved in the sale and supply of controlled drugs.

The Bureau's investigation resulted in the granting of an order under section 3 of the PoC Act over €72,450 cash, a residential property in Dublin 11 valued at €250,000 and an apartment in Bulgaria valued at €25,000.

### Case 2

Following a referral by a local Divisional Asset Profiler, the Bureau commenced an investigation into the assets of an organised crime group (OCG) suspected

to be involved in the commission of burglaries.

During the Bureau's investigation, it was further discovered that the OCG was involved in extortion of monies from building contractors building social housing in the Dublin 10 area. The individuals involved had set up a Security and Fence Maintenance company as a cover for the receipt of monies from two building contractors.

Several incidents of criminal damage and intimidation occurred at two building sites following which the building contractors employed the services of the individuals involved.

The Bureau's investigation resulted in the granting of an order under section 3 of the PoC Act over €259,352.95 held in bank accounts linked to the individuals, a mobile home valued at €12,000 located in Co. Wexford and an Ifor Williams Horse Box valued of €1,500.

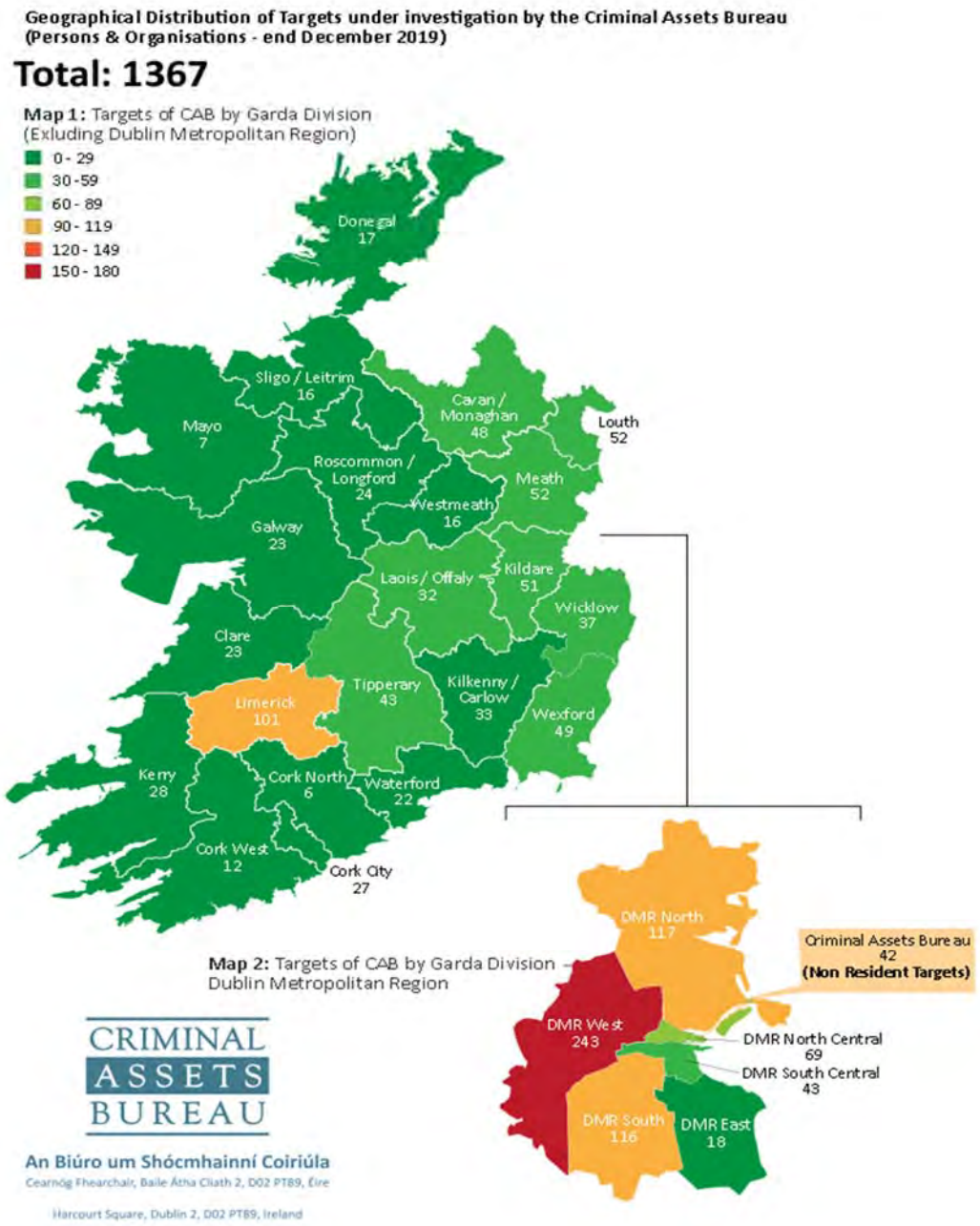
Revenue actions were also used against the individuals.

Mobile Home

Ifor William Horse Box

Part One

*Overview of the Criminal Assets Bureau, its Officers and Staff*



## Training and Development

### Proceeds of Crime & Asset Investigation (POCAÍ)

(Formerly known as TACTIC (The Asset Confiscation and Tracing Investigator's Course)

Since its establishment in 1996, the Bureau's multi-agency structure is recognised as the most powerful tool in the State's armoury in tackling organised crime groups and criminals and is the envy of law enforcement worldwide.

As a part of its prescribed statutory function, it currently provides national and international assistance and education to other law enforcement / regulatory agencies and State bodies, including the European Union Agency for Law Enforcement Training, the Federal Bureau of Investigation (FBI), the National Cyber Investigative Joint Task Force (NCIJTF) of the United States of America, the Australian Federal Police (AFP) and the National Agency of Ukraine for Finding, Tracing and Management of Assets derived from Corruption and Other Crime.

The development of training in the field, which is multi-agency in orientation, is now regarded as critical for the delivery of an effective and professional service, both nationally and internationally.

Following the success of the Asset Confiscation and Tracing Investigator's Course (TACTIC), the Bureau recognised that Bureau Officers do not currently possess an academically recognised qualification for their skill set in this area.

Bureau Officers undertook the significant task of drafting a submission to the University of Limerick for the Level 9 Accreditation of this skill set.

As a result, *the Criminal Assets Bureau: Postgraduate Diploma in Proceeds of Crime & Asset Investigation* was drafted and submitted to the University of Limerick in December 2019. The resulting training programme will upskill appointed Bureau Officers and provide them with an academically recognised qualification for their skill set in the area of proceeds of crime investigation, asset identification, seizure, confiscation and recovery.

This programme will be delivered by internal experts from the Bureau and by external experts in areas such as proceeds of crime procedures, white-collar crime, bribery and corruption, evidence and international co-operation.

The Postgraduate Diploma in Proceeds of Crime & Asset Investigation is an accelerated programme which will be delivered in five modules of learning namely:

1. Multi-agency Proceeds of Crime Investigation
2. Dark-Net & Open Source Intelligence
3. Forensic Accounting
4. National and International Best Practice in Proceeds of Crime Investigation, Law, Procedure, Policy and Practice
5. The Experiential Learning Module

This new programme will be delivered by the Bureau in conjunction with the University of Limerick in September 2020 and it is expected that the programme will be run from the University of Limerick's School of Law under Course Director Professor Shane Kilcommins.

The Bureau wishes to extend its sincere thanks to the University of Limerick's President, Dr Des Fitzgerald and to Professor Shane Kilcommins for their support, advice and determination in securing the programme's successful inclusion in the 2020 curriculum.

## Study Visit: Moldovan Asset Recovery Office

The Bureau hosted a study visit for Officers from the Moldovan Asset Recovery Office on 13th May 2019. The Moldovan delegation set up their Asset Recovery Office in 2018.

Chief Bureau Officer, Pat Clavin and Detective Inspector Barry Butler with colleagues from the Moldovan Asset Recovery Office

## UN Interregional Crime and Justice Research Institute (UNICRI)

The Bureau gave a presentation to the Prosecutors and Judges from Tunisia, Libya and Egypt in respect of a training course organised and run by the UNICRI on 11th September 2019 in Tunis, Tunisia. The purpose of the presentation was to increase awareness among the participants of the options available to them in respect of the identification, freezing and recovery of criminal assets, mainly originating from corruption and theft from national Governments. Presentations were also given by the National Crime Agency and the Bulgarian Authorities.

Training course organised UNICRI

## Study visit: Judiciary from Ukraine – High Anti-Corruption Court (HACC)

The Bureau hosted a study visit from the High Anti-Corruption Court on the 11th December 2019 in order that they might learn about the work of the Bureau. The mandate of the HACC is to adjudicate in confiscation proceedings where the respondent is alleged to be in possession of the proceeds of crime.

Chief Bureau Officer, Pat Clavin and Detective Superintendent Ger Egan with colleagues from the High Anti-Corruption Court, Ukraine

## Staff Training

During 2019, the Bureau continued to upgrade and enhance the training needs of Bureau Officers and staff. In this regard, the Bureau provided funding for staff participation in the following courses:

- Accounting and Finance, Griffith College
- Applied and Professional Ethics
- Corporate, Regulatory & White Collar Crime, Kings Inn
- Corporate Sector Training on Company Law, UCD
- Forensic Computing and Cyber Crime Investigation, UCD
- Penetration Testing, Kali Linua
- Social Media and Media Law, Kings Inn
- The Strategic Command Course, College of Policing, UK

In addition, a number of awareness briefings took place throughout 2019 to all staff of the Bureau on relevant topics including Search of Premises training; Court Room Evidence; Health and Wellbeing; FIU Money Laundering Trends and recent legislative changes – Terrorist Financing – new STR reporting database; FMS Business One, Central Register Training, Garda Síochána Interview Model (GSIM) – Level 2 and Level 3, CBD1 Driving, Performance, Accountability and Learning Framework (PALF) and Serious Crime at the University of Limerick.

## Virtual Currencies

The Bureau continues to maintain its level of knowledge and investigative ability in the field of crypto-currencies and their use in criminal conduct worldwide. The Bureau is one of the foremost law enforcement agencies to have identified the potential for criminals to exploit the characteristics of crypto-currencies to generate and launder the proceeds of crime.


Through its investigations, the Bureau has made a number of seizures of various forms of crypto-currencies including 'Bitcoin' and 'Ethereum'. The Bureau's seizure of the crypto-currency 'Ethereum' is the first of its kind by any law enforcement agency worldwide.

In 2019, the Bureau assisted the U.S. Department of Homeland Security in a multi-million dollar crypto-currency theft investigation and was successful in the recovery of a significant portion of the stolen funds.

In order to maintain the Bureau's position as one of the foremost recognised law enforcement agencies in its ability to investigate, seize, retain and dispose of crypto-currencies, the Chief Bureau Officer sanctioned the attendance of a Bureau Officer at a CEPOL Asset Recovery and Confiscation training forum at Lido Di Ostia (Rome) in July 2019, which focused on crypto-currency and the Darknet.

These forums allow the Bureau to share and enhance their knowledge in this area and generate global expert contacts in

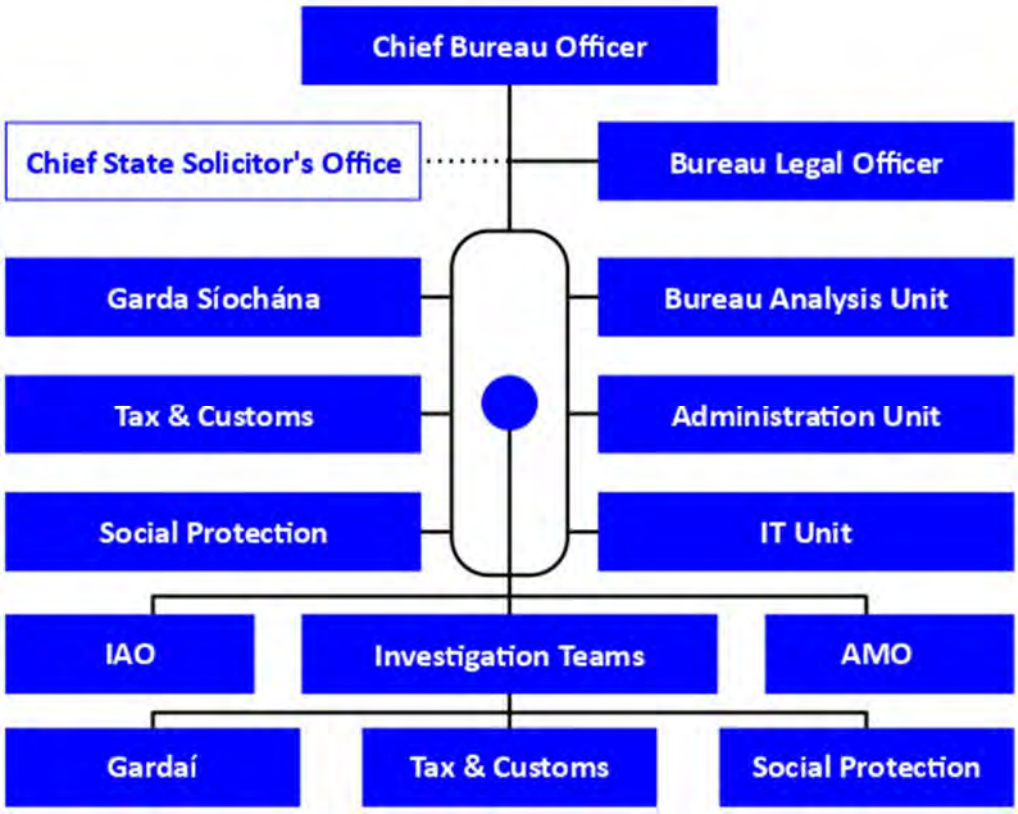
this field which benefit future Bureau investigations.

The Bureau has provided a number of training presentations and seminars through the Garda College to members of An Garda Síochána and other associated agencies in 2019. These include:

- The training of student Gardaí at the Garda College
- Divisional Asset Profiler Courses
- Specialised Units attached to Special Crime Operations
- The National Drugs Strategy Training Programme

The Bureau is committed to maintaining its position as a globally recognised investigative agency in this area through its knowledge and its ability to deny and deprive criminals of its benefits.

Diagram: Organisation of the Bureau



Part One
*Overview of the Criminal Assets Bureau, its Officers and Staff*

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# Part Two
# *Criminal Assets Bureau investigations*

## Investigations

During 2019, Bureau Officers continued to exercise the powers and duties vested in them under section 8 of the CAB Act.

It is important to note that this section emphasises that Bureau Officers retain the duties and powers conferred on them by virtue of membership of their respective parent organisations.

In addition to these powers, the Bureau has particular powers available to it namely:

1. CAB search warrants;
2. Orders to make material available to CAB.

These powers are contained within section 14 and section 14A of the CAB Act and the PoC Act, respectively.

The Bureau conducted its investigations throughout 2019 with the cooperation and assistance of Garda personnel from Garda Divisions and also from Garda National Units such as the Garda National Economic Crime Bureau (GNECB), the Garda National Drugs and Organised Crime Bureau (GNDOCB), the Garda National Bureau of Criminal Investigation (GNBCI), the Emergency Response Unit (ERU), the Special Detective Unit (SDU) and the Security and Intelligence Section, Garda Headquarters. Investigations were also supported by the Office of the Revenue Commissioners.

The Bureau continued to co-operate with the Special Investigation Units of the Department of Employment Affairs and Social Protection in respect of their investigations in 2019.

This continued assistance has been critical to the success in targeting the proceeds of criminal conduct during 2019.

## Section 14

Section 14 of the CAB Act provides for CAB search warrants. Under section 14(1), an application may be made by a Bureau Officer, who is a member of An Garda Síochána, to the District Court for a warrant to search for evidence relating to assets or proceeds deriving from criminal conduct.

Section 14(2) & (3) provides for the issue of a similar search warrant in circumstances involving urgency whereby the making of the application to the District Court is rendered impracticable. This warrant may be issued by a Bureau Officer who is a member of An Garda Síochána not below the rank of Superintendent.

During 2019, all applications under section 14 were made to the District Court and no warrants were issued pursuant to section 14(2).

A section 14 search warrant operates by allowing a named Bureau Officer, who is a member of An Garda Síochána, accompanied by other such persons as the Bureau Officer deems necessary, to search, seize and retain material at the location named. This is noteworthy in that it allows the member of An Garda Síochána to be accompanied by such other persons as the Bureau Officer

deems necessary, including persons who are technically and/or professionally qualified people, to assist him/her in the search.

These warrants are seen as an important tool which allows the Bureau to carry out its investigations pursuant to its statutory remit.

During 2019, the Bureau executed two hundred and twenty seven warrants in targeting organised crime groups. In particular, the Bureau targeted a known organised crime group based in the North of the country. The section 14 warrants were used to search numerous private residences as well as professional offices and other businesses. This led to the seizure of large amounts of cash and vehicles.

## Section 14A

Section 14A was inserted by the PoC Act 2005. This section provides for applications to be made by a Bureau Officer, who is also a member of An Garda Síochána, to apply to the District Court for an order directed to a named person to make material available to the Bureau Officer.

The section 14A Production Orders have been used primarily in uplifting evidence from a number of financial institutions within the State. The material obtained relates to banking details, and in many instances, the transfer of large amounts of money between accounts.

As a result of the information gleaned, the Bureau has been able to use this evidence in ongoing investigations into a number of individuals which were believed to have possession of assets which represent, directly or indirectly, the proceeds of crime.

During 2019, the Bureau executed three hundred and ninety six orders pursuant to section 14A.

## Applications made during 2019

During 2019, the following number of applications were made under section 14 and 14A of the CAB Act and the PoC Act, respectively:

Applications under section 14 & 14A CAB Act, 1996 & 2005

| Description | Applications | |
|---|---|---|
| | 2018 | 2019 |
| Search warrants under section 14 CAB Act, 1996 & 2005 | 171 | 227 |
| Orders to make material available under section 14A of the CAB Act, 1996 & 2005 | 275 | 396 |

## Section 17

Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010

Section 17(2) of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 allows for members of An Garda Síochána to obtain orders through the District Court to restrain the

movement of money held in bank accounts.

During 2019, the Bureau used this order on five hundred and forty six occasions. These orders were obtained in respect of forty two separate targets currently under investigation by the Bureau.

Such orders remain in force for a period of four weeks which allows time for the investigating member to establish if this money is in fact being used in respect of any money laundering or terrorist financing offences. After such time, that order will either lapse or can be renewed by the investigating member in the District Court.

The total amount of funds currently restrained under this provision is in excess of €1,820,978,61, £85,647.00 Sterling and $13,000 US Dollars.

The making of section 17(2) order by the District Court may be challenged in that court by making an application pursuant to section 19 or 20 of the 2010 Act.

## Criminal Prosecutions

### Case 1

During a Bureau search operation in County Limerick, Bureau Officers located a quantity of controlled drugs. Two individuals were arrested.

An investigation file was prepared and submitted to the Office of the Director of Public Prosecutions (DPP). Charges were directed and two individuals are currently before the Circuit Court charged with offences under the Misuse of Drugs Act 1977 & 1984.

### Case 2

The Bureau commenced a criminal investigation into threats / intimidation of a Bureau Officer during the course of their work. An individual was arrested for an offence contrary to section 13 of the CAB Act (Intimidation of Bureau Officers). This individual was detained under the provisions of the Criminal Justice Act 1984, as amended.

An investigation file was prepared and submitted to the DPP, charges were directed and one individual was brought before the District Court charged with two offences contrary to section 13 of the CAB Act (Intimidation of Bureau Officers).

### Case 3

The Bureau commenced a criminal investigation into the provision of falsified documents to the Bureau by an individual involved in the used motor trade industry.

An investigation file was prepared and submitted to the DPP, charges were directed and one individual was brought before the District Court and subsequently the Circuit Court charged with offences contrary to section 6, section 26 and section 29 of the Criminal Justice (Theft and Fraud Offences) Act 2001 and section 2(d) of the TCA 1997.

Part Two
*Criminal Assets Bureau investigations*

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# Part Three
# *Actions under the Proceeds of Crime Acts 1996 to 2016*

## Introduction

The Proceeds of Crime Act, 1996 to 2016 ("PoC Act") provides for the mechanism under which the Bureau can apply to the High Court to make an order ("an interim order") prohibiting a person / entity from dealing with a specific asset, or in other words, freezes the specified asset.

The PoC Act further allows for the High Court to determine, on the civil burden of proof, whether an asset represents, directly or indirectly, the proceeds of criminal conduct.

In 2005, the PoC Act was amended to allow the proceedings to be brought in the name of the Bureau instead of its Chief Bureau Officer. Consequently since 2005, all applications by the Bureau have been brought in the name of the Bureau.

The High Court proceedings are initiated by way of an application under section 2(1) of the PoC Act which is always grounded upon an affidavit sworn by the Chief Bureau Officer. Other affidavits are sworn by relevant witnesses including Bureau Officers and members of staff of the Bureau, member of An Garda Síochána from outside the Bureau including Divisional Asset Profilers and in some instances, by officers from law enforcement agencies from outside the jurisdiction.

The PoC Act provides that the originating motion may be brought ex-parte. This means that the Bureau makes its application under section 2(1) of the PoC Act without a requirement to notify the affected person (the respondent). The section 2(1) order lasts for twenty one days unless an application under section 3 of the PoC Act is brought within that period.

Section 2 of the PoC Act also provides that the affected person should be notified during this time.

During 2019, section 3 proceedings were initiated in all cases brought by the Bureau where a section 2(1) order was made. Section 3 of the PoC Act allows for the longer term freezing of assets. It must be noted that proceedings under the PoC Act may be initiated in the absence of a freezing order under section 2(1) by the issuing of an originating motion pursuant to section 3(1).

While section 3 cases must be initiated within twenty one days of a section 2 order, in practice, it may take some considerable time before the section 3 hearing comes before the High Court. The affected person (the respondent) is given notice of the section 3 hearing and is entitled to attend the hearing and challenge the case in respect of the specified asset.

In cases where the respondent has insufficient means to pay for legal representation, the respondent may apply to the court for a grant of legal aid under a Legal Aid Scheme in place for this purpose. This ensures access to legal representation in cases involving the Bureau, provided the necessary criteria for the scheme, have been met.

If it is ultimately shown to the satisfaction of the High Court following a section 3 hearing that the asset represents, directly

or indirectly, the proceeds of criminal conduct then the court will make an order freezing the asset. This order lasts a minimum of seven years during which the respondent or any other party claiming ownership in respect of the property can make applications to have the court order varied in respect of the property.

At the expiration of the period of seven years, the Bureau may then commence proceedings to transfer the asset to the Minister for Public Expenditure and Reform or other such persons as the court determines under section 4 of the CAB Act. During these proceedings, all relevant parties are again notified and may make applications to the court.

Where the period of seven years has not expired, a Consent Disposal Order under section 4A of the CAB Act may be effected with the consent of the respondent and the court.

## Section 1A Review

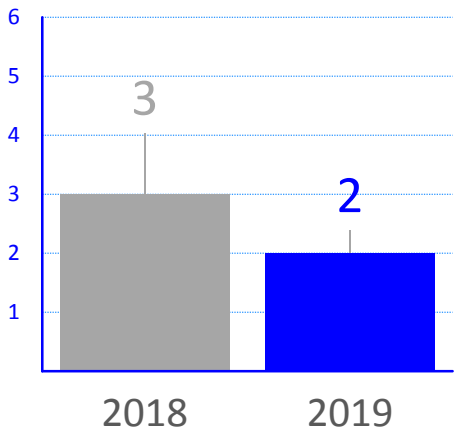
The PoC Act was amended by the PoC (Amendment) Act, 2016. This amendment provides that where a Bureau Officer is in a public place, or in another place where he is authorised or invited, or is carrying out a search, and finds property that he believes to be the proceeds of crime with a value not less than €5,000, then that Officer may seize the property for a period not exceeding twenty four hours.

The Chief Bureau Officer may, during the twenty four hour period, authorise the detention of the property for a period of up to twenty one days, provided he/she:

a) Is satisfied that there are reasonable grounds for suspecting that the property, in whole or in part, directly or indirectly, constitutes the proceeds of crime,
b) Is satisfied that there are grounds for suspecting that the total value of the property is not less than €5,000,
c) Is satisfied that the Bureau is carrying out an investigation into whether or not 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 an authorisation, be disposed of or otherwise dealt with, or have its value diminished, before such an application may be made.

During 2019, the Bureau invoked its powers under section 1A of the PoC Act on two occasions, an example of which is set out below.

Number of cases which section 1A orders made



*Example:*
The Bureau took possession of two vehicles (191 Volkswagen Arteon and a 151 Volkswagen Passat valued at approx €60,000 in total) in October 2019 belonging to members of an organised crime group based in the Waterford City area who are involved in distribution of controlled drugs. Within the twenty one day period of detention, the Bureau made an application to the High Court and was successful in obtaining orders under section 2 & 7 of the PoC Act.

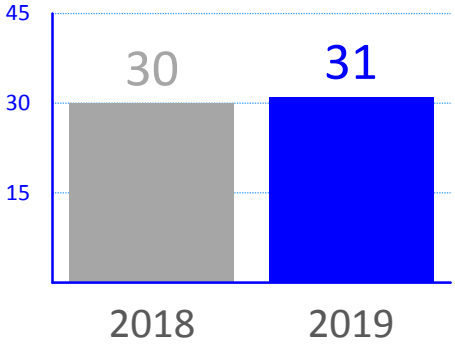
The matter was then listed before the High Court and an order was subsequently made pursuant to section 3 of the PoC Act in respect of the vehicles.

## Cases commenced

Thirty one new cases commenced during 2019. Of the cases commenced, all cases were initiated by issuing proceedings by way of originating motion under section 2 of the PoC Act.

The Bureau notes that this is the largest number of proceeds of crime cases commenced in a single year since the inception of the Bureau. The Bureau has been engaged in extensive work in preparing these investigations to allow it to bring these cases in 2019.

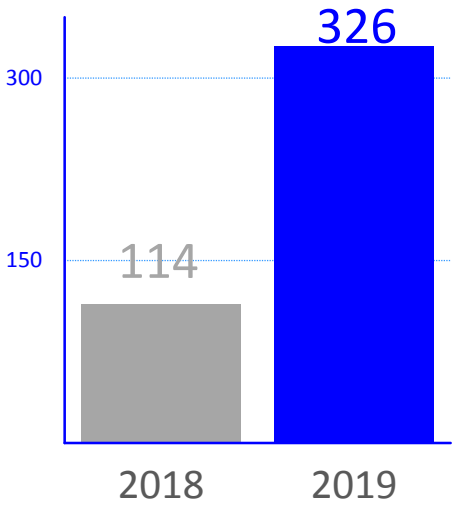
New POC cases brought before the High Court




## Section 2(1) Review

When analysed, the number of assets over which an order was obtained under section 2(1) increased in comparison to 2018 from one hundred and fourteen assets in 2018 to three hundred and twenty six assets in 2019.

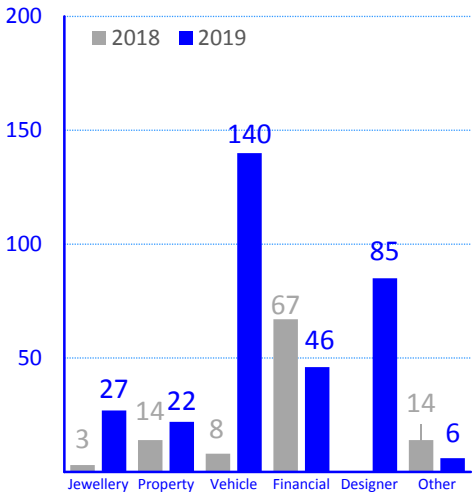
Assets over which section 2(1) Orders made



## Part Three
*Actions under the Proceeds of Crime Act 1996 to 2016*

During 2019, the Bureau took proceedings in respect of a variety of asset types. For profiling purposes, the assets are broken down into jewellery, property, vehicles, financial, designer goods and other.

Assets over which section 2(1) orders made
*Breakdown of assets by asset type*




## Valuation Breakdown

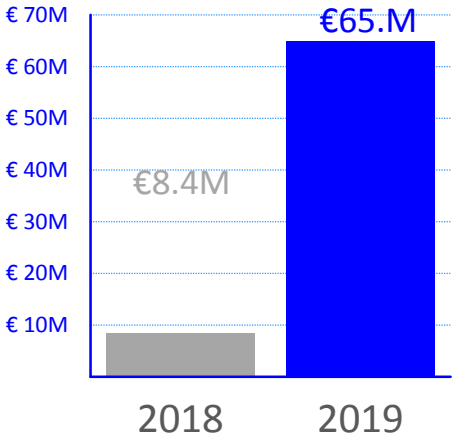
The value of the three hundred and twenty six assets frozen under section 2 of the PoC Act during the year 2019 was €64,985,550.30. This figure may be broken down in the table below.

Analysis of section 2 order by Asset Type

| Description | € |
|---|---|
| Jewellery | 185,730.00 |
| Property | 7,844,133.77 |
| Vehicle | 1,838,798.12 |
| Financial | 54,650,943.92 |
| Designer Goods | 58,875.00 |
| Other | 407,069.49 |
| **Total** | **64,985,550.30** |

The figures in respect of jewellery, property, vehicles, designer goods and other are based on the estimated value placed by the Bureau on the asset at the time of making the application under section 2(1) of the PoC Act.

Value of assets frozen under section 2(1)




The results for 2019 compared to 2018 show the value of assets frozen under section 2(1) has increased by €56 million from the previous year where the value was €8,393,582.30. This large increase is due to the granting of a freezing order over cryptocurrency to the value of €53,023,140.

The value of assets fluctuates in each case depending on whether high ranging assets to low ranging assets are targeted. The value of such orders range from €5,010 to €51.2million.

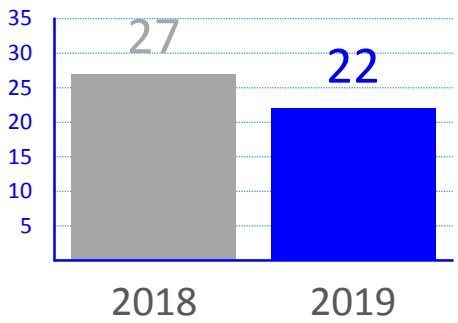
The reduction of the threshold under the new legislation in 2016 contributed to the seizure of an additional 186% of assets in 2019 over 2016.

## Section 3 Review

A section 3(1) orders is made at the conclusion of the hearing in which the High Court has determined that a particular asset or assets represent the proceeds of criminal conduct. As such, the date and duration of the hearing is a matter for the High Court and not within the direct control of the Bureau.

During 2019, twenty two cases before the High Court, to the value of €3,374,696.23, had orders made under section 3(1).

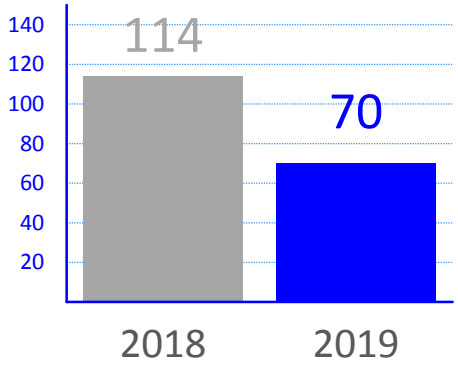
Number of cases in which section 3(1) orders made.




The Bureau notes the decrease in the number of cases that were heard in 2019.

The number of assets over which orders were made by the High Court pursuant to section 3(1) decreased from one hundred and fourteen assets in 2018 to seventy assets in 2019.

Assets over which section 3(1) orders made.

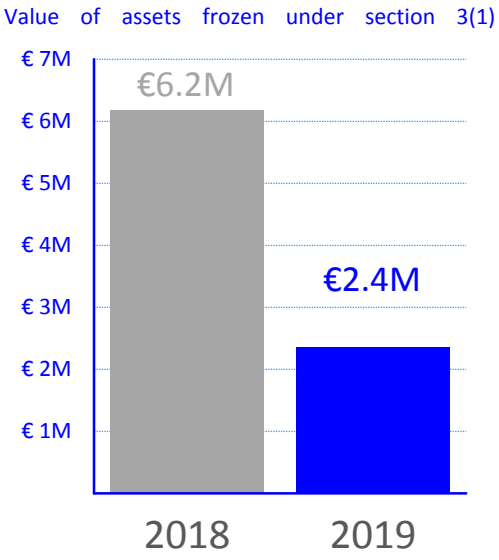



Analysis of section 3 order by Asset Type

| Description | € |
|---|---|
| Jewellery | 25,000.00 |
| Property | 1,840,200.00 |
| Vehicle | 177,750.00 |
| Electronics | 920.00 |
| Financial | 1,302,826.23 |
| Other | 28,000.00 |
| **Total** | **3,374,696.23** |

Part Three

*Actions under the Proceeds of Crime Act 1996 to 2016*




## Section 3(3)

Section 3(3) of the PoC Act provides for the varying or discharge of an existing section 3(1) order. An application pursuant to section 3(3) can be made by the respondent in a case taken by the Bureau or by any other person claiming ownership of the property. While section 3(3) largely contemplates the bringing of an application by a respondent in a case, it can also provide an opportunity for victims of crime, demonstrating a propriety interest in the asset frozen, to make an application for the return of same.

Section 3(3) also provides an opportunity for those interested persons to vary or discharge a section 3(1) order where it can be established, to the satisfaction of the court, that the asset in question is not the proceeds of criminal conduct. No such orders were made under section 3(3) of the PoC Act during 2019.

## Geographical Breakdown

The Bureau's remit covers investigation of proceeds of crime cases irrespective of the location of the assets.

During 2019, the Bureau obtained orders over assets in respect of proceeds of crime in all of the large urban areas, rural communities and foreign jurisdictions.

The Bureau remains committed to actively targeting assets which are the proceeds of criminal conduct, wherever they are situated to the fullest extent under the PoC Act.

The Bureau is further developing its national coverage through the Commissioner of An Garda Síochána's revised policy on the Tasking of Divisional Asset Profilers. This will ensure that there is a focus on local criminal targets throughout the State for action by the Bureau.

## Property

The statutory aims and objectives of the Bureau require that the Bureau take appropriate action to prevent individuals, who are engaged in serious organised crime, benefiting from such crime.

In cases where it is shown that the property is the proceeds of criminal conduct, the statutory provision whereby an individual enjoying the benefit of those proceeds may be deprived or denied that benefit, includes that he/she should be divested of the property.

This policy of the Bureau may require pursuing properties, notwithstanding the fact that in some cases the property remains in negative equity.

This is designed to ensure that those involved in serious organised crime are not put in the advantageous position by being able to remain in the property and thereby benefit from the proceeds of crime.

## Vehicles

The Bureau continues to note the interest of those involved in serious organised crime in high value vehicles. However, during 2019 the Bureau targeted a number of mid-range to upper-range valued vehicles. This is, in part, a response to actions being taken by those involved in crime to purchase lower valued vehicles in an attempt to avoid detection.

An example of the types of vehicles seized by the Bureau under section 2(1) and section 3(1) of the PoC Act during the year 2019 was:

- Audi A4, A6, Q7
- Ford Transit
- Citroen Berlingo
- Volkswagen Passat
- BMW 520, X5
- Mercedes E Class
- Peugeot Partner

## Luxury Goods

The Bureau is continuing to target ill-gotten gains through the purchase of high end luxury goods such as mobile homes, designer handbags, store cards, designer clothing and footwear, examples of which are shown hereafter.

### *Case 1*

The individual in this case was referred to the Bureau by the Special Crime Task Force, following the seizure of €22,720 cash during the course of a search of a residential premises in West Dublin in September 2016, as part of an investigation into the sale and supply of controlled drugs. The individual in this case and the immediate members of his family displayed a lavish lifestyle, despite them being on social welfare.

During a search operation conducted by the Bureau, a 131 Audi A5 valued at €20,000; a 141 Audi A4 valued at €14,000; a 2011 Volkswagen Polo valued at €6,000 and assorted designer luxury goods valued at €46,190 were seized.

The Bureau's investigation resulted in the granting of an order under section 2 of the PoC Act over €22,720 cash, a 131 Audi A5 valued at €20,000; a 141 Audi A4 valued at €14,000; a 2011 Volkswagen Polo valued at €6,000 and assorted designer luxury goods valued at €46,190.

*Case 2*

The individual in this case came to the attention of the Bureau following an investigation by the Bureau into members of his extended family. The Bureau's investigation identified that the individual was displaying a lavish lifestyle at a time when they had limited legitimate income.

The Bureau's investigation resulted in the granting of an order under section 2 of the PoC Act over a residential property in West Dublin valued at €240,000; €146,945 held in eight financial accounts; four motor vehicles with cumulative value of €77,000; €12,500 cash and associated designed luxury goods valued at €63,000.

## Section 4(1) and 4A

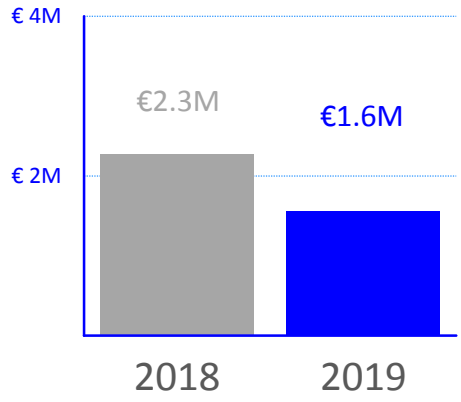
Section 4(1) provides for the transfer of property to the Minister for Public Expenditure and Reform. This section refers to assets which have been deemed to be the proceeds of criminal conduct, for a period of not less than seven years, and over which no valid claim has been made under section 3(3) of the PoC Act.

An Roinn Caiteachais Phoiblí agus Athchóirithe
Department of Public Expenditure and Reform

Section 4A allows for a consent disposal order to be made by the respondent in an application pursuant to the PoC Act, thus allowing the property to be transferred to the Minister for Public Expenditure and Reform in a period shorter than seven years. This was introduced in the 2005 PoC Act.

Seventeen cases were finalised and concluded under section 4(1) and 4A in 2019.

Value of assets frozen under section 4(1) and 4A




During 2019, a total of €1,559,726.31 was transferred to the Minister for Public Expenditure and Reform under the PoC Act arising from section 4(1) and 4A disposals.

Section 4(1) & 4A Breakdown

| Description | No. of Cases 2018 | € 2018 |
|---|---|---|
| Section 4(1) | 3 | 184,005.98 |
| Section 4A | 19 | 2,087,793.94 |
| Total | 22 | 2,271,799.92 |

| **Description** | **No. of Cases 2019** | **€ 2019** |
|---|---|---|
| Section 4(1) | 4 | 357,887.84 |
| Section 4A | 13 | 1,201,838.47 |
| **Total** | **17** | **1,559,726.31** |

While CAB activity continues to increase, the yield to the Exchequer may be down on any given year. This is also due in part to the obligation to wait seven years for conclusion of section 4 PoC order, if a Consent Order under section 4A is not forthcoming prior to the seven years.

*Case 1*

*Criminal Assets Bureau –v- Routeback Media AB t/a Local Mart and Harry Zeman - Record Number 2018 No. 1 CAB*

The Bureau obtained an order under section 4 of the PoC Act over $651,447.85 and continuing interest held in a bank account. The section 3 order in this case was granted by the late Mr Justice Feeney on the 20th January 2011.

The Bureau's case, which was accepted by the High Court in 2011 in the original proceedings pursuant to section 3 of the PoC Act, was that the funds represented wholesale online credit card fraud by the first named respondent, a Swedish company under the direction of the second named respondent back in 2002.

The fraud comprised of the illegal charging of $9.95 to over ninety thousand credit cards, many of which were lost or stolen. The company, in its defence, claimed it was providing email services to its customers.

After initiating the section 4 proceedings, the second named respondent made an application pursuant to section 3(3) of the PoC Act seeking to set aside the 2011 order. Both applications were consolidated and heard by Ms Justice Stewart on the 3rd December 2019. The court reserved judgment and indicated it would deliver judgment on a later date.

*Case 2*

The Bureau obtained an order under section 4 of the PoC Act over €50,000 cash seized by local Gardaí from Dundalk in November 2007. The cash was contained in a plastic sack when Gardaí

searched a car at the Carrickdale Hotel in Dundalk. The driver who is a resident of Northern Ireland, was involved in cigarette smuggling and in the sale and supply of controlled drugs in Northern Ireland.

The section 2 order in this case was obtained in 2008, with the section 3 order obtained in 2011. The granting of the section 4 order finalises the Bureau's action in this case.

## Section 6

Section 6 provides for the making of an order by the court during the period whilst a section 2(1) or 3(1) order is in force to vary the order for the purpose of allowing the respondent or any other party:

1. A discharge of reasonable living or other necessary expenses; or
2. Carry on a business, trade, profession or other occupation relating to the property.

During 2019, four such orders were made to the value of €11,292.

## Section 7

Section 7 provides for the appointment, by the court, of a Receiver whose duties include either to preserve the value of, or dispose of, property which is already frozen under section 2 or section 3 orders.

In 2019, the Bureau obtained receivership orders in regard to one hundred and eighty four assets. In every case the receiver appointed by the court was the Bureau Legal Officer. These cases involved properties, cash, money in financial institutions, motor vehicles, electronics, jewellery and watches. In some receivership cases, the High Court made orders for possession and sale by the Receiver. A receivership order cannot be made unless a section 2 or section 3 order is already in place.

Statement of Receivership Accounts

| | Euro€ | Stg£ | US$ |
|---|---|---|---|
| Opening balance receivership accounts 01/01/2019 | 12,417,452.57 | 208,045.48 | 655,167.27 |
| Amounts realised, inclusive of interest and operational advances | 3,180,464.24 | 2.16 | 2,866.60 |
| Payments out, inclusive of payments to Exchequer and operational receivership expenditure | 2,668,438.83 | 0.00 | 1,003.31 |
| Closing balance receivership accounts 31/12/2019 | 12,929,477.98 | 208,047.64 | 657,030.56 |

Part Three
*Actions under the Proceeds of Crime Act 1996 to 2016*

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# Part Four
# *Revenue actions by the Bureau*

## Overview

Revenue Bureau Officers perform duties in accordance with the Taxes Consolidation Act 1997, Value-Added Tax Consolidation Act 2010, Capital Acquisitions Tax Consolidation Act 2003, the Stamp Duties Consolidation Act 1999, Local Property Tax Act 2012 as amended (hereinafter referred to as the Tax Acts) to ensure that the proceeds of crime or suspected crime, are subject to tax. This involves the gathering of all available information from our partner agencies under the provisions of section 8 of the CAB Act.

## Tax Functions

The following is a summary of actions taken by the Bureau during 2019 and an update of the status of appeals made on foot of tax assessments and decisions made by the Bureau.

## Tax Assessments

Revenue Bureau Officers are empowered to make assessments under section 58 of the Taxes Consolidation Act 1997 (hereinafter referred to as the TCA 1997) - the charging section.

During 2019, a total of fifty individuals and corporate entities were assessed under the provisions of the Tax Acts, resulting in a total tax figure of €11.7m.

## Appeals to the Tax Appeal Commissioners

The Tax Appeals Commission (TAC) was established on 21st March 2016 as an independent statutory body, the main function of which is hearing, determining and disposing of appeals against assessments and decisions of the Bureau and the Revenue Commissioners concerning taxes and duties in accordance with relevant legislation.

During 2019, there was a further increase in the level of engagement between the TAC and the Bureau. The increased engagement resulted in the progression of a substantial number of new appeals in addition to a number of legacy cases. The Bureau continues to positively engage with the TAC with a view to progressing all open tax appeals.

Revenue Tables 1 and 2 located at the end of this chapter summarise the appeal activity for 2019.

At 1st January 2019, thirty nine cases were before the TAC for adjudication. During the year, thirty one appeal applications were referred by the TAC to the Bureau for observations regarding the satisfaction of the statutory requirements for a valid appeal.

The TAC admitted twenty one appeals, refused five appeals in their entirety and partly refused a further three appeals. Three appeal hearings took place during 2019 and determinations were issued in relation to two appeal hearings.

As at of 31st December 2019, there were a total of sixty cases awaiting hearing, determination or adjudication regarding their validity.

As of 1st January 2019, two appeals in respect of cases where appeals had been refused, were awaiting decision. These

two appeal applications were refused by the Bureau prior to 21st March 2016.

As at 31st December 2019 both cases continued to await adjudication by the TAC.

## Significant Revenue Determinations

### *Criminal Assets Bureau v. Martin Foley [2019] IECA 287*

In the matter of the Criminal Assets Bureau v. Martin Foley [2019] IECA 287, the Court of Appeal considered the previous decision of the High Court granting liberty to the Bureau to enter final judgment in a sum comprising of €178,510.85 tax plus €738,449.27 statutory interest.

The appeal focused on the issue of the additional €738,449.27 claimed for interest which the appellant resisted on the basis of undue prejudice which he claimed arose, on foot of, what he alleged was the inordinate and inexcusable delay in applying for liberty to enter judgment.

The Court of Appeal dismissed the case on the basis that the passage of time involved had no bearing on the tax being owed. In delivering the judgment of the court, Mr Justice Edwards stated that it was "*a matter of public policy that people should pay their taxes in a timely manner"* and there was no statute of limitations restricting the timeframe in which the Bureau could commence proceedings to recover the tax and any interest accruing on foot of late payment of said taxes.

The learned Judge went on to say that the appellant *"well knew that interest was accruing"* on his outstanding tax bill and it was within his power "*to stop the interest clock from running*" by paying the outstanding amount of tax.

Accepting that delay in the Bureau's collection action was arguably inordinate, Mr Justice Edwards stated that the onus of establishing that delay has been both inordinate and inexcusable lay with the party seeking to dismiss and oppose a continuance of the proceedings as stipulated in *Primor Plc v Stokes Kennedy Crowley [1996] 2 IR 459*. Mr Justice Edwards said he was not satisfied that Mr Foley had discharged this onus "*particularly in circumstances where there manifestly had been… a relevant Criminal Assets Bureau investigation*".

### *Name Redacted v. Criminal Assets Bureau - Tax Appeals Commission Determination – 23TACD2019*

In the matter of *Name Redacted v. Criminal Assets Bureau*, the TAC considered an appeal against assessments made by the Bureau on the basis that the appellant was not tax resident and had no source of income in this jurisdiction for the periods in question. In submitting the appeal, the appellant asserted they were not chargeable to tax in this jurisdiction and therefore not subject to the provisions of Section 959AH of the TCA 1997. As such, the appellant did not file a tax return in support of the appeal.

Having adduced evidence during the hearing that the appellant had Irish source income chargeable to tax during the periods in question, the TAC determined that the quantum of the assessments be reduced by way of

apportionment based on time spent in the jurisdiction for each period assessed.

The Bureau has made both an application to the High Court to bring judicial review proceedings in respect of this determination and requested that the TAC state and sign a case for the opinion of the High Court. At the time of writing this report, both matters remain before the courts.

*Sheridan Senior & ors v. Tax Appeals Commission & anor [2019] IEHC 266*

In the matter of *Sheridan Senior & ors v. Tax Appeals Commission & anor [2019] IEHC 266*, the High Court judicial review considered whether the applicants were prejudiced by an alleged failure by the Appeals Commissioner to give reasons for his decision to reject their appeals.

Mr Justice Twomey stated that the applicants must have known why the Appeal Commissioner found against them on the basis that they provided no evidence to support their argument. The Appeal Commissioner had to decide whether the applicant's bare assertions made without "*a scrap of supporting evidence*" regarding their tax residency should be accepted or not.

Acknowledging that the Appeal Commissioner could have made it more clear by stating that he rejected the applicant's argument because there was no evidence to support it, Mr Justice Twomey went on to state that such an improvement could be made to any decision with the benefit of hindsight.

The High Court refused to grant the order for certiorari of the Appeal Commissioner's decision. It should be noted that this decision was subsequently overturned by the Court of Appeal on the 13th March 2020 (Record Number: 2019/222).

## Collections

Revenue Bureau Officers are empowered to take all necessary actions for the purpose of collecting tax liabilities as they become final and conclusive. Revenue Bureau Officers hold the powers of the Collector General and will pursue tax debts through all available routes. Collection methods include:

- The issue of demands – Section 960E TCA 1997;
- Power of attachment – Section 1002 TCA 1997;
- Sheriff action – Section 960L TCA 1997; and
- Civil proceedings – Section 960I TCA 1997.

## Recoveries

Tax recovered by the Bureau during 2019 amounted to €2.026m from seventy five individuals or corporate entities.

## Demands

During 2019, tax demands (inclusive of interest) served in accordance with Section 960E TCA 1997 in respect of twenty three individuals and corporate entities amounted to €5.8m.

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*Revenue actions by the Bureau*

## Settlements

During the course of 2019, seven individuals settled outstanding tax liabilities with the Bureau by way of agreement in the total sum of €0.6m.

### *Recovery Proceedings*

High Court proceedings for the recovery of tax and interest in the sum of €5m were initiated in eight cases.

| Respondent | Amount Euro |
|---|---|
| Case 1 | 595,705.52 |
| Case 2 | 171,764.98 |
| Case 3 | 1,317,171.64 |
| Case 4 | 535,563.25 |
| Case 5 | 614,562.76 |
| Case 6 | 266,753.78 |
| Case 7 | 863,416.18 |
| Case 8 | 691,667.00 |
| **Total** | **5,056,605.11** |

### *Judgment*

A High Court judgment was obtained against one individual for a tax liability of €281,938.72.

| Respondent | Amount Euro |
|---|---|
| Tom Casey | 281,938.72 |
| **Total** | **281,938.72** |

### *Judgment Mortgages*

A Judgment Mortgage was registered against property in the beneficial ownership of one individual.

| Respondent | Amount Euro |
|---|---|
| Jason Macken | 103,428.65 |
| **Total** | **103,428.65** |

## Investigations

### *Theft and Fraud*

During 2019, in support of Operation Thor and other anti-crime strategies employed by partner agencies, the Bureau made tax assessments on thirteen individuals connected with theft and fraud offences. The total amount of tax, excluding interest, featured in the assessments amounted to €3m.

In addition to assessments made, tax and interest of €0.9m was collected from seventeen individuals and four corporate entities who generated profits or gains from theft and fraud offences.

### *Money Laundering in Used Car Trade*

In 2019, the Bureau continued to target those seeking to conceal the proceeds of criminal conduct within businesses trading in used cars. Tax assessments were made for €3.3m excluding interest on six individuals and four corporate entities involved in the sale of used cars.

The Bureau made collections amounting to €145,000 from three individuals and four companies involved in the motor trade. The seizure of vehicles by Revenue sheriffs, under the provisions of Section 960L TCA 1997, proved particularly effective in enforced collection actions taken by the Bureau in 2019.

In addition to the making of assessments and enforcing the collection of taxes, the Bureau identified and addressed a number of emerging risks in the motor trade through the imposition of security bonds, compliance visits and other interventions.

*Sale and Supply of Illegal Drugs*

The Bureau made assessments in 2019 on twenty five individuals deemed to have benefited from profits or gains derived from the sale and supply of illegal drugs. Tax assessments totalling €3.9m excluding interest were made in these investigations.

During 2019, the Bureau collected €0.9m, by way of enforcement and other methods of collection, from thirty three individuals associated with the sale and supply of illegal drugs.

Other significant tax investigations conducted by the Bureau in 2019 focused on profits or gains derived from smuggling and brothel keeping.

## Customs & Excise Functions

Serious and organised crime groups in every jurisdiction attempt to violate Customs and Excise regulations in their attempts to make substantial profits and evade EU and national controls. These activities have a negative impact on society by depriving the Exchequer of funds and diverting those funds towards enrichment of criminal lifestyles.

The Bureau implements a broad range of Customs functions, comprising legislation, regulations, information and intelligence, to identify any issue of relevance in support of our investigations.

*Points of Entry / Exit in the State*

Customs functions at ports and airports, in particular, support the Bureau's investigations into the cross – jurisdictional aspects of crime and criminal profits. The Bureau uses all available powers to prevent the proceeds of crime, in any form, being moved by criminals through ports and airports.

Throughout 2019, a number of criminals and their associates were monitored and intercepted by or on behalf of the Bureau. One particular operation of significance, undertaken by the Bureau in November 2019 at Dublin Port, resulted in the interception of two articulated trucks and commercial trailers, which were seized as part of an on-going investigation. The Bureau also intercepted a number of unaccompanied commercial importations which were consigned to businesses with criminal associations, including three horse-drawn carriages and separately, fairground attractions.

*Motor Trade*

Throughout 2019, the Bureau continued to identify used-car outlets operated by, or on behalf of, organised crime groups and continued to enforce VRT legislation, effecting seizures of vehicles with a value in excess of €250,000 under the provisions of Section 141, Finance Act 2001. The Bureau also secured conviction under the Criminal Justice (Theft and Fraud Offences) Act 2001 against one motor trader who had provided falsified documentation to Officers. The individual subsequently received a two year sentence (suspended) at the Dublin Circuit Criminal Court.

The Bureau continues to investigate the infiltration of the used-car trade by organised crime groups. Following on

from seizures, revocation of VRT authorisations, enforcement actions and cross-border work undertaken in 2017/2018, the Bureau hosted a conference in July 2019, attended by the Police Service of Northern Ireland (PSNI), Her Majesty's Revenue & Customs (HMRC), the UK National Crime Agency (NCA), An Garda Síochána and the Revenue Commissioners. This forum highlighted a number of issues of concern and concluded by recommending legislative change to the Vehicle Registration Tax (VRT) regime.

In addition to the continued focus of law enforcement agencies on both sides of the border, the Chief Bureau Officer also hosted meetings with a number of representatives from within the motor industry to discuss matters of mutual concern.

### *National Briefings & Operational Support*

The Bureau welcomes the operational assistance provided by specialist areas within Revenue's Customs Service on a number of large CAB operations throughout 2019 and in particular, the 24 hour support given by Customs Dog Units on twenty two separate search sites throughout the country.

In May 2019, the Bureau conducted separate briefing sessions in relation to current trends and items of mutual interest with Customs Frontier Management Units at Dublin Port, Rosslare and Waterford. The Bureau wishes to acknowledge the support shown to Bureau Officers at those locations.

The Bureau was pleased to provide positions on our Divisional Assets Profiler Training Course to four Officers from Revenue's Customs Service in 2019.

In 2019, the Bureau continued to provide operational intelligence in relation to a number of separate smuggling attempts involving alcohol products and substitute diesel products. In September 2019, the Bureau uncovered an oil laundering facility during a search of premises in Co. Monaghan. Following liaison with Revenue's Customs Service, charges are being pursued against those involved.

### *Her Majesty's Revenue & Customs (HMRC)*

Fighting organised crime groups operating across jurisdictions requires close cooperation among competent authorities on both sides of the border. The Bureau has a traditionally strong liaison with HMRC and in particular, the HMRC Fiscal Crime Liaison Officer based in Dublin. Close co-operation with HMRC took many forms in 2019. The Chief Bureau Officer was a keynote speaker at the HMRC '*Fiscal Crime Liaison Officer (FCLO) Annual Conference*' in Northampton in May and again at the HMRC '*Proceeds of Crime Operations Conference*' in Birmingham in September. The Bureau again participated in this year's Annual Cross Border Organised Crime Conference in September. Two senior HMRC Officers attended our Divisional Asset Profiler Training Course in 2019, which is another important development in our working relationship with HMRC.

All of the above has served to strengthen the very regular and important exchange of criminal intelligence between the Bureau and HMRC. Every aspect of mutual assistance legislation, whether it be Customs to Customs or Police to Police, is utilised by the Bureau.

The Bureau notes the end of assignment of one particular, very successful FCLO in Dublin during 2019 and wishes him well on his departure from Ireland. The Bureau marked the occasion with a special presentation to him, among his colleagues, at the FCLO conference in Northampton in May.

## Part Four
*Revenue actions by the Bureau*

Table 1: Outcome of appeals at Appeal Commissioner Stage

| Description | No. of Cases |
|---|---|
| Opening Appeals as at 01/01/2019 | 39 |
| Appeals referred from TAC | 31 |
| Appeals Admitted by TAC | 21 |
| Appeals Refused by TAC | 5 |
| Appeals Withdrawn | 3 |
| Appeal Determined by TAC | 2 |
| *Open Appeals as at 31/12/2019 | 60 |

**Excludes appeals admitted by TAC as this figure is included in the figure for appeals referred from TAC.*

Table 2: Outcome of appeals refused by the Bureau (prior to 21/03/2016)

| Description | No. of Cases |
|---|---|
| Opening Appeals as at 01/01/2019 | 2 |
| Appeals Withdrawn | 0 |
| Open Appeals as at 31/12/2019 | 2 |

Table 3: Tax Assessments

| Taxhead | Tax €M 2018 | Tax €M 2019 | No. of Assessments 2018 | No. of Assessments 2019 |
|---|---|---|---|---|
| Income Tax | 9.341 | 8.013 | 324 | 291 |
| Capital Gains Tax (CGT) | 0.058 | 0.006 | 1 | 1 |
| Value Added Tax (VAT) | 1.346 | 3.595 | 11 | 48 |
| PAYE/PRSI | - | 0.020 | - | 4 |
| Capital Acquisition Tax (CAT) | 0.018 | 0.095 | 2 | 6 |
| Corporation Tax (CT) | - | 0.001 | - | 1 |
| **Totals** | **10.763** | **11.730** | **338** | **351** |

Table 4: Tax and Interest Collected

| Taxhead | Tax €M 2018 | Tax €M 2019 | No. of Collections 2018 | No. of Collections 2019 |
|---|---|---|---|---|
| Income Tax | 2.585 | 1.413 | 42 | 74 |
| Capital Gains Tax | - | 0.133 | - | - |
| Corporation Tax | - | 0.001 | - | 1 |
| PAYE / PRSI | 0.033 | 0.083 | 2 | 2 |
| Value Added Tax | 0.445 | 0.200 | 5 | 5 |
| Capital Acquisition Tax | 0.034 | 0.169 | 1 | 1 |
| Local Property Tax | 0.027 | 0.027 | 44 | 42 |
| **Totals** | **3.124** | **2.026** | **94** | **125** |

Table 5: Tax and Interest Demanded

| Taxhead | Tax €M | | Interest €M | | Total €M | | No. of Cases | |
|---|---|---|---|---|---|---|---|---|
| | 2018 | 2019 | 2018 | 2019 | 2018 | 2019 | 2018 | 2019 |
| Income Tax | 8.003 | 2.696 | 5.202 | 1.731 | 13.205 | 4.427 | 36 | 23 |
| CGT | - | 0.006 | - | 0.002 | - | 0.008 | - | 1 |
| CAT | 0.049 | 0.004 | 0.002 | 0.001 | 0.051 | 0.005 | 2 | 1 |
| VAT | 1.493 | 1.200 | 0.241 | 0.197 | 1.734 | 1.397 | 7 | 2 |
| **Totals** | **9.545** | **3.906** | **5.445** | **1.931** | **14.990** | **5.837** | **45** | **27** |

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*Revenue actions by the Bureau*

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# Part Five
## *Social Welfare actions by the Bureau*

### Overview
The role of Social Welfare Bureau Officers (SWBOs) is to take all necessary actions under the Social Welfare Consolidation Act 2005, pursuant to its functions as set out in section 5(1)(c) of the CAB Act. In carrying out these functions, SWBOs investigate and determine entitlement to social welfare payments by any person engaged in criminal activity.

SWBOs are also empowered under section 5(1)(d) of the CAB Act to carry out an investigation where there are reasonable grounds for believing that officers of the Minister for Employment Affairs and Social Protection may be subject to threats or other forms of intimidation. During 2019, there were two new cases referred to the Bureau under section 5(1)(d).

As a direct result of investigations conducted by SWBOs, a number of individuals had their payments either terminated or reduced in 2019. These actions resulted in a total savings of €2,336,430.15. This can be broken down as follows:

### Savings
Following investigations conducted by SWBOs in 2019, total savings as a result of termination and cessation of payments to individuals who were not entitled to payment amounted to €441,513.40. The various headings under which these savings were achieved are listed at the end of this chapter.

### Overpayments
The investigations conducted also resulted in the identification and assessment of overpayments against individuals as a result of fraudulent activity. An overpayment is described as any payment being received by an individual over a period or periods of time to which they have no entitlement or reduced entitlement and so accordingly, any payments received in respect of the claim or claims, result in a debt to the Department of Employment Affairs and Social Protection.

As a result of investigations carried out by SWBOs, demands were issued against a number of individuals for the repayment of social welfare debts ranging in individual value from €3,670.80 to €308,861.00.

During 2019, overpayments assessed and demanded, amounted to €1,570,861.02. A breakdown of which is listed at the end of this chapter.

### Recoveries
SWBOs are empowered to recover overpayments from individuals. An overpayment is regarded as a debt to the Exchequer. The Bureau utilises a number of means by which to recover debts which includes payments by way of lump sum and / or instalment arrangement.

Section 13 of the Social Welfare Act 2012 amended the Social Welfare Consolidation Act 2005 in relation to recovery of social welfare overpayments by way of weekly deductions from an

individual's ongoing social welfare entitlements. This amendment allows for a deduction of an amount up to 15% of the weekly personal rate payable without the individual's consent.

The Bureau was instrumental in the introduction of additional powers for the recovery of debts by way of Notice of Attachment proceedings. The Social Welfare and Pensions Act 2013 gives the Department of Employment Affairs and Social Protection the power to attach amounts from payments held in financial institutions or owed by an employer to a person who has a debt to the Department.

As a result of actions by SWBOs, a total sum of €324,055.73 was returned to the Exchequer in 2019, a breakdown of which is listed at the end of this chapter.

## Appeals

The Bureau was actively involved in driving change on behalf of the SWBOs with regard to an amendment to the Social Welfare Acts.

An enactment of section 7 of the Social Welfare Act 2019 came into effect on 1st November 2019. This amendment directed that when a person appeals a decision made by a Social Welfare Bureau Officer, the Chief Appeals Officer of the Social Welfare Appeals Office shall cause a direction to be issued to the person who has submitted the appeal directing the person to submit the appeal not later than 21 days from receipt of the direction to the Circuit Court.

The effect of this amendment to the Social Welfare Act is that all CAB (Social Welfare Decisions) Appeals will now be heard at the Circuit Court.

### Section 5(1)(c) of the CAB Act 1996

*Case 1*

A family in Dublin claimed means tested Social Welfare payments between 2012 and 2017. During this period of time, lodgements in excess of €1.9 million were lodged into bank accounts held by them.

A review was undertaken and payments were stopped. An overpayment was assessed and demanded to the value of €122,000. An appeal was lodged and will be heard in the Circuit Court.

*Case 2*

A woman in the Dublin area was in receipt of means tested Social Welfare payments (Unmarried Mothers Allowance / One Parent Family Payments / Jobseekers Allowance) during the period 1984 to 2016. She failed to declare that she got married in 2005. She further failed to declare a second mortgage free property in her spouse's name.

A review of her Social Welfare payments was undertaken. She was assessed and an overpayment demanded to the value of €147,000. No appeals were lodged in respect of all decisions made.

*Case 3*

A man living in the Dublin area, in receipt of Disability Allowance, had his entitlement reviewed. He was in receipt

of this means tested payment for fourteen years. During this period, he purchased a property in Co. Kildare and had lodgements in excess of €190,000 into his bank account. He was also working as a taxi driver. This information was not declared to the Department of Employment Affairs and Social Protection.

The individual was unable to account for his actions and failed to make a full and frank statement as to his financial affairs over the fourteen years of his claim. His claim was disallowed and an overpayment was assessed and demanded to the value of €308,000. No appeals were lodged in respect of all decisions made.

*Case 4*

A family living in the West of Ireland, in receipt of means tested payments during the period 2009 to 2015 had their entitlements reviewed. During this period, lodgements in excess of €229,000 were made to their bank accounts, separate to the Social Welfare payments. This money was not declared to the Department of Employment Affairs and Social Protection. The family were unable to account for receipt of or lodgements to bank accounts.

Revised decisions were made with regard to these payments and an overpayment was raised to the value of €107,000. This payment has been demanded and no appeal against this demand has been received.

### Increased Resources

In 2019, the Bureau was successful in its application to the Department of Public Expenditure and Reform for an increase in the number of SWBOs. Sanction was granted to increase its cadre by two officers. The importance of additional staff was deemed necessary due to the expansion of the Bureau and increased workload. In addition, the following issues were highlighted:

- The change in legislation reducing the minimum threshold for invoking the PoC Act from €13,000 to €5,000.
- The successful expansion of the nationwide Divisional Asset Profiler Training Programme.
- The creation of a dedicated Intelligence and Assessment Office and also an Asset Management Office.

The newly allocated SWBOs are expected to take up their positions in early 2020.

### CEPOL Training

In 2019, a SWBO was invited to attend the CEPOL (European Union Agency for Law Enforcement Training) training seminar in Asset Recovery and Confiscation. The course hosted participants from all Member States attending the Economic and Financial Police School in Rome.

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*Social Welfare actions by the Bureau*

The course was administered by Guardia di Finanza. The aim of the course is to intensify contacts within the EU to improve law enforcement co-operation and information exchange related to asset recovery, the Darknet and all aspects of crypto-currency.

The Bureau was very pleased to accept the invitation and to share the value of a multi-agency approach with its EU colleagues.

Table 1: Social Welfare Savings

| Scheme Type | 2018 Saving € | 2019 Saving € |
|---|---|---|
| Child Benefit | 14,280.00 | 14,280.00 |
| Carers Allowance | - | 14,892.00 |
| Disability Allowance | 111,642.40 | 26,928.00 |
| Jobseekers Allowance | 112,656.40 | 186,112.40 |
| One-parent family payment | 35,577.60 | 186,569.60 |
| *BASI | 68,848.00 | - |
| Other | - | 12,731.40 |
| **Totals** | **343,004.40** | **441,513.40** |

Table 2: Social Welfare Overpayments

| Scheme Type | 2018 Overpayment € | 2019 Overpayment € |
|---|---|---|
| Child Benefit | - | - |
| Carers Allowance | 165,258.40 | - |
| Disability Allowance | 21,020.00 | 558,659.40 |
| Jobseekers Allowance | 1,131,001.68 | 749,192.49 |
| One-parent family payment | 88,347.60 | 225,751.33 |
| *BASI & Other | 148,453.34 | 37,257.80 |
| **Totals** | **1,554,081.02** | **1,570,861.02** |

Table 3: Social Welfare Recovered

| Scheme Type | 2018 Recovered € | 2019 Recovered € |
|---|---|---|
| Child Benefit | 1,100.00 | 1,200.00 |
| Carers Allowance | 11,887.36 | 18,893.89 |
| Disability Allowance | 37,153.62 | 44,213.30 |
| Jobseekers Allowance | 165,874.24 | 175,455.53 |
| One-parent family payment | 90,117.20 | 79,371.22 |
| Other | 16,952.04 | 4,921.79 |
| **Totals** | **323,084.46** | **324,055.73** |

*A Basic Supplementary Welfare Allowance (commonly referred to as BASI) provides a basic weekly allowance to eligible people who have little or no income.

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*Social Welfare actions by the Bureau*

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# Part Six
# *Notable investigations of the Bureau*

## Introduction

Arising from investigations conducted by the Bureau, pursuant to its statutory remit, a number of criminal investigations were conducted and investigation files were submitted to the Director of Public Prosecutions (hereinafter referred to as "the DPP") for direction as to criminal charges.

During 2019, six files were submitted to the DPP for direction.

## 2019 Investigations

### Case 1

The Bureau with the assistance of the Garda Emergency Response Unit (ERU), the Garda National Drugs and Organised Crime Bureau (GNDOCB), the Garda Stolen Motor Vehicle Investigation Unit (SMVIU), the Garda Technical Bureau and the Garda Dog Unit conducted a search operation in counties Limerick, Tipperary and Dublin targeting the assets and activities of an organised crime group based in the Limerick City and County areas.

The Bureau's investigation centred on an organised crime group involved in the sale and supply of controlled drugs in the Munster region who were laundering the proceeds of their criminal conduct through a used car sales outlet in Limerick City. One hundred and fifteen motor vehicles were seized along with €43,000 in cash and assorted financial documentation.

The Bureau's investigation resulted in the granting of an order under section 2 and 7 of the PoC Act over one hundred and fourteen motor vehicles.

### Case 2

In targeting the assets and activities of an organised crime group comprising of members of an extended family involved in the commission of theft, fraud, deception and intimidation in the Munster Region, the Bureau conducted a

search operation which resulted in the seizure of nine vehicles, nine Rolex watches, four diamond rings, a selection of designer handbags and in excess of €34,000 in cash.

Proceeds of Crime, Revenue and Social Welfare actions against members of this organised crime group remain ongoing.

### Case 3

In targeting the assets and activities of an individual involved in the sale and supply of controlled drugs in the Dublin area, the Bureau obtained orders under section 2, 3 and 4A of the PoC Act over €44,000 cash, a 2011 Audi A4 valued at €6,000 and a 152 Citroen Van valued at €6,000.

### Case 4

In targeting the assets of an individual referred to the Bureau by the Special Investigation Unit of the DMR Roads Policing Unit during their investigation into Insurance Fraud, the Bureau obtained orders under section 2, 3 and 4A of the PoC Act over €21,940 cash, a Tag Heuer Watch valued at €2,900 and €62,136 held in a Ladbrokes Betting Account.

### Case 5

2019 saw the Bureau obtain an order under section 4 of the PoC Act over €31,889.73 held in one bank account and €19,850 held in a second bank account belonging to an individual who was murdered in 2006.

An order under section 3 of the PoC Act was obtained over these bank accounts in 2010. The granting of the order under section 4 of the PoC Act finalised the Bureau's case.

### Case 6

The Bureau with the assistance of the Emergency Response Unit (ERU), the Garda National Drugs and Organised Crime Bureau (GNDOCB) conducted a search operation in Counties Dublin and Kildare targeting the assets of an individual member of the Kinahan Organised Crime Group involved in the sale and supply of controlled drugs.

A total of eighteen searches were conducted. Two high value vehicles, twelve Rolex Watches, assorted designer clothing, €1,000 cash, mobile phones, electronic storage devices, financial documentation and documentation in respect of the ownership of property were seized. In excess of €70,000 has been restrained in financial institutions. The proceeds of crime action against this individual remains ongoing.

### Case 7

The Bureau with the assistance of the Emergency Response Unit (ERU), the Garda Stolen Motor Vehicle Investigation Unit (SMVIU) and Revenue Customs Dog Unit conducted a search

operation targeting the assets and activities of an organised crime group involved in the theft of ATMs across Meath, Cavan and Monaghan during 2019. A total of ten locations were searched which resulted in a number of vehicles, including plant and machinery, being seized with more than €410,000 in cash. In excess of €200,000 was also restrained in financial institutions.

Proceeds of Crime, Revenue and Social Welfare actions against members of this organised crime group remain ongoing.

## Case 8

In targeting the assets and activities of an organised crime group comprising of members of an extended family involved in the commission of theft, fraud, extortion, deception and intimidation of elderly persons in the Munster Region, the Bureau obtained orders under section 2, 3 and 4A of the PoC Act over a 151 Volkswagen Passat valued at €30,900, a 161 BMW 520 valued at €25,000, a 171 Mercedes E-Class valued at €49,500, €15,500 held in financial institutions and €98,660 in cash.

## Case 9

In targeting the assets and activities of an individual involved in the sale and supply of controlled drugs in the Dublin area, the Bureau obtained orders under section 3 and 4A of the PoC Act over €33,705 cash, €25,973 held in financial institutions, a 2012 Volkswagen Passat valued at €10,000, a 2005 BMW X5 valued at €4,000, a Breitling Watch valued at €13,800 and a mobile home located in Co. Wexford valued at €24,000.

## Case 10

The Bureau successfully opposed an application brought by a respondent for the return of monies in the High Court on 25th January 2019.

On the 2nd December 2011, the High Court had found that monies in the case represented the proceeds of crime pursuant to section 3 of the PoC Act. The case involved a sum of approximately €4.65 million generated in connection with a *Ponzi scheme.

*A Ponzi scheme is a fraudulent investing scam promising high rates of returns to investors. The Ponzi scheme generates returns for early investors by acquiring new investors. This is similar to a pyramid scheme.

The application by one of the respondents brought under section 3(3) of the PoC Act, in which they sought the return of approximately €556,000, was withdrawn by the respondent following 2½ days of hearing in the High Court.

The 2½ day hearing was taken up with legal argument followed by the cross examination of the forensic accountant engaged by the respondent. An order for measured costs to the amount of €15,000 was made against the respondent.

In connected proceedings, a liquidator for the companies had been appointed and there was also an application to pay out monies frozen by the Bureau by way of distribution to creditors. This application was not opposed by the Bureau who approved the action to recoup some of the funds to those caught up in the Ponzi scheme.

This action demonstrates the ability of the Bureau to deny and deprive people of the proceeds of crime.

## Operation Thor

Operation Thor was launched on the 2nd November 2015 as an anti-crime strategy by An Garda Síochána. The focus of Operation Thor is the prevention of burglaries and associated crimes throughout Ireland, using strategies which are adapted for both rural and urban settings.

The Bureau's Intelligence and Assessment Office is assigned as the liaison point for Operation Thor.

Throughout 2019 the Bureau continued its activities by identifying and seizing assets suspected of being derived from criminal activity as well as pursuing actions pursuant to Taxation and Social Welfare legislation.

# Part Seven
## *Significant Court Judgments during 2019*

During 2019, written judgments were delivered by the courts in the following cases:

1. Criminal Assets Bureau –v- Daragh Ó hEidirsceoil, David Reilly and Tara Kershaw
2. Criminal Assets Bureau –v- John Power (aka John Boylan) and Leonie Kinsella
3. Timothy Cunningham v. The Commissioner of An Garda Síochána, the Criminal Assets Bureau, the Director of Public Prosecutions (Notice Party) and Danske Bank (Notice Party)
4. Komisia za protivodeystvie na korputsiyata i za otnemane na nezakonno pridobitoto imushtestvo v. BP and Ors.

### Criminal Assets Bureau –v- Daragh Ó hEidirsceoil, David Reilly and Tara Kershaw

High Court Record No. 2018 No. 30 CAB

High Court Ex Tempore judgment delivered by Ms Justice Stewart on 8th October 2019.

**Summary**

The proceedings comprised three consolidated applications for relief pursuant to section 3 of the PoC Act over a total of six assets in the possession or control of the respondents namely, a horse box, a mobile home and the balance held in four bank accounts in the name of the respondents totalling the sum of approximately €272,852. The Bureau contended that the first and third named respondents had, for a significant period of time, been involved in organised crime more particularly, the sale of supply of controlled drugs in the Ballyfermot and wider Dublin area.

The Bureau contended that the assets, the subject matter of the application, were acquired on foot of that criminality and more particularly, that the balances held in the four bank accounts, the subject matter of the application, were the proceeds of the extortion of building contractors working on three identified residential development sites in the Ballyfermot and Cherry Orchard areas.

**Held**

The court, in granting the substantive order pursuant to section 3 of the PoC Act, stated as follows:

*"…the Court is in absolutely no doubt but that the manner and the reason why the monies came to be handed over had its origins in criminality in that unless the company involved had no choice but to pay these sums in order to acquire protection, safety, security for their site and to allow them to continue to do the legitimate work that they were contracted for. I am satisfied that that was not an appropriate or valid or lawful manner in which or reason to request payment from those companies."*

With regards to the application on behalf of the first and third named respondents to offset their Revenue liabilities pursuant to sections 6 or 4A of the PoC Act, the court said in refusing the applications:

*"…that it would seem to the court that that would be almost rewarding activity*

*in what the court is satisfied constitutes the directly or indirectly acquired proceeds of crime could then be used to offset a tax debt which otherwise would remain due and owing…"*

## Criminal Assets Bureau –v- John Power (aka John Boylan) and Leonie Kinsella

No. 11 CAB 2018 and 2018 No. 1929P

Written High Court – Delivered by Ms Justice Stewart on the 25th October 2019.

**Summary**

The application comprised the consolidation of three separate applications for *inter alia* orders pursuant to section 3 of the PoC Act in respect of a total of five assets namely the Racehorse Labaik, the balance held in a Horse Racing Ireland bank account, a Mercedes motor vehicle, a mobile home and a residential property in Rathcoole, Co. Dublin together with plenary proceedings issued by John Power against the Bureau for damages as a result of an injury sustained by the said racehorse in a race after the section 2 order was made over it.

The Bureau claimed that John Power (aka Boylan) was a leading and directing member of an organised crime group based in the West Dublin area specifically involved in armed robbery and the sale and supply of controlled drugs in the Foxdene and Neilstown areas of Dublin.

The case proceeded on the 1st April 2019 and was heard over the course of four days. After the Bureau opened its case, Counsel for John Power (aka Boylan) cross-examined Detective Garda McHugh, Detective Garda Petrie and Detective Chief Superintendent Clavin of the Bureau. John Power (aka Boylan) and Leonie Kinsella were then cross-examined and finally racehorse trainer Gordon Elliot was called by the Bureau, cross-examined by Counsel for the respondent and then re-examined by Counsel for the Bureau.

**Held:**

The court, after first finding that the Chief Bureau Officer's belief evidence to be reasonably grounded, granted the substantive order pursuant to section 3 of the PoC Act, stated as follows:

*"…There has been limited engagement to the extent that there has been no substantial engagement with the financial details of this case by and on behalf of the respondents. It amounts to little more than a denial. The legitimate income such as it is had been fully taken account of in the analysis conducted by Detective Garda Nigel Petrie. There remains a substantial shortfall which leads this court the inescapable conclusion that the assets the subject of these proceedings were acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes the proceeds of crime and further that the property constitutes directly or indirectly the proceeds of crime. I am not satisfied that the respondents have discharged the burden of proof which rests upon them and I am further satisfied that there will be no serious risk of injustice if the court was to make the orders sought by the Bureau."*

With regards to the plenary proceedings for damages taken on behalf of the first named respondent, the court said in refusing the claim:

"*With regards to the plenary proceedings the Court observes at this juncture that perhaps if information with regard to the decision to enter "Labaik" in a race meeting at Punchestown on the 28th April, 2017 had been forthcoming at an earlier stage that this matter may not have proceeded in the manner and to the extent to which it did. It was not until, and during, cross-examination of the witnesses called on behalf of the Bureau that it was established in evidence before this court that the decision to enter the horse in the race was effectively taken by the trainer Mr Elliott and that this decision was then facilitated by members of the Bureau, from Detective Garda McHugh's discussion with her colleagues in the team room to the Chief Bureau Officer's involvement. I found Mr Elliott to be a truthful witness and a candid witness. He stated in his evidence that as the trainer of the horse, which was placed with him for the purpose of being so trained, that he would make the decision in relation to the selection of a suitable race meeting. The 28th April 2017 was in his view a suitable race. I also accept the evidence of the Chief Bureau Officer in relation to the balancing exercise with which he was required to engage in order to decide whether or not the passport should be returned to Mr Elliott for the purpose of allowing the horse to be run in a race at the meeting at Punchestown.*

*… It was a matter of concern to the court that at the time of the moving of the s. 2 application in respect of the HRI account on 3rd May, 2017 that no reference was made to, and no information put before the court in relation to, the fact that the horse had in fact been run in the preceding week and had suffered an injury. However, I am satisfied with the explanation that has been proffered by and on behalf of the Bureau in that regard. I am satisfied that no disrespect towards this court was intended. I am satisfied that the officers and in particular the Chief Bureau Officer at all times acted in the best interest of the Bureau and in the best interest of protecting and preserving the value of the asset with which it was charged pursuant to the s. 2 order."*

It should be noted that the orders arising from this judgment have been subsequently appealed to the Court of Appeal and that appeal remains to be heard.

Part Seven
*Significant Court Judgements during 2019*

## Timothy Cunningham v. The Commissioner of An Garda Síochána, the Criminal Assets Bureau, the Director of Public Prosecutions (Notice Party) and Danske Bank (Notice Party)

High Court Record No. 2018 28 JR

Written High Court Judgment – delivered 14th February 2019 by Ms Justice O' Regan

Neutral Citation: [2019] IEHC 104

**Summary**

On the 16th February 2005, the applicant's home was searched under section 29 of the Offences against the State Act 1939 on foot of which STG £2.4 million was seized. On the 27th March 2009, the applicant was convicted of ten counts connected to the colloquially known Northern Bank Robbery. On the 23rd February 2012, section 29 warrants were found by the Supreme Court to be repugnant to the Constitution and the applicant successfully applied to have the 2009 conviction quashed.

On the 18th February 2014, the applicant was retried on nine remaining counts and pleaded guilty to two counts and on the 27th February 2014, he was sentenced and an order was made confiscating and/or forfeiting the said monies pursuant to section 61 of the Criminal Justice Act 1994 which order for forfeiture was not furnished to the applicant until the 14th May 2018.

In his judicial review application, the applicant sought an order of mandamus compelling the first named respondent to provide a detailed and comprehensive report setting out the statutory provision and all orders of the court under which his monetary property was seized, detained and distributed together with orders relied upon by the first named respondent to search, detain, forfeit and distribute the monies being the documents presented in a pre-action letter of the 4th August 2017.

In addition, an order of mandamus compelling the second named respondent to compile a report setting out the statutory provisions under which his monetary property was seized, detained and distributed as set out in a pre-action letter of the 21st July 2017 was sought. In addition, an application for a declaration that the applicant's monies were unlawfully seized by the first named respondent was made together with a declaration that the applicant's property rights under Article 40.3 of the Constitution have been infringed.

**Held:**

The applicant failed to establish any basis to secure an enlargement of time to maintain the within judicial review proceedings and indeed no formal application was made to the court. In addition, the application has failed to discharge the onus on him to establish that the relevant monies belonged to him - in particular post the making of the forfeiture order and in the circumstances, all of the reliefs claimed by the applicant were refused.

It should be noted that the orders arising from this judgment have been subsequently appealed and the Court of Appeal dismissed that appeal by

judgment of Birmingham P., Edwards J. and Baker J. dated 5th June 2019.

Leave to appeal to the Supreme Court was subsequently sought and refused by determination of the Chief Justice, O'Malley J. and Irvine J. on the 14th October 2019.

## Komisia za protivodeystvie na korputsiyata i za otnemane na nezakonno pridobitoto imushtestvo v. BP and Ors.

Case C234/18 - European Court of Justice

Opinion of Advocate General Sharpston delivered on 31 October 2019

**Summary:**
BP, the Chair of the supervisory board of a Bulgarian bank was subject to criminal proceedings for having incited others, from December 2011 to June 2014, to misappropriate funds belonging to that bank in the sum of approximately €105 million. While the criminal proceedings were pending, independent civil proceedings were taken by the Bulgarian Commission for the combating of corruption and for the confiscation of assets (the Bulgarian equivalent of CAB) before the Sofia City Court in Bulgaria.

This case was a request for a preliminary ruling from that court to the European Court of Justice seeking guidance as to how to interpret several provisions of EU law on confiscation of crime-related proceeds, the means by which offences are committed ('instrumentalities') and property. The context of the within case is confiscation proceedings under national law before a civil court that are unrelated to a criminal conviction and whether such proceedings are compatible with EU Law. The particular question posed to the European Court of Justice had significant implications for the ongoing compatibility of non-conviction based forfeiture provisions such as has been provided for in the PoC Act. It was as follows:

- Is Article 1(1) of Directive 2014/42…, which provides for the establishment of "*minimum rules on the freezing of property with a view to possible subsequent confiscation*", to be interpreted as meaning that it permits Members States to adopt provisions on civil-law confiscation that is not based on a conviction?

- Given the context and scope of the guidance sought by the European Court of Justice, an adverse finding had the potential to significantly undermine the legality of the PoC Act under which the Bureau operates.

In answering this question the Advocate General found that Framework Decision 2005/212/JHA and not Directive 2014/42 was the applicable EU law framework which should apply to the case in hand.

In concluding the Advocate General suggested the European Court of Justice should answer the questions as follows:

"*Framework Decision 2005/212/JHA of 24th February 2005 on Confiscation of Crime Related Proceeds, Instrumentalities and Property does not preclude confiscation proceedings such as those*

*pending before the national court, where those proceedings are not 'in relation to a criminal offence' and their issue does not depend upon a criminal conviction*."

# Part Eight
## *National and International developments*

### The International Perspective

As a front line agency in the fight against criminality, the Bureau's capacity to carry out this function, together with its success to date is, to a large degree, based on its interagency and multi-disciplinary approach, supported by a unique set of legal principles. The Bureau continues to play an important role in the context of law enforcement at an international level.

### Asset Recovery Office (ARO)

As stated in previous reports, the Bureau is the designated Asset Recovery Office (ARO) in Ireland. Following a European Council Decision in 2007, Asset Recovery Offices were established throughout the European Union to allow for the exchange of intelligence between law enforcement agencies involved in the investigation, identification and confiscation of assets deemed to be the proceeds of criminal conduct.

As part of its commitment as an Asset Recovery Office, the Bureau has attended a meeting held in Brussels to discuss the work and cooperation of the Asset Recovery Offices.

During 2019, the Bureau received ninety nine requests for assistance. The Bureau was able to provide information in respect all of these requests. The requests were received from seventeen different countries within the European Union. The Bureau itself sent fifty one requests to thirty six different countries worldwide from which it has received replies.

### International Operations

From an operational perspective, the Bureau continues to be involved in a number of international operations. The Bureau's engagement in such operations can vary depending on the circumstances of the case. It may include providing ongoing intelligence in order to assist an investigation in another jurisdiction. More frequently, it will entail taking an active role in tracking and tracing individual criminal targets and their assets in conjunction with similar agencies in other jurisdictions.

### Europol

The Bureau continues in its role as the lead Irish law enforcement agency in a number of ongoing international operations which are being managed by Europol. These operations target the activities of transnational organised crime groups, who recognise no borders and attempt to exploit the opportunities presented by freedom of movement across international frontiers in their criminal activity.

### Interpol

Interpol is an agency comprised of the membership of police organisations in one hundred and ninety countries worldwide. The agency's primary function is to facilitate domestic investigations which transcend national and international borders. The Bureau has utilised this agency in a number of investigations conducted in 2019.

Part Eight
*National and International developments*

## CARIN

In 2002, the Bureau and Europol co-hosted a conference in Dublin at the Camden Court Hotel. The participants were drawn from law enforcement and judicial practitioners.

Logo of CARIN

The objective of the conference was to present recommendations dealing with the subject of identifying, tracing and seizing the profits of crime. One of the recommendations arising in the workshops was to look at the establishment of an informal network of contacts and a co-operative group in the area of criminal asset identification and recovery. The Camden Assets Recovery Inter-agency Network (CARIN) was established as a result.

The aim of CARIN is to enhance the effectiveness of efforts in depriving criminals of their illicit profits.

The official launch of the CARIN Network of Asset Recovery agencies took place during the CARIN Establishment Congress in The Hague, in September 2004.

The CARIN permanent secretariat is based in Europol headquarters at The Hague. The organisation is governed by a Steering Committee of nine members and a rotating Presidency.

During 2019, the Bureau remained as a member of the Steering Group and attended the Annual General Meeting which was held in Bucharest from the 4th – 7th November 2019.

## ALEFA

(Association of Law Enforcement Forensic Accountants)

The ALEFA Network is a European funded project which has been established to develop the quality and reach of forensic accountancy throughout law enforcement agencies so as to better assist the courts, victims, witnesses, suspects, defendants and their legal representatives in relation to the investigation of alleged fraud, fiscal, financial and serious organised crime.

Logo of ALEFA

The ALEFA Network involves all of the EU Member States and invites participation from the USA, Canada and Australia.

In March 2019, the ALEFA Network published its "*Trafficking in Human Beings, Financial Investigation Handbook*", thereby completing the 2017 – 2019 EU Internal Security funded project "*Financial Investigation as a means to combat Trafficking in Human Beings*". The final report was submitted

to the European Commission which assessed the project implementation as excellent.

Throughout the second half of 2019, the Steering Group, with Bureau membership, was involved in preparing a self-funded conference on "Use of Forensic Accounting techniques in investigating Fraud and Corruption" and due to be hosted by the Policia Judiciara in Lisbon in April 2020.

## Relationship with External Law Enforcement Agencies

The Bureau has a unique relationship with the authorities in the UK, given the fact that it is the only country with which Ireland has a land frontier and the relationship has developed between the two jurisdictions over the years.

### Cross Border Organised Crime Conference

The Cross Border Organised Crime Conference provides an opportunity for all law enforcement agencies from both sides of the border to get together and review activities that have taken place in the previous year, as well as planning for the forthcoming year. The conference provides the opportunity to exchange knowledge and experience and identify best practice in any particular area of collaboration.

In 2019, Senior Bureau Officers attended the Cross Border Organised Crime Conference which was held in Co. Cavan.

As part of the Cross Border cooperation, Senior Officers from the National Crime Agency (NCA) visited the Bureau in 2019. Similarly, Senior Bureau Officers visited the National Crime Agency's offices in Northern Ireland in 2019.

### HMRC Fiscal Crime Liaison Officer's Annual Conference, Northampton

On 3rd May 2019, at the invitation of Her Majesty's Revenue & Customs (HMRC), the Chief Bureau Officer and Senior Customs Bureau Officer attended the "*Fiscal Crime Liaison Officer (FCLO) Annual Conference*" at Northampton, UK.

There are forty seven FCLO's deployed around the world by HMRC and the Chief Bureau Officer was invited to address this global network of senior enforcement officers on the subject of the statutory functions and objectives of the Bureau, as well as trends and cases of mutual interest. A strong and productive working relationship exists between the Bureau and HMRC's Fiscal Crime Liaison Officer based in Dublin.


### HMRC, Proceeds of Crime Operations Conference, Birmingham

On 24th September 2019, at the invitation of Her Majesty's Revenue & Customs (HMRC), the Chief Bureau Officer and Senior Customs Bureau Officer attended the "*Proceeds of Crime*

*Operations 2019 Conference*" in Birmingham, UK. The Chief Bureau Officer provided a keynote address to a forum of over 300 senior officers on the subject of confiscating the proceeds of criminal conduct and depriving criminals of lifestyle and wealth.

## Cross Border Joint Agency Task Force (JATF)

The establishment of the Cross Border Joint Agency Task Force was a commitment of the Irish and British Governments in the 2015 *Fresh Start Agreement* and the Task Force has been operational since early 2016.

This JATF consists of a Strategic Oversight Group which identifies and manages the strategic priorities for combating cross-jurisdictional organised crime and an Operations Coordination Group which coordinates joint operations and directs the necessary multi-agency resources for those operations.

The Cross Border JATF also brings together the relevant law enforcement agencies in both jurisdictions to better co-ordinate strategic and operational actions against cross border organised crime groups. The Task Force comprises Senior Officers from An Garda Síochána, the Police Service of Northern Ireland (PSNI), Revenue Customs, Her Majesty's Revenue & Customs (HMRC), the Bureau and the National Crime Agency (NCA) (who have the primary role in criminal assets recovery).

On occasion, other appropriate law enforcement services are included, (such as environmental protection agencies and immigration services) when required by the operations of the Task Force.

The Bureau attended two operational meetings in 2019 in relation to the JAFT and are involved in a number of operations currently being conducted under the JAFT.

## Fiscalis 2020 EU Co-operation Programme, Tax Residence Issues Workshop, Barcelona, Spain

In March 2019, the Bureau participated in an international workshop on '*Tax Residence Issues*' in Barcelona, Spain.

The workshop was part of the Fiscalis 2020 EU co-operation programme. The programme's objectives and priorities are to support the fight against tax fraud, tax evasion and aggressive tax planning. The workshop provided an opportunity to national officials from across Europe to establish networks and exchange information and expertise.

Logo of Fiscalis

## Institute of International and European Affairs (IIEA)

The Chief Bureau Officer gave a presentation to the IIEA's Justice Group on the 18th October 2019 entitled "*Denying and Depriving local, national and international criminals of their ill-gotten gains".*

Chief Bureau Officer, Pat Clavin with Vice President of the IIEA, Nora Owen and former Minister for Justice and Equality,

## Joint Investigation Teams Policing (JITS)

In 2019, the Bureau was included as a member in two separate Joint Investigation Teams (JIT's) established in accordance with Article 20 of the Second Additional Protocol of the European Convention on Mutual Assistance in Criminal Matters of the 20th April 1959.

### Case 1

The Bureau is a member of a Joint Investigation Team established to facilitate investigations in the United Kingdom, Belgium, France and the Republic of Ireland into events leading to the bodies of thirty nine human beings in a lorry in Essex, United Kingdom on the 23rd October 2019.

The Bureau is conducting an investigation into the assets of two individuals suspected to be involved in facilitating illegal immigration and related money laundering.

### Case 2

The Bureau is a member of a Joint Investigation Team established to facilitate investigations in the Republic of Ireland and Northern Ireland into events leading to criminal damage, assault causing harm, false imprisonment, blackmail and extortion against the directors of a company with business interests both sides of the border.

The Bureau is conducting an investigation into the assets of the individuals involved, in support of the criminal investigation being conducted by An Garda Síochána and the Police Service of Northern Ireland (PSNI).

## EMPACT (European Multidisciplinary Platform against Criminal Threats)

The Bureau is a participant in the EU Policy Cycle called EMPACT under the crime priority Criminal Finances, Money Laundering and Asset Recovery.

During 2019, the Bureau was the lead organisation for Operation Act 6.2. This operational action was responsible for the design and drafting of a document entitled "*To collect and correlate all*

*existing templates / checklists used by Member States for the purpose of creating a comprehensive / master check list for use / reference by Member States for non-financial investigators*".

Over the twelve months of 2019, the Bureau gathered information from all participating countries under this operational action. A guidance document was drafted and distributed throughout Europe to assist non-financial investigators when encountering financial crimes. This action was developed so as to assist and strengthen the co-operation between Member States, the law enforcement officers and agencies within each State. Through the design and publication of this document, it is envisaged that the actions taken by the first responder to financial crimes, or another crime where there is a financial aspect involved, will now be strengthened and knowledge improved.

This document has now been distributed to twenty three different countries for use as well as the EU Commission, Europol and CEPOL.

In 2019, the Bureau attended four operational meetings under the EMPACT Criminal Finances, Money Laundering and Assets Recovery Priority.

## Visits to the Bureau

The success of the Bureau continues to attract international attention. During 2019, the Bureau facilitated visits by foreign delegations covering a range of disciplines, both national and international.

The Bureau's continued involvement in investigations having an international dimension presents an opportunity to both contribute to and inform the international law enforcement response to the ongoing threat from transnational organised criminal activity. In addition, this engagement provides an opportunity for the Bureau to share its experience with its international partner agencies.

The Bureau welcomed agencies and also attended at conference / agencies, where it provided various presentations as follows:

- EU Asset Recovery Offices (ARO) in Brussels on 16th January 2019
- Training to Officers from 14 countries from the Southern African Region, Cape Town on 28th March 2019
- European Parliament on the experiences of the Bureau in tackling crime on 3rd April 2019
- Dublin City Centre Business Forum on 9th May 2019
- Independent Reporting Commission on 14th June 2019
- Garda Inspectorate on 4th July 2019
- Compliance Ireland Conference on 27th July 2019
- Proceeds of Crime Conference in Aston Villa Football Club on 24th September 2019
- A&L Goodbody Corporate Crime and Regulation Summit on 27th November 2019
- International Association of Chiefs of Police (IACP) on 13th December 2019

## Visit of Norwegian Ministry of Justice and Public Security on 26th September 2019

On Thursday 26th September 2019, the Bureau received a delegation from the Norwegian Ministry of Justice and Public Security to include the Norwegian Minister for Justice and Immigration, Mr Jøran Kallmyr.

The delegation received a briefing from the Chief Bureau Officer and Bureau Legal Officer on the workings of the Bureau, the interagency aspect of the Bureau and the legislation associated with it.

The Norwegian delegation were accompanied by their main TV news-program "Dagsrevyen". This news story, featuring the Chief Bureau Officer and Mr Kallmyr is available to view at https://tv.nrk.no/serie/dagsrevyen/201909/NNFA03092919/avspiller.

Chief Bureau Officer, Pat Clavin; Bureau Legal Officer, Kevin McMeel and Detective Inspector Barry Butler with Norwegian Minister for Justice and Immigration, Mr Jøran Kallmyr

## Visit of Secretary General and Deputy Secretary General of the Department of Justice and Equality on 13th November 2019.

On Wednesday 13th November 2019, the Secretary General of the Department of Justice and Equality, Mr Aidan O' Driscoll and the Deputy Secretary, Ms Oonagh McPhillips visited the Bureau offices.

Mr O' Driscoll and Ms McPhillips met with the Chief Bureau Officer, Bureau Legal Officer, Bureau Officers, staff of the Bureau and staff of the Chief State Solicitors Office co-located at the Bureau's offices.

The Secretary General and Deputy Secretary General was briefed on the operation of the Bureau and engaged in a walk-through of the offices where they engaged with all officers and staff.


Chief Bureau Officer, Pat Clavin; Bureau Legal Officer, Kevin McMeel with Secretary General Aidan O'Driscoll and Deputy Secretary General Oonagh McPhillips

Part Eight
*National and International developments*

## Media Interviews

To further raise the profile of the Bureau, the Chief Bureau Officer, Pat Clavin took part in a number of interviews on radio and TV.

### Claire Byrne Live

On 1st April 2019, the Chief Bureau Officer gave an interview on the Claire Byrne Live Show on RTE 1 and brought along a number of high value watches, jewellery and high end designer handbags to show viewers.

The Chief Bureau Officer stated "*we are finding a lot of criminals have high value vehicles, we are finding some of the motor trade being penetrated by criminals… lots of criminals like their cars, they like their fancy SUVs and their high powered cars, they understand cars so they like to have maybe their spouse or their girlfriend showing off bringing their kids to school in a nice looking car. In some instances we find that criminals are swapping cars so that there is no cash actually changing hands at all, so if somebody is selling drugs and for a €60,000 debt they will give them maybe a high value vehicle, it's a way of transferring wealth…*"

"*People that have too much money and throw it into assets like watches and jewellery and bags and other things because maybe if they went in and lodged it into a bank, it might be suspicious or it might be less suspicious to throw it into goods like these [watches, jewellery etc]…*"

This full interview is available on the Bureau's social media pages (Facebook: @criminalassetsbureau) and (Twitter: @criminalassets.

### Richard Curran, The Business on RTE Radio 1

On the 22nd June 2019, the Chief Bureau Officer was interviewed by Richard Curran of The Business on RTE Radio 1. Topics covered in the interview included an outline of assets seized by the Bureau including cash, money held in financial institutions, crypto-currency, jewellery, watches, vehicles, property and luxury goods such as high end handbags and clothing. He went on to explain crypto-currency as a virtual currency and how the Bureau has trained digital specialists who have the capability to seize and take control of the crypto-currency.

Also mentioned in the interview was that the Bureau is recognised as one of the foremost law enforcement agencies with its ability to investigate, seize, retain and dispose of crypto-currencies. The Bureau's trained digital specialists have been called upon to help other law enforcement agencies throughout Europe and beyond.

The Chief Bureau Officer detailed what to look out for in identifying persons who may be benefiting from the proceeds of crime, i.e., modest homes having bullet proof windows and doors fitted, CCTV and alarms fitted, luxury vehicles, exotic holidays etc. Information was provided on how the public can report such information to the Bureau.

For full details of this interview, please visit the Bureau's social media pages on Twitter and Facebook.

### Pat Kenny, Newstalk

On 20th September 2019, the Chief Bureau Officer spoke live on the Pat Kenny Show, on Newstalk.

He outlined the establishment of the Bureau in 1996 and gave details of the authorised staffing levels within the Bureau.

On speaking about the 2016 legislation allowing the Bureau to target a lower threshold, the Chief Bureau Officer explained how the new legislation allows the Bureau target the lower ranking criminals in an effort to inhibit their progression in the criminal world.

He also spoke on how the Bureau targets individuals and organised groups involved in criminal conduct in its function to deny and deprive the criminal of their assets.

For the full interview, please visit https://newstalk.com/podcasts/highlights-from-the-pat-kenny-show/discussing-role-criminal-assets-bureau

### National Newspapers

The Chief Bureau Officer also gave interviews to journalists of the National Newspapers including the Irish Independent, Sunday Independent, Irish Times, Irish Examiner and the Journal.

Part Eight
*National and International developments*

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# Part Nine
## *Protected Disclosures Annual Report*

### Protected Disclosures Act 2014

Section 22 of the Protected Disclosures Act 2014 requires every public body to prepare and publish a report, not later than the 30th June, in relation to the preceding year's information, relating to protected disclosures.

No protected disclosures were received by the Bureau in the reporting period up to the 31st December 2019.

Part Nine
*Protected Disclosures Annual Report*

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# Part Ten
## *Conclusions*

In 2019, the Bureau exercised its statutory remit to pursue the proceeds of criminal conduct. In order to do this, the Bureau has drawn on the provisions of the Proceeds of Crime Act 1996 as amended, together with Revenue and Social Welfare legislation.

The Bureau continued to target assets deriving from a variety of suspected criminal conduct including drug trafficking, fraud, theft, laundering / smuggling of human beings.

The Bureau continues to target emerging trends such as the use of the motor trade to conceal criminal assets as well as the use of crypto-currency for asset transfer and international fraud.

Throughout 2019, the Bureau placed particular emphasis on targeting the criminal groups engaged in serious and organised crime, as well as property crime, such as burglaries and robberies. A particular focus of the Bureau's activities centres upon rural crime and a number of the Bureau's actions were in support of law enforcement in regional locations.

The investigations conducted by the Bureau and the consequential proceedings and actions resulted in sums in excess of €3.9m forwarded to the Central Fund:

- €1.559 million under the Proceeds of Crime legislation.
- €2.026 million was collected in Revenue and
- €324,000 in Social Welfare recoveries.

At an international level, the Bureau has maintained strong links and has continued to liaise with law enforcement and judicial authorities throughout Europe and worldwide.

During 2019, the Bureau was involved in a number of investigations relating to criminal conduct by organised crime groups along the border with Northern Ireland.

The Bureau continues to develop its relationship with a number of law enforcement agencies with cross-jurisdictional links, most notably, Interpol, Europol, Her Majesty's Revenue & Customs (HMRC), the National Crime Agency in the UK and the CARIN Network.

As the designated Asset Recovery Office (ARO) in Ireland, the Bureau continues to develop law enforcement links with other EU Member States.

In pursuing its objectives, the Bureau continues to liaise closely with An Garda Síochána, the Office of the Revenue Commissioners, the Department of Employment Affairs and Social Protection and the Department of Justice and Equality in developing a coherent strategy to target the assets and profits deriving from criminal conduct. This strategy is considered an effective tool in the overall fight against organised crime.

During 2019, the Intelligence and Assessment Office (IAO) was further developed through the establishment of a formal Admissions Group that advises the Chief Bureau Officer on the selection of targets for full investigation. The heart

of the CAB model continues to be the multi-disciplinary team where professionals work together for the common purpose of denying and depriving criminals of their ill-gotten gains.

The Asset Management Office (AMO) continues to evolve and during 2019, a computerised Asset Financial Management System (AFMS) was procured.

One of the key strengths of the Bureau is its reach into other organisations to support its activities. The Bureau could not undertake its activities without the support of many sections of An Garda Síochána, including units under the Special Crime Operations, the Emergency Response Unit, Regional Armed Support Unit and local Divisional personnel.

In addition, the Bureau receives excellent assistance from many sections of the Office of the Revenue Commissioners, including the Disclosure Office and Customs Units. Officers from various sections of the Department of Employment Affairs and Social Protection assist the Bureau in matters of mutual interest. For this reason, the Bureau extends its reach.

Officials from the Department of Justice and Equality provide excellent advice and support to the Bureau in terms of finance, governance, audit and risk. The Department take on board suggestions for legislative and policy changes in support of the statutory remit of the Bureau. The Bureau wishes to acknowledge the expertise and guidance provided to Bureau Officers and staff by Department of Justice and Equality officials throughout the year.

In 2019, the Department of Justice and Equality underwent extensive organisational change in response to the recommendations of the Independent Effectiveness and Renewal Group (ERG) established by Government in January 2018 to identify the changes necessary to enable the Department to meet the changed demands of the environment. The Bureau would like to take this opportunity to wish to Department of Justice and Equality well in their new set up and will continue to work alongside the Department in the years to come.

# Appendix A
## *Objectives & functions of the Bureau*

### Objectives of the Bureau: Section 4 of the Criminal Assets Bureau Act 1996 & 2005

4.—Subject to the provisions of this Act, the objectives of the Bureau shall be—

(a) the identification of the assets, wherever situated, of persons which derive or are suspected to derive, directly or indirectly, from criminal conduct,

(b) the taking of appropriate action under the law to deprive or to deny those persons of the assets or the benefit of such assets, in whole or in part, as may be appropriate, and

(c) the pursuit of any investigation or the doing of any other preparatory work in relation to any proceedings arising from the objectives mentioned in paragraphs (a) and (b).

### Functions of the Bureau: Section 5 of the Criminal Assets Bureau Act 1996 & 2005

5.—(1) Without prejudice to the generality of Section 4, the functions of the Bureau, operating through its Bureau Officers, shall be the taking of all necessary actions—

(a) in accordance with Garda functions, for the purposes of the confiscation, restraint of use, freezing, preservation or seizure of assets identified as deriving, or suspected to derive, directly or indirectly, from criminal conduct

(b) under the Revenue Acts or any provision of any other enactment, whether passed before or after the passing of this Act, which relates to revenue, to ensure that the proceeds of criminal conduct or suspected criminal conduct are subjected to tax and that the Revenue Acts, where appropriate, are fully applied in relation to such proceeds or conduct, as the case may be,

(c) under the Social Welfare Acts for the investigation and determination, as appropriate, of any claim for or in respect of benefit (within the meaning of Section 204 of the Social Welfare (Consolidation) Act, 1993) by any person engaged in criminal conduct, and

(d) at the request of the Minister for Social Welfare, to investigate and determine, as appropriate, any claim for or in respect of a benefit, within the meaning of Section 204 of the Social Welfare (Consolidation) Act, 1993, where the Minister for Social Welfare certifies that there are reasonable grounds for believing that, in the case of a particular investigation, Officers of the Minister for Social Welfare may

be subject to threats or other forms of intimidation,

and such actions include, where appropriate, subject to any international agreement, co-operation with 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.

(2) In relation to the matters referred to in subsection (1), nothing in this Act shall be construed as affecting or restricting in any way—

(a) the powers or duties of the Garda Síochána, the Revenue Commissioners or the Minister for Social Welfare, or

(b) the functions of the Attorney General, the Director of Public Prosecutions or the Chief State Solicitor.

# Appendix B
# *Statement of Internal Controls*

## Scope of Responsibility

On behalf of the Criminal Assets Bureau I, as Chief Bureau Officer, acknowledge responsibility for ensuring that an effective system of internal control is maintained and operated. This responsibility takes account of the requirements of the Code of Practice for the Governance of State Bodies (2016).

I confirm that a business plan is agreed annually by the Senior Management Team (SMT) and is submitted to the Assistant Secretary, Department of Justice and Equality for information.

I confirm that a Corporate Governance Assurance Agreement between the Bureau and the Department of Justice and Equality covering the years 2017 – 2019 is in place and is subject to ongoing review.

I confirm, that the Annual Report and Compliance Statement has been submitted to the Minister for Justice and Equality.

## Purpose of the System of Internal Control

The system of internal control is designed to manage risk to a tolerable level rather than to eliminate it. The system can therefore only provide reasonable and not absolute assurance that assets are safeguarded, transactions authorised and properly recorded and that material errors or irregularities are either prevented or detected in a timely manner.

The system of internal control, which accords with guidance issued by the Department of Public Expenditure and Reform has been in place in the Criminal Assets Bureau for the year ended 31st December 2019 and up to the date of approval of the financial statements.

## Capacity to Handle Risk

The Criminal Assets Bureau reports on all audit matters to the Internal Audit Unit in the Department of Justice and Equality and has in place a Bureau Audit and Risk Committee (ARC). The ARC of the Bureau met on four occasions during the year 2019.

The ARC has developed a risk management policy which sets out its risk appetite, the risk management processes in place and details the roles and responsibilities of staff in relation to risk. The policy was issued to all Managers within the Bureau who were advised of the necessity to alert management of emerging risks and control weaknesses and to assume responsibility for risk and controls within their own area of work.

## Risk and Control Framework

The Criminal Assets Bureau implemented a Risk Management System which identified and reported key risks and the management actions taken to address, and to the extent possible, to mitigate those risks.

A Risk Register is in place in the Criminal Assets Bureau which identifies the key risks facing the Bureau and these are identified, evaluated and graded according to their significance. The register is reviewed and updated by the

ARC on a quarterly basis. The outcome of these assessments is used to plan and allocate resources to ensure risks are managed to an acceptable level. The Risk Register details the controls and actions needed to mitigate risks and responsibility for operational controls assigned to specific staff.

In respect of the Bureau, I confirm that a control environment containing the following elements is in place:

- procedures for all key business processes are documented;
- financial responsibilities are assigned at management level with corresponding accountability;
- an appropriate budgeting system is in place, with an annual budget which is kept under review by senior management;
- systems aimed at ensuring the security of the information and communication technology systems are in place;
- systems are in place to safeguard the Bureau's assets;
- the National Shared Services Office provide Payroll Shared Services to the Bureau

## Ongoing Monitoring and Review

During the period covered by this Financial Statement, formal procedures were implemented for monitoring and control processes and control deficiencies were communicated to those responsible for taking corrective action and to management, where relevant, in a timely way. I confirm that the following monitoring systems were in place in respect of the Criminal Assets Bureau:

- key risks and related controls have been identified and processes have been put in place to monitor the operation of those key controls and report any identified deficiencies;
- an annual audit of financial and other controls has been carried out by the Department of Justice and Equality's Internal Audit Unit;
- reporting arrangements have been established at all levels where responsibility for financial management has been assigned;
- regular reviews by senior management of periodic and annual performance and financial reports take place, which indicate performance against budgets/ forecast.

## Procurement

I confirm that the Criminal Assets Bureau has procedures in place to ensure compliance with current procurement rules and guidelines and that during the year 2019 the Criminal Assets Bureau complied with those procedures.

## Review of Effectiveness

I confirm that the Criminal Assets Bureau has procedures in place to monitor the effectiveness of its risk management and control procedures. The Bureau's monitoring and review of the effectiveness of the system of internal control was informed by the work of the internal ARC, the Internal Audit Unit of the Department of Justice and Equality and the Comptroller and Auditor General. The ARC, within the Criminal Assets Bureau, is responsible for the

development and maintenance of the internal control framework.

During 2019 the Internal Audit Unit of the Department of Justice and Equality conducted an audit at the Criminal Assets Bureau on financial and other controls, in line with its annual programme of audits, to provide assurance to the Audit Committee of Vote 24 (Justice).

## Internal Control Issues

No weaknesses in internal control were identified in relation to 2019 that require disclosure in the Financial Statements.

**Patrick Clavin**
**Chief Bureau Officer**
**9th April 2020**

## Appendix B
## *Statement of Internal Controls*

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# Notes

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Appendix C

## Appendix D

Martin Collins and Colin King, “The disruption of crime in Scotland through non-conviction based asset forfeiture” (2013) 16:4 Journal of Money Laundering Control 379.

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# The disruption of crime in Scotland through non-conviction based asset forfeiture

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## Abstract

**Purpose** – Targeting criminal assets plays a key role in tackling crime, yet there is a notable absence of research on the operation and impact of this approach. This article calls for greater engagement between policymakers, practitioners and researchers to address this. Using experiences from Scotland, the article focuses on the use of civil recovery and identifies a number of areas that are in need of further research. This paper aims to discuss these issues.

**Design/methodology/approach** – This article is a collaborative effort by a member of the Scottish Civil Recovery Unit and an academic researcher. The aim was to stimulate debate on the use of civil recovery, its impact, and future research directions. It draws upon two case studies from Scotland to illustrate how civil recovery has operated in practice.

**Findings** – There are important distinctions between the civil recovery regime in Scotland and the regime that applies in other parts of the UK (e.g. the absence of "incentivisation"). There is a need to consider how the impact of civil recovery can be measured, and there is scope for future research in this area.

**Research limitations/implications** – There is a notable absence of empirical research on civil recovery. The hope is that this article will lead to greater engagement between policymakers, practitioners and researchers. There is a need for empirical research on areas such as has civil recovery disrupted criminal activities, what intelligence gains does asset recovery bring, does asset recovery offer value for money, how is "impact" to be measured, etc.

**Practical implications** – As civil recovery increases in popularity as a form of crime control, this article calls for greater empirical research on the operation and impact of the civil process to tackling criminal assets. This is especially important today as the European Union is investigating the possibility of a European model of non-conviction based asset recovery.

**Originality/value** – Discussion of civil recovery under the Proceeds of Crime Act 2002 tends to focus on England and Wales. This article considers civil recovery from a Scottish perspective.

**Keywords** Cashback into Communities, Civil recovery, Incentivisation, Organised crime, Proceeds of crime, Scottish Ministers

**Paper type** Research paper

## Introduction

Following-the-money is playing an increasingly central role in the fight against crime. In the face of growing threats from, for example, organised crime, corruption, terrorism, there is a growing tendency to target financial assets of those engaged

The views expressed here are in Collins' personal capacity and may not, therefore, be ascribed to the Scottish Ministers.

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in criminal activity. Follow-the-money approaches generally take the form of anti-money laundering measures, post-conviction confiscation, civil forfeiture, or anti-terrorist financing measures. In the UK, this approach is evidenced in legislation such as the Proceeds of Crime Act (POCA), 2002 and the Anti-Terrorism, Crime and Security Act, 2001. While targeting financial assets has received many plaudits, as well as criticism, there is a notable absence of research on the operation and impact of this approach. In April 2011, a symposium – "The Confiscation of Assets: Policy, Practice and Research" – was hosted at the University of Leeds with the aim of bringing together policymakers, practitioners and researchers to engage in dialogue, exchange views and identify future trends[1]. That symposium demonstrated that policymakers and practitioners are receptive to engaging with academics to increase knowledge and awareness of asset recovery. For example, subsequent to the symposium, a member of a Regional Assets Recovery Team stated:

> There are clearly gaps in research on confiscation, in particular the basic premise that it actually has a positive effect. I hope that your event stimulated interest amongst the academics present that may lead to this being addressed.

This article stems from dialogue at that symposium. The focus here in on the use of the non-conviction based approach –, i.e. civil forfeiture – to target criminal assets. Our aim here is to outline the debate surrounding the non-conviction based approach, to consider how that approach is utilised in Scotland, and to identify future research directions that are mutually beneficial to practitioners, policymakers, and academics.

## The debate surrounding the non-conviction based approach

The non-conviction based approach has attracted a great deal of comment – both positive and critical. This article does not seek to engage, in any great detail, with arguments in favour or against the use of the civil process to target criminal assets. Instead, this section simply sets out the main arguments on both sides, leaving the reader to form his own opinion.

The main arguments advanced in support of the non-conviction based approach (for further discussion see, for example, Simser (2009), Casella (2008), Kennedy (2004), Lusty (2002) and Performance and Innovation Unit (2000)) can be summed up as follows:

- The use of the civil process carries many procedural benefits, the obvious ones being the reduced standard of proof – the balance of probabilities – that applies in civil proceedings and the fact that there is no requirement to establish guilt on the part of an individual.
- The conventional criminal process was often regarded as being inadequate to target certain forms of criminality, such as organised criminal groups where those at the upper echelons were seen as being beyond the reach of the criminal law.
- The civil process is much more efficient and expedient than the more cumbersome criminal process.
- Related to previous points, even where a criminal conviction was secured deficiencies in post-conviction confiscation meant that convicted criminals could still enjoy the benefit of their criminal proceeds.
- Removing financial incentives, albeit in civil rather than criminal proceedings, would still remove the financial incentive to engage in crime.

- Civil forfeiture does not seek to impose criminal punishment, rather it serves preventive, reparative and deterrent functions in that it removes the capital for future criminal activity, it denies a person the benefit of criminal proceeds, it raises the costs of committing crime, and it increases the likelihood of detection/conviction.
- A person should not be allowed to benefit from criminal wrongdoing – *ex turpi causa non oritur actio* – and civil forfeiture serves a symbolic function in demonstrating, both to the local community and law enforcement officials, that crime does not pay.

Civil forfeiture is increasingly playing a key role in the fight against organised crime and many jurisdictions are now recognising the value of the non-conviction based approach, including the USA (e.g. Civil Asset Forfeiture Reform Act, 2000), the UK (e.g. POCA, 2002), Canada (e.g. Civil Forfeiture Act, 2005), Ireland (e.g. POCAs, 1996-2005), Australia (e.g. Criminal Property Confiscation Act, 2000), New Zealand (e.g. Criminal Proceeds (Recovery) Act, 2009), and South Africa (e.g. Prevention of Organised Crime Act, 1998) to name but a few. Moreover, civil forfeiture powers have received judicial imprimatur in many jurisdictions[2].

Civil forfeiture is not, however, without its critics (for further discussion see, for example, Campbell (2010), Gallant (2005), Lea (2004) and Naylor (1999)). The main criticisms levied against the non-conviction based approach can be summed up as follows:

- Civil forfeiture ought properly be regarded as a criminal law measure and should, therefore, attract the full array of safeguards inherent in the criminal process.
- By operating under the guise of a civil process, the state is able to impose criminal punishment without the requirement of establishing guilt on the part of the individual.
- Procedural safeguards, such as the criminal standard of proof beyond reasonable doubt and the presumption of innocence, are sidestepped simply by virtue of the legislative label attached to "civil" forfeiture.
- The criminal justice system is not incapable of dealing with organised crime groups and law enforcement officials have a wide range of powers available to them.
- If there are deficiencies in post-conviction confiscation, surely that lends support to reforming those powers rather than enacting a draconian measure such as civil forfeiture.
- Civil forfeiture has the effect of unfairly labelling a person as a criminal (notwithstanding the alleged *in rem* nature of such proceedings).
- Civil forfeiture represents an arbitrary interference with property rights in the absence of criminal conviction.

## The Scottish framework

Scotland has a legal system which is separate and distinct from those in other parts of the UK. Scotland is, of course, subject to the UK legislation, such as the POCA, 2002 (for an overview of this Act, see Gentle (2004)), however, such legislation is enforced and implemented in Scotland through its own legal institutions. Part 5 of POCA

establishes a regime of non-conviction based forfeiture, also referred to as "civil recovery"[3]. In Scotland the enforcement authority (for the purposes of Part 5) is the Scottish Ministers as constituted by Section 44 of the Scotland Act 1998[4]. Part 5 allows for the recovery of all categories of property in Scotland through petition procedure laid before the Court of Session – the highest civil court in Scotland. The test for forfeiture in such actions is whether or not it can be established, on a balance of probabilities, that the property involved has been obtained through unlawful conduct. Cash is recovered through actions taken in the Scottish Sheriff Courts[5]. Cash may be forfeited if it is shown to be the proceeds of unlawful conduct or, alternatively, if it is shown to be intended for use by any person in the furtherance of unlawful conduct. The Civil Recovery Unit (CRU), discussed below, receives most of its referrals for asset recovery from the police, HM Revenue and Customs, or the Department for Work and Pensions. All asset recovery referrals are first considered by the Serious and Organised Crime Division of the Crown Office and Procurator Fiscal Service (COPFS) to ensure that consideration is first given to criminal prosecution (CRU, 2012, para 6).

The CRU acts as agent for the Scottish Ministers in the discharge of their Part 5 functions. The CRU is part of the National Federation of the COPFS[6]. The CRU is a multi-disciplinary unit which includes lawyers, financial investigators, a forensic accountant and support staff. The primary aim of the CRU is to use civil proceedings to disrupt crime and to make Scotland a hostile environment for criminals (CRU, 2012, para 3). As we shall see later, while the realisation of cash and other assets from Part 5 enforcement action has been welcomed, this is regarded as but a secondary issue – disruption is the primary aim. Significantly, the CRU has not been established to generate revenue. This can be contrasted to the tendency, in other parts of the UK, to assess the effectiveness of civil recovery by reference to property and money recovered, realised and remitted to "the tin can" (as HM Treasury is affectionately referred to in some circles)[7].

## Policing for profit?[8]

From the outset England and Wales adopted a scheme which has come to be known as "incentivisation". Under incentivisation all law enforcement and allied agencies involved in the recovery process share proportions of the money recovered under Part 5. Incentivisation was seen as an opportunity to raise additional operating revenues for the organisations involved, though there have been some concerns expressed as to the scheme[9]. Indeed, there is anecdotal evidence from England and Wales that some police forces are using anticipated income from POCA enforcement to underwrite operating budgets. From the outset, then, the focus in England and Wales and Northern Ireland was on sums recovered – the total "take" for "the tin can". This focus has, however, resulted in a distorted perception of what civil recovery under POCA can and should achieve. Indeed, there is an obvious danger that police forces will go after "easy" cases, or cases with a high monetary reward, rather than pursue cases which will "only" result in a criminal conviction.

Further, once money from incentivisation began to flow (or trickle in some cases) then, almost inevitably the scheme was to rebound on law enforcement (for an economic perspective on how policing budgets are affected by incentivisation-type schemes, see Baicker and Jacobson (2004) and Worrall and Kovandzic (2008)). As Mathers (2004, p. 211), of the Royal Canadian Mounted Police, states:

> The minute a police agency begins to retain seized money their political masters will start slashing their budgets [. . .] The Police Department had become a profit centre, another source of revenue [. . .] policing is [. . .] about serving and protecting the population.

For the avoidance of any doubt, incentivisation does not apply, nor has it ever applied, in Scotland. The absence of incentivisation has been instrumental in maintaining the focus of Part 5 recovery action in Scotland very firmly on the disruption of crime at all levels[10].

In recent years, a very different and very limited "reinvestment" of funds generated by Part 5 of POCA has been trialled. For example, in 2010/2011 an additional £1.5 million was made available by the Scottish Government specifically to fund additional law enforcement resources to enhance activity under Part 5 of POCA. Of this sum, £1 million was distributed amongst a number of Scottish police forces and was used, primarily, to fund the training and employment of additional civilian financial investigators. The remaining £0.5 million was allocated to the CRU and was used primarily to fund additional financial investigators and an additional asset recovery lawyer.

The money recovered under Part 5 of POCA is, for the most part, applied to rebuilding and repair of communities damaged by criminality. The programme is known as Cashback into Communities[11]. This is a type of scheme which is, increasingly, being followed in other jurisdictions.

## Impact

The monetary sums realised from Part 5 actions, throughout the UK, are easily measured. All one has to do is look at relevant annual reports for specified figures. For example, from 2005/2006 to 2011/2012, the CRU (2012, para 20) has remitted £24,703,750 to the Scottish Consolidated Fund.

It is important to note, though, that the balance sheets have not always been particularly promising. Indeed, it was the balance sheet deficit that was instrumental in the demise of the ill-fated Asset Recovery Agency and its being subsumed into SOCA.

To focus solely on monetary returns is, however, a short-sighted approach, but one which is apparent in the UK. When POCA first came into force there was considerable political fanfare. Grandiose figures were mentioned, promising huge dividends from asset recovery action. Expectations were, therefore, very high. For example, one Home Office (2007) target set in 2007 was for the recovery of £250 million by 2009/2010 with a longer term goal of up to £1 billion. Even if achieved, what do such monetary figures tell us though? Do they tell us that asset recovery "works"? One difficulty with bare reliance on the amounts recovered is that they do not tell us what impact asset recovery has in tackling crime. For example, there are difficulties in recognising the economic cost and market size of criminal activity (Naylor, 1999). At best, official figures as to the market size/cost of crime might be described as speculative[12]. On their own, monetary figures as to the amount realised under the POCA tell us very little as to the effectiveness of asset recovery in the fight against crime. In the absence of reliable data on criminal activities, especially those involving level three criminality (e.g. economic cost, market size, criminal income, etc.), these figures fail to provide an adequate performance measurement.

Given this, is there another way in which the effectiveness of asset recovery might be measured? Is it possible, for example, to examine the extent to which organised crime groups have had their activities disrupted as a result of the asset recovery regime?

Certainly, if the strategic objective of the CRU is to be seen to be met then the disruption element of the equation must, in some manner, be identified and measured. Otherwise, the CRU's mission statement – to make Scotland a hostile environment for criminals – is largely rhetoric. In considering the disruption factor, it is useful to consider the following two case studies.

*Case study 1*

GM was a level 3 drug dealer based in southwest Scotland. Civil recovery action was taken against him in 2004. Part of this action involved police officers, sheriff officers (roughly the equivalent of bailiffs) and a court-appointed interim administrator and his staff going to GM's home. GM's ostentatious trappings of wealth were loaded onto lorries. These items included power boats, powerful motor bikes and high value motor vehicles. The loaded lorries were driven slowly away from the area in which GM had based himself and upon which he had predated for years. Members of the public came out onto the street to applaud.

In the weeks that followed, the flow of intelligence (from the local community) relating to GM and his network increased by 72 per cent. Over and above that the flow of intelligence from police officers showed a broadly similar increase. In this instance, a highly visible, and successful, civil recovery action produced a positive response from both the local community and the force responsible for the policing of that community.

The CRU always insists upon publicity for its successful civil recovery actions. The experience has been similar in most cases – an increase in the flow of useful, useable and reliable intelligence. Reliable intelligence, in turn, very often forms the basis for further effective action against criminals and their networks resulting in detection, prosecution and conviction. Clearly, this is a phenomenon that needs much closer scrutiny and structured research.

*Case study 2*

GB is a lifetime career level 3 criminal, who has dealt class A drugs in and around Edinburgh for a generation. During the 1980s, he received a 12-year sentence for offences under the Misuse of Drugs Act 1971. However, subsequently he "walked" from two other High Court prosecutions – for a variety of reasons. In 2005 action was taken against GB under Part 5 of POCA. The action was defended and a protracted (and very expensive) proof ran in the Court of Session. The action was dealt with by Lord Penrose who dealt with the evidence in separate tranches. An initial proof was held to determine whether or not, on a balance of probabilities, GB had been involved in unlawful conduct. Unlawful conduct having been established, a further episode of proof was allocated to determine the extent to which property accrued by GB and others was recoverable property. Eventually, a recovery order was made against GB, and members of his family, for assets worth in excess of £200,000.

Intelligence received by Lothian and Borders Police indicated that, as a direct result of civil recovery action taken against him, GB had ceased to be able to operate at level 3 criminality. His entire focus and energy had been diverted to the defence of the civil action. His carefully built up network of runners, couriers and factotums had collapsed, and rival criminals had moved in on his "territory". Having been disrupted in this manner, GB was forced to take greater personal risks in order to continue operating as a drug supplier. As a consequence, he was detected for further (though smaller scale)

drug supply. In May 2011 he was convicted of an offence under Section 4(3)(b) of the Misuse of Drugs Act 1971 and was sentenced to five years and five months imprisonment. That conclusion was, of course, attributable to sound police work. The disruption caused by the successful civil recovery action, though, played a significant role in exposing GB to such criminal prosecution. Again, outcomes for individuals such as GB require further structured research and analysis. In recent years, there has been work done on "crime mapping" in Scotland which has identified individuals and groups most active in organised crime in Scotland. Successful measurement of disruption might be achieved by gauging the impact of Part 5 POCA enforcement on the overall "ranking" of specific organised crime syndicates. Again, this is an area that merits further examination, which could be explored through the use of case studies such as the two illustrations used here.

It is clear that there are inherent difficulties in measuring the impact of asset recovery provisions, but that does not mean that asset recovery should be dismissed as having no effect on criminal activities. Clearly, that is not the case. POCA has been in force now for ten years, and more research needs to be conducted on this issue. Developing relationships between practitioners and researchers is key in this regard.

## Future research directions

As Baumer (2008, p. 251) points out, "We simply do not know what sustained research on the efficacy of asset forfeiture laws would reveal, which makes it difficult to make sound, evidence-based policy choices." According to the most recent annual report of the CRU:

> The nature of civil recovery proceedings is such that the full impact of this new approach on the amount of property recovered will only be felt in the years to come (CRU, 2012: "Foreword by the Head of the CRU").

In an Australian context, Freiberg and Fox (2000) stated, "little has been done empirically to test whether the promises of the confiscation legislation have been realised and to test the rhetoric against the reality." More recently, in 2010, a review of Australian legislation emphasised the need for further research on the impact and effectiveness of unexplained wealth legislation (Bartels, 2010, p. 6). It is suggested that there is a need for in-depth study of the asset recovery regime, including[13]:

- How has asset recovery impacted upon crime levels?
- Given difficulties in measuring the criminal market and/or turnover, is it possible to measure the success of asset recovery?
- What impact does asset recovery have on disrupting criminal activities?
- Even if effective, do asset recovery powers unduly impinge on due process rights?
- Are there opportunities to expand the use of asset recovery powers?
- What are the intelligence gains as a result of asset recovery (and/or financial investigators) and how have these impacted upon crime groups?
- To what extent is asset recovery used against organised crime groups, as opposed to "ordinary" crime?
- What, if any, is the impact upon banks, solicitors, accountants, etc.?

- Does asset recovery provide value for money (or should that even be a consideration)?
- What can be learned from international best practice?

## Conclusion

Baumer (2008, p. 251) makes a strong argument supporting the need for greater research on asset recovery. He contends that policy debates are largely disconnected from empirical research and that there is a need for greater research on both the costs and benefits of asset recovery to play a prominent role in debates about the efficacy of asset recovery. He goes on to say:

> [. . .] it seems that if the discipline of criminology and criminal justice is to play a more pivotal role in policy discussions, then we need to contribute something we are perhaps uniquely or at least better positioned than most to deliver – empirically based evaluations of the costs and benefits of given criminal justice policies (Baumer, 2008, pp. 252-253).

The use of asset recovery provides a fertile ground for further research and empirical study which, it is suggested, is long overdue. Developing relationships between practitioners and researchers is mutually beneficial. It is hoped that issues such as those identified here will receive attention in due course.

## Notes

1. Further details can be found at: www.law.leeds.ac.uk/assets/files/research/events/ccjs-confiscation-symposium.pdf. The symposium was funded by the publishers of the Modern Law Review.
2. Recent decisions include *Gale* v. *SOCA* [2011] UKSC 49 and *Chatterjee* v. *Ontario* (*Attorney General*) [2009] 1 SCR 624, but see how the South African Constitutional Court approached the issue of proportionality in *Mohunram* v. *National Director of Public Prosecutions* [2007] ZACC 4.
3. The UK Supreme Court upheld Part 5 of POCA in *Gale* v. *SOCA* [2011] UKSC 49.
4. The enforcement authorities for England and Wales are the Serious Organised Crime Agency, the Director of Public Prosecutions, the Director of Revenue and Customs Prosecutions or the Director of the Serious Fraud Office. In Northern Ireland enforcement is carried out by the Director of the Serious Fraud Office or the Director of Public Prosecutions for Northern Ireland.
5. The Sheriff Court has a mixed civil and criminal jurisdiction and is, very approximately, the equivalent of a combined County Court/Crown Court in England and Wales.
6. The COPFS is the sole prosecuting authority in Scotland and is led by the Lord Advocate, who is also a Scottish Minister. It is accepted, however, that the Lord Advocate's functions as head of the system of prosecution in Scotland and as part of the POCA enforcement authority are exercised separately and independently. See *Scottish Ministers* v. *Doig* [2006] CSOH 176 per Lord Drummond Young.
7. According to Sproat (2007), drawing upon figures from 2005/2006, "the AML/asset regime presently costs far more to implement than it recovers in any year, with approximately £3.73 being spent on the post-POCA regime by the participating institutions for every £1 of criminal assets recovered".
8. For wider discussion, see Blumenson and Nilsen (1998).

9. For example, the *Joint Thematic Review of Asset Recovery* highlighted concerns about potentially counter-productive aspects of the Asset Recovery Incentivisation Scheme (ARIS), including there not being universal understanding as to how incentivisation works, misconceptions as to how it operates, and no impetus to seek confiscation orders if the money would go towards compensating a victim (HM Crown Prosecution Service Inspectorate, HM Inspectorate of Court Administration, and HM Inspectorate of Constabulary, 2010, para 6.1-6.2).
10. The Police National Intelligence Model categorises criminal activity. Level 1 crime is confined to the community in which the level 1 criminal lives and operates. Level 2 crime crosses police force/divisional boundaries. Level 3 crime crosses national frontiers.
11. "Cashback for Communities is a programme of activities for young people to increase the opportunities they have to develop their interests and skills in a supported way, using funds recovered from criminals. It includes a range of partnerships with Scottish sporting, cultural and youth organisations to provide activities for young people in Scottish communities. The initiatives provided have been aimed primarily at 10-19 year olds, with resources focused on areas of deprivation and/or high crime. The initiatives address both participation and diversion and aim to increase the likelihood of positive long-terms outcomes for those who take part" (CRU, 2012, para 18-19).
12. In the build up to the enactment of the POCA, 2002, it was estimated that the total cost of crime to England and Wales, in 1999/2000, was £60 billion though, even then, it was recognised that this figure was "far from comprehensive" (Brand and Price, 2000, p. vii). Estimates as to the size of the UK black economy suggested a figure of around 10 per cent of GDP (Performance and Innovation Unit, 2000, Box 2.2), while it was also estimated that the value added of illegal drugs transactions in the UK could have been as much as 1 per cent of GDP (Performance and Innovation Unit, 2000, Box 3.1). Such figures must, however, be approached with a critical mindset, given methodological difficulties in estimating the cost and/or size of the criminal market.
13. These, and other, issues were discussed at the one-day symposium from which this paper originated.

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# Appendix E

Colin King, "'Hitting Back' at Organized Crime: The Adoption of Civil Forfeiture in Ireland" in Colin King and Clive Walker, eds., *Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist Assets* (London: Routledge, 2014) 141

# Chapter 7
# ‘Hitting Back’ at Organized Crime: The Adoption of Civil Forfeiture in Ireland

Colin King[1]

## Introduction

Organized crime is now firmly entrenched at the heart of popular discourse on crime in Ireland. Since the mid 1990s, there has been a raft of legislative measures enacted to combat the threat posed by organized crime, and politicians have been quick to resort to emotive sound bites justifying the need for ever-more draconian legislation that strikes at due process values. Over the past 15 years, there have, for example, been significant changes to anti-money laundering legislation,[2] the rules of surveillance,[3] powers of detention,[4] the law governing bail,[5] the law governing participation in organized crime type activities,[6] the adoption of civil forfeiture,[7] the establishment of the Criminal Assets Bureau,[8] and the establishment of an ad hoc witness protection programme. There has also been considerable academic commentary on how the threat of organized crime has influenced criminal justice reform in Ireland. For example, O’Donnell and O’Sullivan have discussed this in relation to zero-tolerance policing,[9] Campbell has examined how the pre-trial and trial process have been affected,[10] and Conway and Mulqueen have argued that there is now a shift towards the securitization of crime.[11] This chapter contributes to this debate by examining how organized crime was thrust into the heart of popular

1 I thank Prof. Dermot Walsh, Prof. Clive Walker and Dr Eimear Spain for valuable feedback.

2 Criminal Justice (Money Laundering and Terrorist Financing) Act, 2010.

3 Criminal Justice (Surveillance) Act, 2009.

4 Criminal Justice (Drug Trafficking) Act, 1996.

5 Bail Act, 1997; Criminal Justice Act, 2007.

6 Criminal Justice Act, 2006; Criminal Justice (Amendment) Act, 2009.

7 Proceeds of Crime Acts, 1996–2005.

8 Criminal Assets Bureau Act, 1996.

9 I. O’Donnell and E. O’Sullivan, ‘The Politics of Intolerance – Irish Style’ (2003) 43(1) *British Journal of Criminology* 41.

10 L. Campbell, ‘Re-configuring the pretrial and trial processes in Ireland in the fight against organised crime’ (2008) 12(3) *International Journal of Evidence and Proof* 208.

11 V. Conway and M. Mulqueen, ‘The 2009 Anti-Gangland Package: Ireland’s New Security Blanket?’ (2009) 19(4) *Irish Criminal Law Journal* 106.

discourse in the law and order debate, and how the subsequent enactment of civil forfeiture legislation represented a radical shift in 'hitting back' at the upper echelons of organized criminal activity. A number of other jurisdictions have followed suit in enacting civil forfeiture legislation to target the illicit gains of organized criminal activities. For example, in the UK, the White Paper, *One Step Ahead*, emphasized that challenges posed by organized crime cannot be dealt with by conventional law-enforcement responses in isolation.[12] In this collection, Gallant demonstrates that the principal objective of civil forfeiture legislation in Canada 'is to scythe organised crime by scything its wealth'[13] while Goldsmith, Gray and Smith demonstrate how organized crime in Australia is now seen as a national security concern, resulting in the enactment of unexplained wealth legislation and the establishment of multi-agency task forces.[14]

This chapter demonstrates how the threat of organized crime has resulted in radical change to the conventional criminal process in Ireland. It examines the political rhetoric surrounding organized crime and argues that, in the wake of particularly sensationalist events, the political clamour to be seen as tough on crime has resulted in a radical new approach to combating organized crime, namely the use of the civil process to target ill-gotten gains. Although it has been argued that the move to the civil process represents a proportionate response to a serious societal problem,[15] namely the growing threat posed by organized crime, it is not, however, possible to sustain such an argument without detailed knowledge as to the nature and extent of organized crime. There is an inadequate knowledge base concerning organized crime in Ireland and, in its absence, there arises instead 'a web of mythical imagery and stereotypes'.[16] These myths enable sweeping political statements to be made about the scale of the problem posed by organized crime. With organized crime policy-making, all too often '"belief statements" exceed fact/observation based statements',[17] which does not bode well for law reform. As Campbell points out: 'Measured consideration and implementation of procedural reform is currently lacking in the Irish context, which is characterised by ad hoc and pragmatic rather than principled reactions to the perceived threat of organised criminality.'[18] This is especially important today, when Irish proceeds

12 Home Office, *One Step Ahead: A 21st Century Strategy to Defeat Organised Crime* (London: Stationery Office, 2004).

13 See Chapter 8.

14 See Chapter 6.

15 S. Murphy, 'Tracing the proceeds of crime: Legal and Constitutional Implications' (1999) 9(2) *Irish Criminal Law Journal* 160.

16 K. von Lampe, 'Making the second step before the first: Assessing organized crime: The case of Germany' (2005) 42 *Crime, Law and Social Change* 227 at 253.

17 P.C. van Duyne and T. Vander Beken, 'The incantation of the EU organised crime policy making' (2009) 51(2) *Crime, Law and Social Change* 261 at 278.

18 L. Campbell, 'Re-configuring the pretrial and trial processes in Ireland in the fight against organised crime' (2008) 12(3) *International Journal of Evidence and Proof* 208 at 233.

of crime legislation is being reviewed to ascertain the need for enhanced powers[19] but in the absence of any evaluation as to the effectiveness of the current regime.

## Law Reform: The Politics of Organized Crime in Ireland

### *Indices of Change*

While there had been concern in relation to, for example, armed robberies and the heroin epidemic in the Republic of Ireland during the 1980s,[20] it was only in the mid 1990s that the threat of organized crime really gained a foothold in political and popular minds. The context of the political discourse at that time reflects what Garland describes as *indices of change*.[21] These well-known landmarks of transformation in the criminal justice system include: the decline of the rehabilitative ideal; the re-emergence of punitive sanctions and expressive justice; changes in the emotional tone of crime policy; the return of the victim to centre stage; above all else, the public must be protected; issues of crime, law and order now figure prominently in the political world; the reinvention of the prison; the transformation of criminological thought; the expanding infrastructure of crime prevention and community safety; the role of civil society and the commercialization of crime control; new management styles and working practices; and a perpetual sense of crisis.[22] These indices of change are to be widely seen in the discourse surrounding reform of the Irish criminal justice system, particularly since the 1990s when the threat of organized crime gathered momentum as a political tool. Law and order is now high on the political agenda. In line with the changes discussed by Garland, there is a profound sentiment that the police must be afforded greater powers, so that criminals may be caught and punished, and the public protected. Expert research findings are often discarded on a whim in favour of more populist (and repressive) policies. Intuitively appealing strategies are seized upon, often

19 Criminal Assets Bureau, *Annual Report 2010* (Dublin: Stationery Office, 2011) para. 7.5.

20 See, for example, D. Bennett, 'Are they always right? Investigation and proof in a citizen anti-heroin movement' in M. Tomlinson, T. Varley and C. McCullagh (eds), *Whose Law and Order? Aspects of Crime and Social Control in Irish Society* (Belfast: Sociological Association of Ireland, 1988).

21 D. Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford: Oxford University Press, 2001).

22 See, for example, S. Hallsworth and J. Lea, 'Reconstructing Leviathan: Emerging contours of the security state' (2011) 15(2) *Theoretical Criminology* 141; L. Zedner, 'Securing liberty in the face of terror: Reflections from criminal justice' (2005) 32(4) *Journal of Law and Society* 507; D. Johnson, 'Anger about crime and support for punitive criminal justice policies' (2009) 11(1) *Punishment and Society* 51; S. Kilcommins and B. Vaughan, 'Reconfiguring State-Accused Relations in Ireland' (2006) 41 *Irish Jurist* (n.s.) 90.

without any empirical research to support (or discredit) the potential for success. This is even more so when, in the face of a particularly notorious incident, politicians are quick to seize the opportunity to introduce radical, perhaps even draconian, legislation in the fight against crime, in the interests of 'us'. These factors were illustrated in 1996 when the government reacted to two particularly notorious murders[23] by introducing a radical package of measures, including powers of civil forfeiture[24] and the establishment of the Criminal Assets Bureau,[25] which significantly altered relations between criminal justice authorities and the individual. These murders 'generated the conditions where a harsh response to perceived lawlessness became acceptable'.[26] The result was, what Garland refers to as, significant 'long-term structural transformations'[27] (as opposed to temporary and reversible short-term shifts in policy emphasis), that set the tone for future reform in dealing with the problem of organized crime. Yet, while demands for reform were particularly vociferous in the face of the ever-increasing threat posed by organized crime, it has been suggested that the term 'organized crime' only entered into popular discourse – and immediately took centre stage – in Ireland in 1996 on the back of media-driven and political influence.[28] These events might be seen as the precipitating factors in a long line of folk devils posing a threat to society;[29] organized crime would henceforth be elevated to the status of a security threat equivalent to the threat posed by paramilitaries.[30]

As Fennell emphasizes: 'The tenor of the debate and commentary is *never* without a context, never without a particular crime. Rarely is there a call for a

23 The murder of Detective Garda Jerry McCabe on 6 June 1996, during an armed robbery by members of a terrorist organization, followed by the murder of the journalist Veronica Guerin by a criminal gang on 26 June 1996, proved to be catalysts in law and order reform in Ireland.

24 Proceeds of Crime Act, 1996, as amended by the Proceeds of Crime (Amendment) Act, 2005.

25 Criminal Assets Bureau Act, 1996.

26 I. O'Donnell and E. O'Sullivan, 'The Politics of Intolerance – Irish Style' (2003) 43(1) *British Journal of Criminology* 41 at 48.

27 D. Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford: Oxford University Press, 2001) 22.

28 J. Meade, 'Organised crime, moral panic and law reform: The Irish adoption of civil forfeiture' (2000) 10(1) *Irish Criminal Law Journal* 11.

29 See S. Cohen, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers* (Oxford: 3rd ed., Blackwell, 1987). For more recent discussion, in the context of organized crime, see M. Woodiwiss and D. Hobbs, 'Organized Evil and the Atlantic Alliance: Moral panics and the rhetoric of organized crime policing in America and Britain' (2009) 49(1) *British Journal of Criminology* 106.

30 S. Kilcommins and B. Vaughan, 'A perpetual State of Emergency: Subverting the rule of law in Ireland' (2004) 35 *Cambrian LR* 55 at 74.

more general debate.'[31] As O'Donnell notes, the origins of criminal justice policy-making is all too often found in the political reaction to a perceived crisis; reform is not 'informed by research findings and seldom tempered by rational debate'.[32] Yet, while certain reforms or policies might well be intuitively appealing, they are rarely evidence-led. The 1996 political response to perceived threats posed by organized crime might be described as 'fear management', all too often based on shaky foundations of knowledge as to the phenomenon of 'organized crime' itself.[33] This is strikingly true in the context of organized crime policy-making in Ireland. In the wake of what were highly emotive standpoints spanning the political spectrum, far-reaching legislation was quickly put on the statute book from which it is now difficult to retreat.

*Regressive Policy-Making*

The perception of a country embroiled in a crime crisis has been evident in the political arena over the past few decades. Since the 1990s, there has been a demonstrative shift towards repressive policies, designed to swing the pendulum in favour of the State in the criminal process.[34] There has been a marked demonization of those suspected (let alone convicted) of criminal activity, with the battle line firmly drawn between 'us' and 'them'. Politicians have made reference to 'home-grown Mafia',[35] 'godfathers of crime',[36] and 'professional, organised drug pushers'.[37] The system was seen as not working for 'us'. 'Criminals' had all the rights, and it was the innocent who suffered. Inevitably, such political rhetoric would result in a significant overhaul of the criminal justice system. There were vociferous calls to shift the balance of the law to the detriment of the criminal, for a recalibration of the scales of justice. A victim-orientated approach was demanded, backed up by criticism of the judiciary for being out of touch with reality. Conventional criminal procedure was seen as inadequate for combating the threat posed by organized crime and something more was perceived to be needed.

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31 C. Fennell, *Crime and Crisis in Ireland: Justice by Illusion* (Cork: Cork University Press, 1993) 31.

32 I. O'Donnell, 'Crime and justice in the Republic of Ireland' (2005) 2(1) *European Journal of Criminology* 99 at 101.

33 P.C. van Duyne and T. Vander Beken, 'The incantation of the EU organised crime policy making' at 262.

34 See, for example, L. Campbell, 'Criminal justice and penal populism in Ireland' (2008) 28(4) *Legal Studies* 559.

35 Dáil Éireann, Private Members' Business – Organised Crime (Restraint and Disposal of Illicit Assets) Bill, 1996, Second Stage, 2 July 1996 vol. 467, col. 2442, per Deputy Alan Shatter.

36 Dáil Éireann, Private Members' Business – Measures Against Crime: Motion, 2 July 1996, vol. 467, col. 2396, per Deputy Mary Harney.

37 Seanad Éireann, Bail Bill, 1997, Second Stage, 23 April 1997, vol. 151, col. 277–278, per Senator Dan Neville.

Inevitably, there followed significant substantive and institutional changes, and, alongside changes made to criminal law and procedure,[38] civil forfeiture was adopted as a tool to target the assets of those engaged in criminal activity.

Perceived inadequacies of the criminal process could, so it was assumed, be cured by the use of the civil process to seize criminal assets. As Deputy Liz O'Donnell exclaimed,

> … given the difficulties experienced in getting convictions, or even gathering evidence, a new power is needed to [restrain] the use of assets outside the context of criminal proceedings … if we cannot arrest the criminals, why not confiscate their assets?[39]

This new approach, whereby the focus would be on the financial gains stemming from illicit activity, represented a radical change from the conventional criminal process involving investigation, arrest, charge and prosecution. It represented a significant re-calibration of the relationship between the State and the individual.[40] In a liberal democracy, such as Ireland, procedural protections such as the presumption of innocence, the right to silence and the right to trial by jury are often enshrined in the constitution.[41] In criminal proceedings, it is for the State to establish, beyond reasonable doubt, the guilt of an accused. The accused can remain mute and put the State to proof.[42] In civil forfeiture proceedings, however, such procedural protections are conveniently bypassed – for example the standard of proof is the civil standard, the balance of probabilities, and the respondent can be required to cooperate with the authorities (for example, by providing information as to income or sources of income). Before turning to the rationale of, and concern surrounding, civil forfeiture, we first must consider whether organized crime in Ireland represented such a threat as to merit the significant change of focus to targeting 'criminal' assets in the absence of the procedural safeguards of the criminal process.

38 For example, the Criminal Justice (Drug Trafficking) Act, 1996.

39 Dáil Éireann, Private Members' Business – Organised Crime (Restraint and Disposal of Illicit Assets) Bill, 1996, Second Stage, 2 July 1996, vol. 467, col. 2435.

40 C. King, 'Using civil processes in pursuit of criminal law objectives: a case study of non-conviction-based asset forfeiture' (2012) 16(4) *International Journal of Evidence and Proof* 337.

41 See generally, D. Walsh, *Criminal Procedure* (Dublin: Thomson Round Hall, 2002). There have, however, been significant encroachments upon these rights, often in response to threats posed by organized crime and terrorist activities.

42 Though, adverse inferences are increasingly permitted where a suspect does remain silent. See, for example, the Criminal Justice Act 2006, s72A, as inserted by s 9 of the Criminal Justice (Amendment) Act 2009.

## Crime in Ireland: An Organized Crime Threat?

There can be no doubt that crime levels in Ireland have increased over time, albeit with significant fluctuations. The level of indictable offences consistently increased from 48,387 in 1975 to 102,387 in 1983. This was followed by a period when crime levels steadily declined – by 1987 the level of indictable offences stood at 85,358. This level, however, was followed by another period of growth reaching a peak of 102,484 in 1995. Another period of decline then followed, with the figure in 1999 standing at 81,274.[43] With the exception of 1987, overall crime rates were, at this time, at the lowest level since 1980. These trends are illustrated in Figure 7.1.

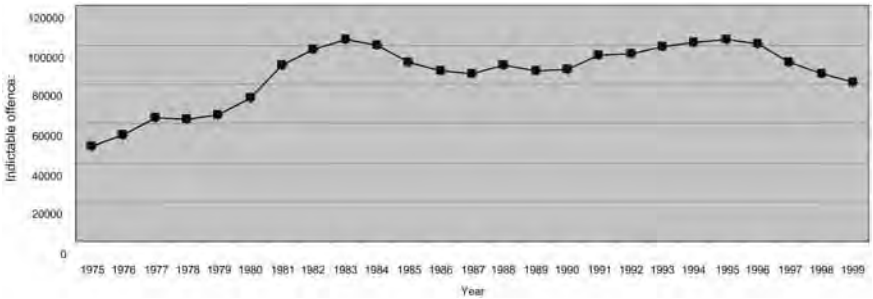


**Figure 7.1 Indictable offences 1975–1999**
*Note*: Annual Reports of *An Garda Síochána*.

In 2000, a new classification of offences was introduced to replace the old indictable/non-indictable offences categorization. This new classification distinguished between headline and non-headline offences.[44] In 2000, the number of headline offences began at 73,276 but quickly increased to a peak of 106,415 within two years. This dramatic increase in the official level of crime is, however, at least partly a consequence of procedural changes – for example the introduction of the PULSE (Police Using Leading Systems Effectively) computer system in 1999 and the adoption of the new classification of offences in 2000. Such changes distort any comparison with earlier years and particular caution must be exercised

43 These figures are taken from the annual reports of *An Garda Síochána* (Irish police). See also E. O'Sullivan and I. O'Donnell, 'Why is crime decreasing' (2001) 11(1) *Irish Criminal Law Journal* 2.

44 The headline/non-headline classification of offences was itself subsequently jettisoned after the Central Statistics Office assumed responsibility for publication of crime rates in 2006: Central Statistics Office *Irish Crime Classification System (ICCS)* (Dublin: 2008).

when interpreting official crime rates from this period. The level of headline offences remained relatively constant thereafter, hovering around the 100,000 mark.[45] This is illustrated in Figure 7.2.

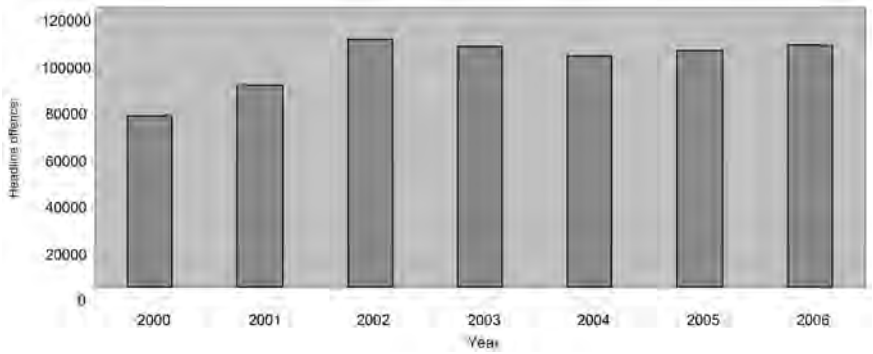


**Figure 7.2 Headline offences 2000–2006**
*Note*: Annual Reports of *An Garda Síochána.*

On their own, and taken at face value, the official statistics would suggest that, during the late 1990s and early 2000s, Ireland was a country with a relatively low crime problem,[46] notwithstanding a general perception that crime was a significant problem. Public concern was matched in the political arena, with politicians keen to wrap themselves in the mantle of law and order and calling for increased powers in support of criminal justice agencies. Added to public concern and political posturing was the portrayal of crime in the media, where the focus is often on extreme, atypical and sensational incidents. It is little wonder then that public perceptions of the crime situation do not correspond with the factual situation, at least as measured in the official statistics.[47]

Care must be exercised, however, when considering the official crime statistics. While the public perception of crime does not correspond with the situation reported in the official statistics, it must be recognized that the official statistics

45 The ICCS has now shifted emphasis away from a notional 'global figure' of crime: Central Statistics Office, *Irish Crime Classification System (ICCS)* (Dublin, 2008).

46 For an international comparison, see I. O'Donnell, 'Interpreting Crime Trends' (2002) 12(1) *Irish Criminal Law Journal* 10; I. O'Donnell, 'Patterns in crime' (2004) 14(2) *Irish Criminal Law Journal* 2.

47 M. O'Connell, 'Is Irish public opinion towards crime distorted by media bias?' (1999) 14(2) *European Journal of Communication* 191.

themselves do not portray a complete picture.[48] Official crime statistics suffer from a number of inherent and well-known deficiencies, including the fact that they do not include crimes that are not reported to the police or are not recorded if they are reported; traditionally, offences prosecuted by other agencies (such as welfare and revenue frauds and health and safety violations) were excluded; the statistics are susceptible to changes in counting rules or procedural changes; and they are affected by changes in public confidence in the police.[49] The overview presented by the total number of recorded offences is, therefore, somewhat misleading. As the Central Statistics Office has stressed: 'It is impossible to make definitive statements about total crime levels in Ireland by considering Garda recorded offences only.'[50] In relation to organized crime, these deficiencies are even more pronounced. For example, organized crime-type activities are included in broader categories that encompass a wide range of illegal, and more frequently occurring, criminal activities, and there might well be a lower propensity to report organized crime-related offences for fear of retaliation.[51] The ever-changing nature of organized crime[52] also presents its own difficulties for measuring organized criminal activities based solely on official statistics. Clearly, 'only very broad – if any – trends in the nature and extent of organised crime can be expected to find expression in the official crime statistics'.[53] Unlike other jurisdictions, there are few alternative sources of information as to the nature or scale of organized crime in Ireland – 'There remains an excessive dependence on the official picture; when this is unclear, explanation becomes difficult.'[54] Given that Ireland did not participate in the International Crime Victims Survey during the 1990s, there are difficulties with drawing a comparison with the extent of crime, particularly organized crime, in other jurisdictions at that time.

But, whilst official statistics do suffer from a number of limitations, it must be recognized that they remain a useful source of information so long as modest demands are made of the data. Furthermore, when it comes to more serious forms of criminal offences (particularly homicide offences, serious assault

48 Z. MacDonald, 'Official Crime statistics: Their use and interpretation' (2002) *The Economic Journal* F85.

49 See, for example, M. Maguire, 'Crime data and statistics' in M. Maguire, R. Morgan and R. Reiner (eds), *The Oxford Handbook of Criminology* (4th ed., Oxford: Oxford University Press, 2007).

50 Central Statistics Office, *Irish Crime Classification System (ICCS)* (Dublin: 2008) para. 2.2.

51 K. von Lampe, 'Making the second step before the first: Assessing organized crime: The case of Germany' (2004) 42 *Crime, Law and Social Change* 227 at 235–236.

52 See, generally, Europol, *EU Organised Crime Threat Assessment 2011* (The Hague: 2011).

53 K. von Lampe, 'Making the second step before the first: Assessing organized crime: The case of Germany' (2004) 42 *Crime, Law and Social Change* 227 at 236.

54 I. O'Donnell, 'Crime and Justice in the Republic of Ireland' (2005) 2(1) *European Journal of Criminology* 99 at 109.

etc.), such offences are more likely to come to the attention of the authorities and consequently be included in official statistics than, say, a minor incident of criminal damage.[55] Reference to official statistics, then, is particularly important in the context of considering political responses to organized crime (albeit not the extent of organized crime itself). While the total number of recorded crimes fell during the 1990s, offences that capture the public attention did increase. For example, the number of Group I offences (encompassing offences against the person, such as murder, manslaughter, dangerous driving causing death, traffic fatalities, possession of firearms with intent to endanger life, assault and other related offences) increased 16.9 per cent over the time period 1990–1998 – from 1,631 to 1,907 offences. Increases in, for example, the number of unlawful killings served to contribute to the perception that the country was engulfed in a crime crisis.[56] The number of murders in 1990 was 16, and 14 of these had been detected. However, by the middle of the decade – in 1995, the year prior to the anti-crime package announced in the summer of 1996, – the number of murders had increased to 41, with 30 of these detected.[57] Similarly, increases can be seen in drug-related offences too. In 1990 the number of persons charged under the Misuse of Drugs Acts, 1977–1984 was 2,071 (which itself represented a 54.1 per cent increase on the previous year).[58] In 1995, the number of persons charged had increased to 3,730.[59] The National Crime Forum, established to gauge comments and suggestions from the general public and relevant experts, stated: 'There is considerable, and understandable, public concern at the damage which the recent growth in drug abuse is doing: the lives wrecked, the attendant crimes and the development of a significant criminal underworld.'[60] Clearly then, it would be wrong to simply dismiss, without more, political reaction to the crime situation – particularly that concerning organized crime – as simply yet another moral panic.

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55 For consideration of some of the uses of official statistics, see W.G. Skogan, 'The validity of official crime statistics: An empirical investigation' (1974) *Social Science Quarterly* 25.

56 See, for example, E. Dooley, *Homicide in Ireland 1992–1996* (Dublin: Stationery Office, 2001).

57 In 2000 these figures were, respectively, 39 and 32 (and there have been significant increases in subsequent years too).

58 This is the overall figure, as given in the *Garda* Annual Report, which does not distinguish between different forms of drug offence. The Annual Report does state, however, that the increase relates mainly to small amounts of cannabis and cannabis resin for personal use and does not indicate any great increase in trafficking. An Garda Síochána, *Annual Report on Crime 1990* (Dublin: Stationery Office, 1991) 35.

59 The quantities of drugs seized are also significant in this time period; heroin seizures increased from 578.24 g to 6.4 kg, while cocaine seizures increased from 1008.60 g to 21.8 kg.

60 *Report of the National Crime Forum* (Dublin: Institute of Public Administration, 1998) 69.

The concern, though, is whether the subsequent response, the adoption of wide-ranging reforms to the criminal justice system, was a form of reactionary politics that strikes to the heart of respect for human rights and due process values.[61] While it has been suggested that the Proceeds of Crime Act is 'a proportionate response to the dramatic growth in organised crime which has occurred in the past decade',[62] such a sweeping generalized statement withers under scrutiny in the absence of supporting evidence. What, for example, do we know of the nature and/or extent of organized crime in Ireland? The answer is not a lot.[63] There is, inevitably, an element of uncertainty, therefore, when discussing the proportionality, and/or effectiveness, of civil forfeiture as a response to organized criminal activities, not to mention a number of caveats that must constantly be born in mind. Such uncertainty, however, does not prevent politicians and/or law-enforcement officials lauding the benefits of this innovative tool.

## Arguments in Favour of Civil Forfeiture

The adoption of civil forfeiture represented a significant change of approach in the fight against organized crime in Ireland, a shift away from the conventional criminal process of investigation, prosecution, conviction, punishment. The Proceeds of Crime Act authorizes seizure, and ultimately forfeiture, of property absent of criminal conviction, often based on hearsay evidence and on the civil standard of proof. One of the main arguments used to justify civil forfeiture concerns the procedural benefits that it carries. As we have seen already, in the mid-1990s, there was a widespread belief that the criminal process alone was inadequate to deal with the threat posed by organized crime. Something more was deemed to be needed, namely the use of the civil process to target those at the upper echelons

61 A more cynical perspective might point to the fact that the Private Members' Organised Crime (Restraint and Disposal of Illicit Assets) Bill was introduced in such a short time-frame after the McCabe and Guerin murders which would suggest that politicians were simply waiting for an opportune moment to introduce the proposals to the *Oireachtas* (legislature) after a previous unsuccessful attempt in the early 1990s.

62 S. Murphy, 'Tracing the proceeds of crime: Legal and Constitutional Implications' (1999) 9(2) *Irish Criminal Law Journal* 160. Compare P.A.J. Waddington, 'Mugging as a moral panic: A Question of proportion' (1986) 37(2) *British Journal of Sociology* 245.

63 There are, of course, significant difficulties in gauging the threat of organized crime. See T. Vander Beken, 'Risky business: A risk-based methodology to measure organized crime' (2004) 41 *Crime, Law and Social Change* 471. In the UK, there have been attempts to quantify the threat posed by organized crime activities, for example: S. Brand and R. Price, *The economic and social costs of crime* (London: Home Office, 2000); Performance and Innovation Unit *Recovering the Proceeds of Crime* (London: Cabinet Office, 2000); Home Office, *One Step Ahead: A 21st Century Strategy to Defeat Organised Crime* (London: Stationery Office, 2004).

of criminal activity.[64] In civil forfeiture proceedings to seize 'criminal' assets, the State does not have to establish guilt or, indeed, any wrongdoing on the part of an individual.[65] The State simply has to establish that the property concerned constitutes proceeds of crime. And, of course, given that it purports to be a civil process, the standard of proof is on the balance of probabilities as opposed to the higher standard of beyond reasonable doubt required in criminal proceedings. Further, the presumption of innocence does not apply in such proceedings. Clearly, resort to the civil process is attractive to law-enforcement agencies, not least because it is, for the most part, more efficient and expedient than the more cumbersome criminal process.[66]

Related to such procedural indulgences is the view that civil forfeiture is an ideal (indeed, perhaps the only) method of targeting those at the upper echelons of organized criminal groups. If they cannot be brought to justice in the conventional manner, then at least the financial incentive for engaging in criminal activity can be removed. As has been pointed out by Simser: 'Where organized crime insulates itself from culpability through the use of foot soldiers, civil forfeiture can still effectively get at the lifeblood of the organization – its money.'[67] According to Ashe and Reid: 'The phenomenon of the controllers being able to insulate themselves has long been the major issue in combating organised crime, and the 1996 legislation [*namely, the Proceeds of Crime Act, 1996 and the Criminal Assets Bureau Act, 1996*] in Ireland may be seen as a direct attack on those people by attacking directly the proceeds of crime.'[68] In *M v D*, Moriarty J referred to:

> the international phenomenon, far from peculiar to Ireland, that significant numbers of persons who engage as principals in lucrative professional crime, particularly that referable to the illicit supply of controlled drugs, are alert and effectively able to insulate themselves against the risk of successful criminal prosecution through deployment of intermediaries.[69]

Moriarty J went on to state that the Proceeds of Crime Act 'is designed to enable the lower probative requirements of civil law to be utilised in appropriate cases, not

64 Official discourse focuses on a hierarchical idea of 'organised crime', though the reality is often very different. See, for example, Z.J. Alach, 'An incipient taxonomy of organised crime' (2011) 14(1) *Trends in Organized Crime* 56.

65 See, for example, *Murphy v Gilligan* [2011] IEHC 62.

66 T. Jaggar and M. Sutherland Williams, 'Civil recovery: Then and Now' (2010) *Criminal Bar Quarterly* 5; T.P. Farley, 'Asset forfeiture reform: A law enforcement response' (1994) 39 *New York Law School Law Review* 149.

67 J. Simser, 'Perspectives on civil forfeiture' in S. Young (ed.), *Civil Forfeiture of Criminal Property: Legal Measures for Targeting the Proceeds of Crime* (Cheltenham: Edward Elgar, 2009) 20.

68 M. Ashe and P. Reid, 'Ireland: The Celtic Tiger bites – The attack on the proceeds of crime' (2001) 4(3) *Journal of Money Laundering Control* 253 at 256.

69 [1998] 3 IR 175, 178.

to achieve penal sanctions, but to effectively deprive such persons of such illicit financial fruits of their labours as can be shown to be proceeds of crime'.[70] Given that criminal convictions are all too often seen to be beyond reach in relation to the 'organizers', post-conviction confiscation of criminal assets is, of course, also not possible. Even where criminal convictions are secured, deficiencies in post-conviction forfeiture regimes often mean that criminals are in a position to enjoy their ill-gotten gains (and, indeed, to use such gains for further criminal activity) after punishment. It is not surprising then that the non-conviction approach has grown in prominence in recent decades. This approach is increasingly being used across the common-law world (for example, in the USA, Canada, Australia, the UK and South Africa)[71] in the fight against organized crime.

## Criticism of Civil Forfeiture

The first criticism of civil forfeiture is that it is not necessary, that the conventional criminal justice system is in fact adequate to tackle organized crime. Police and prosecution authorities have a vast arsenal available to them for tackling criminal behaviour. For example, there are, *inter alia*, powers: to stop and question; to stop and search; of entry, search and seizure; to issue search warrants (including some vested in the police); of arrest, detention and questioning; of surveillance; to restrict the right to bail; to draw adverse inferences and encroach upon the right to silence; to try without a jury; to protect witnesses; to shift the evidential burden of proof onto the accused in certain circumstances; to impose mandatory sentencing; and to use anti-terrorism powers. In recent decades, this array of powers has been further enhanced, and there is a demonstrative shift towards the crime control model at the expense of due process norms.[72] It would certainly appear that the Criminal Assets Bureau itself is focused on pursuing, to the utmost of its powers, those suspected, accused and/or convicted of criminal wrongdoing. For example, the Bureau has targeted a person with a conviction for armed robbery and suspected of being a significant player in drug trafficking,[73] a person with convictions for murder, drugs offences and firearms offences,[74] people suspected of,[75] or convicted

70 Ibid.

71 For discussion of developments in Australia and Canada, see chapters 6 and 8 respectively.

72 See, for example, A. Ryan, 'Arrest and detention: A review of the law' (2000) 10(1) *Irish Criminal Law Journal* 2; S. Kilcommins and B. Vaughan, 'Reconfiguring State-accused relations in Ireland' (2006) 41 *Irish Jurist* (n.s) 90.

73 'Hands-on worker has armed raid conviction here' *Irish Times*, 6 March 1998.

74 'Killer made £720,000 in drugs deal' *Irish Times*, 30 July 1999.

75 'Assets bureau seizes €17,360 in cash from drug dealer' *Irish Times*, 9 October 2007.

of,[76] involvement in the drugs trade, those engaged in corruption,[77] and people with convictions for receiving and/or handling stolen property.[78] Given that the Bureau purports to operate outside the conventional criminal process, procedural safeguards that are insisted upon in the criminal process do not apply.

Inevitably, the adoption of civil forfeiture raises serious issues as to the rights of the individual, not least because a person 'charged' with involvement in criminal activity is effectively 'tried' in civil proceedings but stripped of the benefit of criminal process procedural protections such as the presumption of innocence and the higher criminal standard of proof.[79] The adoption of civil forfeiture as a tool of law enforcement has been described as 'a frontal assault on due process'.[80] Another commentator has suggested that States are enacting such procedures for the express purpose of imposing punishment while avoiding the heavy burden of safeguards afforded to an individual in the criminal process.[81] As Piety points out:

> The doctrine of civil forfeiture has turned into a legal juggernaut, crushing every due process claim thrown in its path: the privilege against self-incrimination, the prohibition against cruel and unusual punishment, the right to trial by jury, the right to a verdict rendered only after a finding of guilt beyond a reasonable doubt, the right to be free from being twice charged with the same offense, the right to be free from government seizures of property absent probable cause, and the right to counsel of choice. All of the claims to these rights have been rejected, and their existence limited, or eliminated entirely, in the realm of civil forfeiture … Because the entire civil forfeiture doctrine is made up of legal fictions that if applied in a logically consistent manner provide no internal check on the government's power to employ forfeiture, its application is virtually unbounded.[82]

It might be suggested that since certain 'civil' sanctions exact punishment as severe as criminal sanctions, they ought to attract enhanced safeguards that are inherent in criminal procedure. Cheh, however, while recognizing that 'this idea is

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76 'Contest over Gilligan's millions' *Irish Times*, 17 November 2005.

77 'The political fixer who can't hide from the past' *Irish Times*, 29 November 2003.

78 'Couple oppose Cab order to seize house, ring and cash' *Irish Times*, 19 March 2010.

79 A. Ashworth, 'Is the criminal law a lost cause?' (2000) 116 *Law Quarterly Review* 225.

80 J. Lea, 'Hitting criminals where it hurts: Organised crime and the erosion of due process' (2004) 35 *Cambrian Law Review* 81 at 83.

81 S. Klein, 'Civil in rem forfeiture and double jeopardy' (1996–1997) 82 *Iowa Law Review* 183 at 188.

82 T.R. Piety, 'Scorched Earth: How the expansion of civil forfeiture doctrine has laid waste to due process' (1991) 45(4) *University of Miami Law Review* 911 at 921–924.

appealingly straightforward and, sometimes, equitably compelling',[83] rejects this proposition.

> Though the severity of a civil sanction may be an important consideration in applying various constitutional safeguards, the [US] Supreme Court has never adopted this approach. This *sanction equivalency* approach has many serious flaws, not the least of which is the longstanding acceptance of the civil label even as applied to huge punitive damage awards and fabulous forfeitures. Even if one were to confine the argument to only those sanctions that involve losses of liberty equivalent to the quintessential criminal sanctions of incarceration, it is clear that the courts consistently have treated certain deprivations of physical liberty, such as imprisonment for civil contempt and involuntary commitment of the mentally ill, as civil in nature.
>
> But, mindful of Holmes's admonition that we should have better reasons than just history to support our legal rules, we also should reject the sanction equivalency approach because of practical, common sense concerns. The criminal procedural protections set out in the Constitution are extremely costly and time consuming. In fact, they may add nothing to and even frustrate the goals of fairness, accuracy, and truth-finding. One can view the Bill of Rights itself as a balancing of interests between the costs of procedures and the benefits they confer. Any decision to extend procedural protections beyond those instances where they clearly apply requires a similar calculation.[84]

While Cheh proceeds on the assumption that criminal law safeguards ought not be extended to the imposition of civil sanctions, it is certainly arguable that 'civil' forfeiture is not, de facto, a civil sanction; rather, it is a criminal punishment designed to punish *criminals* for their wrongdoing.[85] It is important to distinguish between *punishment* and *criminal punishment*. As Packer states: 'Not all punishment is criminal punishment but all criminal punishment is punishment.'[86] While civil sanctions, such as punitive damages, imprisonment for contempt and involuntary commitment of the mentally ill can be seen as punitive, they do

83 M.M. Cheh, 'Constitutional limits on using civil remedies to achieve criminal law objectives: Understanding and transcending the criminal-civil law distinction' (1991) 42 *Hastings LJ* 1325 at 1350. See further, for the UK Supreme Court's position, *Gale v Serious Organised Crime Agency* [2011] UKSC 49.

84 Ibid., at 1350–1351.

85 See, for example, L. Campbell, 'Theorising asset forfeiture in Ireland' (2007) 71 *Journal of Criminal Law* 441; J. Meade, 'The Disguise of civility: Civil forfeiture of the proceeds of crime and the presumption of innocence in Irish law' (2000) *Hibernian Law Journal* 1.

86 H.L. Packer, *The Limits of the Criminal Sanction* (Palo Alto: Stanford University Press, 1968) 35.

not seek to *criminally* punish a person for wrongdoing. Forfeiture, however, is different, and it is contended that Cheh errs in classifying forfeiture as a civil sanction. Indeed, as has been stressed by Naylor: 'It is impossible to declare a car or house or bank account to be the proceeds of cocaine sales, for example, without simultaneously smearing its owner with the accusation of drug trafficking.'[87]

Cheh further rejects the sanction equivalency approach because of practical, common sense concerns. She regards criminal procedural protections as costly, time-consuming, and an obstacle to the pursuit of fairness, accuracy and truth-finding. As we have seen, a similar viewpoint pervaded political debates in the build-up to the enactment of the Proceeds of Crime Act and the establishment of the Criminal Assets Bureau. Such a focus on the concern for efficiency and expediency at the expense of due process is troubling, not least since it casts to one side the foundational principles of criminal evidence.[88] Demands for harsher, more repressive responses to 'the crime problem' have fed through into significant substantive, institutional and procedural reforms that significantly strengthen the hand of the State in the criminal process. Such reform is, of course, at the expense of individual rights. Rather than balancing the interests of the State in prosecuting criminals against the rights of the individual, the scales of justice are now firmly weighed in favour of the State, at the expense of due process norms. It has been said that 'the delicate equilibrium between freedom from government and public protection is being unsettled by an anxious State determined to show strength by "tooling up" in the fight against crime'.[89] Yet, as Costigan and Thomas point out:

> Due process is not inconsistent with the notion of crime suppression: as a normative model, it prescribes the *procedure* to be employed in the prosecution of offenders. Although the due process model is commonly seen to imply a reduction in the efficiency of the criminal process, this view is predicated on the notion that fact-finding reliability is of secondary importance as a value. But public confidence is not secured simply by high rates of prosecution and conviction, as the reaction to publicised miscarriages of justice has shown; adherence to due process is essential to the very legitimacy of the criminal justice system.[90]

Indeed, it is questionable whether there ought to be any further balancing exercise when criminal matters are at issue. A balance has already been achieved

87 R.T. Naylor, 'Wash-out: A critique of follow-the-money methods in crime control policy' (1999) 32(1) *Crime, Law and Social Change* 1 at 41.

88 See, generally, P. Roberts and A. Zuckerman, *Criminal Evidence* (Oxford: Oxford University Press, 2010).

89 S. Kilcommins and B. Vaughan, 'Reconfiguring state-accused relations in Ireland' (2006) 41 *Irish Jurist* (n.s) 90 at 92.

90 R. Costigan and P.A. Thomas, 'Anonymous witnesses' (2000) 51 *Northern Ireland Legal Quarterly* 326 at 357–358.

– requiring, *inter alia*, the presumption of innocence, with the burden of proof upon the State to prove its case beyond reasonable doubt, alongside exclusionary rules of evidence – and, it is submitted, the rights afforded to an individual under the criminal process ought not be jettisoned, in the interests of efficiency and expediency, simply by labelling a process as 'civil'. That, however, is the effect of the Proceeds of Crime Act. By virtue of its placement in the civil realm, it is able to circumvent criminal procedural safeguards. While the government of the day wanted to demonstrate a stance of being tough on crime, it effected a radical shift in the relationship between the State and the individual, enacting legislation with profound long-term implications, and which is, of course, difficult to reverse (at least for any government with aspirations of re-election).

## Judicial Reactions

Notwithstanding such criticisms, civil forfeiture has withstood constitutional scrutiny before the Irish courts. The seminal decision on the Proceeds of Crime Act was delivered by the Supreme Court in *Murphy v GM, PB, PC Ltd, GH; Gilligan v CAB*.[91] The central issue there was whether proceedings under the Act are civil or criminal in nature. If they are criminal then they would fall foul of constitutionally protected safeguards. As Keane CJ stated:

> It is almost beyond argument that, if the procedures under ss. 2, 3 and 4 of the Act of 1996 constituted in substance, albeit not in form, the trial of persons on criminal charges, they would be invalid having regard to the provisions of the Constitution. The virtual absence of the presumption of innocence, the provision that the standard of proof is to be on the balance of probabilities and the admissibility of hearsay evidence taken together are inconsistent with the requirement in Article 38.1 of the Constitution that
>
> > "No person shall be tried on any criminal charge save in due course of law."
>
> It is also clear that, if these procedures constitute the trial of a person on a criminal charge, which, depending on the value of the property, might or might not constitute a minor offence, the absence of any provision for a trial by jury of such a charge in the Act would clearly be in violation of Article 38.5 of the Constitution.[92]

91 [2001] 4 IR 113.

92 *Murphy v GM, PB, PC Ltd, GH; Gilligan v CAB* [2001] 4 IR 113, 135–136. Compare *FJMcK v AF and JF* [2002] IR 242, 258–259.

After a review of the case law, Keane CJ found that the *indicia* of a 'crime', set out in *Melling v O'Mathghamhna*,[93] are not present in the Act of 1996:

> In contrast, in proceedings under ss. 3 and 4 of the Act of 1996, there is no provision for the arrest or detention of any person, for the admission of persons to bail, for the imprisonment of a person in default of payment of a penalty, for a form of criminal trial initiated by summons or indictment, for the recording of a conviction in any form or for the entering of a *nolle prosequi* at any stage.[94]

The Irish Supreme Court, however, focused more on form rather than substance. The Proceeds of Crime Act is, it is contended, punitive. Civil forfeiture was adopted to 'hit back' at those engaged in crime and the underlying punitive sentiment is clear to see. Further, it was felt that targeting illicit assets would act as a deterrent in that it would eliminate the incentive to commit crime and also remove the capital for further criminal activity. Where proceedings are initiated against a specified individual, so too would that individual experience some form of social stigma.

The Irish courts, however, have rejected the contention that the Proceeds of Crime Act is punitive. In *Gilligan v CAB*, McGuinness J, while recognizing that the Proceeds of Crime Act provides 'a method of attacking a certain form of criminality', went on to say that removal of the proceeds of crime 'could well be viewed in the light of reparation rather than punishment or penalty'.[95] In *M v D*, Moriarty J expressed the view that the Act was designed 'not to achieve penal sanctions, but to effectively deprive [*the principals of professional crime*] of such illicit fruits of their labours as can be shown to be proceeds of crime'.[96] Given that the highest courts in Ireland have consistently upheld the civil nature of the Proceeds of Crime Act, there is little prospect of any further constitutional challenge proving successful in this respect. Civil forfeiture legislation is, however, expected to be challenged before the European Court of Human Rights in the not-too-distant future.[97]

93 [1962] IR 1.

94 [2001] 4 IR 113, 147.

95 [1998] 3 IR 185, 217–218.

96 [1998] 3 IR 175, 178.

97 In Ireland, it has long been anticipated that the decision in *Gilligan v CAB* [1998] 3 IR 185 (HC), [2001] 4 IR 113 (SC) would be pursued in Strasbourg, while in *Gale v Serious Organised Crime Agency* [2011] UKSC 49 the UK Supreme Court indicated at paras 32 (Lord Phillips), 60 (Lord Clarke), and 117 (Lord Brown) that this area would benefit from consideration by the Grand Chamber of the European Court of Human Rights. For further consideration of civil forfeiture and the ECHR, see C. King, 'Civil forfeiture and Article 6 of the ECHR: Due process implications for England and Wales and Ireland' (2013) *Legal Studies* (forthcoming, DOI: 10.1111/lest.12018).

## 'Hitting Back' at Organized Crime?

How effective is civil forfeiture at denying criminals the benefit of their ill-gotten gains? Has it had a significant impact on how organized crime groups conduct their activities? Has it acted as a valid deterrent? These, and other, questions are important when examining how effective civil forfeiture has been in hitting back at organized crime. The impact of civil forfeiture is especially relevant today in that the Irish Minister for Justice, Equality and Defence has established a committee to consider the effective implementation of proceeds of crime legislation.[98]

It has been recognized that '[e]valuating the effectiveness of a law, especially the effectiveness of unexplained wealth laws, is a complex and difficult task'.[99] At this point, it is worth briefly reviewing some anecdotal evidence concerning the Proceeds of Crime Act. It is widely believed that the Act has impacted upon the activities of organized crime groups, either in the form of disrupting and/ or dismantling their illicit activities. In the years immediately following the enactment of the Act, there was a concerted focus on persons who were suspected of directing organized-crime type activities and who had accumulated significant wealth, all with no apparent legitimate income to sustain such wealth. For various reasons, even though such individuals were known to the police there was insufficient evidence against them to justify bringing a criminal prosecution. The adoption of civil forfeiture had a significant impact on the Irish crime scene, notably in that many criminal figures moved from Ireland to the continent, often Spain or the Netherlands. In reality, though, these people continued to direct criminal activity from afar. Even where they ceased all involvement in the Irish crime scene the vacuum was quickly filled by new crime groups. Significantly, the Criminal Assets Bureau was in a position to seize at least some of the accumulated assets held by these people before they could be removed from the jurisdiction. While money, for example, was easily transferable it was not always possible for property to be sold before the Bureau came calling. After initial 'success', the Bureau turned to middle- and lower-ranking criminals. While the Bureau has recognized that this 'may not realise extensive funds', it 'illustrates the Bureau's ability to react to local community concern and as such is seen as an effective use of Bureau resources'.[100]

Turning now to the (admittedly limited) statistical evidence that is available. The annual reports of the Criminal Assets Bureau provide some insight into the use of the Proceeds of Crime Act. According to its 2010 Annual Report, the Bureau obtained 12 consent disposal orders (to the value of €2,810,902.52), as well as

98 Criminal Assets Bureau, *Annual Report 2010* (Dublin: Stationery Office, 2011) para. 7.5.

99 Booz Allen Hamilton, *Comparative Evaluation of Unexplained Wealth Orders: Prepared for the US Department of Justice, National Institute of Justice* (Washington, DC: 2011) 103.

100 Criminal Assets Bureau, *Annual Report 2007* (Dublin: Stationery Office, 2008) 'Letter to Commissioner from Chief Bureau Officer'.

14 interim orders (€7,019,475.88 and Stg£63,535) and 17 interlocutory orders (€4,526,527.72) during that year. Annual reports regularly proclaim, for example, that the Bureau 'has had another successful year in the context of pursuing its statutory remit'.[101] In the political arena, so too we hear statements such as:

> The Criminal Assets Bureau has been at the forefront of the fight against organised crime, including drug trafficking, in this jurisdiction since its inception in 1996. The significant successes that the Bureau continues to achieve by its operations demonstrates the effectiveness of its approach in pursuing illegally gotten gains.[102]

This statement was accompanied by the figures published in the Annual Reports – see Table 7.1 below. Such self-congratulation rests on the value of assets realized by the Bureau. These figures, though, do not allow any meaningful assessment of the Proceeds of Crime Act. The figures simply demonstrate that the Bureau has successfully utilized the provisions under the Proceeds of Crime Act, but tell us little else. These figures do not, for example, tell us how much an impact the Bureau has had in disrupting and/or deterring organized crime activities.

**Table 7.1 Monies secured by CAB from 1996–2007**

| Year | s.2 Interim Order | s.3 Interlocutory Order | s.4 and 4A Disposal Order |
|---|---|---|---|
| 1996 | IR£2,101,000 | IR£2,048,000 | n/a |
| 1997 | IR£2,334,680 | IR£1,496,180 | n/a |
| 1998 | IR£1,682,545 | IR£1,091,413 | n/a |
| 1999 | IR£1,500,000 | IR£813,659 | n/a |
| 2000 | IR£838,536<br>Stg£52,230 | IR£1,641,215 | n/a |
| 2001 | IR£1,872,655<br>Stg£491,114 | IR£1,342,951<br>Stg£279,635 | n/a |
| *Total: 1996–2001* | *IR£10,329,416*<br>*Stg£543,344* | *IR£8,433,418*<br>*Stg£279,635* | *n/a* |
| *Total euro equivalent: 1996–2001* | *€13,115,652* | *€10,708,231* | *n/a* |

101 Criminal Assets Bureau, *Annual Report 2010* (Dublin: Stationery Office, 2011) 'Letter to Minister from Commissioner'.

102 Dáil Éireann Debates, vol. 661, Written Answer – Criminal Assets Bureau, 24 September 2008, Minister Dermot Ahern.

Appendix E

| Year | s.2 Interim Order | s.3 Interlocutory Order | s.4 and 4A Disposal Order |
|---|---|---|---|
| 2002 | €3,709,086<br>Stg£17,802,004<br>US$5,558,377 | €2,504,669<br>Stg£1,993,094<br>US$5,247,821 | n/a |
| 2003 | €3,045,842<br>Stg£12,150 | €71,699<br>Stg£557,070 | n/a |
| 2004 | €1,027,152<br>Stg£6,115 | €1,688,652<br>Stg£375 | €275,875 |
| 2005 | €5,860,335<br>US$314,620 | €1,200,526<br>Stg£26,760<br>US$130,000 | €2,002,738 |
| 2006 | €2,836,480<br>Stg£ 294, 289 | €726,351 | €2,459,865 |
| 2007 | €9,804,193<br>Stg30,690 | €9,848,433 | €1,435,341 |
| *Total: 2002–2007* | *€26,283,088*<br>*Stg£18,145,248*<br>*US$5,872,997* | *€16,040,330*<br>*Stg£2,577,299*<br>*US$5,377,821* | *€6,173,819* |
| *Total: 1996– 2007* | *€39,398,740*<br>*Stg£18,688,592*<br>*US$5,872,997* | *€26,748,561*<br>*Stg£2,856,934*<br>*US$5,377,821* | *€6,173,819* |

*Note*: Adapted from Dáil Éireann Debates, vol. 661, Written Answer – Criminal Assets Bureau, 24 September 2008, Minister Dermot Ahern.

Experience from Australia demonstrates that despite a lack of evidence as to the effectiveness of proceeds of crime legislation such legislation has become progressively more severe.[103] Ireland must be careful not to follow the same route in the absence of evidence that civil forfeiture, and other follow-the-money techniques, are having the desired effect. A rigorous evaluation of the Proceeds of Crime Act is required before any policy decision is made (as is the task of the committee reviewing the Irish legislation) as to 'whether statutory amendments are necessary and, if so, prepare draft heads for a Bill to be considered by the Attorney General'.[104] A 2010 review of similar legislation in Australia emphasized the need for further research on the impact and effectiveness of unexplained wealth

103 A. Freiberg and R. Fox, 'Evaluating the effectiveness of Australia's confiscation laws' (2000) 33 *Australian and New Zealand Journal of Criminology* 239. See further Chapter 6.

104 Criminal Assets Bureau, *Annual Report 2010* (Dublin: Stationery Office, 2011) para. 7.5.

legislation.[105] A 2011 report commissioned by the National Institute of Justice in the United States, drawing upon international best practice, concluded

> UWOs [*unexplained wealth orders*] have the potential to be a powerful weapon in the fight against organized and serious crime. If used appropriately they can deprive criminals of their ill-gotten gains, they are especially effective in forfeiting assets that are difficult to be connected to an offense. However it is important to emphasize that their effectiveness is limited. While powerful, expectations about their impact should be moderate and realistic.[106]

Writing in 2000, Freiberg and Fox drew attention to the dearth of empirical research on the effectiveness of unexplained wealth legislation, recognizing that 'Oft-repeated statements by politicians that the legislation has been "successful" in confiscating criminal profits, citing the sums restrained or recovered in specific cases as evidence, confound the particular and the general.'[107] Of course seizure of assets might be seen as 'successful' in the sense that it prevents an offender from benefiting from criminal activity.[108] Freiberg and Fox go on to state, however:

> But occasional success in stripping some offenders of their ill-gotten gains alone is insufficient to justify the ever widening reach of the legislation, and the eroding effect of its departure from generally accepted principles of due process in criminal justice. Since the scope and potency of the confiscatory legislation is defended by reference to its broader deterrent effect on serious crime and criminals, it behoves those who defend its measures to ensure that they are properly targeted against the principals of organised crime, rather than bit players who contribute little to the enterprise in capital or planning. Furthermore, if confiscation legislation has not lived up to its promises because it has not been appropriately exploited, further enlargement of the confiscatory powers should be deferred until weaknesses in the implementation policies and the known operational inefficiencies have been remedied.[109]

The Irish authorities would do well to bear such words of caution in mind as part of the ongoing review of proceeds of crime legislation in Ireland.

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105 L. Bartels, 'Unexplained wealth laws in Australia' (2010) *Trends and issues in crime and criminal justice (no. 395)* 6.

106 Booz Allen Hamilton, *Comparative Evaluation of Unexplained Wealth Orders* 148.

107 A. Freiberg and R. Fox, 'Evaluating the effectiveness of Australia's confiscation laws'.

108 Ibid.

109 Ibid.

## Conclusion

Since the 1990s, the Irish criminal justice system has undergone significant change. The conventional criminal law approach of investigation, prosecution, conviction and punishment is no longer regarded as the sole means of crime control. Faced with increasing criminal activity associated with organized crime, Ireland has turned to the civil process in a bid to supplement perceived weaknesses in the criminal enforcement model. The use of civil processes is personified in the adoption of civil forfeiture to target the financial assets of those engaged in criminal activity, particularly those at the upper echelons of organized criminal activity.[110] Yet, the effectiveness of 'follow-the-money' approaches as a tool of law enforcement – while admittedly intuitively appealing – is largely untested. As Naylor states:

> Everyone agrees with the fundamental principle, that criminals should not profit from their crimes. However, beyond that basic conviction, there is no real consensus on how large the problem of criminal money flows really is, on why society is actually worse off when criminals, rather than legitimate business people, consume, save or invest, or on just what level of "collateral" damage society should be called upon to accept in the name of a war on criminal profits. Despite the fact that so many key questions have remained not merely unanswered, but usually unasked, police forces around the world are being turned loose to find, freeze and forfeit the presumed proceeds of crime on the basis of little more than a vague assurance that this is the most resource-effective way to deal with economically-motivated crime.[111]

The Proceeds of Crime Act was hastily rushed through parliament in the summer of 1996 in the wake of significant concerns surrounding organized crime and little thought was given to the implications, and likely effectiveness, of this legislation. The leitmotif at that time was that demand for legislation, to 'hit back' at the criminal elements of society, had to be satiated. In the absence of detailed understanding and evidence-based research on 'what works',[112] criminal justice policy in Ireland will continue to be driven by this sense of populist punitiveness whereby harsh regimes are introduced for no other reason than that they are intuitively appealing. As one commentator states: 'When facts are unavailable, the argument is often won by the politician who shouts loudest or has the most compelling anecdote. Although this is not a peculiarly Irish situation, neither is

110 C. King, 'Using civil processes in pursuit of criminal law objectives: a case study of non-conviction-based asset forfeiture'.

111 R.T. Naylor, 'Wash-out: A critique of follow-the-money methods in crime control policy' at 50.

112 See M. Levi and M. Maguire, 'Reducing and preventing organised crime: An evidence-based critique' (2004) 41(5) *Crime, Law and Social Change* 397 at 404.

it a recipe for considered debate and principled reform.'[113] The adoption of civil forfeiture in 1996 is illustrative of such a populist approach to law reform. A post-conviction regime had only been adopted two years previously,[114] which afforded significant powers to deprive convicted criminals of their ill-gotten gains. Yet, this legislation was not even afforded fair opportunity to have an impact before it was usurped by more radical powers under the Proceeds of Crime Act 1996. Moreover, by going down the 'civil' route, the State circumvents due process norms that would be respected under a post-conviction regime. The Irish legislature has, in the absence of rational and tempered debate, enacted far-reaching measures to counter organized crime even though there is little understanding as to the threat posed by such crime. Moreover, 16 years after the enactment of the Proceeds of Crime Act, it is still not possible to say decisively whether this new approach has significantly impacted upon organized crime type activities in Ireland.

113 I. O'Donnell, 'Crime and justice in the Republic of Ireland' (2005) 2(1) *European Journal of Criminology* 99 at 107.

114 Criminal Justice Act 1994.

## Appendix F

Colin King, “Civil Forfeiture in Ireland: Two Decades of the Proceeds of Crime Act and the Criminal Assets Bureau” in Katalin Ligeti and Michele Simonato, eds. *Chasing Criminal Money: Challenges and Perspectives on Asset Recovery in the EU* (Oxford: Hart Publishing, 2017) 77

# 3

# Civil Forfeiture in Ireland: Two Decades of the Proceeds of Crime Act and the Criminal Assets Bureau

COLIN KING*

## Introduction

Two decades have passed since Ireland adopted civil forfeiture to tackle serious/organised crime: a move that represented a radical change in criminal justice strategies and came at great cost to individual rights. Civil forfeiture allows for property to be seized by, and forfeited to, the State even in the absence of criminal conviction against the person in possession of that property. There are thus significant concerns in relation to due process and property rights. The purpose of this chapter is to explore the law and policy of civil forfeiture in Ireland, drawing upon the extensive case law and commentary over the course of the past two decades. The Irish model of civil forfeiture is regularly used as an exemplar of best practice in other jurisdictions[1]—both common law and civil law—as well as at the EU level.[2] There is thus great merit in examining the Irish model in some depth.

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[1] eg Booz Allen Hamilton, 'Comparative Evaluation of Unexplained Wealth Orders', prepared for the US Department of Justice (Washington DC, National Institute of Justice, 2011). In Vettori's assessment of the 'law in practice' across different EU Member States, civil forfeiture in Ireland was rated as: 93/100 (investigative phase), 95/100 (judicial phase), and 100/100 (disposal phase). B Vettori, *Tough on Criminal Wealth: Exploring the Practice of Proceeds from Crime Confiscation in the EU* (Dordrecht, Springer, 2006) 78.

[2] eg G Mitchell, 'Thematic Paper on Organised Crime. Asset Confiscation as an Instrument to Deprive Criminal Organisations of the Proceeds of their Activities' (Special Committee on Organised Crime, Corruption and Money Laundering, September 2012). For arguments in favour of an EU civil forfeiture regime, see F Alagna, 'Non-conviction Based Confiscation: Why the EU Directive is a Missed Opportunity' (2015) 21(4) *European Journal on Criminal Policy and Research* 447.

Irish authorities regularly proclaim their successes, and emphasise how civil forfeiture adheres to human rights norms. Others disagree—quite strongly. This chapter offers a review of the state of the art. Before looking at the relevant legislation, the first section of the chapter explores the context behind the adoption of civil forfeiture, namely concern surrounding serious/organised crime and the associated, highly charged, political discourse. Civil forfeiture is not a new tool, however; rather, a similar type of legislation had previously been enacted in the anti-terrorism realm, and this experience was influential in designing the Proceeds of Crime Act 1996 (POCA).

After setting out this background, the chapter moves on to consider the legislative framework adopted in both POCA and the Criminal Assets Bureau Act 1996, as well as the subsequent wave of legal challenges that inevitably followed. Challenges to the legislation, on the grounds of constitutional arguments, were ultimately unsuccessful. This leads on to the next section, namely a critique of: due process concerns, circumventing criminal procedural safeguards, the supposed 'civil' nature of civil forfeiture process, the failure of the Irish courts to operate as a check against legislative excess, interference with property rights and the powers afforded to the Criminal Assets Bureau (CAB), as well as its limited accountability.

Finally, the chapter issues a call to arms to other disciplines: much of the extant research on civil forfeiture is from law or criminology scholars. There is a need for greater insight from, or in collaboration with, other disciplines (including economics, business management, psychology, sociology) to consider issues such as effectiveness, the use of civil forfeiture in the corporate realm and procedural fairness.

# I. Background

## A. The Politics of Law and Order

Over the course of the past two decades, the Irish State has been active in its efforts to tackle organised criminal activities. This proactive approach can be seen by, inter alia, a more restrictive approach to bail; expanded police powers relating to arrest, detention and questioning; the establishment of an ad hoc witness protection programme; increased use of the non-jury Special Criminal Court; expanded surveillance powers; and new criminal law offences, including an offence of participating in organised crime type activities.[3] One of the most significant changes—and

[3] For discussion of such measures, see L Campbell, *Organised Crime and the Law: A Comparative Analysis* (Oxford, Hart, 2013).

the focus of this chapter—is the adoption of civil forfeiture, accompanied by the establishment of the multi-agency CAB.[4] This section examines political discourse in the build up to the passing of POCA and the Criminal Assets Bureau Act 1996.[5]

In the wake of the murders of a member of An Garda Síochána (Irish police) and an investigative journalist,[6] political discourse was highly charged: as O'Donnell and O'Sullivan point out, these murders 'generated the conditions where a harsh response to perceived lawlessness became acceptable'.[7] Politicians widely spoke of 'professional thugs',[8] 'home grown Mafia'[9] and 'drug barons'.[10] Politicians were widely critical of perceived inadequacies in the conventional criminal process; and it was widely claimed that 'godfathers of crime'[11] were able to avoid arrest and conviction by virtue of operating at a remove from the coalface of criminal activity. A new criminal justice strategy—whereby the focus would be on the financial incentive of crime—came to the fore: under POCA it would now be possible for the State to seize 'criminal' assets even in the absence of criminal conviction. The enactment of this radical new procedure—civil forfeiture—was accompanied by the creation of a new multi-agency body tasked with implementing the focus on criminal money, the CAB. The rationale underpinning this shift in emphasis towards criminal money is clear:

> The conventional criminal justice system is simply not equipped to bring the so-called crime bosses to justice since they can rarely be directly linked with the execution of a crime. They can, however, be linked with the enormous profits generated by their crimes.[12]

Similarly, in an oft-quoted passage, Deputy O'Donnell stated:

> We have given the courts power to seize the assets of those convicted of certain crimes and to restrain the assets of those facing certain criminal charges, but given the difficulties experienced in getting convictions, or even gathering evidence, a new power is needed to restain [*sic*] the use of assets outside the context of criminal proceedings. To date we have dealt only with assets which are the fruits of past crimes. What we need to

[4] The multi-agency nature of the Bureau is reflected in its composition, ie it brings together police, taxation, and revenue officials.

[5] Much of this discourse reflects the 'indices of change' identified by Garland: D Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Oxford, Oxford University Press, 2001).

[6] Detective Garda Jerry McCabe was murdered by members of a terrorist group during an armed robbery on 6 June 1996 and Veronica Guerin was murdered by a criminal gang on 26 June 1996.

[7] I O'Donnell and E O'Sullivan, 'The Politics of Intolerance—Irish Style' (2003) 43(1) *British Journal of Criminology* 41, 48.

[8] Seanad Éireann, Criminal Assets Bureau Bill, 1996, Second Stage, 9 October 1996, vol 148, col 1547, per Senator Mulcahy.

[9] Dail Éireann, Private Members' Business—Organised Crime (Restraint and Disposal of Illicit Assets) Bill, 1996, Second Stage, 2 July 1996, vol 467, col 2442, per Deputy Shatter.

[10] ibid, vol 467, col 2486, per Deputy Gregory.

[11] Dail Éireann, Private Members' Business—Measures Against Crime: Motion, 2 July 1996, vol 467, col 2396, per Deputy Harney.

[12] Dail Éireann, Organised Crime Bill (n 9), vol 467, col 2463, per Deputy Byrne.

> do now is prevent assets being used as the seeds of future crimes. To put it another way, if we cannot arrest the criminals, why not confiscate their assets?[13]

Against this backdrop, and in a remarkably short space of time, the Proceeds of Crime Bill passed through all parliamentary stages, and was signed into law on 4 August 1996.[14]

## B. Anti-Terrorism Influence

It is often suggested that the Irish civil forfeiture provisions were directly influenced by similar measures in the United States. It is true that the US RICO legislation was highlighted by some politicians during the passage of the Proceeds of Crime Bill. For example, Deputy Willie O'Dea stated:

> The notion that assets can be frozen, or that they can be frozen without anybody being convicted, is not new. Such legislation has been in operation in the United States for more than a decade. … the United States now has legislation which allows for the forfeiture of assets which are suspected of being the proceeds of crime, even when a prosecution never ultimately takes place.[15]

He continued:

> The United States … has infinitely more draconian legislation on the seizure and forfeiture of assets and this has consistently withstood constitutional challenge. The director of the forfeiture office of the United State's Department of Justice was recently quoted as describing the asset seizure legislation in the United States as, 'the most valuable and powerful we have against organised crime'.[16]

Such comments notwithstanding, a more influential framework was found much closer to home—in anti-terrorism legislation permitting the seizure of funds allegedly belonging to the Irish Republican Army (IRA).

The Offences Against the State (Amendment) Act 1985 (OAS(A)A 1985) was introduced, on a temporary basis,[17] to enable forfeiture of property held by an unlawful organisation. Under section 2 of this legislation, where the Minister for Justice was of the opinion that money held in a bank was the property of an unlawful organisation, he could freeze that money and require it to be paid into the High Court. If proceedings were not brought for the return of this money within a

[13] Dail Éireann, Organised Crime Bill (n 9), vol 467, col 2435, per Deputy O'Donnell.

[14] This was only five weeks after the death of Veronica Guerin on 26 June 1996. For further discussion of the backdrop to this legislation, see C King, 'Hitting Back at Organised Crime: The Adoption of Civil Forfeiture in Ireland' in C King and C Walker, *Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist Assets* (Farnham, Ashgate, 2014) 141; J Meade, 'Organised Crime, Moral Panic and Law Reform: The Irish Adoption of Civil Forfeiture' (2000) 10(1) *Irish Criminal Law Journal* 11.

[15] Dail Éireann, Organised Crime Bill (n 9), vol 467, col 2473, per Deputy O'Dea.

[16] Dail Éireann, Organised Crime Bill (n 9), vol 467, col 2474, per Deputy O'Dea.

[17] The OAS(A)A 1985 had a limited lifespan (three months), unless extended by the government. The legislation was only used on one occasion and was then allowed to lapse.

six-month period, the Minister could apply *ex parte* to the High Court for an order directing that the money be paid to the Exchequer. The OAS(A)A 1985 was signed into law on 19 February 1985 and the next day was used to freeze money (IR£1.75 million) held in a bank account in Navan, County Meath. This legislation was unsuccessfully challenged in *Clancy v Ireland*.[18] In a rather brief judgment, Barrington J held that, while the legislation provides for freezing, and paying into the High Court, of money without notice to the account holder, it

> does not confiscate his property or deprive him of a fair hearing. He is entitled to claim the funds in the High Court and he is entitled to a fair hearing there though, admittedly, the onus of proof is on him to establish his title. In the event of a mistake having been made there is provision for the payment of compensation.[19]

Barrington J went on to find that 'the Act of 1985 amounts to a permissible delimitation of property rights in the interests of the common good'.[20] The OAS(A)A 1985, then, provided a 'clear and direct precedent' for the civil forfeiture provisions under POCA.[21]

## II. Legislative Framework

### A. Outline of the Proceeds of Crime Act

The primary legislation governing civil forfeiture in Ireland is the Proceeds of Crime Acts 1996–2005 (POCA).[22] At the outset, it is worth briefly distinguishing civil forfeiture from post-conviction confiscation.[23] Post-conviction confiscation is dependent upon successful prosecution and conviction. As such, all of the enhanced procedural protections of the criminal process apply, including, inter alia, the presumption of innocence and the heightened criminal standard of proof beyond reasonable doubt. At the confiscation hearing (ie when the criminal proceedings are concluded), the civil standard of proof applies.[24] Contrariwise,

[18] [1988] IR 326. The decision in *Clancy* was considered by the Supreme Court in *Murphy v GM; Gilligan v CAB* [2001] 4 IR 113, 144–45.

[19] *Clancy v Ireland* [1988] IR 326, 335.

[20] ibid 336.

[21] Dail Éireann, Organised Crime Bill (n 9), vol 467, col 2409, per Deputy O'Donoghue.

[22] The 1996 Act was amended by the Proceeds of Crime (Amendment) Act 2005, which specifies that the two Acts are together to be known as the Proceeds of Crime Acts 1996–2005. In this vein, whereas until 2005 'POCA' was used to refer to the 1996 Act, since then 'POCA' has been used to refer to the Act, as amended.

[23] Criminal Justice Act, 1994. For a discussion, see M Ashe and P Reid, *Money Laundering: Risks, Liabilities and Compliance* (Dublin, FirstLaw, 2007).

[24] eg Criminal Justice Act 1994, s 4(6).

with civil forfeiture under POCA, property may be seized even in the absence of criminal conviction: civil forfeiture is said to operate *in rem* (against the property), rather than *in personam* (against the individual). What follows is a brief overview of POCA. The long title to the Act provides that it is:

> An Act to enable the High Court, as respects the proceeds of crime, to make orders for the preservation and, where appropriate, the disposal of the property concerned and to provide for related matters.

'Proceeds of crime' is defined as 'any property obtained or received at any time (whether before or after the passing of this Act) by or as a result of or in connection with criminal conduct'.[25] 'Criminal conduct' is defined as

> any conduct:
>
> (a) which constitutes an offence or more than one offence, or
> (b) which occurs outside the State and which would constitute an offence or more than one offence –
>
> i. if it occurred within the State,
> ii. if it constituted an offence under the law of the state or territory concerned, and
> iii. if, at the time when an application is being made for an interim or interlocutory order, any property obtained or received at any time (whether before or after the passing of this Act) by or as a result of or in connection with the conduct is situated within the State.[26]

Significantly, in proceedings under the Act, it is not necessary for an application to relate particular proceeds to a particular crime.[27]

Section 2 of POCA makes provision for an interim order—a pre-trial restraint order.[28] The application for an interim order can be brought by a senior police officer, an authorised officer of the Revenue Commissioners or the CAB. If granted, this order prohibits disposal of, or otherwise dealing with, or diminishing the value of specified property.[29] Applications for an interim order are usually brought on an *ex parte* basis, the rationale being to ensure that assets cannot be dissipated or removed from the jurisdiction pending a full *inter partes* hearing.[30] An interim order can only be granted where the court is satisfied that a person is in possession or control of specified property that constitutes, or was acquired with, proceeds

[25] POCA, s 1(1), as substituted by POC(A)A, s 3.
[26] POCA, s 1(1), as inserted by POC(A)A, s 3.
[27] *FMcK v AF; FMcK v EH* [2005] IESC 6.
[28] Proceedings shall be held otherwise than in public: POCA, s 8(3).
[29] POCA, s 2(1), as amended by POC(A)A, s 4.
[30] While the risk of dissipation may be one consideration, such a risk is not a formal requirement under the Act: *FMcK v DC* [2006] IEHC 185. Jurisprudence relating to Mareva and Anton Pillar orders in the commercial field applies to *ex parte* applications under the Proceeds of Crime Act, thus there is an obligation of full disclosure on the part of the applicant: ibid. For an example of where a s 2 order was lifted for lack of full disclosure, see *CAB v Base Garage Supplies Ltd* [2013] IEHC 302.

of crime and is of a certain minimum value (€13,000).[31] The civil standard of proof applies[32] and belief evidence is admissible.[33] The court may also direct the respondent to file an affidavit specifying the property that he is in possession or control of, or his income and sources of income for a specified period (not exceeding ten years up to the date of application of the order), or both.[34] Documentary evidence is also admissible.[35] An interim order lasts for 21 days and then lapses unless an application for an interlocutory order is brought during that period.[36]

Section 3 of POCA provides for an interlocutory order; whilst this is described as an 'interlocutory order', the section 3 hearing is to be regarded as the trial of the action.[37] An application for an interlocutory order can be brought by a senior police officer, an authorised officer of the Revenue Commissioners or the CAB. Where it appears to the court that a person is in possession or control of specified property that constitutes, or was acquired with, proceeds of crime and is of a certain minimum value (€13,000), the court shall grant an interlocutory order. Where an interlocutory order is granted, that order prohibits disposal of, or otherwise dealing with or diminishing the value of, specified property.[38] Here, again, the civil standard of proof applies[39] and belief evidence is admissible.[40] The court may also direct the respondent to file an affidavit specifying the property that he is in possession or control of, or his income and sources of income for a specified period (not exceeding ten years up to the date of application of the order), or both.[41] Documentary evidence is also admissible.[42] The legislation explicitly

[31] POCA, s 2(1).

[32] POCA, s 8(2).

[33] POCA, s 8(1). To briefly explain: the legislation permits a senior police officer or revenue official to state his/her 'belief' that a person is in possession or control of specified property that constitutes or stems from proceeds of crime and that the value of that property is not less than €13,000. If the court is satisfied that there are reasonable grounds for that belief, then it shall be admitted as evidence.

[34] POCA, s 9(1), as renumbered by POC(A)A, s 11. Such an affidavit is not admissible in criminal proceedings against that person or spouse, except where such proceedings relate to perjury arising from statements in the affidavit: POCA, s 9(2), as inserted by POC(A), s 11.

[35] POCA, s 16A, as inserted by POC(A)A, s 12.

[36] POCA, s 2(5). This does not require that the application be actually moved in court within the 21-day period: *FMcK v AF; FMcK v EH* (n 27).

[37] *FJMcK v AF and JF* [2002] 1 IR 242; *FJMcK v FC, PL, and MAC; FJMcK v MJG, T Ltd, and E Ltd* [2001] 4 IR 521.

[38] POCA, s 3(1). Post-2005, there is provision for a consent disposal order to be granted at this stage where all parties agree to such an order, in which case s 4A applies: POCA, s 3(1A), as inserted by POC(A)A, s 5. By virtue of POCA, s 8(3), a hearing under section 3 may be held in camera: see *CAB v MacAviation Ltd* [2010] IEHC 121.

[39] POCA, s 8(2).

[40] POCA, s 8(1). In *McK v D* [2004] 2 IR 470, McCracken J set out a step-by-step approach to be followed in proceedings under POCA. The application of this seven-step approach can be seen in, eg, *CAB v W* [2010] IEHC 166. *cf PB v AF* [2012] IEHC 428, where the court declined to admit belief evidence under s 8(1).

[41] POCA, s 9(1), as renumbered by POC(A)A, s 11. Such an affidavit is not admissible in criminal proceedings against that person or spouse, except where such proceedings relate to perjury arising from statements in the affidavit: POCA, s 9(2), as inserted by POC(A)A, s 11.

[42] POCA, s 16A, as inserted by POC(A)A, s 12.

provides a safeguard that 'the Court shall not make the order if it is satisfied that there would be a serious risk of injustice'.[43] A further safeguard is that, at any time when an interlocutory order is in force, the respondent or any other person claiming ownership of any of the property concerned can apply to the court to have the order varied or discharged.[44] Subject to being discharged, an interlocutory order normally continues until (i) the determination of an application for a disposal order in relation to the property concerned, (ii) the expiration of the ordinary time for bringing an appeal from that determination or (iii) if an appeal is brought, the determination or abandonment of that appeal or any further appeal, or the expiration of the ordinary time for bringing any further appeal.[45]

Before moving on, it is worth briefly mentioning situations concerning expenses incurred by a respondent. At any time while an interim or interlocutory order is in force, an application can be made to the Court to enable the discharge of reasonable living and other necessary expenses (including legal expenses in relation to proceedings under POCA) or to enable the carrying on of a business, trade, profession or other occupation to which the property concerned relates.[46]

At any point when an interim order or an interlocutory order is in force, the court may appoint a receiver to take possession of any property to which the order relates. Subject to the court's directions, the receiver will manage, keep possession of, dispose of or otherwise deal with any property over which he is appointed.[47] In practice, where a receiver is to be appointed, the Bureau Legal Officer will be appointed to this role.

Section 4 provides for a disposal order: after an interlocutory order has been in force for seven years, the court, on application, may grant a disposal order directing that the property be transferred (subject to any terms and conditions specified by the court) to the Minister for Finance or to such other person as the court may determine.[48] While it would appear that the court has a discretion under section 4(1), section 4(2) explicitly states that the court

[43] POCA, s 3(1). There are different perspectives on this safeguard: for example, Ashe and Reid describe it as 'an important safeguard', whereas O'Higgins is more critical, describing it as 'a vague and intangible yardstick'. See M Ashe and P Reid, 'Ireland: The Celtic Tiger Bites—The Attack on the Proceeds of Crime' (2001) 4(3) *Journal of Money Laundering Control* 253, 259; M O'Higgins, 'The Proceeds of Crime Act 1996' (1996) *Bar Review* 12, 12. For an example of where it was argued (unsuccessfully) that the making of a s 3 order would result in a serious risk of injustice, see *CAB v O'Brien* [2010] IEHC 12.

[44] POCA, s 3(3). In practice, this opens the possibility for victims of crime to apply to court to have their rights recognised. For an in-depth consideration of an application under s 3(3), see *Murphy v Gilligan* [2011] IEHC 62. The Supreme Court declined to reopen this issue in *Murphy v Gilligan* [2014] IESC 43. *cf CAB v Kelly* [2012] IEHC 595.

[45] POCA, s 3(5).

[46] POCA, s 6(1), as amended by POC(A)A, s 8. See, eg, *MFM v MB* [1998] IEHC 174.

[47] POCA, s 7(1). The appointment of a receiver was unsuccessfully challenged in *Murphy v GM; Gilligan v CAB* (n 18) 125.

[48] POCA, s 4(1). The hearing under s 4(1) may be adjourned for up to 2 years: POCA, s 4(7). A hearing under s 4 may be held in camera: POCA, s 8(3). For an example of s 4 in practice, see *Murphy v Gilligan* [2011] IEHC 464.

> *shall* make a disposal order … unless it is shown to its satisfaction that that particular property does not constitute, directly or indirectly, proceeds of crime and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime.[49]

The civil standard of proof continues to apply at this stage.[50] The effect of a disposal order is to deprive the respondent of his rights (if any) in the property concerned and, upon the order being made, the property shall stand transferred to the Minister for Finance or other specified person.[51] Similar to section 3, here, too, there is a safeguard in that the court shall not grant a disposal order if it is satisfied that there would be a serious risk of injustice.[52] Since 2005, there has been provision for a disposal order to be granted before the seven-year period has elapsed where an application is made with the consent of all the parties concerned. The effect of such a consent disposal order is the same as an order under section 4.[53]

Two final points are worth mentioning: first, section 11(7) of the Statute of Limitations does not apply in relation to proceedings under the Act.[54] Secondly, compensation provisions in relation to interim, interlocutory and disposal orders are set out in section 16.[55]

A new section 16B was inserted by the Proceeds of Crime (Amendment) Act 2005, making provision for a corrupt enrichment order. A person is corruptly enriched if he 'derives a pecuniary or other advantage or benefit as a result of or in connection with corrupt conduct, wherever the conduct occurred'.[56] Where the court is satisfied that a defendant has been corruptly enriched, the court may grant a corrupt enrichment order directing the defendant to pay to the Minister for Finance, or such other person as specified by the court, an amount equivalent to the amount by which it determines that the defendant has been so enriched.[57] The standard of proof under this section is that applicable to civil proceedings.[58] Belief evidence is admissible.[59] The court may also direct the defendant to file

[49] POCA, s 4(2). Emphasis added.

[50] POCA, s 8(2).

[51] POCA, s 4(4). The Minister may sell or otherwise dispose of any such property. Any money realised under this section shall be paid into or disposed of for the benefit of the Exchequer: POCA, s 4(5). Contrast this with the Asset Recovery Incentivisation Scheme (ARIS)in the UK.

[52] POCA, s 4(8). For consideration in the context of the 'family home' see *CAB v Kelly* [2012] IESC 64.

[53] POCA, s 4A, as inserted by POC(A)A, s 7.

[54] POC(A)A, s 10.

[55] POCA, s 16.

[56] POCA, s 16B(1)(a), as inserted by POC(A)A, s 12. 'Corrupt conduct' is defined as 'any conduct which at the time it occurred was an offence under the Prevention of Corruption Acts 1889 to 2001, the Official Secrets Act 1963 or the Ethics in Public Office Act 1995': POCA, s 16B(1)(b), as inserted by POC(A)A, s 12.

[57] POCA, s 16B(2), as inserted by POC(A)A, s 12.

[58] POCA, s 16B(8), as inserted by POC(A)A, s 12.

[59] POCA, s 16B(5), as inserted by POC(A)A, s 12.

an affidavit specifying the property owned by him or his income and sources of income, or both.[60] Unlike the affidavit that can be required in proceedings under sections 2 (interim order) and 3 (interlocutory order), there is no time restriction here. An *ex parte* application can be brought to the court for an order prohibiting the defendant, or any other person having notice of the order, from disposing of, otherwise dealing with or diminishing the value of the property during a specified period.[61]

## B. The Criminal Assets Bureau

The agency tasked with implementing POCA is the CAB.[62] Indeed, the establishment of such a specialised agency was described as 'a necessary adjunct to [the] assets' freezing Bill and is somewhat consequential to it'.[63] The CAB is established as a body corporate with perpetual succession, an official seal, the power to sue and be sued in its corporate name, and the power to acquire, hold and dispose of land, or an interest in land or any other property.[64] The CAB is headed by a senior police officer (the Chief Bureau Officer)[65] and adopts a multi-agency approach, with officials from An Garda Síochána (police), the Revenue Commissioners (taxation) and the Department of Social Protection (social welfare).[66] A bureau officer retains the powers and duties vested in him by virtue of his position as a Garda, a member of the Revenue Commissioners or an officer of the Minister for Social Protection.[67] There are many benefits to this multi-agency approach, including pooling of professional expertise, improved management of resources and decreased duration of investigations.[68] As Lemieux says, in the context of transnational police cooperation: 'In theory the coordination of resources should

[60] POCA, s 16B(6)(a), as inserted by POC(A)A, s 12. Such an affidavit is not admissible in criminal proceedings against that person or spouse, except where such proceedings relate to perjury arising from statements in the affidavit: POCA, s 16B(6)(b), as inserted by POC(A)A, s 12.

[61] POCA, s 16B(4), as inserted by POC(A)A, s 12.

[62] While much of the discussion on CAB relates to civil forfeiture powers, and these powers are the focus of this chapter, it is important to realise that CAB does have significant taxation and social welfare powers too.

[63] Dáil Éireann, Criminal Assets Bureau Bill, 1996, Second Stage, 25 July 1996, vol 468, col 1031, per Deputy McCreevy.

[64] CABA, s 3(2). The objectives and functions of the Bureau are set out in CABA, ss 4 and 5.

[65] CABA, s 7.

[66] CABA, s 8.

[67] CABA, s 8(2) and (8). The rationale behind this was explained during the passage of the CAB Bill in the following terms: 'each of the three agencies will bring their own powers and expertise to the bureau and, by means of section 8 of the Bill, will exercise these powers in a mutually supportive and concerned manner.' Dáil Éireann, Criminal Assets Bureau Bill (n 63), vol 468, cols 1025 and 1026, per Minister Quinn.

[68] A useful analogy here can be found in international police cooperation against transnational drug trafficking: F Lemieux, 'Tackling Transnational Drug Trafficking Effectively: Assessing the Outcomes of the Drug Enforcement Administration's International Cooperation Initiatives' in F Lemieux, *International Police Cooperation: Emerging Issues, Theory and Practice* (Devon, Willan Publishing, 2010) 260.

allow police forces to surpass their individual capacities by improving the efficiency of operations and reducing the cost of managing investigations.'[69]

The multi-agency approach facilitates greater cooperation and collaboration between officials from different agencies,[70] the sharing of powers and duties,[71] greater admissibility of evidence[72] and the sharing of information.[73] The Criminal Assets Bureau Act also makes provision for a bureau officer to be 'accompanied or assisted in the exercise of [his or her] powers or duties by such other persons (including bureau officers) as [he or she] considers necessary'.[74] The Criminal Assets Bureau Act contains a number of provisions in relation to investigatory powers, including provision for anonymity of non-Garda bureau officers.[75] The Act makes provision for a search warrant to be issued by a District Court judge, where there are reasonable grounds for suspecting that evidence of or relating to assets or proceeds deriving from criminal conduct, or to their identity or whereabouts, is to be found in a particular place.[76] In situations of urgency where it is impracticable to apply to a District Court judge, a senior police officer (ie not below the rank of superintendent) may issue such a warrant.[77] Post-2005, there is provision for an 'Order to make material available',[78] a 'tipping-off' offence in relation to such an order,[79] and an order in relation to obtaining information regarding any property held in trust.[80] There is now provision for non-Garda bureau officers, accompanied by a Garda bureau officer, to attend at and participate in questioning a person detained pursuant to section 4 of the Criminal Justice Act 1984 or section 2 of the Criminal Justice (Drug Trafficking) Act 1996.[81]

A number of offences are also set out in the Criminal Assets Bureau Act. It is an offence to publish or cause to be published the fact that a person is, or was, a bureau officer or member of staff at the bureau, or is a member of the family of such a person, or the address of any such person.[82] It is an offence to delay,

[69] ibid 266. Lemieux does acknowledge that 'there are few rigorous, empirical evaluations of the performance of multi-jurisdictional teams' (ibid 266). The same point can equally be made in relation to the lack of rigorous, empirical evaluation of the multi-agency Criminal Assets Bureau. It is to be hoped that criminologists or policing scholars will take up this challenge and carry out empirical review of CAB.

[70] CABA, s 8(5).

[71] CABA, s 8(6)(c).

[72] CABA, s 8(6)(d).

[73] CABA, s 8(5) and (7). In *CAB v Craft* [2001] 1 IR 121, 133 O'Sullivan J stated: 'The members of the Criminal Assets Bureau are entitled to exchange information amongst themselves and clearly they would be in dereliction of duty if they failed to do this in an appropriate case.'

[74] CABA, s 8(6)(a).

[75] CABA, s 10.

[76] CABA, s 14(1), as substituted by Criminal Justice Act 2006, s 190.

[77] CABA, s 14(2) and (3).

[78] CABA, s 14A, as inserted by POC(A)A, s 18.

[79] CABA, s 14B, as inserted by POC(A)A, s 18.

[80] CABA, s 14C, as inserted by POC(A)A, s 18.

[81] CABA, s 8(6A), as inserted by Criminal Justice Act 2007, s 58.

[82] CABA, s 11(1).

obstruct, impede, interfere with or resist either a bureau officer in the exercise or performance of his powers or duties or a member of staff of the bureau who is accompanying or assisting such a bureau officer.[83] It is an offence to utter or send threats to, or in any way intimidate or menace, a bureau officer or member of staff of the bureau, or the family or either such person.[84] It is an offence to assault or attempt to assault a bureau officer, a member of staff of the bureau or a family member of either such person.[85] Where a Garda bureau officer has reasonable cause to suspect that a person is committing, or has committed, an offence under section 12, 13 or 15 of the Criminal Assets Bureau Act, or an offence under section 94 of the Finance Act 1983, that officer may arrest that person without warrant or require the person to give his or her name and address.[86] Where a person is charged with an offence under either section 13 or 15 of the Criminal Assets Bureau Act, no further proceedings (other than remanding in custody or on bail) shall be taken except by, or with the consent of, the Director of Public Prosecutions.[87]

## C. Legal Challenges

Unsurprisingly, a number of legal challenges ensued, but the Irish courts have consistently upheld the constitutionality of POCA. The leading decision is the joined case of *Murphy v GM, PB, PC Ltd, GH and Gilligan v CAB*.[88] In that case, the Supreme Court upheld the constitutionality of the Act and also dismissed a number of challenges on non-constitutional points. The arguments advanced are worth further attention: it was argued that POCA essentially formed part of the criminal law, not the civil law, and that persons affected by this legislation were deprived of traditional criminal law safeguards.[89] Furthermore, it was alleged that: the Act permitted oppressive delays; the maxim *audi alteram partem* was violated; the privilege against self-incrimination was contravened; the Act was over-broad and vague; the Act violated the guarantee of private property; there was an impermissible interference with the judicial function; the Act purported to allow, or at least recognise, the possibility of an appeal from the Supreme Court to a non-specified court or authority; and, finally, the Act had retrospective effect (contrary to Article 15.5) and extraterritorial effect (contrary to Articles 29.3 and 29.8).

[83] CABA, s 12(1).
[84] CABA, s 13(1).
[85] CABA, s 15(1).
[86] CABA, s 16(1).
[87] CABA, s 17.
[88] Above n 18. This case was an appeal from separate High Court decisions in *Gilligan v CAB* [1998] 3 IR 185 and *Murphy v GM, PB, PC Ltd* [1999] IEHC 5.
[89] The specific safeguards mentioned were the presumption of innocence, the standard of proof, trial by jury and the rule against double jeopardy.

These arguments were dismissed by the Supreme Court. The court first noted that the legislation enjoys a presumption of constitutionality,[90] and then addressed each of the above arguments in turn. In relation to the criminal nature of the proceedings, the court began by stating:

> It is almost beyond argument that, if the procedures under ss 2, 3 and 4 of the Act of 1996 constituted in substance, albeit not in form, the trial of persons on criminal charges, they would be invalid having regard to the provisions of the Constitution. The virtual absence of the presumption of innocence, the provision that the standard of proof is to be on the balance of probabilities and the admissibility of hearsay evidence taken together are inconsistent with the requirement in Article 38.1 of the Constitution that: 'No person shall be tried in any criminal charge save in due course of law.' It is also clear that, if these procedures constitute the trial of a person on a criminal charge, which, depending on the value of the property, might or might not constitute a minor offence, the absence of any provision for a trial by jury of such a charge in the Act would clearly be in violation of Article 38.5 of the Constitution.[91]

The key question for the court, then, was whether the procedures under POCA are criminal in nature. After reviewing a number of authorities,[92] the court stated that the indicia of crime are 'conspicuously absent in the present case'[93] and continued:

> in proceedings under ss. 3 and 4 of the Act of 1996, there is no provision for the arrest or detention of any person, for the admission of persons to bail, for the imprisonment of a person in default of payment of a penalty, for a form of criminal trial initiated by summons or indictment, for the recording of a conviction in any form or for the entering of a *nolle prosequi* at any stage.[94]

The court further rejected the contention that the presence of *mens rea* is a prerequisite to an order under either section 3 or 4: such 'orders can be made even though it has not been shown to the satisfaction of the court that there was *mens rea* on the part of the person in possession or control of the property'.[95] The court went on to say that forfeiture of property that represents the proceeds of crime 'is not a punishment and its operation does not require criminal procedures'.[96]

The argument that the Act permitted oppressive delays was swiftly dismissed by the court, since

[90] See *McDonald v Bord na gCon (no 2)* [1965] IR 217; *East Donegal Co-Operative Livestock Mart Ltd v Attorney General* [1970] IR 317.

[91] *Murphy v GM; Gilligan v CAB* (n 18) 135.

[92] Including *Attorney General v Southern Industrial Trust Ltd* (1957) 94 ILTR 161; *Melling v O'Mathghamhna* [1962] IR 1; *Clancy* (n 19); *McLoughlin v Tuite* [1989] IR 82; and *O'Keeffe v Ferris* [1993] 3 IR 165 (HC), [1997] 3 IR 463 (SC). The court also referred to the US decision in *United States v Ursery* (1996) 518 US 267.

[93] *Murphy v GM; Gilligan v CAB* (n 18) 147.

[94] *Murphy v GM; Gilligan v CAB* (n 18) 147.

[95] *Murphy v GM; Gilligan v CAB* (n 18) 148. See also *Murphy v Gilligan* (n 44) para 8 *et seq*.

[96] *Murphy v GM; Gilligan v CAB* (n 18) 153.

> the procedure under the Act is perfectly capable of being operated in such a manner as to ensure that no unreasonable delay elapses between the making of the interim order and the interlocutory order: that indeed is clearly what the Act envisaged.[97]

In relation to the seven-year period between the making of an interlocutory order and a disposal order, the contention that such delay is unduly oppressive was rejected as it 'rests on the misconception' that the application for a disposal order equates to the trial of the action. A person affected by an interlocutory order under section 3 can apply, at any point when such an order is in force, to have that order varied or discharged.[98]

The court also swiftly dealt with the complaint regarding the maxim *audi alteram partem*. After reiterating that

> it is to be presumed that the Oireachtas intended that procedures provided for under the Act would be conducted in accordance with the principles of constitutional justice and that any departure from those principles will be restrained or corrected by the courts[99]

it was said:

> the court is satisfied that in any case brought under the procedures laid down by the Act, the affidavits grounding the interim and interlocutory application of necessity will indicate to the respondents the nature of the case being made on behalf of the applicant. Nor is the provision for the admission of hearsay of itself unconstitutional: it was a matter for the court hearing the application to decide what weight should be given to such evidence. The court is satisfied that there is no substance in these grounds of challenge to the constitutionality of the legislation.[100]

The next ground for challenge was that there was no equality of arms, given that the applicant could rely on opinion evidence whereas the respondent could not. Again, the court swiftly rejected this argument:

> the respondents to an application under s 2 or s 3 will normally be the persons in possession or control of the property and should be in a position to give evidence to the court as to its provenance without calling in aid opinion evidence.[101]

[97] *Murphy v GM; Gilligan v CAB* (n 18) 154.

[98] *Murphy v GM; Gilligan v CAB* (n 18) 154. This reasoning was applied in *Murphy v Gilligan* (n 44) para 12 *et seq*. It was said: 'Insofar as the first-named respondent's contention in relation to delay is based upon a claim that the 1996 Act mandates a seven year delay prior to a disposal application being brought and that the present proceedings have lasted for nearly seven more years and such delay is excessive, the court is satisfied that the first-named respondent cannot rely upon this contention as it was open to him at any time since the making of the s 3 order, including during the seven year period provided for in s 4, to bring an application under s 3(3). It is the first-named respondent himself who chose not to commence such an application until 2009 and in those circumstances the legal authorities relied upon by the first-named respondent in relation to delay in criminal trials have no application. In criminal trials it is for the prosecution to bring matters before the court whilst in s 3(3) applications it is for persons, such as the first-named respondent, who are affected by s 3 orders to commence such applications. If they delay in commencing such applications they cannot seek to rely on such delay' (para 14).

[99] *Murphy v GM; Gilligan v CAB* (n 18) 154.

[100] *Murphy v GM; Gilligan v CAB* (n 18) 155.

[101] *Murphy v GM; Gilligan v CAB* (n 18) 155.

The argument that the Act contravenes the privilege against self-incrimination was also dismissed:

> Parties to civil proceedings, whatever their nature, may find themselves in a position where they are reluctant to adduce evidence beneficial to them because it might also expose them to the risk of a criminal prosecution. That factual position, however, cannot be equated to a statutory provision obliging a person to give evidence, even in circumstances where his or her evidence might be incriminating. Similarly, the fact that a person can be required to file an affidavit specifying his or her property and income cannot, on any view, be equated to a statutory provision requiring a person to adduce evidence which may incriminate him or her. The court is satisfied that these grounds of challenge are also without foundation.[102]

The next argument dealt with by the court related to whether the Act was overly broad and vague, specifically as regards the term 'proceeds of crime' and the court's power not to grant an order where there is 'a serious risk of injustice'. In relation to the former, it was said that

> in every case before an order can be made, the court must be satisfied on the balance of probabilities that on the evidence adduced to it in that particular case the property in respect of which the freezing order is sought was the proceeds of crime.[103]

In relation to the latter, it was said that, while this power

> is undoubtedly wide in its scope, that can only be in ease of the individuals whose rights may be affected and the court, in applying these provisions, will be obliged to act in accordance with the requirements of constitutional justice.[104]

As such, this challenge was also rejected.

Neither did the court dwell on the argument that the Act violated the guarantee of property rights under the Constitution. The court adopted the decision of Barrington J in *Clancy v Ireland*, concerning the Offences Against the State (Amendment) Act 1985, where it was held that that legislation was 'a permissible delimitation of property rights in the interests of the common good'.[105] The challenge to POCA was also rejected on this ground.

The next argument to be rejected was the challenge on the ground of interference with judicial function in that the legislation requires the High Court to make an order in certain circumstances: 'it is perfectly permissible for the legislature to provide that, where certain conditions are met, the making of an order of a particular nature by a court may be mandatory rather than discretionary'.[106]

The court also rejected the challenge to the legislation based on the grounds of retrospective effect and extraterritorial effect:

[102] *Murphy v GM; Gilligan v CAB* (n 18) 156.
[103] *Murphy v GM; Gilligan v CAB* (n 18) 156.
[104] *Murphy v GM; Gilligan v CAB* (n 18) 156.
[105] *Clancy* (n 19) 336.
[106] *Murphy v GM; Gilligan v CAB* (n 18) 156.

> The Act does not offend in any way the prohibition in Article 15.5 against declaring acts to be infringements of the law which were not so at the date of their commission. The fact that it enables the court to make orders in respect of property constituting the proceeds of crimes committed before the coming into force of the legislation is not in any sense a contravention of that prohibition.[107]

The court continued:

> Nor was the fact that the legislation may be operated so as to require the compliance of citizens within the jurisdiction with orders of the court directing the transfer of property in their possession or control to a receiver appointed by the court in circumstances where the property is in another jurisdiction constitute in any way a breach of the principles of international law which the State accepts under Article 29 of the Constitution.[108]

Another argument advanced was that the Act impermissibly authorised and/or recognised the possibility of an appeal from the Supreme Court to a non-specified court or authority. Again, this argument was rejected:

> The court is satisfied that the words 'or if any further appeal' in s 2(5)(c) are, at worst, surplusage and, in accordance with well established principles of statutory construction, can be disregarded where the result would otherwise be unconstitutional or would, as in this case, produce an absurd or anomalous result.[109]

Finally, the court declined to consider whether POCA conflicted with the European Convention on Human Rights, on the ground that the Convention was not then part of domestic law. The Supreme Court, accordingly, upheld the constitutionality of POCA. It will be argued in the next section, however, that the courts erred in this regard.

## III. A Critique of the Irish Model

While welcomed by some,[110] civil forfeiture has been heavily criticised by others as undermining due process. Lea, for example, describes the non-conviction based

[107] *Murphy v GM; Gilligan v CAB* (n 18) 157. See also *Murphy v Gilligan* (n 44) para 6.2.
[108] *Murphy v GM; Gilligan v CAB* (n 18) 157.
[109] *Murphy v GM; Gilligan v CAB* (n 18) 157.
[110] eg SD Cassella, 'Civil Asset Recovery: The American Experience' (2013) *EUCrim: The European Criminal Law Association's Forum* 98; F Cassidy, 'Targeting the Proceeds of Crime: An Irish Perspective' in T. Greenberg et al, *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (London, World Bank) 153; J Simser, 'Perspectives on Civil Forfeiture' in S Young, *Civil Forfeiture of Criminal Property: Legal Measures for Targeting the Proceeds of Crime* (Cheltenham, Edward Elgar, 2009) 13; A Kennedy, 'Justifying the Civil Recovery of Criminal Proceeds' (2004) *Journal of Financial Crime* 8.

approach to seizing assets as 'a frontal assault on due process',[111] while Gallant notes that 'the chronic critique of asset recovery is that the takings do not, for the most part, comply with procedural and substantive rights. Regulation manages to secure title to tainted assets at the expense of the rule of law.'[112] Gray argues that, despite the 'civil' label, civil forfeiture is in fact criminal in nature and due process protections should apply.[113] In the Irish context, Campbell argues that CAB and POCA 'indicate a realignment of the approach adopted by the agents of the State in the fight against organised crime, and demonstrate a preference for the needs of the State over the individual's right to due process'.[114] In my own previous work, I have been critical of the use of civil processes to avoid enhanced procedural protections of the criminal process,[115] arguing that civil forfeiture undermines due process rights[116] and is a step 'too far'.[117]

The use of the civil process—essentially as a less burdensome alternative to the criminal process—gives rise to concern, not least that it allows the State to circumvent enhanced procedural protections that apply in the criminal process.[118] There are good reasons to insist upon such procedural protections in criminal proceedings: indeed, the relationship between the State and the individual, the imbalance between the State's and a defendant's resources, the potential consequences of a guilty verdict, avoiding wrongful convictions and respecting individual dignity and autonomy can all be cited as relevant justifications.[119]

My argument is that civil forfeiture, albeit purporting to be civil, ought to properly be regarded as being of a criminal nature and, therefore, should attract criminal procedural safeguards. For example, in criminal proceedings, the applicable standard of proof is proof beyond reasonable doubt. In contrast, under POCA, section 8(2) provides that the applicable standard of proof is the civil standard,

[111] J Lea, 'Hitting Criminals Where It Hurts: Organised Crime and the Erosion of Due Process' (2004) 35 *Cambria Law Review* 81, 83.

[112] M Michelle Gallant, 'Money Laundering Consequences: Recovering Wealth, Piercing Secrecy, Disrupting Tax Havens and Distorting International Law' (2014) 17(3) *Journal of Money Laundering Control* 296, 299.

[113] A Gray, 'Forfeiture Provisions and the Criminal/Civil Divide' (2012) 15 *New Criminal Law Review* 32; A Gray, 'The Compatibility of Unexplained Wealth Provisions and "Civil" Forfeiture Regimes with Kable' (2012) 12 *Queensland UT Law and Justice Journal* 18.

[114] L Campbell, 'Theorising Asset Forfeiture in Ireland' (2007) 71 *Journal of Criminal Law* 441, 455.

[115] C King, 'Using Civil Processes in Pursuit of Criminal Law Objectives: A Case Study of Non-conviction Based Asset Forfeiture' (2012) 16(4) *International Journal of Evidence and Proof* 337.

[116] C King, 'Civil Forfeiture and Article 6 of the ECHR: Due Process Implications for England and Wales and Ireland' (2014) 34(3) *Legal Studies* 371.

[117] J Hendry and C King, 'How Far Is Too Far? Theorising Non-conviction-Based Asset Forfeiture' (2015) 11(4) *International Journal of Law in Context* 398.

[118] See, eg AX Fellmeth, 'Civil and Criminal Sanctions in the Constitution and Courts' (2005) 94(1) *Georgetown Law Journal* 1.

[119] See, eg A Ashworth, 'Four Threats to the Presumption of Innocence' (2006) *International Journal of Evidence and Proof* 241; R Lippke, 'Justifying the Proof Structure of Criminal Trials' (2013) *International Journal of Evidence and Proof* 323.

namely the balance of probabilities. This lower standard of proof allows for criminal allegations to be tested against the civil standard of proof. As Gallant reinforces, 'it is significantly easier to prove matters of fact and law to the civil standard of a balance of probabilities than it is to prove the same beyond a reasonable doubt'.[120]

There are also concerns relating to the presumption of innocence: for example, a person might be acquitted in criminal proceedings but subsequently confronted with civil forfeiture proceedings based on the very same allegations and evidence. Of course, a 'not guilty' verdict does not establish actual innocence—it merely establishes that the prosecution case did not establish guilt beyond reasonable doubt—but to allow civil forfeiture proceedings in such a circumstance effectively undermines that acquittal. In other words, 'In essence, a person is being "punished" for his wrongdoing, albeit in civil proceedings, having been found "guilty", in the eyes of both the State and his fellow citizens, of the offence for which he had been previously acquitted'.[121]

The circumvention of criminal procedural protections can be seen in *McK v SG*.[122] There, the defendant had been suspected of involvement in an armed hijacking of a truck; however, he was never charged in connection with that offence. During the police investigation, a sum of money had been seized from the defendant's home. The defendant successfully applied to the District Court for an order, under the Police Property Act 1897, directing that the money be returned to him. Subsequent to that order, proceedings were initiated under POCA, based on opinion evidence from Chief Superintendent McK and testimony from Garda O'K, who was a member of the team investigating the armed hijacking. In granting an order under section 3 of POCA, White J stated:

> from a consideration of the evidence of Chief Superintendent McK. and the evidence of Garda O'K. I am satisfied that the Plaintiff has made out a prima facie case that the monies in question constitute directly or indirectly the proceeds of crime.

He went on to say:

> I accept that the Defendant was never prosecuted in any respect in relation to the armed hijacking. Nevertheless this fact alone does not persuade me that the monies are not directly or indirectly the proceeds of crime, on the contrary, in all the circumstances of the case, I am more than satisfied, on the balance of probabilities that they are.

This case clearly demonstrates how POCA can operate to undermine criminal procedural protections.

[120] MM Gallant, *Money Laundering and the Proceeds of Crime: Economic Crime and Civil Remedies* (Cheltenham, Edward Elgar, 2005) 19.

[121] MM Gallant and C King, 'The Seizure of Illicit Assets: Patterns of Civil Forfeiture in Canada and Ireland' (2013) 42 *Common Law World Review* 91, 97. See also RT Naylor, 'Wash-out: A Critique of Follow-the-Money Methods in Crime Control Policy' (1999) *Crime, Law and Social Change* 1, 41.

[122] [2006] IEHC 447.

Much of the due process criticisms levied against POCA stem from its purported civil nature. Yet, despite it being 'unquestionably draconian',[123] the Irish courts, as we have seen above, have upheld the constitutionality of POCA. The Irish courts, however, are more concerned with form rather than substance: as I have argued elsewhere, 'we must look beyond the face of the legislation to consider whether the provisions of the Act are, de facto, concerned with criminal, as opposed to civil, matters'.[124]

While the legislature did intend to create a civil process, the argument advanced here is that civil forfeiture should instead be deemed a criminal process. It is lamentable that the Irish courts have failed to stand up to the legislature in this respect. The approach of the Irish courts, in granting judicial imprimatur to civil forfeiture, has been subjected to criticism. For example, Campbell points out that

> the courts have held, using somewhat circular logic, that a procedure is not a criminal process if it does not involve characteristics such as arrest or detention. However, it appears that it is the avoidance of these aspects at the stage of enactment which facilitates the depiction of forfeiture as civil. For example, while the lack of detention under the Proceeds of Crime Acts may be cited as evidence that the proceedings are not criminal, the initial classification of the process as civil in nature by the legislature has resulted in the fact that an individual may not be detained.[125]

A punitive purpose underpins civil forfeiture—as illustrated in the political debates discussed above in Section I.[126] Retribution[127] and deterrence[128] clearly weighed on the minds of politicians. And, of course, civil forfeiture proceedings can result in stigma.[129] While the Irish courts have suggested that civil forfeiture

[123] *Murphy v GM; Gilligan v CAB* (n 18) 136, per Keane CJ. In *FJMcK v FC, PL, and MAC; FJMcK v MJG, T Ltd, and E Ltd* [2001] 4 IR 521, 524 Keane CJ recognised that procedures under POCA are 'of an unusual nature and they are of course, self evidently, and it is not using excessive language to say, of a draconian nature'.

[124] King (n 115) 345.

[125] L Campbell, 'The Recovery of "Criminal" Assets in New Zealand, Ireland and England: Fighting Organised and Serious Crime in the Civil Realm' (2010) 41 *Victoria University of Wellington Law Review* 15, 23.

[126] See J Meade, 'Organised Crime, Moral Panic and Law Reform: The Irish Adoption of Civil Forfeiture' (2000) 10(1) *Irish Criminal Law Journal* 11.

[127] eg 'The killing of Veronica Guerin was a calculated attack on the freedom of each and every person in this country. It was an act designed to silence not alone the late Veronica Guerin but everybody who might follow in her footsteps. It was an act of unspeakable evil which was carried out for a specific and defined purpose. Veronica Guerin was killed because she investigated and wrote about organised crime. She had become a threat to criminals and to their continued enjoyment of illegally acquired assets. She was killed so that criminals could hold on to the proceeds of crime. Are we as a community … prepared to tolerate the continued unhindered existence in our midst of people who have accumulated vast and unexplained wealth? If we are, I suggest Veronica Guerin died in vain'. Dail Éireann, Organised Crime Bill (n 9), vol 467, cols 2405–06, per Deputy O'Donoghue.

[128] eg 'What we need to do now is prevent assets being used as the seeds of future crimes. To put it another way, if we cannot arrest the criminals, why not confiscate their assets?' Dail Éireann, Organised Crime Bill (n 9), vol 467, col 2435, per Deputy O'Donnell.

[129] eg 'Cab Gets Order to Seize 146 000 € as Proceeds of Crime from Sligo Family', *Irish Times*, 15 December 2011; 'Alleged Criminal Must Forfeit House and Car,' *Irish Times*, 4 February 2014.

serves reparative purposes,[130] it is posited here that such proceedings primarily serve criminal law purposes and that the courts ought to have intervened to insist that criminal procedural safeguards apply in civil forfeiture proceedings.

Another area that has attracted criticism is the impact on property rights. Even before POCA was enacted in 1996, concern had been raised as to the constitutionality of seizing property in the absence of criminal conviction: it was thought that such a procedure might constitute an 'unjust attack' on property rights guaranteed by the Constitution.[131] When civil forfeiture was challenged before the courts, however, such criticisms were rejected.[132] It was found that civil forfeiture does not constitute an 'unjust attack' on property rights. Emphasis was also placed on balancing rights to property against the public interest. For example:

> While the provisions of the Act may, indeed, affect the property rights of a respondent it does not appear to this court that they constitute an 'unjust attack' under Article 40.3.2, given the fact that the State must in the first place show to the satisfaction of the court that the property in question is the proceeds of crime and that thus, prima facie, the respondent has no good title to it, and also given the balancing provisions built into ss.3 and 4 [of the Act].
>
> This court would also accept that the exigencies of the common good would certainly include measures designed to prevent the accumulation and use of assets which directly or indirectly derive from criminal activities. The right to private ownership cannot hold a place so high in the hierarchy of rights that it protects the position of assets illegally acquired and held.[133]

The courts have also said:

> The issue in the present case does not raise a challenge to a valid constitutional right of property. It concerns the right of the State to take, or the right of a citizen to resist the State in taking, property which is proved on the balance of probabilities to represent the proceeds of crime. In general such a forfeiture is not a punishment and its operation does not require criminal procedures. Application of such legislation must be sensitive to the actual property and other rights of citizens but in principle and subject, no doubt, to special problems which may arise in particular cases, a person in possession of the proceeds of crime can have no constitutional grievance if deprived of their use.[134]

Again, however, we are confronted with the absence of important criminal procedural safeguards: the State is depriving a person of property on the basis that that property constitutes proceeds of crime, yet the *civil* standard of proof applies. Most people, I venture, would agree with the idea that crime should not pay; of course

[130] *Gilligan* (n 88) 217–18.

[131] Law Reform Commission, 'Report on the Confiscation of the Proceeds of Crime' LRC 35-1991 (Dublin, Law Reform Commission, 1991) 51.

[132] The courts, in considering POCA, were influenced by the decision in *Clancy* (n 19).

[133] *Gilligan* (n 88) 237, per McGuinness J.

[134] *Murphy v GM; Gilligan v CAB* (n 18) 153, per Keane CJ.

a person who has benefited from criminal conduct should be denied the benefit of that conduct. Yet, any such deprivation of property ought to require the higher criminal standard of proof. To say, as the Supreme Court does, that civil forfeiture under POCA 'is not a punishment' misrepresents the reality of the situation.

The next issue to consider is the agency tasked with implementing civil forfeiture—the CAB.[135] That the CAB is essentially a policing agency, with extensive powers, adds significant concern. CAB officers retain the powers and duties that they have by virtue of their position as a Garda, a member of the Revenue Commissioners or an officer of the Minister for Social Protection, as the case may be. There is provision for a bureau officer to be 'accompanied or assisted in the exercise of [his or her] powers or duties by such other persons (including bureau officers) as [he or she] considers necessary'.[136] This is stated very broadly and would appear to include assistance by non-bureau officers. Presumably, this provision was included to enable assistance from technical experts (eg computer specialists), but the broad wording of this provision does not confine assistance to such persons. Moreover, there is no requirement as to background or training necessary before a person can accompany or assist a bureau officer.

Another concern relates to the sharing of powers: 'A bureau officer who assists another bureau officer under [section 8(6)(a)] shall have and be conferred with the powers and duties of the first-mentioned bureau officer for the purposes of that assistance only.'[137] This opens the possibility[138] of non-police officers being bestowed with policing powers where they are assisting a Garda bureau officer. As Harfield points out (in relation to the UK Serious Organised Crime Agency):[139] 'In adopting the position that police powers are no longer exclusively for police officers to execute, the Government has altered radically the relationship of the citizen to the use of police powers and the accountability inherent there.'[140]

A final concern to emphasise in relation to the CAB is its limited accountability. While an Annual Report is to be prepared,[141] these reports are inadequate in terms of being an effective accountability mechanism. Not only is the detail rather limited,[142] but also the national Parliament simply plays a passive role in receiving

[135] For a critique of the Bureau and its powers, see C King, 'Follow the Money Trail: "Civil" Forfeiture of "Criminal" Assets in Ireland' in P van Duyne et al (eds), *Human Dimensions in Organised Crime, Money Laundering, and Corruption* (Nijmegen, Wolf Legal, 2013).

[136] CABA, s 8(6)(a).

[137] CABA, s 8(6)(c).

[138] In practice, it appears that policing powers have only been exercised by Garda bureau officers to date. I thank Frank Cassidy for this point.

[139] The Serious Organised Crime Agency (SOCA) has since been replaced by the National Crime Agency, but the point equally applies to that new agency.

[140] C Harfield, 'SOCA: A Paradigm Shift in British Policing' (2006) 46(4) *British Journal of Criminology* 743, 751.

[141] CABA, s 21.

[142] Though this may be somewhat understandable: 'For operational effectiveness and statutory confidentiality reasons the Bureau is required to keep specific details of many of its actions confidential': Criminal Assets Bureau, *Annual Report 2005* (Dublin, Stationery Office, 2006) 7.

these reports.[143] As has been pointed out elsewhere (in relation to the UK Serious Organised Crime Agency): 'In the absence of proper public accountability, scrutiny—whether this is through research, parliamentary committee or through openness to public debate—becomes even more important.'[144]

## Conclusion

The Proceeds of Crime Acts and the Criminal Assets Bureau Act have now been on the statute book for two decades, and have received a great deal of praise during that time. For example, in 2010 the Department of Justice and Law Reform published a White Paper on Crime discussion document in which civil forfeiture powers and the multi-agency Criminal Assets Bureau were commended as a 'very effective tool'.[145] That document went on to say:

> The Bureau has been successful over the years in seizing the proceeds of criminal activity in an effective and visible manner. It represents a new form of policing designed to disrupt and disable the capacity of targeted individuals to participate in further criminal activity.[146]

The Minister for Justice, Equality and Law Reform has lauded the work of the Bureau as follows:

> The Criminal Assets Bureau has been at the forefront of the fight against organised crime, including drug trafficking, in this jurisdiction since its inception in 1996. The significant successes that the Bureau continues to achieve by its operations demonstrates the effectiveness of its approach in pursuing illegally gotten gains.[147]

A note of caution must be sounded, however, and this chapter has identified a number of areas that give rise to concern, not least the use of civil processes to avoid criminal procedural protections. Notwithstanding extensive criticism in this regard, the Irish courts have upheld the constitutionality of civil forfeiture, thereby giving judicial imprimatur to this hugely controversial power.

Given that civil forfeiture is here to stay, the purpose of this chapter has been to set out the 'state of the art'—specifically, how the legislation and case law have

[143] For greater discussion of accountability, see M den Boer, 'Towards an Accountability Regime for an Emerging European Policing Governance' (2002) 12(4) *Policing and Society* 275.

[144] B Bowling and C Murphy, 'Serious Organised Crime under New Labour' (2007) *Criminal Justice Matters* 32, 33.

[145] Department of Justice and Law Reform, *Organised and White Collar Crime* (White Paper on Crime, Discussion Document No 3, October 2010) 6.

[146] ibid 6.

[147] Dail Éireann, Written Answers—Criminal Assets Bureau, vol 661, 24 September 2008, per Minister Ahern.

developed over the past two decades. The focus is very much on legal developments; indeed, much of the extant literature on civil forfeiture has examined this topic from a legal and/or criminological standpoint. Yet there is a great deal of scope for other disciplines to contribute to debates about civil forfeiture and add fresh perspectives. For example, it would be interesting to explore the use of civil forfeiture to combat corporate wrongdoing, especially in light of difficulties in prosecuting such behaviour, and ask whether it is appropriate (or desirable) to use such a tool instead of conventional criminal processes. Another potential issue to explore relates to procedural fairness, and the experiences of those confronted by civil forfeiture actions. So, too, would it be interesting to examine the 'new' form of policing, the structures, and accountability mechanisms of the CAB. A further idea would be to consider the question of impact or effectiveness: while there has been some such work in respect of anti-money laundering or counter-terrorist financing powers,[148] there is a notable lack of such research in relation to asset recovery. It is hoped that this chapter will spark interest from other disciplines to bring their skill set to examine civil forfeiture measures.

## Postscript

Subsequent to the writing of this chapter, the Oireachtas passed the Proceeds of Crime (Amendment) Act 2016 on 27 July 2016—in response to a number of shootings in Dublin.[149] This legislation makes provision for administrative seizure and detention, ie a bureau officer can now seize and detain property with a value of at least €5,000 for an initial period of up to 24 hours. The Chief Bureau Officer of CAB may authorise detention for a further period not exceeding 21 days. There is provision for a person to apply to the Court to have the authorisation varied or revoked, and there is provision for compensation to be paid to a person who suffers loss as a result of property being detained.[150] Significantly, the 2016 Act reduces the monetary threshold before property can be subject to an order under POCA—from €13,000 to €5,000.[151]

[148] eg B Unger et al, *The Economic and Legal Effectiveness of the European Union's Anti-money Laundering Policy* (Cheltenham, Edward Elgar, 2014); M Levi, 'Combating the Financing of Terrorism: A History and Assessment of the Control of "Threat Finance"' (2010) 50 *British Journal of Criminology* 650.

[149] See, generally, Seanad Éireann, Proceeds of Crime (Amendment) Bill 2016: Second Stage, 5 July 2016. *cf* C Lally, 'Gardaí Believe Gangland Killing Linked to the Kinahan-Hutch Feud', *Irish Times*, 2 July 2016.

[150] POCA, s 1A, as inserted by POC(A)A 2016, s 3.

[151] POC(A)A 2016, ss 4–6, amending POCA, ss 2, 3 and 8.

## Appendix G

Colin King, “The Difficulties of Belief Evidence and Anonymity in Practice: Challenges for Asset Recovery” in Colin King, Clive Walker, and Jimmy Gurulé eds. *The Palgrave Handbook of Criminal and Terrorism Financing Laws* (Cham, Switzerland: Springer International Publishing AG, 2018) 565

# 24

# The Difficulties of Belief Evidence and Anonymity in Practice: Challenges for Asset Recovery

Colin King

## Introduction

The first wave of legal challenges to civil forfeiture in Ireland has now passed. Since its enactment in 1996, the Proceeds of Crime Act (POCA) has been unsuccessfully challenged as repugnant to the Constitution. The main two grounds of challenge have been, first, that POCA essentially formed part of the criminal law, not the civil law, and that persons affected by this legislation were deprived of criminal law safeguards such as the presumption of innocence, the standard of proof, trial by jury and the rule against double jeopardy. Second, it has also been contended that POCA violated the guarantee of private property. The Irish courts have rejected such arguments.[1] The second wave of legal challenges involves challenges to the operation or application of the Act, rather than challenges to the Act itself[2]—an area that has received scant attention in the literature to date. This chapter, then, focuses on two of the most controversial evidential provisions, namely the use of belief evidence (whereby a senior police officer or revenue official can testify that they believe that a person is in possession or control of 'proceeds of crime' worth not less than €5000) and anonymous testimony by State officials. For each of these

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evidential provisions, this chapter examines the statutory framework and developments in case law. The doctrinal analysis is then followed by examination of how these evidential provisions are implemented, what safeguards apply (in both the statutory provisions themselves and how they operate in practice) and criticisms of these provisions. Ultimately, the focus of this chapter is on how, if at all, these evidential provisions impact upon the fairness and openness of proceedings, which hitherto have not been explored in the literature on POCA.

The belief evidence and anonymity provisions give rise to serious concerns, which have far wider significance than the Irish asset recovery model.[3] First, by allowing such evidence, there are limitations on open justice and natural justice.[4] How can these fundamental principles be respected when some matters relevant to the proceedings are kept secret on the basis of claims to public interest?[5] Moreover, by denying a respondent access to relevant material, these evidential provisions impact upon the fairness of the proceedings. As van Harten points out, 'The conflict of interest that is inherent in hidden government presents a major concern for adjudication because of the ways in which secrecy tends to undermine truth-seeking.'[6] Second, while the discussion in this chapter focuses on asset recovery in Ireland, it is important to stress that the Irish civil forfeiture regime is widely regarded as a model of best practice, with many jurisdictions taking their precedent from Ireland.[7] Thus, the use of both belief evidence and anonymous testimony in Irish asset recovery cases might well have wider consequences. Indeed, many jurisdictions—both common law[8] and civil law[9]—have by now adopted one form or another of non-conviction-based asset forfeiture, and steps have been taken towards an EU Directive in this regard.[10] It is clear that these evidential provisions merit further examination. As Kutz points out, in the context of secret law, 'it can be worthwhile to tease apart the problems with secret law, not just so we can understand our objections, but because by doing so, we may reveal something about the nature of law and its moral and political qualities'.[11]

There is a burgeoning literature on the first wave of legal challenges to civil forfeiture in Ireland. This literature, in the main, adopts a doctrinal approach to critique both the legislation and subsequent case law. Some commentators are complimentary,[12] others much less so.[13] A similar pattern is evident in other jurisdictions, with civil forfeiture subject to both praise[14] and condemnation.[15] Apart from a small number of notable exceptions, however (mainly in the United States),[16] there is a lack of empirical analysis of the operation of civil forfeiture in action, the 'law in action' rather than the 'law in books'. This chapter, then, explores how civil forfeiture operates in practice, drawing upon insights from experienced practitioners in the field, with particular focus on the evidential provisions under POCA.

Moreover, civil forfeiture can be seen as a further example of 'civil-ising' the criminal process[17] and the expansion of procedural hybrids to deal with different forms of undesirable behaviour[18]—what Mann describes as a 'middle-ground' system of justice.[19] There are, however, significant concerns about this resort to civil processes: in earlier work, I have criticised the circumvention of criminal procedural safeguards,[20] arguing that civil forfeiture undermines due process rights[21] and lacks legitimacy.[22] Similar criticisms have been expressed by others—in Ireland[23] and elsewhere.[24] This chapter expands upon such criticisms of civil forfeiture, going beyond the civil/criminal distinction, by focusing on evidential rules under POCA and how they apply in practice. Here too there are significant concerns as to procedural fairness, due process and a lack of legitimacy. Not only does this chapter provide an in-depth analysis of relevant statutory provisions and subsequent case law, it also delivers the first empirical analysis of the controversial powers of belief evidence and anonymity.

## Methods

Semi-structured qualitative 'elite' interviews were conducted with ten practitioners,[25] with considerable expertise in POCA. Interviews lasted on average for 1 hour 40 minutes. The number, and length, of interviews allows deep insight into how POCA operates in practice—in a sense, 'giving a voice' to practitioners.[26] There are less than 30 practitioners at the Irish Bar who are actively practising in this area of law. It is difficult to estimate how many solicitors practise in this area, as POCA work tends to come to them through their expertise as criminal defence solicitors—thus every criminal defence solicitor could potentially work in this area. However, given that the number of POCA cases tends to be limited to, approximately, 10–15 each year, it is unlikely to be a large cohort.

Interviews were conducted with barristers (five), defence solicitors (two), officials from the Criminal Assets Bureau (CAB) (two) and a representative of the Irish Council for Civil Liberties (ICCL) (one). It is worth setting out the expertise of these interviewees: both INT1 and INT8 are criminal defence solicitors; INT3 and INT5 are CAB officials; INT2 is a barrister who, in POCA proceedings, mainly acts against CAB; INT4, INT6, INT7 and INT9 are barristers who, in POCA proceedings, mainly act (or previously acted) on behalf of CAB; and INT10 is an ICCL representative. Given the expert knowledge of interviewees, the interview itself was seen as 'an opportunity to have an informed discussion'.[27] The value of interviews with legal practitioners is that they allow us to explore how law operates in practice, going beyond legislation and case law to gain valuable insights from those who work at the coalface of the legal system.[28]

## Belief Evidence: The Law

Perhaps the most controversial evidential provision in POCA is the use of belief evidence (often known as opinion evidence). As a general rule, witnesses are not allowed to express their opinion in criminal matters,[29] but, as Heffernan points out, '[t]he prohibition on opinion evidence is a general norm rather than an absolute, categorical rule'.[30] The Irish parliament has enacted a number of exceptions to this rule—section 8 of POCA being one such statutory exception.[31] Section 8(1) permits a senior police officer or revenue official to state his/her 'belief' that a person is in possession or control of specified property that constitutes or stems from proceeds of crime and that the value of that property is not less than €5000.[32] If the court is satisfied that there are reasonable grounds for that belief, then it shall be admitted as evidence.

In *FJMcK v GWD,*[33] McCracken J helpfully set out a seven-step approach to belief evidence under section 8:

1. The trial judge should consider the position under section 8. This includes consideration of the belief evidence of a member or authorised officer[34] and also any other evidence that might point to reasonable grounds for that belief.
2. If the trial judge is satisfied that there are reasonable grounds for such a belief, then the he judge should make a specific finding that that belief is evidence.
3. Only then should the judge consider the substantive criteria set down in the Act. In this, the he judge should consider the evidence tendered by the plaintiff.
4. The judge should consider whether the evidence establishes a *prima facie* case against the respondent. If it does, the onus then shifts to the respondent.
5. The trial judge must then consider the evidence introduced by the respondent.
6. If the judge is satisfied that the respondent has discharged the onus of proof then the proceedings should be dismissed.
7. If the judge is not so satisfied, the he judge should then proceed to consider whether there would be a serious risk of injustice.

A significant criticism of belief evidence provisions relates to corroboration of such evidence. Strictly speaking, there is no requirement of corroboration before belief evidence can be relied upon. In *Gilligan v CAB,* McGuinness J expressed the view that 'a court should be slow to make orders under s.3 on the basis of such evidence without other corroborating evidence'.[35] The learned

judge did not, however, completely rule out such a possibility; she merely opined that a court *should be slow* to do so. Indeed, the wording of section 3 is significant here:

> Where, on application to it in that behalf by a member, an authorised officer or the Criminal Assets Bureau, it appears to the Court, on evidence tendered by the applicant, **which may consist of or include evidence admissible by virtue of section 8**… (Emphasis added)[36]

This statement would appear to suggest that the legislature envisaged the courts granting an order under section 3 even where belief evidence is the sole plank of the applicant's case. Indeed, in *FMcK v TH and JH*,[37] the Supreme Court emphasised that, so long as there are reasonable grounds, belief evidence, in itself, would suffice to ground an order under section 3 if there were no evidence to the contrary or if, as happened in that case, the court rejected the evidence of the respondent.[38] In essence, therefore, on the face of the legislation, a case may be *proved* on the basis of unsubstantiated allegations, often from unidentified or unidentifiable sources, with either a Chief Superintendent of An Garda Síochána (Garda—the Irish police force) or an authorised revenue official effectively acting as a decider of fact.

Where belief evidence is admitted under section 8, it is up to the court to determine what weight ought to be attached to such evidence.[39] It is important, though, that the courts do not simply accept such evidence unquestioningly. The danger is that the courts will too readily accept the belief evidence of a senior police officer or revenue official.[40]

No indication is given in the legislation as to the weight that ought to be attached to belief evidence. That weight will depend on a variety of factors such as, *inter alia*, the person who expressed the opinion, the circumstances in which it was expressed and whether the opinion was challenged or not. If belief evidence is not undermined in cross-examination, that can create a *prima facie* case against the respondent. It will then be up to the respondent to introduce credible evidence as to how the property in question came into his possession or control.[41] The difficulty, though, is that the respondent may be put to proof where the only evidence against him is belief evidence, giving such evidence a higher status than it merits.[42]

This difficulty is exacerbated when belief evidence is based on hearsay. The rationales for the rule against hearsay are well known: it is preferable that witnesses give oral testimony, under oath or affirmation, about events that they directly witnessed. Witnesses can then be cross-examined and their

demeanour can be assessed during their testimony.[43] Yet, in *FJMcK v GWD,* it was said that '[e]vidence of belief under section 8 does not have to be direct. The value of belief evidence is not diminished by being based on hearsay'.[44] In *Murphy v GM, PB, PC Ltd.,* O'Higgins J stated '[t]he basis of many beliefs is information gathered from different sources some of which frequently will be based on hearsay. It is illogical to conclude that it is unreasonable to accept such information.'[45] And in *Byrne v Farrell and Farrell,* Feeney J stated '[w]hile s.8 of the 1996 Act permits the introduction of hearsay evidence it is the case that that evidence is not conclusive and is open to challenge by a respondent'.[46] Feeney J did acknowledge, though, that '[t]he real ability of a defendant to challenge hearsay evidence is a significant factor in whether the Court should rely on such evidence'.[47]

In *Murphy,* Peart J said 'the hearsay evidence given on an application under s. 3 of the Act of 1996 is not given as proof of its content but rather in order to demonstrate that there are reasonable grounds for the belief evidence given. It can be rebutted by the defendant if he/she chooses to call evidence in that regard. It can be cross-examined in order to try and dislodge it or at least diminish the weight that the Court should properly attribute to it. But it cannot be said, and no authority has been cited in support of the proposition, that it is inadmissible evidence.'[48] Peart J went on to note that an application for an order under sections 2 or 3 of POCA can consist of or include belief evidence under section 8—so long as there are reasonable grounds for that belief.[49] It was said: 'There is no reason in my view in principle or otherwise why the basis for that belief evidence cannot consist of information that may have come to the applicant officer from a third party, or which is otherwise outside his own direct knowledge, without the necessity of that third party coming to court to give that evidence directly in the normal way.'[50]

The difficulty in challenging belief evidence is further exacerbated where the respondent does not know the source of the belief tendered under section 8. Where a witness tendering belief evidence under section 8 claims privilege as to the source of that belief, it is virtually impossible to challenge that evidence.[51] Such a claim of privilege is often said to be necessary to protect informants.[52] But, as Farrell points out in relation to belief evidence in anti-terrorism legislation, 'The result is that the court is effectively receiving hearsay evidence from anonymous sources and about unknown events and is totally dependent on the Chief Superintendent's assessment of the reliability of those sources.'[53] He goes on to say: 'The accused person cannot defend him or herself against allegations of involvement in unspecified criminal conduct made by persons who cannot be cross-examined and whose character or motives cannot be challenged, despite the obvious dangers of relying

on evidence from informants—unreliability, spite, desire to cover their own tracks etc.'[54] It is not unusual for a claim of privilege to be made in relation to belief evidence under section 8 of POCA. While a respondent does, of course, have a right to cross-examine the witness, in practice there can be restrictions on such cross-examination which, it is suggested, significantly impact upon a respondent's ability to challenge belief evidence.

One of the few cases where belief evidence was not accepted in a proceeds of crime application (indeed, the only reported case) is *Byrne v Farrell and Farrell*.[55] Even then, the belief evidence was not admitted simply due to the peculiar circumstances in that case. CAB claimed that specified property and money represented proceeds of crime by the late Patrick Farrell (the deceased husband and father of the defendants). Patrick Farrell was murdered in 1997; it was almost 3 years later that POCA proceedings were commenced, and over 14 years had elapsed between the date of that murder and the current proceedings being heard. Furthermore, a number of the properties in question had been acquired in the 1970s and 1980s. In those circumstances, it would be extremely difficult for the respondents to rebut belief evidence. Inevitably, this judgment might lead proponents of belief evidence to point out that the courts are demonstrably strict in deciding whether or not to admit belief evidence. However, that would be to take this judgment too readily at face value. Rather, the result in *Farrell* is the exception, not the norm: it was only the particular circumstances of the case, and the 'real, special and unique problems'[56] posed, that resulted in the belief evidence being excluded.

The admission of belief evidence is clearly controversial. But, as we have seen—with the seeming sole exception of *Farrell*—the courts are generally receptive to such evidence. And, belief evidence has been found to be compatible with the Constitution.[57] In *GM/Gilligan*, section 8(1) was challenged on the ground that there was no equality of arms between the parties given that the applicant (usually the CAB or the Chief Bureau Officer (CBO) of CAB) could rely on such evidence whereas the respondent could not: that argument was unsuccessful. It was held that the respondent 'will normally be the persons in possession or control of the property and should be in a position to give evidence to the court as to its provenance without calling in aid opinion evidence'.[58] The courts have, however, recognised the need to exercise caution as to what has been described as 'the very great potential unfairness'[59] of admitting belief evidence. Indeed, the Supreme Court has stressed that such evidence is 'capable of gross abuse, and capable of undermining the ability of a person against whom they are deployed to defend himself by cross-examination'.[60] That, however, has not stopped the almost routine admission of belief evidence in POCA proceedings.

## Belief Evidence in Practice

One of the dangers of belief evidence is that the courts will be overly reliant on law enforcement officials—to justify the use of belief evidence and to present such evidence—and may become conditioned to favour not only the admissibility of such evidence but also its reliability.[61] In light of such concerns, we now consider how belief evidence operates in practice, focusing on, first, the role of the CBO of CAB and, second, difficulties in challenging such evidence.

The CBO is the head of CAB. The CBO is appointed by, and accountable to, the Garda Commissioner. The CBO is appointed from the ranks of Chief Superintendent of An Garda Síochána.[62] Despite not being set out in legislation,[63] in practice it tends to be the CBO who tenders belief evidence (INT2; INT3; INT6; INT7; INT9). The rationale behind this practice is to make the CBO accountable. While some practitioners found it reassuring that accountability was personalised in this way (INT7), others noted that this makes it difficult to challenge belief evidence. As INT2 stated: 'he has a position of high trust and authority and so to challenge that is a very difficult thing to do'. This practice can be contrasted with belief evidence in other types of cases (such as the offence of membership of a criminal organisation or in bail applications) where there are a number of senior Gardai who would tender such evidence.

Given that the CBO tends to be in post for a lengthy period, coupled with the fact that a single judge is usually 'ticketed' to hear POCA cases, there is a danger that such evidence will be accepted all too readily. Indeed—particularly where informer privilege is pleaded—the court (and the respondent) is restricted in looking into the source of the CBO's belief.[64] INT5, however, rejected such criticism stressing that the courts do scrutinise belief evidence to ascertain whether there are reasonable grounds for that belief. Some proponents did recognise potential difficulties with the practice of one person tendering belief evidence but stressed that the belief evidence provisions are used appropriately (INT9). Others, however, disagreed, stressing that the same person regularly tendering belief evidence to the same judge is problematic and that this is not a good procedure (INT10).

A recurring criticism is that it is very difficult to challenge belief evidence. Indeed, INT8 stated: 'It's impossible to challenge.' INT8 described a situation where she represented a person suspected of, but never charged with, drug offences. INT8 took exception to the approach adopted by CAB, where the grounding affidavit for the proceeds of crime application named that person as being the person responsible for at least six murders. However, that

person had never even been questioned by the police in relation to drug offences nor murder. INT8 stated that she had no issue with CAB using relevant powers to target illicit assets, in appropriate cases, but: 'I do have a problem with them putting up affidavits to say that they are responsible for murders because it has no relevance to the proceeds of crime application.' She further noted the futility of challenging the CBO's evidence ('a fairly pointless exercise') as the CBO will claim informer privilege.

Before considering informer privilege, however, it is important to consider the issue of corroboration. As seen earlier, there is no requirement of corroboration before belief evidence can be relied upon. And one CAB interviewee (INT5) acknowledged that an application under POCA could succeed on the basis of belief evidence alone. Notwithstanding, it would appear that a more stringent approach is adopted in practice. A number of interviewees stressed the importance of corroborating evidence (INT3; INT4; INT7; INT9).[65] INT7 referred to analogous criminal prosecutions for membership of an illegal organisation, where belief evidence played a significant role, and said that even in those cases—where a conviction can be secured in the absence of corroborating evidence[66]—the practice from prosecutors was to 'almost always insist on corroboration—substantive evidence'. A similar practice, she suggested, developed with POCA cases.[67] Similar sentiments were expressed by INT9:

> So, while on the face of it you can read it and say "oh my God, you can get an order on the back of just a fella's word", in practice the courts, in my experience, were always careful to ensure that there was adequate substantiation for any opinion.

INT4 went so far as to say that 'almost by definition there is corroboration in every proceeds of crime application'. While INT3 stated 'What is also important to say is that it is not available uncorroborated—there are again significant safeguards in that it cannot be used unless corroborated', this statement does not appear consistent with judicial dicta (discussed above). Yet, INT3's statement apparently reflects how the law is applied in practice. It was further emphasised that the court must be satisfied that there are reasonable grounds for the belief (INT5; INT9).[68]

Proponents went further and stressed that belief evidence: should not be over-emphasised (INT3), is there to assist the court (INT3), cannot fill an evidential gap (INT3), cannot prop up a weak case (INT3), maps out CAB's case (INT5), can be ignored by the court (INT5), is of secondary or tertiary importance (INT7), is a confirmation of pre-existing evidence (INT7), and is

merely an opinion, backed up with supporting evidence, that then calls for an explanation from a respondent (INT9). There was criticism, however, from defence practitioners interviewed. They contended that belief evidence undermines the presumption of innocence (INT1) and the information relied upon would be inadmissible in a criminal case and would not meet the criminal standard of proof (INT8: 'it's hearsay on hearsay on hearsay'). Thus, it was suggested that it is 'far from a level playing field' (INT8).

The difficulty in challenging belief evidence is most evident where the respondent does not know the source of the belief tendered under section 8. For example, where the belief is based on information provided by an informer,[69] then the respondent will struggle to challenge the informer's reliability without knowing the identity of that person. Moreover, as that informer is not called to testify, it is not possible for the court to observe that person's demeanour during adverse cross-examination.[70] This begs the questions: can a respondent receive a fair hearing when information is kept from that person thereby impacting upon that person's ability to properly challenge the case against him/her?[71]

While some proponents did acknowledge difficulties in challenging belief evidence (INT3: 'I'll accept that, I accept that there's a disadvantage'), it was suggested that difficulties are offset by procedural safeguards. It was noted that the courts approach informer evidence with caution (INT9), that a case will not be brought solely on the basis of belief evidence and a claim of informer privilege (INT4), and that it is possible to challenge such evidence, by cross-examining the CBO, even without knowing the identity of an informer (INT3). Such supposed safeguards, however, are inadequate.

The respondent will be hampered in challenging evidence against him; thus, the court will not hear additional information and arguments that might otherwise have come to light. Indeed, 'without any opportunity for confrontation, individuals subject to proceedings that use secret evidence are forced to prove their innocence in the face of the anonymous slurs of unseen and unsworn informers'.[72] Critics argue that withholding relevant information undermines due process and severely restricts a respondent in challenging evidence against him/her. To say, for example, that a respondent does have the opportunity to cross-examine the person tendering belief evidence fails to recognise the difficulties in undermining belief evidence when privilege is claimed, as INT8 stated:

> That's not a great safeguard. You ask the guy a question and he says I can't answer that because the information is confidential. That's not a great safeguard.

## Anonymity: The Law

The CAB Act contains a number of provisions in relation to investigatory powers, including provision for anonymity of non-Garda bureau officers and other members of staff of the Bureau.[73] This includes the granting of anonymity when giving evidence in court. On application by the CBO under the CAB Act, 1996, s.10(7), the court may grant anonymity if satisfied that there are reasonable grounds in the public interest to do so.[74]

The statutory provisions provide that anonymity can include restrictions on the circulation of affidavits or certificates; the deletion from affidavits or certificates of the name and address of the Bureau official; or the giving of evidence in the hearing, but not the sight, of any person. This power was challenged in *CAB v PS*,[75] as being repugnant to the Constitution and the European Convention of Human Rights. More specifically, it was contended that such anonymity offended the guarantee of equality before the law and the administration of justice in public. While *PS* concerned an assessment for tax, the decision equally applies to proceedings under POCA. In that case, the CBO had made an application for anonymity to be granted to a revenue official (as a Bureau Officer). The grounds for this application were summarised as follows:

> his evidence was that if anonymity was not afforded he had a concern for the safety of that Officer. The Defendant in that witness's belief is involved with persons involved in organised crime and if he became aware of the identity of the Officer he could transmit it to other persons. One of the traits of organised crime is that they utilise intimidation of witnesses. Such intimidation would hinder the gathering of evidence against persons involved in organised crime. The Defendant did not lead evidence to contest the existence of the belief. There is a public interest that crime should be investigated and criminals punished: there is a public interest in persons who derive assets from criminal activity being deprived of the benefit of the same.[76]

It was also noted that the defendant could have introduced evidence as to the source of his assets but failed to do so. Further, it was said that the court would have to balance any order for anonymity against the effect that such an order would have on the defendant in presenting his case. In this instance, Finnegan P concluded '[on] the basis of Chief Superintendent McKenna's evidence I am satisfied that it was reasonable to grant anonymity and that there was no impediment to the Defendant presenting his defence resulting from the anonymity and indeed no such impediment was urged upon me'.[77]

However, the granting of anonymity to a State official—on the ground that a respondent is 'involved with persons involved in organised crime'—leaves a distinct sense of unease. That is not to say that anonymity ought never be afforded; to date, however, the courts have been too quick to accede to a request for anonymity. The approach adopted in *PS*—essentially granting anonymity on the basis of a form of guilt by association—runs counter to the principles of open justice and natural justice.

In *PS*, Finnegan P also stated: 'I am satisfied that the provisions of the [Criminal Assets Bureau Act 1996] section 10 operate in special and limited cases within the meaning of the Constitution.'[78] He emphasised the safeguard that the judge must be satisfied that there were reasonable grounds in the public interest before granting anonymity and went on to say:

> It is conceivable that in a particular case the grant of anonymity might work an injustice: however the fact that the operation of the section might work an injustice does not render the provision unconstitutional and a Defendant has the safeguard that in the event that the operation of the section worked an injustice then the operation of the section, although not the section itself, would be unconstitutional. The Court in considering the constitutionality of a statutory provision will assume that the same will be operated in a constitutional manner.[79]

In this instance, it was noted that no evidence was led before the court to suggest that section 10 worked an injustice or operated unfairly against the defendant; thus, it was held that that provision did not infringe Article 40 of the Constitution. Specifically in relation to Article 40.1 of the Constitution ('All citizens shall, as human persons, be held equal before the law'), Finnegan P acknowledged that the granting of anonymity in this instance does result in the defendant being treated differently before the law but that that treatment cannot in any way be related to the defendant's dignity as a human person; thus, section 10 of the CAB Act was held not to infringe Article 40.1.[80]

The anonymity provisions were also applied in *CAB v PMcS*[81] (another revenue case), which concerned anonymity of two revenue officials who had signed a tax assessment on behalf of the CAB.[82] In that instance, the CBO:

> told the Court that it was his belief that in the event of the identity of the two officers becoming known, it would hinder the work of the Bureau in the general sense that other enquiries would be affected if the people in question were known. He said it would be difficult to get suitable applicants to come and work in the Bureau if their identity was not protected. He further gave evidence of his belief that the Defendant was a person suspected of drug dealing in Cork, an

> activity which by its very nature was likely to pose safety and security risks to Bureau officials if their identity became known, although he was not aware of any specific threats in the instant case. He based his belief on information supplied to him by Drug Squad Officers from Cork and investigations carried out in the Bureau since 1996.[83]

In granting anonymity, Kearns J based his decision on the opinion that 'the efficient functioning of the Bureau required anonymity for Bureau officers'.[84] Kearns J went on to say:

> I therefore did not need to rely on the separate ground advanced by Chief Superintendent McKenna for granting anonymity, namely, his belief derived from contact with members of the Drug Squad that the Defendant is actively involved in drug dealing, an activity which of its nature suggests safety concerns for Bureau officers whose identity is not protected. I should say, however, and in my ruling so held, that for the limited purpose of S.10(7) of the 1996 Act and bearing in mind that the objectives of the Bureau extend to "suspected" criminal activity, that hearsay would be admissible to establish "reasonable grounds in the public interest" where no evidence to the contrary was led.[85]

Similarly, in *CAB v Craft and McWatt*,[86] an order of anonymity was granted pursuant to section 10(7) 'following evidence from Detective Inspector Byrne that he would be concerned for the safety of and could not rule out threats to the Revenue Officers of the Bureau if their names were disclosed'.[87] Thus, the approach of the courts in deciding whether or not to grant an order of anonymity has echoed discussion of anonymity provisions when POCA was at the Bill stage in the Oireachtas: for example, Deputy Róisin Shortall stated: 'They are ordinary people, many with families, who understandably fear for their safety. In many ways it has been unfair and unrealistic to expect people in the Revenue Commissioners to get involved with these dangerous people.'[88] Minister Quinn stated: 'We cannot expect them to be heroes on behalf of the State. That is not fair. It is not reasonable or practicable. One protection we can give them is anonymity, and it is essential.'[89] There are, however, a number of concerns with this approach, which are explored in the next section.

## Anonymity in Practice

Anonymity gives rise to a number of concerns. It is a fundamental feature of the administration of justice that the trial process should be subject to public scrutiny and that witnesses tender evidence in public. This is crucial to

maintaining public confidence in the legitimacy of the system. Where the trial process resorts to accepting evidence tendered anonymously:

> confidence in the integrity and impartiality of the judicial fact-finding process is diminished and doubt over whether justice has prevailed in any particular case will inevitably arise and be extremely difficult, if not impossible to dispel.[90]

The courts ought to be on guard to protect against the erosion of a fundamental aspect of the administration of justice,[91] yet it appears that the courts have become rather conditioned to meekly accept applications for anonymous testimony.

Notwithstanding such concern, a number of interviewees did come down heavily in support of the anonymity provisions under the CAB Act due to the nature of crime, and the people, that CAB investigates (INT5), concerns for the safety of Bureau officials (INT7), the capacity of serious criminals to threaten State officials (INT9) and the composition of the Bureau itself, that is a small unit with a relatively small number of people (INT9). It was said that anonymity is 'fundamentally important' (INT5). Others, while being supportive of CAB/POCA, were indifferent: INT4 opined that anonymity should be an operational matter for CAB, while INT6 stated that she did not have any particular view on anonymity or whether it was needed. Other interviewees, however, were critical of the anonymity provisions. It was said that anonymity is 'over the top' (INT1; INT2), on the grounds that the names of other officials (e.g. solicitors, police officers) in CAB proceedings are not withheld, so why is there a need for anonymity for some officials (INT1) and that POCA actions are not confined to serious crime (INT2: 'but the vast majority of cases would be to do with people who are, say, market vendors or, (*trails off*)'). INT8 was particularly scathing about the anonymity provisions: 'I think it's preposterous.'

That a State official need not be identified where he acts in writing, gives evidence in court proceedings or where he swears an affidavit gives rise to significant concerns as to transparency, accountability and equality between the parties.[92] In what types of situation, then, might the courts grant anonymity? As seen in the cases of *PS*, *McS* and *Craft*, discussed above, anonymity has been granted on the basis of concerns for the safety of bureau officials, the efficient functioning of CAB investigations and the people with whom the respondent associates. These reasons have been deemed to be 'reasonable grounds in the public interest' to grant anonymity.[93] However, the approach of the courts—in all too easily acceding to requests for anonymity—leaves a distinct sense of unease. This concern was acknowledged by some proponents

(INT7: 'Certainly at a policy level, you're right to be uneasy about whether that's an appropriate approach'), but it was nonetheless suggested that anonymity represents 'a proportionate balancing of the interests involved' (INT7):

> bring it back to brass tax, what tended to happen was the individual would be in court, the anonymous official would get into the witness box, be visible—not behind a screen or anything like that—be visible to the cross-examining defence counsel and so on, and to the judge, so their demeanour could be observed and all that stuff. So, there was no handicap in terms of, you know, your concern would be if somebody is behind a screen, then you don't know who the hell they are; are they who they say they are; what's their demeanour like. Then you're kind of going, "well, that's a bit Kafkaesque" maybe. But if they're there and all you're doing is saying that their name shouldn't be published in a judgment or in the newspapers because if they do, and word gets back out to potentially dangerous criminals, that could be dangerous for them. It's a balancing of interests. I mean, the case takes place in open court, so it's in public, there are reporting restrictions, there are anonymity restrictions for the purposes of the judgment and court orders, but that's probably a proportionate balancing of the interests involved.

Others (INT4) argued that a respondent will not be disadvantaged by not knowing the identity of a tax official, for example. Indeed, INT5 went further and said that CAB encourages media not to report the names of Garda officials as well—'there's no good reason for doing it'—and that naming of Garda officials 'does cause family difficulties'.

In relation to the safety of non-Garda officials, INT10 expressed the view that anonymity might properly be granted to anyone who might need it in order to make the trial effective, once the defence rights can be upheld with anonymity in place (e.g. effective cross-examination, authority to challenge an application for anonymity). Ultimately for her, whether anonymity should be granted would 'depend on the case'. Her views were heavily influenced on the legislation being used against the serious players of organised crime, what was described as 'the Mr. Big's'. (INT10: 'if you are going after a Mr Big …in certain circumstances it could absolutely be reasonable for a social welfare official to remain anonymous. I don't think they would testify otherwise'.)

Significantly, though, the powers under POCA are not restricted to organised crime-type cases. While the legislation was enacted against a backdrop of concern as to such crime,[94] it can be used against any type of crime so long as the statutory conditions (e.g. the €5000 threshold) are satisfied.[95] Moreover, notwithstanding comments in support of anonymity, affording anonymity to a State official, acting as such, still leaves a sense of unease[96]—as both INT1

and INT2 opined 'It's a bit over the top.' This unease is amplified in the case of an official of what is, essentially, a policing body.[97]

It is not appropriate that anonymity be granted simply on the grounds that a person is suspected of serious criminality. Even less so, is it justifiable on the grounds that a person is 'involved with persons involved in organised crime'?[98] At a minimum, there ought to be an assessment as to the actual threat posed by the person against whom proceedings have been taken.[99] As Andersen states, 'anonymity should be restricted to cases with a manifest aspect of necessity'.[100] According to Costigan and Thomas:

> The granting of anonymity to state agents should be on the basis of necessity, rather than convenience, with the court's decision being made on the provision of evidence as to the level of risk to each individual seeking such protection.[101]

The danger with how the anonymity provisions have been applied is that they can become almost routinised in use. After outlining the rationale underpinning the anonymity provisions, INT9 stated: 'as a matter of policy, I don't think it's necessarily a bad thing but, like all these things, you've just got to be very careful how it applies in practice'. She continued:

> And there probably was an extent to which it became a bit of a default, and it seems to me that you've got be guarded against that; it has to be demonstrated in any given case as to why a particular official needs anonymity. Because, our justice is administered under the constitution, in public and, as a general principle, people shouldn't have the immunity of anonymity if they're going in to give evidence.

INT10 did note that perhaps more stringent requirements are needed before an anonymity order should be granted.

A further issue with the anonymity provisions under the CAB Act is that there are peculiar difficulties when an anonymous witness is actually a State official. Indeed, that official will likely have been involved at the investigative stage in preparing the case against the respondent. In an analogous situation, concerning the tendering of evidence anonymously by police officers, the Strasbourg Court has recognised:

> their position is to some extent different from that of a disinterested witness or a victim. They owe a general duty of obedience to the State's executive authorities and usually have links with the prosecution; for these reasons alone their use as anonymous witnesses should be resorted to only in exceptional circumstances.

> In addition, it is in the nature of things that their duties, particularly in the case of arresting officers, may involve giving evidence in open court.[102]

Bureau officers should not fall within the ambit of 'disinterested' witnesses: they are acting as agents of the State, in a law enforcement capacity. It is difficult to see how they could be regarded as a disinterested party to proceedings initiated by CAB, particularly where they have been involved in the investigation leading to such proceedings. Non-Garda bureau officers work alongside Garda officials and they are entrusted with policing powers. As such, they ought to be subject to checks and balances that apply to members of Garda.

## Conclusion

It is widely recognised that natural justice is now 'under sustained attack throughout the common law world'.[103] In this chapter, the focus has been on how 'secrecy' (specifically in the context of controversial evidential provisions in POCA) has negative consequences for natural justice. There are many reasons to criticise secrecy[104] or, to put it another way, why openness and transparency is important. Such reasons include those based on historical justifications, catharsis reasons, an educative effect of publicity, the role of the public-as-a-control, enhancing fact-finding, publicity as a form of accountability, enabling a defendant to properly participate in proceedings and ensuring that an adverse judgment can properly be seen as an expression of public condemnation.[105] Indeed, public justice has been described as 'fundamental to the recodifications of political power that established the modern state'.[106]

Looking beyond the proceeds of the crime context, there is a tension between procedural fairness and transparency, on the one hand, and the desire to keep certain matters secret, on the other, in ongoing debates relating to, *inter alia*, secret evidence and closed material procedures,[107] anonymous witnesses (both in terrorism[108] and in non-terrorism cases[109]), warrantless surveillance[110] and special advocates,[111] to name but a few. And as Appleby points out, the greater weight afforded to secrecy is:

> explicable by reference to the fact that the protection of procedural fairness is a fundamentally deontological exercise, where the consequences of breach are not readily apparent and can be more easily dismissed if considered unlikely to change the final result. In contrast, the protection of state secrecy is a fundamentally consequentialist exercise, where the courts can focus on the potentially disastrous consequences of failing to protect national security or police operations for the community.[112]

In the context of civil forfeiture proceedings under POCA, the use of belief evidence ignores the key point that evidence must be capable of withstanding scrutiny from the other side, and the person best placed to challenge such evidence is the respondent. To allow a State official to selectively choose information, and to form a belief on the basis of such information, undermines the notion of an adversarial contest. To permit that to be done without identifying the source of that belief (as where informer privilege is claimed) further undermines ideals of procedural fairness and transparency. The allowing of anonymous testimony reinforces concerns as to secrecy in POCA proceedings. Moreover, resorting to such evidence on grounds of expediency, rather than any demonstrated necessity, runs counter to principles of open justice. Ultimately, the belief evidence and anonymity provisions lead to the view that the scales are firmly weighed in favour of the State and that equality of arms between the parties is conveniently sidelined.

Of course proponents disagree with this assessment; instead they proclaim that such evidence accords with principles of procedural fairness, pointing to the use of similar provisions in other contexts (particularly the anti-terrorism framework) in support of their stance. However, that such evidential rules have been used in other contexts does not necessarily lend support to their use in POCA proceedings. Indeed, such evidential rules have been criticised in terrorism trials.[113] Moreover, in (criminal) terrorism trials, the use of such evidential rules is offset by the higher standard of proof that must be met before a defendant is convicted. In POCA proceedings, the standard of proof is the civil standard. It is no answer to say that a respondent in POCA proceedings does not face a loss of liberty; there are serious consequences of an adverse judgment in POCA proceedings, not least the loss of property and stigma. If anything, the use of such controversial evidential provisions lends support to the argument that a higher standard of proof ought to be required in POCA proceedings.[114]

To prevent any suspicion that the CAB has abused its powers, procedural fairness and open and natural justice are essential to maintain confidence in the system.[115] The Irish proceeds of crime legislation, and the multi-agency CAB, are widely recognised as models of best practice.[116] Many other jurisdictions are influenced and guided by the Irish model.[117] It is essential then that the Irish model should maintain stringent standards in how it operates; however, that has not proved to be the case as regards the belief evidence and anonymity provisions. Moreover, the deferential approach of the courts is problematic, for example, it 'opens the door not simply to intentional abuse but also to unintended error or misrepresentation'.[118] The undermining of procedural fairness and open justice sends out the wrong message. Not only

do the belief evidence and anonymity provisions leave proceedings open to question in the eyes of a respondent, more widely they also undermine the confidence in, and the reputation of, the Irish proceeds of crime model.

## Notes

1. The leading judgment is *Murphy v GM, PB, PC Ltd., GH; and Gilligan v CAB* [2001] 4 IR 113. This case was an appeal from separate High Court decisions in *Gilligan v CAB* [1998] 3 IR 185 and *Murphy v GM, PB, PC Ltd.* [1999] IEHC 5.
2. I thank Ben O'Floinn BL for this description of 'waves' of legal challenge, when discussing POCA at the conference 'Confiscation and Recovery of Criminal Assets' (Dublin, 12 April 2013).
3. See Greg Martin, Rebecca Scott Bray, and Miiko Kumar (eds), *Secrecy, Law and Society* (Routledge 2015); JUSTICE, 'Secret Evidence: A JUSTICE Report' (2009) <https://2bquk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2015/07/Secret-Evidence-10-June-2009.pdf> accessed 10 April 2017.
4. The terms 'open justice' and 'natural justice' are often used interchangeably by some authors; however, there are distinctions between them. These distinctions are teased out in Joseph Jaconelli, *Open Justice: A Critique of the Public Trial* (OUP 2002) 29ff. For further consideration of the value of open justice, see Matthew Simpson, *Open Justice and the English Criminal Process* Unpublished PhD Thesis (University of Nottingham 2008).
5. See Adam Tomkins, 'Justice and Security in the United Kingdom' (2014) 47(3) Israel Law Review 305.
6. Gus Van Harten, 'Weaknesses of Adjudication in the Face of Secret Evidence' (2009) 13(1) International Journal of Evidence and Proof 1, 10.
7. Anthony Kennedy, 'Designing a Civil Forfeiture System: An Issues List for Policymakers and Legislators' (2006) 13(2) Journal of Financial Crime 132.
8. Notable examples include Australia, the United Kingdom and the United States.
9. Notable examples include Bulgaria, Italy and Romania.
10. See Chap. 17 (Maugeri) in this collection.
11. Christopher Kutz, 'Secret Law and the Value of Publicity' (2009) 22(2) Ratio Juris 197, 199.
12. See Francis Cassidy, 'Targeting the Proceeds of Crime: An Irish Perspective' in Theodore Greenberg and others, *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (World Bank 2009); Shane Murphy, 'Tracing the Proceeds of Crime: Legal and Constitutional Implications' (1999) 9(2) Irish Criminal Law Journal 160.

13. See Colin King, 'Civil Forfeiture in Ireland—Two Decades of the Proceeds of Crime Act and the Criminal Assets Bureau' in Katalin Ligeti and Michele Simonato, *Chasing Criminal Money: Challenges and Perspectives on Asset Recovery in the EU* (Hart Publishing 2017); Liz Campbell, 'Theorising Asset Forfeiture in Ireland' (2007) 71(5) Journal of Criminal Law 441.
14. See Brittany Brooks, 'Misunderstanding Civil Forfeiture: Addressing Misconceptions About Civil Forfeiture with a Focus on the Florida Contraband Forfeiture Act' (2014) 69(1) University of Miami Law Review 321 (United States); Alan Bacarese and Gavin Sellar, 'Civil Asset Forfeiture in Practice' in Jon Petter Rui and Ulrich Sieber (eds), *Non-Conviction-Based Confiscation in Europe* (Duncker & Humblot 2015) 211 (UK). In this collection, see Chap. 18 (Cassella).
15. See Zaiton Hamin and others, 'When Property is the Criminal: Confiscating Proceeds of Money Laundering and Terrorist Financing in Malaysia' (2015) 31 Procedia Economics and Finance 789 (Malaysia); Annemarie Bridy, 'Carpe Omnia: Civil Forfeiture in the War on Drugs and the War on Piracy' (2014) 46(3) Arizona State Law Journal 683 (United States). In this collection, see Chap. 22 (Aldridge).
16. See Dick Carpenter and others, *Policing for Profit: The Abuse of Civil Asset Forfeiture* (2nd edn, Institute for Justice 2015). In this collection, see Chap. 23 (Gallant).
17. Mary Cheh, 'Civil Remedies to Control Crime: Legal Issues and Constitutional Challenges' in Lorraine Green Mazerolle and Jan Roehl (eds), *Civil Remedies and Crime Prevention* (Criminal Justice Press 1998) 45.
18. See, for example, Stuart Hoffman, and Simon MacDonald, 'Should ASBOs be Civilised?' [2010] Criminal Law Review 457; Simon Bronitt and Susan Donkin, 'Australian Responses to 9/11: New World Legal Hybrids?' in Aniceto Masferrer (ed), *Post 9/11 and the State of Permanent Legal Emergency* (Springer 2012) 223.
19. Kenneth Mann, 'Punitive Civil Sanctions: The Middleground between Criminal and Civil Law' (1992) 101(8) Yale Law Journal 1795.
20. Colin King, 'Using Civil Processes in Pursuit of Criminal Law Objectives: A Case Study of Non-Conviction Based Asset Forfeiture' (2012) 16(4) International Journal of Evidence and Proof 337.
21. Colin King, 'Civil Forfeiture and Article 6 of the ECHR: Due Process Implications for England and Wales and Ireland' (2014) 34(3) Legal Studies 371.
22. Jennifer Hendry and Colin King, 'Expediency, Legitimacy, and the Rule of Law: A Systems Perspective on Civil/Criminal Procedural Hybrids' (2016) 9 Criminal Law and Philosophy 1.
23. Liz Campbell, 'The Recovery of "Criminal" Assets in New Zealand, Ireland and England: Fighting Organised and Serious Crime in the Civil Realm' (2010) 41(1) Victoria University of Wellington Law Review 15.

24. Anthony Davidson Gray, 'Forfeiture Provisions and the Criminal/Civil Divide' (2012) 15(1) New Criminal Law Review 32.
25. Robert Mikecz, 'Interviewing Elites: Addressing Methodological Issues' (2012) 18(6) Qualitative Inquiry 482; William Harvey, 'Strategies for Conducting Elite Interviews' (2011) 11(4) Qualitative Research 431.
26. Throughout this article the pronoun 'she' is used when referring to interviewees, to preserve anonymity.
27. Mikecz (n 25) 485.
28. Kate Fitz-Gibbon, 'Overcoming Barriers in the Criminal Court System: Examining the Challenges Faced When Interviewing Legal Stakeholders' in Karen Lumsden and Aaron Winter (eds), *Reflexivity in Criminological Research: Experiences with the Powerless and the Powerful* (Palgrave Macmillan 2014).
29. For discussion of whether civil forfeiture under POCA ought to be regarded as a civil or a criminal matter, see the contrasting views expressed in Cassidy (n 12) and King (n 13).
30. Liz Heffernan, *Evidence in Criminal Trials* (Bloomsbury 2014) 27.
31. Other notable statutory exceptions, also relating to belief evidence, are s 3(2) of the Offences Against the State (Amendment) Act 1972 and s 71(B) of the Criminal Justice Act 2006. See Dermot Walsh, *Walsh on Criminal Procedure* (Roundhall 2016) Chapter 21; Kevin Sweeney, 'The Power of Silence: Using Adverse Inferences to Investigate Terrorism in Ireland' (2016) 26 Irish Criminal Law Journal 38.
32. The Proceeds of Crime (Amendment) Act 2016 reduced the monetary threshold from €13,000 to €5000.
33. *FJMcK v GWD* [2004] 2 IR 470, 491–492; [2004] IESC 31, para 70.
34. POCA, s 1 defines 'member' as 'a member of the Garda Síochána not below the rank of Chief Superintendent' and 'authorised officer' as 'an officer of the Revenue Commissioners authorised in writing by the Revenue Commissioners to perform the functions conferred by this Act on authorised officers'.
35. *Gilligan v CAB* [1998] 3 IR 185, 243.
36. POCA, s 3(1) as amended. See also *CAB v Murphy and Murphy* [2016] IECA 40, para 65.
37. *FMcK v TH and JH* [2007] 4 IR 186, 196.
38. Similarly, see *McK v F*, unreported, High Court, Finnegan J (24 February 2003).
39. *Murphy v GM, PB, PC Ltd., GH; and Gilligan v CAB* [2001] 4 IR 113, 155; *FJMcK v GWD* [2004] 2 IR 470. A long line of authority, in relation to similar evidence under the Offences Against the State legislation, was influential in interpreting s 8 of POCA. See, for example, *Maher v Attorney General* [1973] IR 140; *State (McEldowney) v Kelleher* [1983] IR 289; *O'Leary v Attorney General* [1993] 1 IR 102; *The People (DPP) v Gannon*, unreported, Court of Criminal Appeal (2 April 2003).

40. See the decision of Finnegan J in *McK v D* [2002] IEHC 115 (HC), appealed in *FJMcK v GWD* [2004] 2 IR 470.
41. *FMcK v TH and JH* [2007] 4 IR 186, 195.
42. Commenting on belief evidence under s 3(2) of the Offences Against the State Act 1972, a majority of the Offences Against the State Committee expressed concern 'that the Oireachtas has given evidential status to an expression of opinion which may not merit that status': *Report of the Committee to Review the Offences Against the State Acts, 1939–1998 and Related Matters* (Stationery Office 2002) para 6.90.
43. For further discussion, see Michael Seigel, 'Rationalizing Hearsay: A Proposal for a Best Evidence Hearsay Rule' (1992) 72(5) Boston University Law Review 893; HL Ho, 'A Theory of Hearsay' (1999) 19(3) Oxford Journal of Legal Studies 403.
44. *FJMcK v GWD* [2004] 2 IR 470, 481 (Fennelly J).
45. *Murphy v GM, PB, PC Ltd.* [1999] IEHC 5, para 176. In *FJMcK v SMcD* [2005] IEHC 205 Finnegan P opted to exclude hearsay from his mind when considering whether or not the applicant had established the necessary belief, based on reasonable grounds, under s 8. Too much emphasis should not be placed on this however. The President, applying the best evidence rule, merely preferred to rely on other evidence tendered by the applicant.
46. *Byrne v Farrell and Farrell* [2012] IEHC 428, para 3.6.
47. Ibid.
48. *CAB v Murphy and Murphy* [2016] IECA 40, para 65.
49. Ibid. Whether there were reasonable grounds for the belief in that instance was considered by the court at paras 67ff.
50. *CAB v Murphy and Murphy* [2016] IECA 40, para 66.
51. For consideration of informer privilege and its effects on belief evidence, see Walsh (n 31) Chapter 15. See also Liz Heffernan, 'Evidence and National Security: "Belief Evidence" in the Irish Special Criminal Court' (2009) 15(1) European Public Law 65.
52. See, for instance, *Director of Consumer Affairs and Fair Trade v Sugar Distributors Ltd* [1991] 1 IR 225; *Breathnach v Ireland (no.3)* [1993] 2 IR 458; *DPP v Special Criminal Court* [1999] 1 IR 60. For in-depth consideration of informer privilege, see Henry Mares, 'Balancing Public Interest and A Fair Trial in Police Informer Privilege: A Critical Australian Perspective' (2002) 6(2) International Journal of Evidence and Proof 94.
53. Michael Farrell, 'The Challenge of the ECHR' (2007) 2 Judicial Studies Institute Journal 76, 84.
54. Ibid.
55. *Byrne v Farrell and Farrell* [2012] IEHC 428.
56. Ibid. para 7.1.

57. The use of belief evidence has also been upheld in criminal proceedings: *The People (DPP) v Kelly* [2006] 3 IR 115 (Irish Supreme Court) and *Donohoe v Ireland*, App No 19165/08 (ECtHR, 12 December 2013).
58. *Murphy v GM, PB, PC Ltd., GH; and Gilligan v CAB* [2001] 4 IR 113, 155, as approved *in FMcK v TH and JH* [2007] 4 IR 186, 194; [2006] IESC 63, para 23.
59. *FMcK v TH and JH* [2007] 4 IR 186, 194.
60. Ibid.
61. Van Harten (n 6) 3.
62. Criminal Assets Bureau Act 1996, s 7.
63. The legislation provides that a 'member' or 'authorised officer' can tender such evidence—thus, any Chief Superintendent (or higher) or any authorised revenue official.
64. Farrell (n 53) 84.
65. Interviewees gave examples of what would be used to support belief evidence, including bank statements, bank details, social welfare records for comparison, absence of any visible means of income, level of expenditure, purchases of items, personal and real property, previous criminal convictions, criminal associations and testimony from investigating officials.
66. See *The People (DPP) v Kelly* [2006] 3 IR 115.
67. Other interviewees also referred to the influence of the anti-terrorism framework: as INT3 stated, 'we had the history and considerable experience in the use of [*the anti-terrorism legislation on belief evidence*]'.
68. *FJMcK v GWD* [2004] 2 IR 470.
69. INT5 stated that there are cases where they would rather lose the case rather than give up the name of a confidential informant.
70. See Didier Bigo and others, *National Security and Secret Evidence in Legislation and Before the Courts: Exploring the Challenges* (European Parliament 2014) 26.
71. See Greg Martin, 'Outlaw Motorcycle Gangs and Secret Evidence: Reflections on the Use of Criminal Intelligence in the Control of Serious Organised Crime in Australia' (2014) 36(3) Sydney Law Review 501.
72. Anon, 'Secret Evidence in the War on Terror' (2005) 118(6) Harvard Law Review 1962, 1980, referring to *Jay v Boyd*, 351 US 345, 365.
73. Criminal Assets Bureau Act 1996, s 10. In addition, there are further provisions providing that it is a criminal offence to identify (current or former) non-Garda bureau personnel, to publish the names or addresses of such persons or to identify members of family of current or former bureau officers or members of staff or the address of any such person (s 11). It is also an offence to threaten, intimidate, menace, assault or attempt to assault a bureau officer of a member of staff of the bureau or any member of the family of such a person (ss 13 and 15).
74. Compare Offences Against the State Act 1939, s 41.

75. *CAB v PS* [2009] 3 IR 9; [2004] IEHC 351.
76. Ibid. 32.
77. Ibid. 33.
78. Ibid.
79. Ibid.
80. Ibid. The court had regard to *Quinns Supermarket v Attorney General* [1972] IR 1.
81. *CAB v PMcS* [2001] IEHC 162.
82. Criminal Assets Bureau Act 1996, ss 10(4)–(6).
83. *CAB v PMcS* [2001] IEHC 162 para 14.
84. Ibid. para 80.
85. Ibid.
86. *CAB v Craft and McWatt* [2001] 1 IR 121.
87. Ibid. 124.
88. Dáil Éireann, Criminal Assets Bureau Bill 1996, Second Stage (25 July 1996) vol 468, col 1054.
89. Seanad Éireann, Criminal Assets Bureau Bill 1996, Second Stage (09 October 1996) vol 148, col 1567.
90. David Lusty, 'Anonymous Accusers: An Historical and Comparative Analysis of Secret Witnesses in Criminal Trials' (2002) 24(3) Sydney Law Review 361, 423.
91. See Gilbert Marcus, 'Secret Witnesses' [1990] Public Law 207.
92. Concerns as to anonymity and secrecy are aptly described in Kafka's *The Trial*, where Josef K proclaimed, 'There is no doubt that behind all the utterances of this court, and therefore behind my arrest and today's examination, there stands a great organization. An organization which not only employs corrupt warders and fatuous supervisors and examining magistrates, of whom the best that can be said is that they are humble officials, but also supports a judiciary of the highest rank with its inevitable vast retinue of servants, secretaries, police officers and other assistants, perhaps even executioners—I don't shrink from the word. And the purpose of this great organization, gentlemen? To arrest innocent persons and start proceedings against them which are pointless and mostly, as in my case, inconclusive. When the whole organization is as pointless as this, how can gross corruption among the officials be avoided? That's impossible, not even the highest judge could manage that': Franz Kafka, *The Trial* (Penguin Books 1994) 36.
93. Criminal Assets Bureau Act 1996, s 10(7).
94. See John Meade, 'Organised Crime, Moral Panic and Law Reform: The Irish Adoption of Civil Forfeiture' (2000) 10(1) Irish Criminal Law Journal 11; Colin King, 'Hitting Back at Organised Crime: The Adoption of Civil Forfeiture in Ireland' in Colin King and Clive Walker (eds), *Dirty Assets: Emerging Issues in the Regulation of Criminal and Terrorist Assets* (Ashgate 2014).

95. See Tom Brady, 'CAB Uses New Powers to Target Lower-Ranking Gang Members' *Irish Independent* (Dublin, 17 September 2016).
96. Ruth Costigan and Philip Thomas, 'Anonymous Witnesses' (2000) 51(2) Northern Ireland Legal Quarterly 326, 335.
97. For consideration of the CAB, see Colin King, 'Follow The Money Trail: 'Civil' Forfeiture of 'Criminal' Assets in Ireland' in Petrus van Duyne and others (eds), *Human Dimensions in Organised Crime, Money Laundering, and Corruption* (Wolf Legal 2013).
98. *CAB v PS* [2009] 3 IR 9, 32.
99. See *Van Mechelen v Netherlands* [1998] 25 EHRR 647, para 61. But, see *Doorson v Netherlands* [1996] 22 EHRR 330, para 71.
100. John Peter Andersen, 'The Anonymity of Witnesses—A Danish Development' [1985] Criminal Law Review 363, 366. See also Stefano Maffei, *The European Right to Confrontation in Criminal Proceedings: Absent, Anonymous and Vulnerable Witnesses* (Europa Law Publishing 2006) 48.
101. Costigan and Thomas (n 96) 342.
102. *Van Mechelen v Netherlands* [1998] 25 EHRR 647, para 56. But see the dissenting opinion of Judge Van Dijk, which is receptive to anonymous testimony by State officials.
103. Steven Churches, 'Is There a Requirement for Fair Hearings in British and Australian Courts?' in Greg Martin, Rebecca Scott Bray, and Miiko Kumar (eds), *Secrecy, Law and Society* (Routledge 2015) 102.
104. There are many references to abuse of power in secret trials, most notably the Star Chamber, though there has also been criticism about 'myths' attached to that court. For further discussions, see, for example, Daniel Vande Zande, 'Coercive Power and the Demise of the Star Chamber' (2008) 50(3) American Journal of Legal History 326; Thomas Barnes, 'Star Chamber Mythology' (1961) 5(1) American Journal of Legal History 1.
105. Of course, each of these reasons can also be criticised. For an excellent discussion of such reasons see, for example, Judith Resnik, 'Due Process: A Public Dimension' (1987) 39 University of Florida Law Review 405; Antony Duff and others, *The Trial on Trial, vol.3: Towards a Normative Theory of the Criminal Trial* (OUP 2007); Claire Baylis, 'Justice Done and Justice Seen to Be Done—The Public Administration of Justice' (1991) 21(2) Victoria University of Wellington Law Review 177.
106. Duff and others (n 105) 260.
107. John Jackson, 'Justice, Security and the Right to a Fair Trial: Is the Use of Secret Evidence Ever Fair?' [2013] Public Law 720.
108. Miiko Kumar, 'Secret Witnesses, Secret Information and Secret Evidence: Australia's Response to Terrorism' (2011) 80(4) Mississippi Law Journal 1371.

109. David Ormerod, Andrew Choo and Rachel Easter, 'Coroners and Justice Act 2009: The "Witness Anonymity" and "Investigation Anonymity" Provisions' [2010] Criminal Law Review 368.
110. Kevin S Bankston, 'Only the DOJ Knows: The Secret Law of Electronic Surveillance' (2007) 41(4) University of San Francisco Law Review 589.
111. John Ip, 'The Rise and Spread of the Special Advocate' [2008] Public Law 717.
112. Gabrielle Appleby, 'Protecting Procedural Fairness and Criminal Intelligence: Is There a Balance to Be Struck?' in Greg Martin, Rebecca Scott Bray, and Miiko Kumar (eds), *Secrecy, Law and Society* (Routledge 2015) 94.
113. See Heffernan (n 51).
114. For further discussion, see Colin King, 'Using Civil Processes in Pursuit of Criminal Law Objectives: A Case Study of Non-Conviction Based Asset Forfeiture' (2012) 16(4) International Journal of Evidence and Proof 337, 358ff.
115. *Quicunque aliquid statuerit, parte inaudita altera, aequum licet statuerit, haud aequus fuerit*—where natural justice is violated, it is no justification that the decision is, in fact, correct. Cited in Christopher Forsyth, *Administrative Law* (11th edn, OUP 2014) 406. See also *Boswell's case* (1605) 6 Co Rep 48b.
116. Kennedy (n 7).
117. Criminal Assets Bureau, *Annual Report 2015* (2016) Chapter 8.
118. Van Harten (n 6) 16. See also David Cole, 'Enemy Aliens' (2002) 54(5) Stanford Law Review 953, 1002.

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## Appendix H

Colin King, “International Asset Recovery: Perspectives from Ireland” in John L.M. McDaniel, Karlie E. Stonard and David J. Cox, eds. *The Development of Transnational Policing: Past, Present and Future* (London: Routledge, 2019) 290

# 13 International asset recovery

## Perspectives from Ireland

*Colin King*

### Introduction

A recurring theme in law and practice on 'dirty money' and proceeds of corruption is how best to tackle the flow of corrupt assets from developing countries to developed ones. Such illicit financial flows (IFFs) pose different problems for both developing and developed countries (Spanjers and Salomon, 2017; OECD, 2018). This chapter is concerned with the legal response of the Irish state in this regard. Over the past decade or so, there have been a number of legal proceedings in the Irish courts related to high-profile foreign officials involving property alleged to be proceeds of crime. This can be illustrated with the following examples: in 2006, an Irish company (Rosewood International) that was owned by Abdulkadir Abacha (brother of former Nigerian dictator Sani Abacha) was involved in a dispute over €7.6 million held in bank accounts in the Isle of Man (McDonald, 2007). Although there were doubts as to the origins of that money, it appears that the money was eventually returned to Abdulkadir Abacha. In 2014, the Criminal Assets Bureau (CAB) obtained an order under the Proceeds of Crime Act (POCA) 1996 to freeze assets linked to corruption on the part of the former Governor of the Tourism Authority of Thailand. The frozen funds were to the value of €250,000 held in the name of the former Governor and his daughter (Healy, 2014). In 2015, CAB obtained an order under POCA that US$6.5 million worth of investment bonds in a Dublin account, held for the benefit of Mohammed Sani Abacha (son of Sani Abacha), constituted proceeds of crime (*Irish Times*, 2015; Sheehan, 2015). Also in 2015, US authorities brought proceedings against money in Irish bank accounts allegedly being proceeds of corruption from Uzbekistan (Keena, 2015). A group of Uzbek political exiles have since written to the Irish government urging that the funds are not repatriated to the Uzbek government for fear that it will be used for further corruption; instead, they suggest, the money should be returned to the victims of corruption by way of charities and trusts (Rowe, 2017). Against this context, this chapter is concerned with Irish efforts to target proceeds of cross-border corruption. There is, of course, a vast literature on proceeds of corruption in larger jurisdictions, particularly the

US and UK (Pieth, 2008; Daniel and Mason, 2012; Carr and Jago, 2014; Sharman, 2017). This chapter deliberately focuses on a smaller jurisdiction. As Hamilton states:

> Through the more subtle and nuanced learning which can be gained from testing theories across varied political, social and historical contexts, smaller jurisdictions can provide a valid basis for evaluating competing explanations of a given phenomenon. They therefore provide an important area of comparative and international research, not only as a corrective against the 'false universalism' assumed by much penal theory, but also, as Aas observes, in terms of the insights they offer into the 'situatedness' of the global within the local.
>
> (Hamilton, 2016, referring to the work of Aas (2012))

Before looking at Irish experiences, this chapter first considers the costs of corruption (particularly the extent of IFFs) and offers a brief overview of relevant international developments. This chapter then considers the Irish enforcement response to 'dirty money', drawing upon expert interviews. Interviews were conducted with legal practitioners and law enforcement, and a draft report was then prepared based on analysis of law and policy, supplemented by the empirical research. Given that the number of practitioners in this area is relatively low, to preserve anonymity, this chapter deliberately does not distinguish between interviewees nor does it contain any identifying information (e.g. background of quoted individuals). The draft report was subsequently sent to Transparency International Ireland (who had commissioned the research), as well as to the Central Bank of Ireland, the Department of Justice and Equality (DoJE) and the CAB. An official from the Central Bank provided written comments and an official from the DoJE agreed to be interviewed about the contents of the draft report. CAB had nothing to add to the contents of the draft report. This chapter does not purport to be comprehensive; rather it is a snapshot of particular insights into how the Irish system operates in the context of proceeds of corruption.

## The costs of corruption

The non-governmental organisation (NGO) Transparency International (n.d.) defines corruption as 'The abuse of entrusted power for private gain'. Corruption and theft of public assets can have many negative consequences, including undermining public institutions and administration, having a negative effect on public services, eroding trust in government, depleting public resources, damaging investment and discouraging foreign investment, hindering economic development, reinforcing inequality and poverty, advancing the needs (or wants) of the few over the many and weakening the rule of law (Bhargava, 2006). It is, of course, impossible to state with

any degree of confidence the monetary cost of corruption – though that has not stopped various estimates being produced (Dreher and Herzfeld, 2005; Aulby and Campbell, 2018).

For the purposes of this chapter, we are concerned with the proceeds of corruption. It is, of course, almost impossible to accurately quantify the extent of illicit financial outflows from developing countries (or, indeed, the extent of illicit financial inflows into developed jurisdictions). That has not stopped efforts to provide estimates, however.

For example, in publications from the World Bank, it has been suggested that developing countries lose between $20 and $40 billion each year through corruption (Brun et al., 2011; Stephenson et al., 2011). Others suggest that Africa is losing in excess of $50 billion each year (AUC/ECA, n.d.: 13). Even such figures are suggested to be conservative: it has been said that

> these estimates may well fall short of reality because accurate data do not exist for all African countries, and these estimates often exclude some forms of IFFs that by nature are secret and cannot be properly estimated, such as proceeds of bribery and trafficking of drugs, people and firearms.
>
> (AUC/ECA, n.d.: 13)

Indeed, an April 2017 report from Global Financial Integrity estimated that the total illicit financial outflows from developing countries was between $620 and $970 billion in 2014 (Spanjers and Salomon, 2017: 5). These estimates must, however, be approached with caution given the inherent difficulties in accurately measuring the extent of IFFs. As Marie Chêne (n.d.: 11) of Transparency International has recognised,

> Given the clandestine nature of money laundering and corruption, it is challenging to accurately assess the volume of funds laundered and, consequently, their economic impact. Current estimates are based on various approaches … All these approaches lack accuracy and have their respective flaws beyond confirming the significance of the magnitude of money laundering at the national and international levels.

While it is impossible to accurately quantify the extent of illicit financial outflows, the rationale underpinning the targeting – and repatriation – of proceeds of corruption is clear: first, it would provide a deterrent to corrupt activities (and the moving of funds out of a country) by removing the monetary incentive; second, there would be a positive development impact through greater funding for such activities; third, victims (for example, a government or the people) can be compensated with recovered funds; and fourth, there may be positive long-lasting reforms and improved credibility of governance (Brun et al., 2011: 103; Gray et al., 2014: 55). The emphasis on

targeting the proceeds of corruption is especially important in the context of grand corruption. As the Financial Action Task Force (FATF) (2011: 9) has stated:

> PEPs [*politically exposed persons*] pose a high risk for money laundering by the very nature of their position; they have access to significant public funds and the knowledge and ability to control budgets, public companies and contracts. Corrupt PEPs may use that knowledge and ability to award contracts in return for personal financial reward, or simply to create structures to siphon money from government coffers.

Against this backdrop, this chapter considers efforts to target proceeds of corruption.

## International efforts to target proceeds of corruption

According to Andreas and Nadelmann (2006: 20):

> Underlying the emergence of most global prohibition regimes, as well as the emergence of much international cooperation in criminal matters, has been the evolution of what some scholars have termed 'a universal international society' grounded in the gradual homogenization and globalization of norms developed initially among the European states. In the evolution of global society, the centrality of Western Europe initially and of the United States during the past century cannot be overemphasized.

In discussing global prohibitions, Andreas and Nadelmann trace the nature and evolution of such regimes with specific emphasis on issues such as piracy, slavery, prostitution and international drug trafficking. They note, also, the development of 'new and emerging global prohibitions', including 'the U.S.-led push to criminalize money laundering, which builds on and is very much derivative of the global drug prohibition regime' (Andreas and Nadelman, 2006: 51). The focus on 'dirty money' is still relatively young, emerging in the past three decades or so (Gilmore, 2011; related to – but also distinct from – the anti-money laundering (AML) regime is the development of the counterterrorism financing (CTF) regime, particularly post-9/11: de Goede, 2012; King and Walker, 2015).

Key developments (for space reasons, we do not go into detail of these developments; for in-depth discussion, see Bergstrom, 2018) include the establishment of the FATF, which is now regarded as the global standard setter through its International Standards (FATF, 2012; Nance, 2018), with Bowling and Sheptycki (2012: 60) contending that the FATF 'was instrumental in the construction of a transnational infrastructure for police surveillance in the global money system'; the emergence of the Egmont Group 'as a result

of the challenges to practical co-ordination of information exchange between FIUs [financial intelligence units]' (Bowling and Sheptycki, 2012: 61); the EU money laundering (ML) directives (the most recent being the fifth ML directive agreed in 2018: Directive 2018/843); and various Conventions from the UN (namely, the Vienna Convention, the Palermo Convention and United Nations Convention against Corruption (UNCAC)) and the Council of Europe (particularly the Strasbourg and Warsaw Conventions) containing detailed provisions on ML offences and AML regulatory and supervision regimes. As Joyce (2005: 80) states: 'The development of an international AML regime is not simply an attempt to codify at the global level existing national or regional norms and standards. Rather, it represents a major change in the way governments address transnational crime'.

While the global AML regime can be traced to efforts to tackle drug trafficking (Andreas and Nadelmann, 2006: 147–9), its reach extends much further than drugs. Targeting the 'dirty money' of kleptocrats is now firmly on the international agenda. Indeed the then-US Attorney General Eric Holder has said that 'asset recovery isn't just a global necessity – it's a moral imperative' (US Department of Justice, 2011). As Sharman (2017: 2) notes, 'Threatening to disrupt this nexus of money and power, … new global rules to combat grand corruption are challenging the status quo'. Indeed,

> the number and diversity of anti-corruption and AML instruments would seem to demonstrate an international consensus on the criminal nature of corruption-related money laundering and the need for international co-operation in the prevention and reversal of related illicit financial flows.
>
> (Ivory, 2017: 186)

Actions against proceeds of corruption are evident in the following (necessarily selective) list:

- The UNCAC (General Assembly resolution 58/4 of 31 October 2003) was said to represent 'a major breakthrough' in tackling corruption and recovering proceeds of corruption (Kofi Annan, 'Foreword', UNCAC, 2003, iii).
- In 2003, the same year that UNCAC was opened for signature, the FATF also issued mandatory requirements covering foreign PEPs, their family members and close associates (then-FATF Recommendation 12. See FATF, 2013).
- In 2007, the Stolen Asset Recovery Initiative (StAR) was established by the World Bank and the United Nations Office on Drugs and Crime (UNODC), with an emphasis on supporting international efforts to end safe havens for corrupt funds (StAR, n.d.; StAR, 2009).
- In 2010, the United States launched the Kleptocracy Asset Recovery Initiative (US Senate Levin Committee Report: Permanent Subcommittee on Investigations, 2010; FBI News, 2016).

- In 2011, the Busan Partnership for Effective Development Co-operation (2011) emphasised the importance of targeting IFFs in tackling corruption.
- In 2012, the Arab Forum on Asset Recovery was established to foster international cooperation for the return of stolen assets (StAR, n.d.).
- In 2014, the UK and US jointly organised the Ukraine Forum on Asset Recovery (Foreign and Commonwealth Office and Home Office, 2014).
- Speaking at the 2016 global Anti-Corruption Summit, the then-UK Prime Minister David Cameron (2016) called for a global movement to tackle illicit financial outflows – the problem of 'people stealing from poor countries and hiding that wealth in rich ones'.

Of course, these are just a select few of the many discussions and practical steps demonstrating how 'dirty money' and kleptocracy have been placed on the international agenda as a response to the 'global geography of money laundering' (Cooley et al., 2018: 42). Indeed, it has been suggested that 'Asset recovery has become one of the major themes in discourses on development funding, due in part to the enormous amount of resources that are lost annually by developing countries and countries in transition to corruption' (Jimu, 2009: 5).

Despite this international focus, however, the monetary value of assets recovered has tended to be low, for a variety of reasons such as difficulties in tracing money, problems when money is located abroad, difficulties linking assets to corruption, finding (admissible) evidence to support court proceedings, securing cooperation of witnesses, complex and/or lengthy legal proceedings, difficulties in terms of cooperation between different jurisdictions, lack of capacity – or indeed a lack of willingness – on the part of victim countries to participate in the asset recovery process, a lack of political will on the part of host countries to pursue asset recovery, a lack of trust between host and victim countries and a lack of 'incentive' on the part of host countries. Such difficulties are illustrated in many PEP asset recovery cases (see UNODC, 2015), demonstrating that 'despite reforms, the odds are still stacked against successful asset recovery' (Sharman, 2017: 120).

## Targeting corrupt assets in Ireland: practitioner perspectives on key issues

Influenced by international developments, such as the EU ML directives and the FATF Recommendations, Ireland has developed a legal and institutional framework to stop 'dirty money' entering the financial system, as well as to seize proceeds of crime. As noted in its National Risk Assessment:

> Ireland has developed a comprehensive and robust legal and institutional framework to combat ML/TF. This framework aims to detect and prevent the proceeds of crime from entering the financial system,

> and the funding of terrorism. It also aims to deprive criminals of the proceeds of crime, and to punish and deter criminal conduct.
>
> (Department of Finance and Department of Justice and Equality, 2015: 15)

According to the most recent annual report on ML and terrorist financing (TF) published by the DoJE (2016: 2):

> Money laundering legislation in Ireland, as elsewhere, is based on putting in place a range of 'defensive' measures intended to mitigate the risk of money laundering occurring in the first place and, in instances where money laundering does occur, to ensure that significant dissuasive sanctions are applied.

For the purposes of this chapter, it suffices to say that there are detailed provisions in Irish law relating to AML requirements (Criminal Justice Act (CJA) (ML and TF) 2010, as amended), post-conviction confiscation of assets (CJA 1994, as amended), civil forfeiture (absent criminal conviction) (POCA 1996, as amended) and taxation of assets (Taxes Consolidation Act 1997, s.58). It is not intended to delve into the details of such powers in this chapter; there are many practitioner-focused texts examining AML and proceeds of crime provisions in the Irish context (Horan, 2011; Higgins, 2012; Ashe and Reid, 2013). Much less has been written on taxation powers, (though see Friel and Kilcommins, 2018). Rather, the focus here is on practitioner perspectives of the 'law in action' (Pound, 1910). This chapter does not offer a comprehensive coverage of all the issues that arise in relation to AML or asset recovery in Ireland, but instead offers a snapshot of key issues identified in discussions with practitioners. We first consider practitioners' insights in relation to AML (specifically on the extent of transnational laundering in Ireland, issues in enforcement, whether more powers are needed and resourcing considerations). Then we consider the operation of asset recovery powers (specifically targeting proceeds of foreign corruption, terminology difficulties, mutual legal assistance (MLA) immunity from suit, alternative approaches, whether there is a need for reform and the role of the state). This chapter then moves on to consider the important, but often overlooked, question of what should happen after assets are seized.

## AML issues

### *Extent of transnational ML in Ireland*

Ultimately, we do not – and cannot – know the extent of ML (whether transnational or otherwise). However, certainly in contrast to the major international financial centres, it can be assumed that the scale of transnational ML is lower in Ireland. As noted at the outset of this chapter, there

are instances where money linked to corrupt activities abroad has passed through the Irish financial system, including money from Uzbekistan and Nigeria. It is unclear, however, the extent to which Ireland is used to launder proceeds of corruption. One interviewee stated 'is PEP money a real problem in Ireland? … yes, it is a possibility … but that's a long way from saying that it actually happens' (practitioner interview).

There have been some anecdotal suggestions that Ireland may not be widely used as the end-destination for laundering PEP-related proceeds of corruption, but rather that proceeds of low-level foreign corruption (e.g. a company executive who receives bribes/kickbacks in a developing jurisdiction) might well be located in Ireland. However, it is difficult to gauge the extent to which Ireland is used for laundering proceeds of foreign corruption, and greater research in this area would be welcome.

Notwithstanding, the FATF (2017: para. 140) evaluation noted that: 'The range of ML associated with foreign activity that has been prosecuted is minimal considering Ireland's risk profile'. Such a conclusion inevitably gives rise to questions as to whether the AML regime is robust enough and whether more powers are needed, which we now turn to.

### *AML enforcement*

The Irish AML framework is robust, but that counts for little if the requirements are not implemented in practice. In recent years, we have witnessed, for example, enforcement cases taken by the Central Bank against Bank of Ireland (fined €3.15 million), AIB (fined €2.275 million), Drimnagh Credit Union (fined €125,000), Bray Credit Union (fined €98,000), Ulster Bank (fined €3.325 million) and Western Union (fined €1.75 million) (see, respectively, Central Bank, 2015, 2016a, 2016b, 2017a; 2017b; 2017c). So too has action been taken by the Law Society of Ireland – for example, in *Law Society of Ireland v Herlihy* ([2017] IEHC 122) a solicitor who had failed to comply with requirements under AML legislation (CJA (ML and TF) 2010, as amended) (among many other instances of misconduct) was struck off the roll of solicitors (see also S.I. No. 533/201 Solicitors (ML and TF Regulations) 2016). According to the most recent annual report, in 2016 An Garda Síochána (Irish police) charged 18 people with 22 ML offences. That same year, nine persons were convicted for 16 ML offences (note that these convictions related to charges brought in previous years) (DoJE, 2016: 13).

Notwithstanding the above, however, interviewees did express some misgivings as to the extent of enforcement:

> The level of enforcement is practically non-existent, apart from the Central Bank going in and doing administrative sanctioning, but certainly with criminal enforcement of suspicious transactions reporting – I'm not sure if it has ever happened.
>
> (Practitioner interview)

The role of different agencies was frequently mentioned. Here, we first consider the Central Bank approach to AML enforcement. In correspondence with the Central Bank, the distinction between regulatory and criminal enforcement was emphasised. They stressed the distinction between ML offences and ML controls offences (correspondence with Central Bank). The reasons for the distinction were described as follows:

> Within the Irish system, the substantive offence of money laundering (i.e. transfer, concealment, conversion of criminal proceeds) is dealt with under Parts 2 and 3 of the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 [CJA 2010]. The powers to investigate and prosecute a money laundering offence (section 7) rests solely with An Garda Síochána. The Central Bank has no powers in the area of criminal prosecution of actual money laundering.

Part 4 of the CJA 2010 contains the regulatory provisions that are preventative measures ('AML controls'). These include, inter alia, customer due diligence, reporting STRs [*suspicious transaction reports*] and policies and procedures. The Central Bank has powers as competent authority under the CJA 2010 to monitor compliance with AML controls, and it can take steps to secure compliance. As Part 4 CJA 2010 is a designated enactment under the Central Bank Acts, it also can use its regulatory enforcement powers, when necessary, for 'AML controls offences' (correspondence with Central Bank).

It was also noted that 'it is breaches of AML controls that the Central Bank has the power to sanction and it has done so through the administrative sanctions procedure. This approach is in line with other AML/CFT supervisors and with FATF best practice' (correspondence with Central Bank).

Thus, there appears to be a disconnect between key agencies involved in enforcement of the AML regime. For example, the Central Bank has expressed its 'clear preference for the administrative sanctions route, rather than the criminal law route' (practitioner interview). While An Garda Síochána can prosecute ML offences, in practice that does not appear to be a priority: 'they would regard that as being within the purview of the Central Bank' (practitioner interview). However, in correspondence with the Central Bank, it was emphasised that 'it is breaches of AML controls that the Central Bank has the power to sanction and it has done so through the administrative sanctions procedure' (correspondence with Central Bank). Thus, there would appear to be a gap in actual enforcement if An Garda Síochána regard ML as a matter for the Central Bank, whereas the Central Bank is only concerned with 'AML controls' (this term was suggested by the Central Bank during correspondence). The low levels of prosecutions in Ireland, then, appears consistent with Levi and Reuter's (2006: 333) view that 'in many countries there appears to be minimal use of criminal statutes for AML purposes'.

It was suggested that this view (i.e. the view within An Garda Síochána that ML is a matter for the Central Bank) has stemmed from resourcing considerations: 'When you get that resource shortage, one of the effects is that areas that are perceived as dealt with by other regulators are simply excluded from consideration' (practitioner interview). The effect, then, is that you 'don't have a spectrum of enforcement, as the Central Bank has little or no interest in criminal enforcement' (practitioner interview). According to one practitioner, in his practice, AML work mainly comes up at the regulatory end, such as where a financial institution has a question; he stated that there is relatively little in terms of 'hard enforcement' cases (practitioner interview).

It was suggested that there are broader problems in relation to prosecuting ML offences that exist with all white-collar crime (WCC) prosecutions (for wider discussion of WCC in Ireland, see McGrath, 2015) – such as the absence of any formal case management (described as 'pre-trial stuff'), the approach to documentary evidence and hearsay (evident in the Anglo-Irish case in which, in June 2018, the former CEO of Anglo-Irish Bank was convicted and sentenced to six years imprisonment: O'Carroll and Fletcher, 2018) which might be particularly problematic with extraterritorial evidence (practitioner interview). One interviewee suggested that an inclusionary rule should be introduced for documentary evidence (practitioner interview).

## Are more powers needed?

There was not any inclination towards a need for further powers for An Garda Síochána; it was thought that the powers already available are sufficient.

An important point was made, particularly in the context of AML/POCA related to corrupt assets from abroad, that in Ireland, there is a 'cultural reluctance to even look at international, transnational offences' (practitioner interview). It is unsurprising, then, to see the FATF highlight cross-border issues in its evaluation:

> more emphasis should be given to pursuing cross-border ML/TF cases. The emphasis on cash as one of the key means of ML, and the need for more focus on mutual legal assistance and other requests for assistance processed in the risk assessment, would also indicate a need for greater focus on cross-border ML/TF.
>
> (FATF, 2017: para. 87).

This does not necessarily mean, however, that there is a need for more powers in this area; rather, a shift in thinking – to encompass cross-border issues – is required.

The FATF evaluation also noted: 'Stronger engagement of the DPP and the judiciary would strengthen Ireland's ability to prosecute and convict

money launderers and terrorist financers' (FATF, 2017: para. 87). Again, this would not require any additional powers or legislative change. Dwelling on the FATF point as to the judiciary, it is not clear what is envisaged in terms of stronger engagement of the judiciary, though elsewhere in the report the FATF are critical of a 'conservative approach' by the judiciary in considering ML cases (FATF, 2017: para. 130). In contrast to this view, though, one interviewee suggested that 'the guards had been given a very easy time by the courts in relation to money laundering, particularly where extra-territorial crime came into play' (practitioner interview).

One area that was, however, mentioned as being in need of attention concerned search powers and electronic data (practitioner interview; see the Supreme Court decision in *CRH Plc, Irish Cement Ltd v Competition and Consumer Protection Commission* [2017] IESC 34); it was said that 'there are big problems there' (practitioner interview). Another area that has been highlighted is the need for greater understanding related to PEPs and the risk of ML/TF (FATF, 2017: para. 258–63). Again, this would not require additional powers, but rather greater awareness in different financial sectors of the risks involved and the need for AML compliance.

## Resourcing considerations

There have been criticisms about the level of resources to tackle WCC (generally) in Ireland (MacCormaic, 2014; Foxe, 2017), and it has been said that 'things have not really improved' over the past five years or so (practitioner interview). Admittedly, some relevant agencies have been given extra resources, but doubt has been expressed as to whether that is sufficient. One practitioner described the level of resources as 'grossly inadequate' (practitioner interview).

In the AML context, it is worth noting that the AML division of the Central Bank had 17 staff in 2014; by June 2017, that number had increased to 37 (Rowland, 2017). It is not clear, however, whether the Central Bank, other regulators or law enforcement agencies have the required resourcing and staff levels to properly deal with AML issues in Ireland. The FATF raised specific concerns in relation to the DoJE:

> There are some concerns as to the frequency and intensity of the DoJE inspections and its limited resources (3 full time persons and 1 part time person). Further, coverage needs to be enhanced, especially as DoJE is aware that certain entities falling under its remit (TCSPs, HVGDs, tax advisors, external accountants) are not being monitored for AML/CFT purposes. DoJE is taking steps to expand its supervisory reach in this regard.
> (FATF, 2017: para. 314)

In correspondence from the DoJE, it was noted that the department is working to increase the resources committed to the Anti-Money Laundering

Compliance Unit (AMLCU) following the FATF recommendation. It was, however, pointed out that the ability to increase resourcing 'is of course subject to the overall constraints on resources available to the public sector and the need to balance priorities across our overall responsibilities' (correspondence with DoJE official). In relation to proceeds of (foreign) corruption, though, it was stressed that 'there's little evidence at present that our acknowledged resource constraints are directly impacting on overall engagement with those precise issues' (correspondence with DoJE official).

Concerns were also raised by the FATF in relation to the Financial Intelligence Unit (FIU):

> based on the IT and personnel resources available to it at the time of the on-site visit, the FIU was not able to fully exploit opportunities to identify complex ML schemes and networks to support operational efforts on ML.
>
> (FATF, 2017: para. 106)

It was also stated: 'At the time of the on-site visit, the MLIUs were lacking adequate resources but … processes to increase their resources were well-advanced at the time of the on-site' (FATF, 2017: para. 126).

## Asset recovery issues

### *Targeting the proceeds of foreign corruption*

Just as with AML, Ireland has a detailed legal framework governing the freezing/ seizure of property deemed to constitute proceeds of crime. Internationally, Ireland is often held up as a model of best practice in relation to the non-conviction-based (NCB) approach to targeting criminal assets (see Kennedy, 2006; Cassidy, 2009; compare King, 2017). Given the focus of this chapter, discussion here mainly relates to how Irish law can be used to target proceeds of foreign corruption involving PEPs.

There are, unsurprisingly, a number of practical issues that impact upon confiscating proceeds of foreign corruption. An example put forward by one interviewee was as follows: if a person has engaged in corruption abroad, Irish authorities have no jurisdiction to prosecute for that criminal offence abroad (there are some exceptions to this territoriality rule, which are not relevant for this chapter). If the money does come into Ireland, then there is likely an ML act in Ireland – e.g. an attempt to hide the money, transferring the money, attempt to disguise the money, etc. It was noted that there are 'huge difficulties in Ireland for convicting of money laundering' (practitioner interview) but that if you do get a conviction, the next step is to look at the proceeds of that offence. Given difficulties in securing a criminal conviction, civil forfeiture powers under the POCAs could be used as they now

apply to foreign criminality (since 2005) subject to certain requirements. If the money is in Ireland, then it can be targeted. If the money is not in Ireland, but the crime was committed in Ireland, then the money can also be targeted.

The rest of this section touches upon relevant issues discussed during interviews, namely: terminology, MLA, other (miscellaneous) issues, whether there is need for reform, the role of the state and the effectiveness of AML/POCA.

## Terminology

It is worth noting at the outset that there can be significant confusion with the different terminology used (discussion here draws upon King, 2018). Practitioners, policymakers and academics widely speak of terms such as 'confiscation', 'forfeiture', 'seizure', 'freezing', 'restraint', yet all too often there is a lack of consensus as to the meaning of such terms. Even a word like 'civil' has proved problematic – what precisely does that word mean (Cassidy, 2015)? The specific meaning of different terms often varies depending on the jurisdiction and, at a practical level, the inevitable ambiguity that this can give rise to is problematic. For example, it is not uncommon for law enforcement officials in different countries to be working together on 'confiscation' cases yet having entirely different interpretations of the word. Yet, if we look at some policy documents, the terms 'confiscation' and 'forfeiture' are used interchangeably (UNODC, 2012: 2). And that is the approach adopted too in some jurisdictions, such as the United States (I thank Stef Casslla for discussion on this point). In contrast, the Hodgson Committee (in the UK) distinguished between these terms, defining 'forfeiture' as 'the power of the Court to take property that is immediately connected with an offence' whereas 'confiscation' was said to be 'the depriving of an offender of the proceeds or the profits of crime' (Howard League for Penal Reform, 1984: 4–5). As Barbara Vettori (2006: 2) points out, 'the potential for confusion is high'.

Another term frequently used – and open to potential confusion – is 'asset recovery'. Some regard that term to encompass not only the legal proceedings to confiscate/forfeit property but also the asset tracing phase (e.g. work by FIUs and Asset Recovery Offices (AROs)) and the disposal phase (European Commission, 2012: para. 2.1.1). In this respect, Atkinson et al. (2017) prefer to use the term 'asset-focused interventions'. Others use the term 'asset recovery' in the specific context of targeting corruption-related assets of PEPs (Adam, 2012; cf. Gray et al., 2014: 9). It is no surprise, then, that this point was flagged during interviews. It was said that there is a significant issue with 'not defining the words correctly' (practitioner interview). Also: 'The words mean so many different things, and words need to be defined' (practitioner interview).

## MLA

A central aspect of targeting proceeds of cross-border corruption is cooperation with officials in different jurisdictions. Reference was made to Framework Decisions in 2003 (2003/577/JHA of 22 July 2003), 2005 (2005/214/JHA of 24 February 2005) and 2006 (2006/783/JHA of 6 October 2006) and the 2014 Directive (2014/42/EU). How, though, does MLA operate in practice? One interviewee spoke of 'the complexity of Ireland when it comes to international cooperation' (practitioner interview) and outlined relevant legislation such as the CJA (MLA) 2008, as amended – see CJA (MLA) (Amendment) 2015, which 'was brought in to recognize our position under the 2005 and 2006 Framework Decisions' (practitioner interview). This legislation was said to contain extensive provision allowing for mutual recognition of restraint orders and confiscation orders in Ireland.

An MLA request in relation to a (post-conviction) confiscation order will go to the Central Authority, rather than directly to the Assets Seizing Section of the DPP. One interviewee gave the following example:

> If Italian authorities obtain a confiscation order in Italy, where relevant they will send a request for MLA to the Central Authority in Ireland, which will then have an application made before the Irish High Court. That application will usually be made in the name of the Minister for Justice. In practice, the Chief State Solicitors Office might be brought in to make the application.
>
> (Practitioner interview)

It was said that 'In practice, there is a process whereby an application can be made for mutual recognition of a confiscation order – but it has to be a criminal order. It does not apply to NCB [*i.e. civil forfeiture orders*]' (practitioner interview).

What, though, of MLA in relation to NCB orders? In such circumstances, it was said that the easiest way to proceed would be for CAB to bring its own case – 'the money is in Ireland so CAB has jurisdiction. It doesn't need an order from elsewhere' (practitioner interview). An example given was of an order under the UK proceeds of crime legislation – if the UK authorities contact CAB with details of that order, then that can be used as the basis of belief evidence (POCA, s.8(1)) (practitioner interview). If deemed necessary, the UK authorities might be asked to attend court to give evidence in support of CAB's application. It was noted that there is no issue with foreign officials travelling to Ireland to give evidence before the High Court – their evidence is 'valid'; 'its simple proof of evidence' (practitioner interview). In such situations, it often happens that a deal would be negotiated between Irish and UK authorities to share the assets, though that does not always happen and is not always deemed necessary. It was said of this type of approach: 'It is not

mutual recognition, it is simply coordination – it's an application in Ireland using foreign evidence' (practitioner interview). While there have been criticisms of the NCB approach in Ireland (e.g. Campbell, 2007; King, 2017), it does have its advocates (Cassidy, (2009). For arguments in favour of NCB in other jurisdictions, see Simser (2009) and Cassella (2013)). It was specifically mentioned in interviews that there are benefits of using this route in MLA cases, including the civil standard of proof, the onus shifting to the respondent, and the use of belief evidence (practitioner interview). And particularly in relation to MLA requests, the NCB route is a much quicker option than a formal MLA request.

One issue with international cooperation that was noted was the variety of remedies available in different jurisdictions, such as confiscation orders, NCB orders, tax assessments, etc. Often it is necessary 'to negotiate a deal across the board' with foreign authorities. Where such a deal is negotiated, that written agreement would usually be put before the court.

The option of informal assistance might explain why the numbers of incoming MLA requests are low. For example, the FATF refers to 'one example in which it [*i.e. Ireland*] cooperated with Austrian authorities to have an Irish confiscation order recognized in Austria, although no MLA request was ultimately made' (FATF, 2017: para. 386). According to the FATF evaluation there were 'approximately five requests between 2012 and 2016' from other jurisdictions related to asset confiscation (FATF, 2017: para. 377). Of course, another possible explanation for the low number of incoming MLA requests could be that Ireland is not widely used in laundering foreign money. The point was also made by other interviewees that there are not a lot of MLA requests in this area, with one interviewee stating that 'the volume of business is small' (practitioner interview).

As well as formal MLA requests, in practice informal contacts are important for cross-border cooperation. Such contacts can arise through the AROs in different member states as well as through CARIN (Camden Asset Recovery Inter-Agency Network). As one interviewee noted, 'There are ways of ensuring that the experts talk to the experts to make it as efficient as possible' (practitioner interview). It was also mentioned that Eurojust and Europol can play a role, and that there is good cooperation at that level (practitioner interview; see generally Eurojust (2014) and Europol (2016)). It was noted that there are benefits to such informal assistance, often through contacts in agencies abroad, such as in 'improving working relationships and getting things done' (practitioner interview).

There have been difficulties, however. One interviewee noted that the difficulties in international cooperation in asset recovery cases stems from 'the proliferation of different remedies and the unnecessary complexity of it. I'm not sure there is much you can do about it' (practitioner interview).

It was also noted that there has been significant resistance to the NCB approach in other jurisdictions, that there is a widespread feeling that the Irish approach is a breach of fundamental human rights (due process considerations are discussed in King, 2014). The interviewee who raised this point

strongly disagreed with such criticisms, however (practitioner interview). In this regard, it is worth mentioning that the Irish courts have upheld the constitutionality of NCB forfeiture (*Murphy v GM; Gilligan v CAB* [2001] 4 IR 113. For a critical analysis of the approach of the Irish courts, see King, 2017). The European Court of Human Rights (ECtHR) has reached a similar conclusion in relation to NCB legislation (see *Gogitidze v Georgia* [2015] ECHR 475, App No. 36862/05, May 12, 2015).

Given the focus of this chapter, interviewees were also asked about experiences with AML/POCA and cooperation with developing countries. Only one interviewee expressed an opinion in this regard, noting that there may on occasions be difficulties in relation to getting the required documentation or in relation to translation issues, but it was emphasised that it is more 'a capacity thing, rather than a will thing' (practitioner interview).

## Other issues

An issue that is worth briefly mentioning in the context of PEP-related assets is immunity from suit. One interviewee noted that immunity 'would not particularly worry CAB' (practitioner interview). It was also noted that immunity can be lifted by the state from which it is given.

There was no real support for alternative options such as Unexplained Wealth Orders (UWOs) – see, e.g., the UK provisions under Chapter 1 of the Criminal Finances Act 2017 and also Home Office (2018) – or illicit enrichment offences. One interviewee expressed the view that they would not work in Ireland for constitutional reasons, while another suggested that while UWOs are 'an interesting idea … I suspect that what we do under the Proceeds of Crime Act effectively has the same effect' (practitioner interview).

## Need for reform?

One interviewee went so far as to suggest that 'the powers that the Gardaí have are draconian when it comes to freezing foreign assets' (practitioner interview). Specific reference was made to section 17 of the CJA (ML and TF) 2010 (see *Cassidy v Commissioner of An Garda Síochána and others*, Unreported, High Court, 29 July 2014, Barr J) 'being operated in a very draconian way', which effectively gives the Garda Síochána 'power to freeze your property indefinitely'. It was suggested that applications under s.17 usually 'just go through on the nod' (practitioner interview). There was suggestion that the possibility of a continually rolling order to freeze property (under section 17 of the 2010 Act) 'does have to be addressed', on the basis that that section may be 'constitutionally frail' (practitioner interview).

In relation to actual confiscation of assets, it was said that nothing 'really jumps to mind'; 'I've not really come across legal loopholes, its fairly tight and there's a chilly reception from the judiciary when you try to run clever points'. It was further suggested that POCA is 'quite a good piece of legislation because it's fairly simple … fairly straightforward' (practitioner interview).

Thus, rather than look at 'additional powers', it might be worth looking at institutional issues. For example, one interviewee drew an important distinction between CAB and other Garda units, saying that the difference between them is that 'CAB has a lot more expertise that is hardwired into the organisation'. One key issue that was emphasised is that CAB have their own legal advice in-house, 'I think that that makes a huge difference'. There is a legal team in CAB 'actually giving direction to investigations, I think that has a huge impact' (practitioner interview).

The expertise and work of CAB was emphasised: 'CAB are pretty prolific for the size of the unit, they're litigating day-in day-out, and they're getting results day-in day-out'. This was contrasted with other units (such as the Garda National Economic Crime Bureau (GNECB)), which do 'have a couple of accountants working for them, but that's not enough. You need legal direction' (practitioner interview). Also mentioned here was the importance of IT skills – 'you need guys who have actual proper skills in IT' (practitioner interview).

A significant issue mentioned is career progression within An Garda Síochána – for example, if a police officer is interested in a career in financial investigation, and does spend many years specialising in that area, if that person gets promoted s/he is often transferred to an unrelated unit. This was said to be 'absolutely absurd, it's almost as if the system is designed to prevent people specialising' (practitioner interview).

Another area that has been mooted by some people for many years is differences in culture and enthusiasm across different ages/ranks: 'There is huge enthusiasm amongst the more junior people, but not amongst the senior ranks' (practitioner interview).

## Role of the state in AML/POCA cases

One interviewee spoke of a case that s/he had been involved in and stated: 'What was remarkable about it was the extent to which the state took no interest in the fact that he was a politically exposed person' (practitioner interview).

Referring to both post-conviction confiscation and civil forfeiture powers, the FATF has stated:

> it does not appear that assets are being pursued in line with the country's international risk profile. The nature of the criminal environment and Ireland's status as an international financial centre warrants an enhanced commitment by the relevant law enforcement agencies to targeting high value and complex financial frauds with an international aspect. The authorities should increase their focus on tracing assets abroad and the detection and identification of proceeds of complex financial crime to ensure that assets are generally pursued in line with the country's international risk profile.
>
> (FATF, 2017: para. 176–7)

## We've seized the money, now what?

An important consideration in relation to ML and asset recovery is, of course, what happens to any money that is actually confiscated. This issue is particularly difficult in relation to PEP-related assets. Indeed, the 'disposal phase' is often overlooked in the literature (for a notable exception, see Vettori, 2018). An example of where this issue arose in the Irish context is evident with funds allegedly linked to corruption in Uzbekistan, which had moved through Irish bank accounts. The Irish government has been urged not to repatriate any such funds to the Uzbek government, but instead to return money to victims of corruption by way of charities and trusts (Rowe, 2017; Ilkhamov, 2018). Some options that have been used by other jurisdictions have included the assets being retained by the host state; the assets being split 50/50 (above a certain amount) between the host state and the victim state (the term 'victim state' is generally used to refer to a country from which corrupt assets have been taken); or the assets being repatriated to the victim state. When asked about confiscated money being repatriated from Ireland, one interviewee in this area did say that 'I have never known it to operate in Ireland' (practitioner interview).

Both the CJA 1994 (s.22) and the POCA 1996 (s.4(1)) provide that property realised as a result of proceedings under either of those pieces of legislation shall be paid to the Exchequer. That will usually be the default approach to dealing with seized assets. That notwithstanding, there may be ways to ensure repatriation. Given the potential role of POCA in such cases, attention was drawn to that legislation. Under section 3 of POCA (i.e. the NCB approach), anyone who is a legitimate claimant can seek to claim the property in question. While CAB might take the property from the respondent, that does not necessarily mean that that respondent owns the property. One interviewee suggested that if a foreign state came to Ireland and said 'this is money belonging to our jurisdiction' and proved to the court that it was stolen from that jurisdiction, then it could be returned to that state under section 3 (3) – they would have a legitimate claim to it (practitioner interview). In two separate cases, where CAB have frozen property linked to foreign corruption, Thailand and Nigeria have been informed of the potential to apply under section 3(3) to recover that money. No application has been made to date in either case (FATF, 2017: para. 169).

An example of the operation of section 3(3), albeit in a different context, related to a Ponzi scheme where a person had property in Bantry Bay. The money derived from an insurance scam, where a company took premiums and transferred the money via accounts in offshore jurisdictions, and eventually the money came to Ireland. The liquidators of that company applied to the Irish courts, saying that they would pay out to legitimate claimants (though given the amounts available, the claimants only received a portion of what they had lost). The money was returned to those liquidators, though it was monitored by the Irish authorities (and the liquidator had to provide

a report which was put before the court to show where the money went). The court agreed with this process, and the Irish authorities (CAB in that instance) did not object (practitioner interview).

What would happen, though, if it was thought that the state applying for the return of assets was still corrupt, and any returned assets would be used for the personal use of government officials? In the Uzbek case mentioned above, the contention by political exiles is that there exist significant concerns as to corruption in that country thus money should not be returned to the Uzbek government, but instead be used to compensate victims of corruption (Rowe, 2017). During interviews, it was noted that other jurisdictions (e.g. Switzerland, UK) have had such problems. However,

> if you look at it from a court perspective, under s.3(3) the court has to determine who owns the money and if, say, the government of a foreign state appears before the Irish courts and says 'we are the legitimate elected government of the country, we can show the money was taken by a former member of the government for his own use', it is not the court's function to decide whether or not the money ought to be returned to that foreign government. The court might, however, decide that the money belongs to the *people* of the foreign country, and that it has concerns as to whether the government would use the money for the benefit of its people – but that would require CAB to object to the return of the money. CAB might object on the basis, for example, of taking money from one person in an organized criminal group and giving it to another person in an organized criminal group; in such a situation, CAB would effectively have to show that the foreign government was an organized criminal group and that the money would be stolen again – which would not be easy for CAB to establish.
>
> (Practitioner interview)

It is worth mentioning, though, that such an approach was adopted by Swiss authorities when they designated the Abacha family as a criminal group (see Monfrini, 2008). Where there are concerns that funds might be used inappropriately if they are repatriated, then there is an obvious problem. One approach that has been used in such a situation is the establishment of an independent foundation tasked with spending the fund with no, or limited, political involvement. Perhaps the most notable example of such an approach is the BOTA Foundation, which was established as an independent NGO in 2008 by the governments of Kazakhstan, US and Switzerland as a means of returning in excess of US$115 million to Kazakhstan. The Foundation was established against the backdrop of a criminal investigation in Switzerland, suspicions of ML in Kazakhstan, and a bribery investigation led by the US Department of Justice. US authorities suspected that US citizens had paid bribes to Kazakhstani officials for obtaining oil prospecting rights. Discussions took place between the three governments 'to identify a

restitution mechanism that would guarantee that the returned assets would be returned to the people of Kazakhstan transparently and accountably' (IREX and Save the Children, 2015: 4).

When asked if Irish authorities/courts would be open to a similar approach, one interviewee noted that the court's primary function is to determine the owner of the assets in question; if they are deemed to be the proceeds of crime, then those assets will go to the Minister for Public Expenditure and Reform (in accordance with the legislation). But, if a victim of crime (including a victim state) comes forward, then the courts might order the money to be given to the victim ahead of the Minister (practitioner interview). If the courts were not satisfied that the money would go back to its legitimate owner (such as the *people* of a foreign country), it is possible that they might be open to not returning the money to the government of that foreign country. In such a situation, it was suggested that the courts might be open to a BOTA Foundation-type approach – though it would depend on the judge involved (practitioner interview). It was stressed, however, that the primary legal analysis would be that the money would go to the (Irish) government as the proceeds of crime unless there was a legitimate owner of the money, and there was a legitimate way of getting the money back to its owners (practitioner interview).

In a recent report on corruption in Uzbekistan, Lasslett et al. (2017: 21) suggest:

> The principles of transformative justice could usefully inform how stolen assets are returned to victim populations. In short, a transformative approach to asset-forfeiture would require processes oriented towards (a) redress of the diverse social harms suffered by victimized populations, (b) securing non-reoccurrence, and (c) assisting movements and initiatives that can instigate reforms which confront structural violence. To achieve these ends, a transformative approach encourages the engagement of victim groups both in the design of enacting mechanisms for asset return, and defining desirable outcomes. This approach promotes a return process that is bottom-up, victim oriented, context driven and calibrated to important systemic changes.

## Conclusion

In many ways, the laundering of corrupt assets – often in wealthy 'host' states – might be seen as a 'dark side of globalisation' (for a critique, see Andreas (2011); for discussion of globalisation and transnational policing, see Bowling (2009)). As Boister (2012: 100–1) notes, 'the globalization of the financial system has made it possible to launder the proceeds of crime globally'. A 2011 FATF report, titled *Laundering the Proceeds of Corruption*, noted that in almost all cases studied, foreign bank accounts were used: 'corrupt PEPs nearly universally attempt to move their money outside of

their home country' (FATF, 2011: 23). Typically (though there are exceptions) money is moved from developing countries to financial centres in developed countries. London, New York and Tokyo are often mentioned as destinations of choice (Talani, 2018). The use of offshore/ foreign jurisdictions (Young, 2013) has advantages; in the words of the FATF:

> Foreign accounts hold the advantage of being harder to investigate for the victim country, are perceived of as more stable and safer, and are more easily accessed than accounts held in the PEPs home country. Moreover, a PEP can 'stack' foreign jurisdictions: a bank account in one country could be owned by a corporation in another jurisdiction, which is in turn owned by a trust in a third jurisdiction. Each additional country multiplies the complexity of the investigation, reduces the chances of a successful result, and extends the time needed to complete the investigation.
>
> (FATF, 2011: 23. See also FATF (2012))

In 2006, the *Nairobi Declaration on International Obligations and on the Recovery and Repatriation of Africa's Stolen Wealth* emphasised: 'it is not only illegal but blatantly immoral that so much wealth stolen from Africa is allowed to circulate freely in the economies of some of the world's wealthiest nations in Europe, the Americas, the Middle East and diverse offshore havens' (Transparency International, 2006). There are now many international counter-efforts – though the effectiveness of these may be open to debate. The aim of this chapter was to consider the international developments designed to target the laundering of corrupt-related assets, from the perspective of a smaller country. This chapter does not purport to offer a comprehensive analysis of the 'law in action' in Ireland; that would require a much deeper empirical study than was possible here. As such, this chapter instead offers a snapshot based on a small study, offering selective insights into the Irish regime. It is clear that while Ireland does have a comprehensive regime in terms of both AML and asset recovery, there are practical considerations that impact on their effective operation, and this is particularly pronounced in relation to the proceeds of foreign corruption.

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