
CRIMINAL
ASSETS
BUREAU

CULLEN COMMISSION

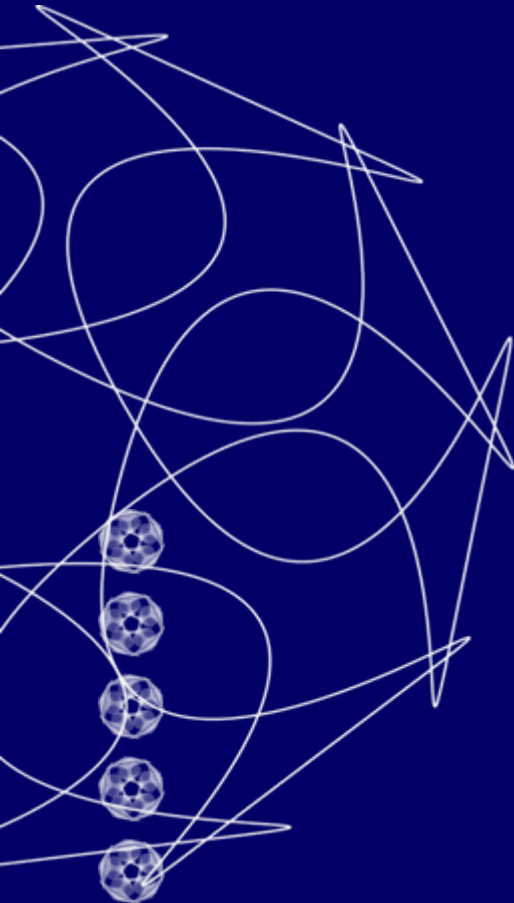
CRIMINAL ASSETS BUREAU STRUCTURE AND LEGISLATION

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1. Structure, Organisation and Operation of the Bureau
2. Restraint of proceeds of crime/unjust enrichment
3. Key safeguards

Feel free to raise questions at any stage

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Part 1

Structure and Operation of the Bureau

Criminal Assets Bureau Act, 1996 & 2005

- Section 3(2) CAB Act:
 - “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.”

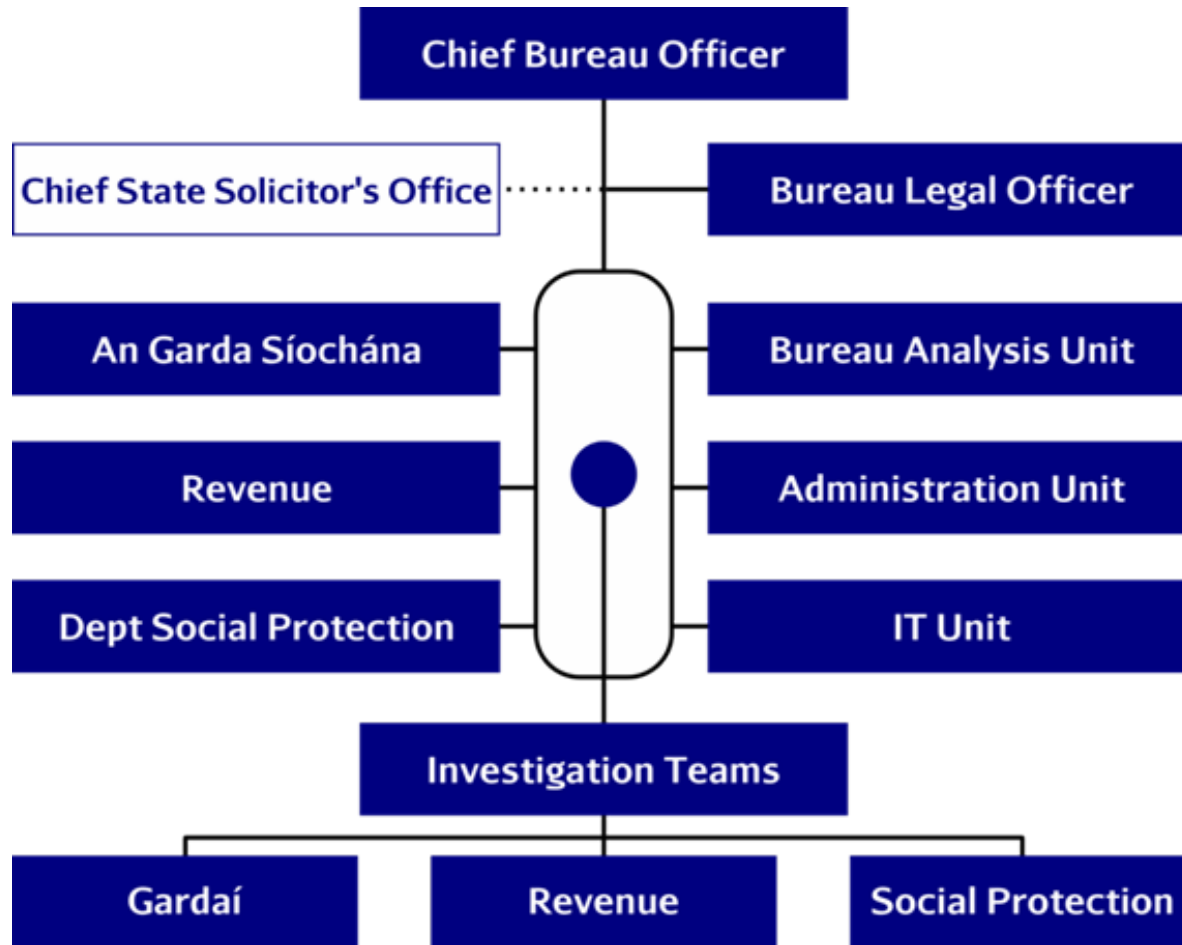
Multi Agency



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Revenue



Structure of the Bureau



CAB objectives & functions

Objectives - What

- The identification of proceeds of crime
- To deny & deprive
- All preparatory work

(Section 4 CAB Act)

Functions - How

- Garda: freeze & seize
- Revenue: tax crime
- SW: investigate claims

(Section 5 CAB Act)

All approaches at same time



Police

Tax

Social Welfare



Is CAB a branch of the Police?

“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.**”

- Murphy v. Flood [1999] IEHC 9 (1st July, 1999)

Breakdown of personnel



Result of appointment

- Section 18 CAB Act 1996 & 2005
 - On appointment an officer or member of staff “shall ... be granted **special leave with pay** from any office or employment exercised by the person at the time”
- Section 8(8)
 - Officers **continue to be vested with** any may exercise their **pre-existing powers or duties**
- Direction and control?
 - Chief Bureau Officer

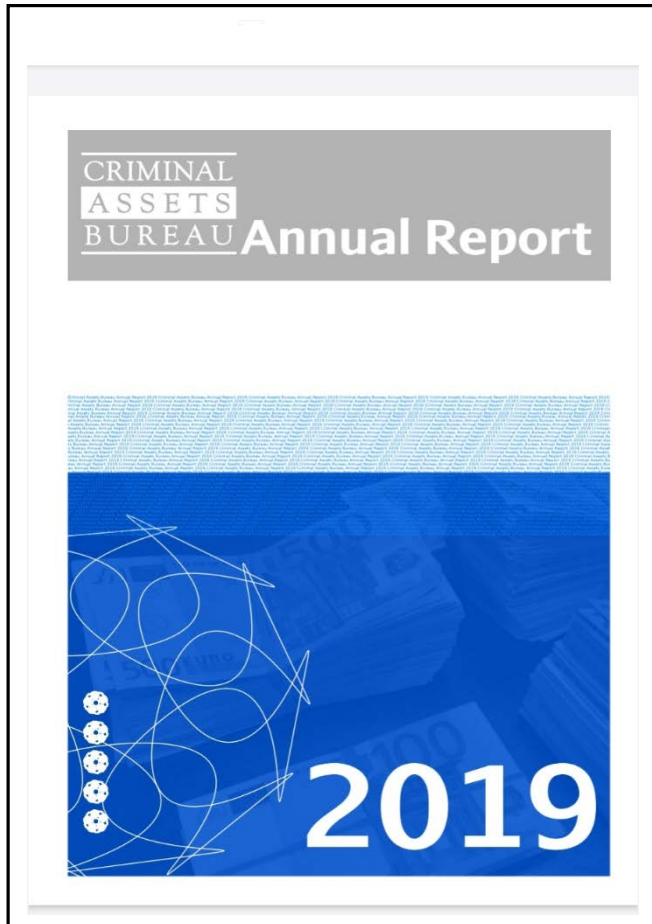
Chief Bureau Officer

- Carry on and manage and control generally the administration and business of the Bureau
- Shall be responsible to the Commissioner for the performance of the functions of the Bureau
- Appointed from ranks of Garda Síochána of rank of Chief Superintendent

Bureau Legal Officer

- Reports directly to the Chief Bureau Officer but cannot be dismissed by CBO
- Duties: to assist the Bureau in the pursuit of its objectives and functions
 - General counsel - Advisory function
 - Directing function regarding POC applications
 - Receiver of assets under section 7 POC Act

- Section 8(2)
 - “The powers and duties vested in a bureau officer by virtue of being ... [Garda/ Revenue/ SW] ...shall be exercised in the name of the Bureau”
- Section 8(4)
 - Officer: performed duty/function on direction of other person - now CBO



Section 21 CAB Act

- Annual Report

“through the Commissioner ... to the Minister of its activities during that year”

- Minister may request through the Commissioner report:

“as to the general operations of the Bureau”

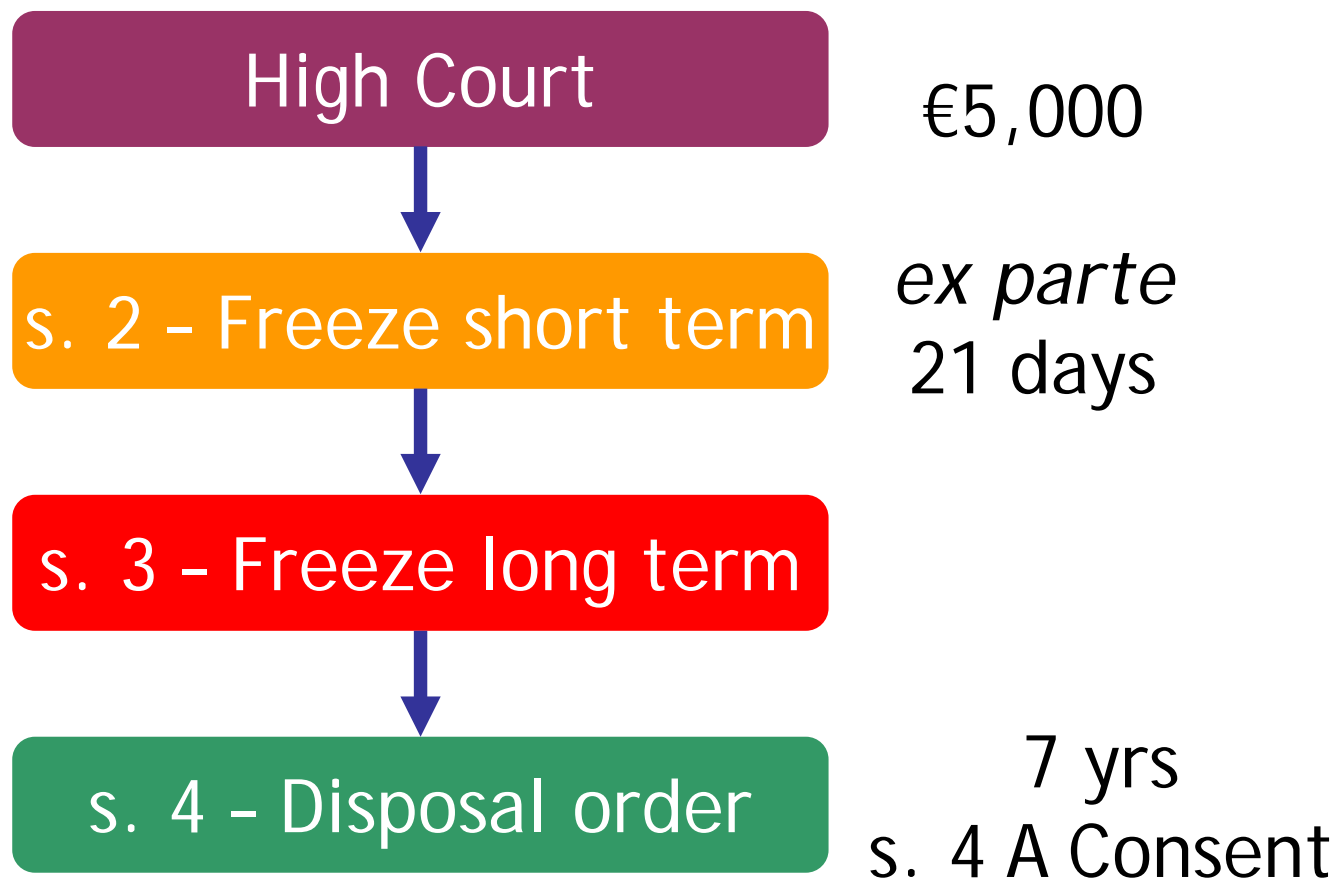
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Part 2
Proceeds of Crime Acts 1996-2016
Overview

What to target?



Proceeds of crime application



Reasons for relative success

- Asset focused - not reliant on criminal conviction
- Multi-agency
 - exchange of information
 - nowhere to hide.
- Initial Section 2 application is ex parte (investigation often complete before the Respondent knows there was one)
- Civil burden of proof - balance of probabilities
- Allows CBO's Belief evidence
- Belief evidence can be grounded in hearsay evidence
- Once belief evidence accepted - onus shifts to the respondent to show why its not Proceeds of Crime.
- Anonymity of civilian Bureau Officers = security

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Part 3
Safeguards

Institutional Structure and independence

1. Bureau Officers retain all of the duties inherent to their original role – i.e. duty to uphold the law.
2. CAB is an independent statutory body and as such is not required to report directly to any of its constituent agencies - it is free from outside influence and interference.

Institutional Structure and independence

- Operational head Chief Bureau Officer and legal head, Bureau Legal Officer (Advisory and Directing function). The Bureau Legal Officer while reporting to cannot be dismissed directly by the CBO and thus retains independence.
- Chief State Solicitor's Office is the provider of solicitor services and legal advice to CAB. This Chief State Solicitor's Office is of itself an independent state legal office and its staff are not in the employ of the CAB. It too independently charged with upholding the Constitution and adhering to the Rule of Law.

Judicial Independence and Right of Appeal

- All POC proceedings take place before the High Court which is the highest court of first instance in Ireland.
- Full unfettered right of appeal to the Appellate courts
 - Therefore:
 - Applications subject to the highest possible level of independent judicial scrutiny.
 - Not administrative rubber stamping

Opportunity to Contest POC

- Process is staggered in 3 main steps 2 of which provide opportunity to fully contest.
- Final step takes 7 years (unless consent) = opportunity to move multiple further challenges under section 3(3) if those affected can demonstrate:
 - The asset is not the proceeds of crime or,
 - the freezing order causes any other injustice which would justify its discharge

Procedural safeguards

- Default hearing is on affidavit but full plenary hearing including cross-examination permitted.
- Initial burden of proof on the Bureau.
- Legal aid available.
- Injustice provision
- Compensation provided (section 16)