



AN BILLE UM GHOID, 1989
LARCENY BILL, 1989

*Mar a ritheadh ag dhá Theach an Oireachtais
As passed by both Houses of the Oireachtas*

ARRANGEMENT OF SECTIONS

Section

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2. Amendment of section 28 of Principal Act.
3. Amendment of section 33 of Principal Act.
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ACTS REFERRED TO

Defence Act, 1954	1954, No. 18
Larceny Act, 1916	1916, c. 50
Post Office Act, 1908	1908, c. 48
Prevention of Crimes Act, 1871	1871, c. 112
Road Traffic Act, 1961	1961, No. 24
Vagrancy Act, 1824	1824, c. 83



AN BILLE UM GHOID, 1989
LARCENY BILL, 1989

BILL

entitled

AN ACT TO AMEND THE LARCENY ACT, 1916, THE POST 5
OFFICE ACT, 1908, AND THE DEFENCE ACT, 1954, AND
TO PROVIDE FOR RELATED MATTERS.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Interpretation.

1.—(1) In this Act “the Principal Act” means the Larceny Act, 1916. 10

(2) A reference in this Act to any other enactment shall, except so far as the context otherwise requires, be construed as a reference to that enactment as amended, extended or applied by or under any other enactment including this Act.

Amendment of section 28 of Principal Act.

2.—The Principal Act is hereby amended by the substitution for 15 section 28 of the following section:

“Possession of articles.

28. (1) A person who is, when not at his place of abode, in possession of any article with the intention that it be used in the course of or in connection with— 20

(a) larceny or burglary, or

(b) an offence under section 29, 30, 31 or 32 of this Act, or

(c) an offence under section 112 (which deals with taking a vehicle without lawful 25 authority) of the Road Traffic Act, 1961,

shall be guilty of felony and be liable on conviction on indictment to imprisonment for a term not exceeding 5 years or to a fine or to both. 30

(2) A person who is, without lawful authority or reasonable excuse, in possession of any article made or adapted for use in the course of or in connection with—

- (a) larceny or burglary, or
- (b) an offence under section 29, 30, 31 or 32 of this Act, or
- (c) an offence under section 112 (which deals with taking a vehicle without lawful authority) of the Road Traffic Act, 1961,

shall be guilty of felony and be liable on conviction on indictment to imprisonment for a term not exceeding 5 years or to a fine or to both.

(3) Where a person is convicted of an offence under this section, the court may order that any article for the possession of which he was so convicted shall be forfeited and either destroyed or disposed of in such manner as the court may determine.

(4) An order under subsection (3) of this section shall not take effect until the ordinary time for instituting an appeal against the conviction or order concerned has expired or, where such an appeal is instituted, until it or any further appeal is finally decided or abandoned or the ordinary time for instituting any further appeal has expired.”

3.—The Principal Act is hereby amended by the substitution for section 33 of the following section: Amendment of section 33 of Principal Act.

“Handling stolen property.”
33. (1) A person who handles stolen property knowing or believing it to be stolen property shall be guilty of felony and shall be liable on conviction on indictment to imprisonment for a term not exceeding 14 years or to a fine or to both.

- (2) For the purposes of this Act—
- (a) a person handles stolen property if (otherwise than in the course of the stealing), knowing or believing it to be stolen property, he dishonestly—
 - (i) receives the property, or
 - (ii) undertakes or assists in its retention, removal, disposal or realisation by or for the benefit of another person, or
 - (iii) arranges to do any of the things specified in subparagraph (i) or (ii) of this paragraph;

(b) where a person—

(i) receives stolen property, or

(ii) undertakes or assists in its retention, removal, disposal or realisation by or for the benefit of another person, or

5

(iii) arranges to do any of the things specified in subparagraph (i) or (ii) of this paragraph,

in such circumstances that it is reasonable to conclude that he knew or believed the property to be stolen property, he shall be taken to have so known or believed unless the court or the jury, as the case may be, is satisfied having regard to all the evidence that there is a reasonable doubt as to whether he so knew or believed;

and

(c) believing property to be stolen property includes thinking that such property was probably stolen property.

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(3) A person to whom this section applies may be indicted and convicted whether the principal offender has or has not been previously convicted or is or is not amenable to justice.”

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Amendment of section 40 of Principal Act.

4.—Section 40 of the Principal Act is hereby amended by—

(a) the substitution for subsection (3) of the following subsection:

“(3) Any number of persons may be charged in one indictment, with reference to the same theft, with having at different times or at the same time handled the stolen property or any part of it, and the persons so charged may be tried together.”; and

(b) the substitution for paragraphs (j) and (k) of subsection (5) of the following paragraphs:

“(j) Charges of stealing any property and of handling the same property or any part thereof may be included in separate counts of the same indictment and such counts may be tried together.

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(k) Any person or persons charged in separate counts of the same indictment with stealing any property and with handling the same property or any part thereof may be severally found guilty either of stealing or of handling the said property or any part thereof.”

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Repeal of section 43 (1) of Principal Act.

5.—Section 43 (1) of the Principal Act is hereby repealed.

6.—Section 44 of the Principal Act is hereby amended by the substitution of the following subsection for subsection (5):

Amendment of section 44 of Principal Act.

5 “(5) On the trial of two or more persons indicted for jointly handling any stolen property, the court or jury, as the case may be, may find any of the accused guilty if satisfied that he handled all or any part of such property whether or not he did so jointly with the other accused or with any of them.”.

10 7.—(1) The provisions of the Principal Act and of this Act relating to handling property which has been stolen shall apply whether the property was stolen in the State or elsewhere, and whether the stealing occurred before or after the commencement of this Act, provided that the stealing amounted to an offence where and at the time when the property was stolen; and references to stolen property shall for the purposes of those provisions be construed accordingly.

Scope of offences relating to stolen property.

15 (2) For the purposes specified in *subsection (1)* of this section, references to stolen property shall include, in addition to the property originally stolen and parts of it (whether in its original state or not)—

20 (a) any property which directly or indirectly represents, or has at any time represented, the stolen property in the hands of the thief as being the proceeds of any disposal or realisation of the whole or part of the stolen property or of property so representing the stolen property; and

25 (b) any other property which directly or indirectly represents, or has at any time represented, the stolen property in the hands of a handler of the stolen property or any part of it as being the proceeds of any disposal or realisation of the whole or part of the stolen property handled by him or of property so representing it.

30 (3) For the purposes specified in *subsection (1)* of this section, no property shall be regarded as having continued to be stolen property after it has been restored to the person from whom it was stolen or to other lawful possession or custody, or after that person and any other person claiming through him have otherwise ceased, as regards that property, to have any right to restitution in respect of the theft.

35 (4) For the purposes specified in *subsection (1)* of this section, property shall be regarded as stolen property whether it has been stolen, embezzled, fraudulently converted or obtained by false pretences or by the commission of any offence under section 29, 30 or 31 of the Principal Act; and “steal”, “theft” and “thief” shall be
40 construed accordingly.

(5) In section 46(1) of the Principal Act, the definition of “property” is hereby amended by the insertion, after “The expression ‘property’”, of “, subject to *section 7* of the *Larceny Act, 1990*,”.

45 8.—(1) If, on the trial of a person for an offence consisting of or including the stealing, embezzlement or fraudulent conversion of any property, or the obtaining of any property by false pretences, or for an offence under section 29, 30 or 31 of the Principal Act, it is proved that the person handled the property the subject of the charge in such circumstances as to constitute an offence under section 33 (as
50 substituted by this Act) of the Principal Act, he may be convicted of that offence, but shall not be sentenced to a term of imprisonment exceeding 10 years.

Alternative verdicts.

(2) If, on the trial of a person for an offence, under section 33 (as substituted by this Act) of the Principal Act, of handling property alleged to have been stolen or alleged to have been embezzled, fraudulently converted or obtained by false pretences or by the commission of an offence under section 29, 30 or 31 of the Principal Act, it is proved that the person stole, embezzled or fraudulently converted the property or obtained it by false pretences or by the commission of an offence under section 29, 30 or 31 of the Principal Act, as the case may be, he may be convicted of the offence which he is proved to have committed as aforesaid.

Alteration of certain penalties under Principal Act.

9.—A person convicted on indictment of an offence under any section of the Principal Act specified in *column (1)* of the Table to this section shall, in lieu of the penalty provided by the section so specified, be liable to the penalty specified in *column (2)* of the Table to this section.

TABLE

Sections of the Principal Act (1)	Penalty (2)
2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 19, 20, 21, 22, 29, 30, 31, 32.	A term of imprisonment not exceeding ten years or a fine or both.

Amendment of Post Office Act, 1908.

10.—The Post Office Act, 1908, is hereby amended by—

(a) the substitution, in section 51, of “and be liable on conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine or to both” for “and on conviction shall be liable, at the discretion of the court, to penal servitude for any term not exceeding fourteen years or not less than three years, or to imprisonment, with or without hard labour, for any term not exceeding two years”;

(b) the substitution, in section 53, of “he shall be guilty of an offence, and be liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine or to both” for “he shall be guilty of a misdemeanour, and be liable on conviction on indictment to a fine and to imprisonment with or without hard labour”;

and

(c) the substitution of the following section for section 55:

“Secreting or destroying by officer of An Post of postal packet.

55. If any officer of An Post for any purpose whatsoever secretes or destroys a postal packet in course of transmission by post, he shall be guilty of felony, and shall be liable on conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine or to both.”

Amendment of Defence Act, 1954.

11.—The Defence Act, 1954, is hereby amended by the substitution for section 156 of the following section:

“156. (1) Every person subject to military law who steals,

5 embezzles or fraudulently misapplies or handles knowing or believing it to have been stolen or otherwise unlawfully obtained any property belonging to a person subject to military law or any public property or service property shall be guilty of an offence against military law and shall, on conviction by court-martial, be liable to suffer imprisonment or any less punishment awardable by a court-martial.

10 (2) Section 33(2) (as substituted by the *Larceny Act, 1990*) of the Larceny Act, 1916, shall apply to the offence of handling under subsection (1) of this section as it does to the offence of handling stolen property.”.

15 12.—(1) In section 4 (as extended to Ireland by section 15 of the Prevention of Crimes Act, 1871) of the Vagrancy Act, 1824, the words “having in his or her custody or possession any picklock key, crow, jack, bit, or other implement, with intent feloniously to break into any dwelling house, ware-house, coach-house, stable, or out-building or” and “and every such picklock key, crow, jack, bit, and other implement” are hereby repealed. Repeals, etc.

20 (2) Sections 50 and 52 of the Post Office Act, 1908, are hereby repealed.

(3) Sections 12, 18, 37(1) to (3) and 39 of the Principal Act are hereby repealed.

25 (4) In the definition of “property” in section 46 of the Principal Act, the words “, and also includes not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same has been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise” are hereby repealed.

30 (5) The common law offence of receiving stolen property is hereby abolished.

13.—(1) This Act (other than *sections 1, 5 and 14* of this Act) shall come into operation 3 months after the date of its passing. Commencement and transitional provisions.

(2) Any reference to an offence or a conviction for an offence under—

35 (a) section 4 (as extended to Ireland by section 15 of the Prevention of Crimes Act, 1871) of the Vagrancy Act, 1824, in relation to an accused having in his custody or possession any picklock key, crow, jack, bit or other implement with intent feloniously to break into any dwelling house, ware-
40 house, coach-house, stable or out-building, or

(b) section 28 of the Principal Act,

45 contained in any statute or statutory instrument immediately before the commencement of this Act shall be construed as a reference to an offence or a conviction for an offence under section 28 of the Principal Act as substituted by this Act.

(3) Any reference to an offence or a conviction for an offence under section 33 of the Principal Act or section 52 of the Post Office Act, 1908, contained in any statute or statutory instrument immediately before the commencement of this Act shall be construed as a reference to an offence or a conviction for an offence under the said section 33 as substituted by this Act and references in any such statute or statutory instrument to receiving stolen property shall be construed as including references to handling stolen property. 5

(4) Any reference to an offence or a conviction for an offence under section 156 of the Defence Act, 1954, contained in any statute or statutory instrument immediately before the commencement of this Act shall be construed as a reference to an offence or a conviction for an offence under that section as substituted by this Act, and references in any such statute or statutory instrument to receiving stolen property shall be construed as including references to handling stolen property. 10 15

(5) *Subsections (2), (3) and (4)* of this section shall not apply in relation to offences committed before the commencement of this Act.

(6) If a person—

(a) is charged in the alternative with having committed an offence under section 28 of the Principal Act as in force immediately before the commencement of this Act and an offence under that section as substituted by this Act, or 20

(b) is charged in the alternative with having committed an offence under section 33 of the Principal Act as in force immediately before such commencement and an offence under that section as substituted by this Act, or 25

(c) is charged in the alternative with having committed an offence under section 156 of the Defence Act, 1954, as in force immediately before such commencement and an offence under that section as substituted by this Act, 30

and it is proved that he did acts which would constitute either of the offences charged but it is not proved whether those acts were done before or after such commencement, he may be convicted of the appropriate offence aforesaid under the enactment as in force immediately before the commencement of this Act but he shall not be liable to a penalty greater than the lesser of the maximum penalties provided for the two offences with which he was charged. 35

(7) A person found guilty of having, before the commencement of this Act, committed an offence under any of the sections of the Principal Act specified in *section 9* of this Act shall not, in respect of that offence, be liable to a penalty greater than the maximum penalty provided for by the Principal Act as in force immediately before the commencement of this Act or the maximum penalty so provided after such commencement, whichever is the lesser. 40 45

(8) Section 40(3) and (5)(j) and (k) and 44(5) of the Principal Act (as substituted by this Act) shall apply in relation to a charge of receiving stolen property as if it were a charge of handling stolen property.

14.—(1) This Act may be cited as the Larceny Act, 1990.

Short title,
collective citation
and construction.

(2) The Principal Act and this Act may be cited together as the Larceny Acts, 1916 and 1990.

(3) The Principal Act and this Act shall be construed together as
5 one.

BILLE

dá ngairtear

Acht do leasú an *Larceny Act*, 1916, an *Post Office Act*, 1908, an Achta Cosanta, 1954, agus do dhéanamh socrú le haghaidh nithe gaolmhara.

BILL

entitled

An Act to amend the *Larceny Act*, 1916, the *Post Office Act*, 1908, and the *Defence Act*, 1954, and to provide for related matters.

*Ritheadh ag dhá Theach an Oireachtais,
16 Bealtaine, 1990*

*Passed by both Houses of the Oireachtas,
16th May, 1990*

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

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