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Tuarascáil maidir leis an nGrinnscrúdú Réamhrechtach ar Scéim Ghinearálta an Bhille um Fháltais ó Choireacht (Leasú), 2024

Bealtaine 2024

Joint Committee on Justice

Report on Pre-Legislative Scrutiny of the General Scheme of the Proceeds of Crime (Amendment) Bill 2024

33/JC/55

May 2024

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CATHAOIRLEACH'S FOREWORD

In January 2024, the Minister for Justice, Ms. Helen McEntee TD, forwarded the General Scheme of the Proceeds of Crime (Amendment) Bill 2024 to the Joint Committee on Justice in accordance with Standing Orders for the purpose of pre-legislative scrutiny.

In welcoming this legislation, the Committee acknowledges the profound success of the Criminal Assets Bureau (CAB) since its establishment. The Committee notes comments made during its engagement that CAB recovered more than €210 million between 1996 and 2022 and that the success of the Proceeds of Crime legislation has also been widely recognised in other jurisdictions. The Committee also notes the introduction of a recent Directive on Asset Recovery and Confiscation at a European level¹ and welcomes the stated intention to monitor the development of this Directive, while progressing this legislation.

In undertaking pre-legislative scrutiny, the Committee has sought to scrutinise the proposed legislation and provide recommendations on areas where it believes change or amendments are warranted. Among the areas identified for further examination include proposals to reduce the period of time between the seizure and disposal of items from seven years to two years [Head 5]; measures to provide for the appointment of a receiver to deprive respondents of property suspected as stemming from proceeds of crime [Head 8]; and proposals to improve the information exchange powers between CAB and law enforcement agencies in other jurisdictions [Head 11].

The Committee has made a number of recommendations and a copy of this report and recommendations will be sent to the Minister for Justice. I would like to express my appreciation to all the witnesses for their contributions and to the Members of the Committee for their work on this subject.

Finally, I hope that this report will help to inform the legislative process and make a valuable contribution to the forthcoming legislation.



James Lawless TD (FF) [Cathaoirleach]
May 2024

¹ eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0245

COMMITTEE MEMBERSHIP

Joint Committee on Justice

Deputies



James Lawless TD (FF) [Cathaoirleach]



Colm Brophy TD
(FG)



Patrick Costello TD
(GP)



Alan Farrell TD
(FG)



Pa Daly TD
(SF)



Aodhán Ó Ríordáin TD
(LAB)



Mark Ward TD
(SF)



Thomas Pringle TD
(IND)



Niamh Smyth TD
(FF)

Senators



Robbie Gallagher
(FF)



Vincent P. Martin
(GP)



Michael McDowell
(IND)



Lynn Ruane
(IND)



Barry Ward
(FG) [Leaschathaoirleach]

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil on 3rd September 2020.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 25th September 2020.
3. Deputy Jennifer Carroll MacNeill elected as Leas-Chathaoirleach on 6 October 2020.
4. Deputy James O'Connor discharged and Deputy Niamh Smyth nominated to serve in his stead by the Fifth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 19th November 2020.
5. Deputy Michael Creed discharged and Deputy Alan Farrell nominated to serve in his stead by the Fifteenth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 28th June 2022.
6. Deputy Brendan Howlin discharged and Deputy Aodhán Ó Ríordáin nominated to serve in his stead by the Nineteenth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 8th November 2022.
7. Deputy Jennifer Carroll MacNeill was discharged, pursuant to Standing Order 34, on 21st December 2022.
8. Senator Barry Ward was elected as Leas-Chathaoirleach at the Committee meeting on 15th February 2023.
9. Deputy Colm Brophy nominated to serve on the Committee by the Twenty First Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 7th March 2023.
10. Deputy Martin Kenny discharged and Deputy Mark Ward nominated to serve in his stead by the Twenty-Third Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 26th April 2023.

COMMITTEE RECOMMENDATIONS

The following recommendations were made by the Committee in relation to the topic:

1. The Committee recommends that, under Head 3, the requirement for the Chief Bureau Officer (CBO) to be responsible for making an application to the District Court should be removed. It is recommended that instead, the relevant Criminal Asset Bureau (CAB) officers should submit these applications to the District Court and the investigator in the given case should attend court on behalf of the application.
2. The Committee recommends that further examination take place in relation to the circumstances and criteria under which detention orders under Head 3 and restraint orders under Head 4 may be granted without prior judicial authorisation and the potential impact this may have on an individual's property rights and timely access to legal aid or counsel.
3. The Committee recommends that further examination take place in respect of the provisions under which detention orders and restraint orders are granted, and the potential impact on third parties who were not complicit in, or aware of, the suspected criminal activity.
4. The Committee recommends that further clarification is provided as to why the provisions under Head 4 limit interference in property rights to a 7-day period, while the period allowing for detention orders without judicial authorisation is longer under Head 3, at up to 22 days.
5. The Committee recommends further consideration of the 7-day period of restraint prior to application to the Court under Head 4.
6. The Committee recommends that the reference to non-Garda bureau officers under Head 10 should be amended to include members of staff of the Bureau

who would be appointed in accordance with Section 9 of the Criminal Assets Bureau Act 1996 and 2005, in order to ensure the assistance of technical or financial experts can be permitted as part of interviews for those detained under section 50 of the Criminal Justice Act 2007.

7. The Committee recommends that further examination take place in relation to the sharing of information internationally, and compliance with European Union data protection rules, which may necessitate judicial authorisation.
8. The Committee recommends further clarification is provided as to why the provisions under Head 11 limit information sharing with foreign authorities while the same limit does not apply domestically. The clarification provided should expand on the type of information that can be shared and the bodies that might be granted access.
9. The Committee recommends that the definition of cash, as stipulated under section 22 of the Proceeds of Crime (Amendment) Act 2005, be amended to align with the EU Cash Control Regulation (Regulation (EU) 2018/1672).
10. The Committee recommends that the definition of “Revenue Acts” in the Criminal Assets Bureau Acts 1996 and 2005 be amended to have the same meaning as section 859 of the Taxes Consolidation Act (TCA) 1997, to ensure that any new taxes that may be applicable to the Criminal Assets Bureau are provided for.
11. The Committee recommends that an examination take place regarding the current criteria and eligibility for potential projects under the Community Safety Innovation Fund.

12. The Committee recommends further examination of the time period for disposal of property after an interlocutory order is made, under Head 5, to ensure the protection of rights of persons who have an interest in the property.
13. The Committee recommends further consideration of provisions under Head 5 and whether it would be more appropriate to align the time period for disposal of property after an interlocutory order has been made with that of civil proceedings.
14. The Committee recommends that further clarification is provided in regard to who might claim interest in property due to be disposed under Head 5.
15. The Committee recommends further examination of the use of funds recovered from proceeds of crime and how such funds could be invested to address the root causes and drivers of crime and anti-social behaviour through the provision of preventative supports within communities and within the prison system.
16. The Committee recommends that an analysis is undertaken by the Department of Justice on the root causes and drivers of crime and anti-social behaviour.
17. The Committee recommends that further consideration is given to the publication of funding allocations which stem from the proceeds of crime.
18. The Committee recommends further consideration of the provisions under Head 8 and the potential impact on vulnerable third parties should the property be placed in receivership.
19. The Committee recommends that further examination take place regarding the difficulties faced by third parties in accessing legal aid or representation.

20. The Committee recommends that further clarification is provided with regard to the individuals or organisations who might be eligible for compensation under Head 9.

CHAPTER 1 - Introduction

This is the report on pre-legislative scrutiny of the General Scheme of the Proceeds of Crime (Amendment) Bill 2024, which will introduce significant changes to the Proceeds of Crime Act and enhance the Criminal Assets Bureau's (CAB) ability to target the proceeds of crime.²

The civil non-conviction based model used in Ireland to seize the proceeds of crime is enabled and supported by the Proceeds of Crime Act 1996 and the Criminal Assets Bureau Act 1996. The Proceeds of Crime Act has been amended significantly twice, in 2005 and 2016, and this General Scheme proposes further amendments, to ensure this legislation remains robust and as effective as possible.

Purpose of the Bill

Among the General Scheme's objectives include the reduction of the period between an order being made that assets are the proceeds of crime and the final disposal order relating to these assets being issued from seven years to two years; mechanisms to provide for the appointment of a receiver over a property, with the main aim of depriving the respondent of the property; and enhanced powers for exchanging information between CAB and law enforcement agencies in other jurisdictions.

Procedural basis for scrutiny

Pre-legislative consideration was conducted in accordance with Standing Order 174A, which provides that the General Scheme of all Bills shall be given to the Committee empowered to consider Bills published by the member of Government.

² [gov - Minister for Justice secures approval to draft legislation to enhance Criminal Assets Bureau's powers \(www.gov.ie\)](https://www.gov.ie)

Engagement with stakeholders

The Joint Committee on Justice invited submissions from stakeholders on the General Scheme of the Proceeds of Crime (Amendment) Bill 2024.

On 16th April 2024, the Committee held a public engagement with several of these stakeholders, as laid out in the table below:

Table 1: List of public engagements with Stakeholders

Organisation	Witnesses	Date of appearance
Office of the Revenue Commissioners	Mr. Barry Murphy, Assistant Principal Officer, Investigation, Prosecution and Frontier Management Division	16 th April 2024
	Mr. Brendan O'Hara, Assistant Principal Officer, Business Taxes Policy and Legislation Division	
Bar of Ireland	Mr. Sean Guerin SC, member of the Council of The Bar of Ireland	16 th April 2024
	Ms. Kate Egan BL, member of the Law Library	
Criminal Assets Bureau (CAB)	Mr. Michael Gubbins, Chief Bureau Officer	16 th April 2024
	Mr. Kevin McMeel, Bureau Legal Officer (BLO)	
An Garda Síochána	Assistant Commissioner Justin Kelly, Organised and Serious Crime	16 th April 2024
	Detective Superintendent Steven Meighan, Organised and Serious Crime	

Department of Justice

Mr. Brendan Bruen, Principal Officer, 16th April 2024
Criminal Legislation

The primary focus of this meeting was to allow for an engagement between the Members and stakeholders to discuss areas of the General Scheme which may require amending.

This report summarises the engagement and the key points considered by the Committee when drafting the recommendations set out in this report.

A link to the full transcript of the engagement can be found [here](#).

CHAPTER 2 - Summary of Evidence

In the course of the public hearing, a number of important points were raised.

A summary of the main areas discussed in evidence to the Committee follows.

1. International context and the Directive on Asset Recovery and Confiscation

During the Committee's engagement, Members and witnesses discussed the international context in relation to proceeds of crime legislation and the progression of asset recovery legislation at an EU level.

Witnesses emphasised to Members the importance of international co-operation in the area of asset recovery and underlined that crime has become more international and digitised in nature since the Proceeds of Crime Act was originally enacted in 1996.

The Committee heard that the criminals targeted by the Criminal Assets Bureau (CAB) often move abroad to escape CAB's orders and that, as Ireland was one of the first countries to introduce asset recovery legislation, CAB can face difficulties in having their orders recognised by other jurisdictions.

Witnesses highlighted the recent adoption of the Asset Recovery and Confiscation Directive, which provided for the adoption of a model of confiscation of unexplained wealth on an EU basis for the first time. The Department of Justice welcomed the adoption of this proposal, as EU Members would introduce a model of asset recovery similar to the model used by CAB. This should help to improve the familiarity of European Member States with CAB's processes and with the recognition of orders similar to Ireland's non conviction forfeiture-based orders. It is hoped that it may also help to change the opinions of other jurisdictions in relation to international co-operation in the area of asset recovery.

Representatives from the Department of Justice highlighted that the General Scheme did not place as much of a focus on how to improve international co-operation in relation to asset recovery. The Committee was told that as the Asset Recovery

Directive is at an early stage, it is intended to monitor the development of this Directive before proposing additional measures in this area. It was suggested that this Directive may result in negotiations at a European level towards adopting an additional protocol to the Warsaw Convention, to better facilitate international cooperation in this area.

The Committee heard that there are other organisations, such as the Financial Action Task Force (FATF), which operates at a transnational level to inform and assist other jurisdictions in the area of asset recovery. Witnesses highlighted that in recent times FATF had tried to encourage other jurisdictions to adopt the model used by Ireland.

Witnesses also told the Committee that the growing adoption of asset recovery legislation in other jurisdictions reflects the success of the Proceeds of Crime Act 1996 and demonstrates that it is a robust and effective piece of legislation.

2. Rights of third parties under the legislation

Members and witnesses discussed provisions relating to the rights of third parties under the proposed legislation. Members questioned whether the legislation provides sufficient safeguards for individuals who may be indirectly affected by disposal orders on assets deemed to be the proceeds of crime and restraint orders which might create potential danger for such individuals.

For example, what recourse to justice individuals would have, in circumstances where the tenants of a property would be impacted by an eviction notice on a property that is the proceeds of crime or where employees are working for a company linked to the proceeds of crime and may be concerned about the status of their employment with this company.

Members also asked how often the 'injustice' provision has been invoked under Section 4(8) and questioned whether there is adequate protection for more vulnerable individuals, e.g., those with a disability or a mental illness, under this legislation.

Witnesses highlighted to the Committee that there are two provisions under the current legislation which allow people to access legal representation in circumstances where they may be affected by disposal orders on assets and have limited time under new provisions to express interest in the property or access legal counsel on the matter.

Section 6 of the Proceeds of Crime Act allows individuals to apply to the court and request some monies from assets which were seized by CAB as proceeds of crime. The CAB ad hoc legal aid scheme, which was established in 1998, also provides an opportunity for people to apply for legal aid. Witnesses did not expand on the criteria for such applications or on the types of third party who may be eligible for legal aid; concerns were raised in regard to the length of time it might take to access legal aid and the shortage of barristers.

It was pointed out that, as the Section 4 disposal stage currently happens seven years after an asset would have been deemed the proceeds of crime under a section 3 order, this would allow seven years within which tenants would be on notice of a property being sized and have recourse to avenues to appeal this decision.

Witnesses stated that there is a principle of equality of arms in relation to legal aid in cases regarding proceeds of crime, therefore, whatever legal counsel is granted to the Bureau will also be granted to third-parties. There is also provision made for individuals to represent themselves in court, where they choose to and to have access to the expertise that they need to defend their case.

Witnesses argued that the Courts do take the circumstances, including financial circumstances, of third-party individuals into account when reaching decisions and said that legal aid will often be granted in situations where, for example, the family home would be repossessed otherwise.

When approaching cases involving proceeds of crime, the Committee was told that the Courts will often take a similar approach in these cases as in situations where the Courts would repossess a property from someone has failed to keep up with their mortgage payments.

In situations where there may be a business deemed to be proceeds of crime, the Committee heard that if the business is viable, then it will be up to the Courts to decide if this business may continue or not.

In response to questions, witnesses stated that they do not believe that the injustice provision has yet been invoked under Section 4(8) of the Proceeds of Crime Act. Witnesses said that as the asset recovery system in Ireland is based on an all-predicate model, where any criminal offence could generate proceeds of crime, this can raise questions of proportionality. Therefore, witnesses underlined the importance of the injustice provision being available as a safeguard for these circumstances. Witnesses stated that it is also a credit to how CAB conducts its work that the injustice provision has not been utilised to this point.

In relation to protections for vulnerable individuals under this legislation, witnesses said they envisaged that the Courts would take the injustice provisions under Section 4(8) into account in these cases and that these individuals would be entitled to legal representation. It was highlighted that the Courts always seek to find out who resides in a property before they make an order for its possession and that the Court would

be made aware of circumstances of the tenant of that property as part of any decision made in relation to the property.

3. Prior judicial authorisation for interference in an individual's property rights [Head 3 and Head 4]

Members and witnesses discussed provisions relating to Heads 3 and 4 which provide a set period within which applications for short-term detention orders and for restraint orders respectively may be granted, prior to judicial authorisation being required.

Some witnesses argued that these orders have an impact on an individual's property rights and recommended that, except in urgent circumstances, such orders should always receive prior judicial authorisation. Witnesses also highlighted that the provisions under Head 4 limit interference in property rights to a 7-day period and questioned why the period allowing for detention orders without judicial authorisation is longer under Head 3, at up to 22 days.

However, other witnesses stated that the 7-day period stipulated under Head 4 is similar to the time period granted under section 17 of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 (the 2010 Act)*. Witnesses pointed out that CAB makes frequent use of section 17, having used it 750 times a year on average, over the last five years. It was pointed out that only 2.2% of these applications are made under a Section 17(1) provision, where prior approval from the Courts is not sought for this seven-day period and therefore, witnesses stressed that this provision under the 2010 Act has only been used in a minority of cases.

Some witnesses informed the Committee that the proposed seven-day period without judicial authorisation is necessary, as it takes into account the practical realities of an investigation, particularly considering holiday periods at Christmas or Bank Holiday weekends, where the banks and courts are closed. Other witnesses questioned the appropriateness of the 7-day period without a positive application made by the Bureau, given that Heads 12 and 13 clearly contemplate the possibility of an application to court by a person affected.

Witnesses also highlighted that interference with an individual's property rights happens frequently during the course of normal investigations, where property may be seized as evidence as part of a criminal investigation. The Committee heard that in such instances, individuals can contest the seizure of property under the Police

Property Acts and that under sections 19 and 20 of the 2010 Act, individuals can challenge the seizure of property within the 7 days or after this period. Therefore, it was argued that individuals have several avenues through which to challenge property being seized without prior judicial authorisation.

4. Shortening of the period between granting of interlocutory orders and disposal orders [Head 5]

Members and witnesses discussed the proposed changes to sections 3 and 4 of the Proceeds of Crime Act 1996. Head 5 of the General Scheme proposes to reduce the current period between interlocutory orders being granted in relation to a property under Section 3 and disposal orders being granted for this property under Section 4, from seven years down to two years.

Members asked if these provisions would have any impact on property rights and whether this proposal would allow sufficient time for more vulnerable individuals, e.g., those with a disability or a mental illness, to guarantee the protection of their rights under this shorter period.

Members also queried the protections or rights afforded to community-based organisations who might have an interest in the property and operate on the basis of social good.

Some witnesses suggested that while there may be value in decreasing the current 7-year period for final disposal orders to be made, it was suggested that this period could instead be amended to align with the general limitation period in ordinary civil law.

Other witnesses, however, spoke in support of this period being decreased to 2 years. It was argued that the intention of this Head is to ensure that there is a more expeditious judicial process in place and that cases relating to proceeds of crime would be resolved within a more reasonable amount of time.

Representatives from the Department of Justice stated that, while they await final advice from the office of the Attorney General (AG), they have engaged closely with the AG's office on this matter and they do not believe there are any constitutionality issues with decreasing this period from seven years to two years. The Committee was told that the Department is also satisfied that the proposed two-year time period is appropriate in terms of safeguarding the rights of individual rights and providing sufficient time to allow for the appeal of decisions, where applicable.

Witnesses told the Committee that individuals have several opportunities to pursue their right to the property during this period. This includes the option at the section 3 stage of the process to advance their arguments for their right to the property in question. Individuals may also appeal decisions made following the stage 3 process to the Court of Appeal and the Supreme Court if they disagree with the decision made in relation their case.

In addition, individuals can put forward a challenge under Section 3(3) to have a Section 3 order discharged or varied within the 2-year period that is proposed.

5. Additional Points

Witnesses raised some of the following points during the engagement:

- **Interaction between CAB and Local Authorities in relation to properties seized**

Members asked questions relating to the approach of CAB towards Local Authority housing. Members asked whether the legislation could include a provision that, where a house originally belonged to the Local Authority, but was subsequently purchased from them and later deemed to be the proceeds of crime, that this property could be returned to the Local Authority housing stock, rather than sold by CAB to another buyer.

Witnesses stated that, in being appointed as receiver over a property, CAB would have the same responsibilities that any other court appointed receiver would have.

Witnesses highlighted that, when CAB receives a property at the section 4 stage, there is some scope around who CAB may choose to sell a property to. It was pointed out that in these situations, and as a matter of protocol, CAB would first offer this property to the Land Development Agency (LDA) and the Local Authority (LA) for first refusal.

The Committee heard that CAB is generally obliged to sell any property in their possession in the open market, for the best price reasonably available. Therefore, they are not in a position to offer any property seized to a Local Authority for a lower or discounted price, as doing so would be in breach of a court order.

- **Community Safety Innovation Fund [CSIF]**

Members asked questions in relation to the Community Safety Innovation Fund (CSIF) the intention of the fund, the budget allocated from the total retrieved from the proceeds of crime, and the criteria to access money under this fund. Members questioned whether the current criteria of the fund allow it to be used to support

organisations that work within communities most likely to be affected by poverty, addiction and crime.

The Committee heard that the current operation of the fund might be counter-intuitive and does little to address the root causes and drivers of crime and anti-social behaviour, and create preventative opportunities for those within the community. Members highlighted the need for a more targeted approach and asked whether an analysis has been done of root causes of crime.

In response, representatives from the Department of Justice pointed out that the CSIF is a new programme, whose size and funding has been increasing since its inception. It was acknowledged that there can be difficulties in ring-fencing funding or having a stable funding source for projects, however, witnesses said that as this programme develops further, it is hoped that the criteria attached to funding and selecting projects will also continue to be refined and develop.

- **Housing and unintended costs to the State**

Members asked questions in relation to homes which have been renovated using the proceeds of crime. The point was raised that where ownership reverts to a local authority, significant investments are unnecessarily removed, due to the requirement that all local authority homes in an area must look the same. Members raised concerns as to whether there is an appropriate balance between the monetary value being removed from a home and the State funds required to undertake such work. It was suggested that increasing the housing stock and acting with regard to social good should be paramount.

CHAPTER 3 - Summary of Submissions

This note summarises the key issues raised in the submissions received.

The Committee received submissions from the following Stakeholders.

- Office of the Revenue Commissioners
- The Bar of Ireland
- Criminal Assets Bureau (CAB)
- Department of Justice
- An Garda Síochána

The submissions provided commentary in relation to several heads of the General Scheme, in particular, proposals to reduce the period of time between the seizure and disposal of items from seven years to two years [Head 5]; measures to provide for the appointment of a receiver to deprive respondents of property suspected as stemming from proceeds of crime [Head 8]; and proposals to improve the information exchange powers between CAB and law enforcement agencies in other jurisdictions [Head 11].

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

Submissions welcomed the introduction of Head 3, which would permit the Chief Bureau Officer (CBO) to apply to the District Court for an extension of the period in which a property is detained, provided that it is subject to an ongoing proceeds of crime investigation, for a further 28 days. This period can be extended and the property may be held up to a period of no longer than 90 days in total.

Submissions stated that currently, the Criminal Assets Bureau (CAB) must acquire an interim, or interlocutory order, within 22 days when seeking to detain an asset suspected of being the proceeds of crime for an additional 21 days. However, it was outlined that it can often be difficult to gather the evidence necessary for the extension application within this timeframe.

Submissions stated this restrictive timeframe has impacted negatively on the overall effectiveness of this measure and welcomed the changes proposed under Head 3, which would provide CAB with a more reasonable amount of time within which to conduct investigations and gather the evidence necessary for submitting these interlocutory applications to the High Court.

Some stakeholders suggested that the requirement under this Head for the CBO to make an application to the District Court be removed, as it would be impractical for the CBO to attend the District Court for each application and given that the CBO does not have direct involvement in the investigation.

Stakeholders recommended that it would be more suitable for the investigator in the given case to attend court on behalf of the application or for CAB officers to submit these applications.

Other stakeholders recommended that judicial approval should always be granted for detention orders, save in urgent circumstances, due to their impact on an individual's property rights. Submissions also highlighted that similar provisions under Head 4 of the General Scheme limit interference in property rights to a 7-day period ([see more below](#)) and questioned why the period allowing for detention orders without judicial authorisation is longer under Head 3.

2. Restraint Orders [Head 4]

Stakeholders held varying views on Head 4, which would permit a bureau officer to issue an order, and a court to extend such an order, restraining services or transactions in relation to a property suspected to be the proceeds of crime, so that this officer may carry out an initial examination into whether the property in question would be considered as proceeds of crime.

Submissions highlighted that under current legislation, CAB must rely on use of Section 17 of *the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* in order to restrain services or transactions relating to property. However, Section 17 can only be relied upon where an investigation into money laundering or terrorist financing is taking place and where there is a tenable link between the items frozen and potential crimes of money laundering or financing of terrorist offences. Stakeholders cautioned that prosecutions relying on Section 17 may be at risk of legal challenges, where investigations find that there is no link between the proceeds of crime and offences of money laundering or terrorism.

Therefore, stakeholders welcomed this Head, as it would provide CAB with its own measure to freeze transactions or services while carrying out a proceeds of crime investigation, without the need to undertake an investigation into offences money laundering or terrorist financing, which may not be necessary or relevant for the particular case.

Some stakeholders suggested that the maximum time limit of orders made under Head 4(2) should be increased from 28 to 56 days, as it was argued that a timeframe of 28 days places too much pressure on staff and resources when trying to renew these orders.

Other stakeholders highlighted that, while it can be necessary for some restraint orders to be made without prior judicial authorisation, they questioned proposals under this Head which would allow for a 7-day period of restraint without an application to court. It was argued that, as restraint orders in general impact on an individual's property rights, restraint orders that are not subject to prior judicial authorisation should only be permitted in urgent situations.

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

Submissions welcomed proposals under Head 5. It was highlighted that under current legislation, a seven-year waiting period must be in place between a Section 3 order (interlocutory order) or determination by the Courts that a property is considered as the proceeds of crime and this property being eventually confiscated under a Section 4 order (disposal order).

Head 5 proposes to reduce this waiting period from seven years to two years. Submissions welcomed this proposed change, highlighting some of the following issues with the current seven-year waiting period:

- **Assets deemed as the proceeds of crime remain in use:** Stakeholders were critical of how the current arrangements can allow individuals to continue using properties that have been determined as proceeds of crime, for a considerable length of time.
- **Cost to the State in maintaining these properties:** Stakeholders said that reducing this period would decrease the costs incurred by the Exchequer in maintaining these properties. It was also pointed out that, in instances where the Court is slow in appointing a receiver to sell a property considered to be the proceeds of crime, CAB can be left to act in effect, as the 'landlords' responsible for these properties. It was argued that decreasing the period from seven to two years would bring some improvement to this situation.
- **Ease difficulties in securing witnesses for Section 4 hearings:** Submissions argued that decreasing this period will help facilitate the appearance of witnesses during Section 4 disposal order hearings, as it can be difficult for witnesses to be available for these hearings, when they may only take place seven years after Section 3 proceedings occurred.

- **Benefits the rights of victims:** Stakeholders argued that decreasing this period will also benefit victims, as those who do not have sufficient funds to engage in a Section 3(3) variation order for reparation or those who are ineligible for this order who must wait for the seven-year period to expire before receiving any compensation.
- **Ruling of Supreme Court in McKenna -v- Farrell [2002] IESC 4:** Submissions also pointed out that although Section 3 orders were considered as interlocutory, or provisional orders, when the Proceeds of Crime Acts were first enacted, the ruling in the case of the Supreme Court in McKenna -v- Farrell [2002] IESC 4 clarified that a Section 3 application can now be considered as a final order in a case. It was argued that this ruling gives further justification to a shortening of the seven-year period, as this now protects individuals with a possible claim to these properties, rather than the respondents themselves.

Other submissions acknowledged that while seven years may be too long a period between an interlocutory order and disposal of this property, it was argued that decreasing this period to two years as proposed may be too short, given that this period is in place to safeguard the rights of individuals who have an interest in the property and may not be aware of the interlocutory order in place.

It was suggested that the seven-year period could instead be amended to align with one of the limitation periods for civil proceedings.

Section 4(6)

Submissions also commented on the proposed changes to Section 4(6) under this Head, which would clarify the nature of the Section 4 disposal order and limit the grounds on which a disposal order can be challenged.

It was argued that currently, respondents at Section 4 hearings can request that matters be re-opened, which had been previously decided upon by the High Court at

Section 3 proceedings. This can include the key issue of whether a property can be considered as the proceeds of crime.

Some stakeholders argued that it is inappropriate for such matters to be re-determined at Section 4 hearings and alleged that these provisions are used by individuals to delay proceedings and can also increase the overall cost of proceedings.

Therefore, these stakeholders welcomed the changes proposed under this section.

Other stakeholders raised questions as to how this new section would operate in practice and recommended that this section could instead be amended, so that it would restrict the re-hearing of the Section 3 order by the parties who were on notice of the Section 3 application.

4. Amendment of Section 7 (Appointment of Receiver) [Head 8]

Stakeholders welcomed Head 8, which would provide for the appointment of a receiver over a property, with the main aim of depriving the respondent of the property and would also set conditions around the appointment of this receiver.

Submissions highlighted that under current practice, where the Court exercises its discretion to appoint a receiver over a property considered to be the proceeds of crime, CAB is required to demonstrate that there may be some risk to the property as part of this application.

Submissions argued that this requirement is unnecessary as it facilitates the continued use of the property by the respondent, which undermines the overall purpose behind the Proceeds of Crime Acts. Stakeholders welcomed Head 8, as it would enable CAB to apply for the appointment of a receiver with the primary aim of depriving the respondent of their property, rather than for the protection of the property itself or other reasons.

It was argued that measures under Sections 1A(c) and Section 1B provide adequate safeguards to tenants or others that may be affected by this order, as the Courts would still have discretion to decline the application if it were found that granting the application would be of significant harm to these parties.

CAB also suggested that providing for the automatic appointment of a receiver may encourage more respondents to engage with the Section 3(1) process and enable applications for variation orders under Section 3(3) to be processed earlier.

Other submissions welcomed this Head, starting that the automatic appointment of a receiver would ensure greater protection of properties which are deemed as proceeds of crime, which is beneficial for both the owner of the property and for the Exchequer.

5. Amendment of section 8(6A) (Attendance at interviews) [Head 10]

Submissions welcomed Head 10, which would allow non-Garda bureau officers to attend Garda interviews of individuals who are detained under section 50 of the Criminal Justice Act 2007. This provision mirrors existing, similar provisions under section 4 of *the Criminal Justice Act 1984* and section 2 of the *Criminal Justice (Drug Trafficking) Act 1996*.

Stakeholders said that some investigations may require the assistance of technical or financial experts as part of interviews for those detained under section 50 and it was recommended that the reference to non-Garda bureau officers under this Head should be amended to include these specific members of staff, who would be appointed in accordance with Section 9 of the CAB Acts.

6. Amendment of section 8(7) (Information exchange) [Head 11]

Stakeholders welcomed the measures under Head 11 to amend section 8(7) of Criminal Assets Bureau Act 1996 and allow CAB to share information with other statutory bodies, e.g., the Director of Public Prosecutions (DPP).

Head 11 also clarifies CAB's powers in relation to the sharing of information with law enforcement agencies in other jurisdictions. Stakeholders welcomed the measures to improve the exchange of information, highlighting that co-operation between agencies and law enforcement agencies in other jurisdictions is vital in order to tackle organised crime. It was highlighted that An Garda Síochána remains the central point of contact for organisations for international police co-operation, e.g. Interpol.

Other stakeholders raised concerns with data protection measures under this Head, highlighting the sensitive nature of information possessed by CAB and concerns that the provisions around the sharing of data with international bodies do not take European data protection rules into account.

It was recommended that any information that is shared by CAB with bodies outside of the EU should be first subject to judicial authorisation, to ensure that the sharing of this information is lawful and proportionate and that information should be shared only when it reaches a particular threshold in relation to the reliability of this information.

7. Additional Points

In addition to the above key issues, some stakeholders indicated specific interest in certain areas, as follows:

- **Office of the Revenue Commissioners**

Revenue made the following suggested amendments in relation to Parts 2 and 3 of the General Scheme

- **Part 2:** It was recommended that the definition of cash, as stipulated under section 22 of the Proceeds of Crime (Amendment) Act 2005, be amended to align with the EU Cash Control Regulation (Regulation (EU) 2018/1672).
- **Part 3:** It was recommended that the definition of “Revenue Acts” in the Criminal Assets Bureau Acts 1996 and 2005 be amended to have the same meaning as section 859 of the Taxes Consolidation Act (TCA) 1997, which has since been updated through several Financial Acts and includes new taxes, e.g. Local Property Tax, Vacant Homes Tax.

- **Community Safety Innovation Fund**

The Department of Justice provided additional information to the Committee, outlining the Community Safety Innovation Fund (CSIF), which was established by the Department in 2021. The CSIF aims to re-invest funds identified by CAB as being proceeds of crime back into local projects within communities. It is intended that re-directing the funds of crime into communities in this way can support innovative projects to improve community safety, while demonstrating the positive impact that enforcement by Gardaí can have, in helping to develop stronger communities.

It was highlighted that the CSIF was given a gross allocation of €3 million in 2023, from which 30 different projects benefitted, while the size of the CSIF has increased to €3.75m under Budget 2024.

Since its inception, the CSIF has supported projects which engage with some of the following issues:

- Anti-Social Activity;
- Drug use;
- Education;
- Homelessness;
- Encouraging prosocial activities;
- Supporting vulnerable Groups
- Youth interventions

Further details on the projects supported by this initiative can be found in the Department of Justice's submission to the Committee.

APPENDICES

APPENDIX 1- ORDERS OF REFERENCE OF THE COMMITTEE

Standing Orders 94, 95 and 96 – scope of activity and powers of Select Committees and functions of Departmental Select Committees

Scope and context of activities of Select Committees.

94.(1) The Dáil may appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill, Estimate or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil.

(2) It shall be an instruction to each Select Committee that—

(a) it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(b) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;

(c) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 125(1)³; and

³ Retained pending review of the Joint Committee on Public Petitions

(d) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(i) a member of the Government or a Minister of State, or

(ii) the principal office-holder of a State body within the responsibility of a Government Department or

(iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

Functions of Departmental Select Committees.

95. (1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

(a) legislation, policy, governance, expenditure and administration of—

(i) a Government Department, and

(ii) State bodies within the responsibility of such Department, and

(b) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

(a) stand referred to the Committee by virtue of these Standing Orders or statute law, or

(b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

(a) for the accountability of the relevant Minister or Minister of State, and

(b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

(a) consents to such consideration, or

(b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

(a) the Committee Stage of a Bill,

(b) Estimates for Public Services, or

(c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

- (a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,
- (b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,
- (c) non-legislative documents published by any EU institution in relation to EU policy matters, or
- (d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings, the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:
 - (i) members of the European Parliament elected from constituencies in Ireland,
 - (ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and
 - (iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

- (a) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and

(b) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.⁴

⁴ Retained pending review of the Joint Committee on Public Petitions.

Powers of Select Committees.

96. Unless the Dáil shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

(a) minutes of such evidence as was heard in public, and

(b) such evidence in writing as the Committee thinks fit;

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

(a) require any Government Department or other instrument-making authority concerned to—

(i) submit a memorandum to the Select Committee explaining the statutory

Instrument, or

(ii) attend a meeting of the Select Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil,

and

(b) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss—

(a) policy, or

(b) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially

responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 197;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(a) State body within the responsibility of a Government Department or

(b) non-State body which is partly funded by the State,
shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil;

and

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under Standing Order 120(4)(a).'

APPENDIX 2 - LIST OF STAKEHOLDERS AND SUBMISSIONS

The Committee received submissions from the following stakeholders:

- [Office of the Revenue Commissioners](#)
- [The Bar of Ireland](#)
- [Criminal Assets Bureau \(CAB\)](#)
- [Department of Justice](#)
- [An Garda Síochána \(AGS\)](#)

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