

Joint Oireachtas Committee on Justice
Proceeds of Crime (Amendment) Bill 2024
Pre-Legislative Scrutiny
16 April 2024

Brendan Bruen, Department of Justice
Opening Statement

I thank the Chairman and the Committee for the opportunity to attend and to contribute to the deliberations on the Scheme of this Bill. The Department has benefitted very significantly from stakeholder input in developing the Scheme and it looks forward both to the discussion today and to considering any input arising from the Committee's scrutiny.

We particularly acknowledge the exceptional work of the Criminal Assets Bureau. Since its inception, it has been at the forefront of disrupting the activities of the organised criminal groups which have caused such damage to our society. Between 1996 and 2022, CAB recovered over €210 million.

That targeting the proceeds of crime is a valuable and vital response to economic and organised crime is now hardly controversial. Across Europe and beyond, there is a growing realisation and acceptance that pursuing individuals for individual criminal offences can only be a part of the response to such conduct. Another necessary part of the response is targeting the illicit assets that are generated by that conduct, and which have no demonstrable lawful source. That realisation, of course, is one Ireland reached a long time ago with the Proceeds of Crime Act 1996, and the Irish model has rightly been a focus of international attention as this approach has been more widely adopted.

Civil confiscation is not the trial of a criminal offence but rather a challenge to the provenance of an asset. It operates from the premise that the ownership of the asset is tainted from the moment it is proceeds of criminal conduct. A drug trafficker cannot assert property rights over the drugs they are trafficking, nor can they cannot assert property rights over the proceeds of the sale of those drugs. These challenges to ownership and possession properly operate subject to civil standards of proof.

When introduced, the Proceeds of Crime Act was a new departure. We now have the benefit of almost 30 years practical experience in its operation. It has been thoroughly tested in Irish and European Courts. The reforms proposed in the Scheme reflect the operational lessons learned and are part of a process of ongoing improvement.

Given the time available I don't propose to speak to every aspect of the Scheme, but I will highlight some features. I am, of course, happy to address any specific points that the Committee wish to examine in greater detail.

The most prominent change is the reduction of the time that must elapse from 7 years to 2 years between the determination that property is the proceeds of crime and an order for its disposal for the benefit of the Exchequer.

A determination that property is proceeds of crime is made at the section 3 stage – this constitutes the final hearing of that question.

The purpose of the period of time provided after the section 3 order and before a disposal order may be made under section 4, has been to ensure that anyone with a claim to the property, including the respondent, may litigate that claim.

Under these circumstances, the view underpinning the Scheme is that the 7 year period does not actually function to protect legitimate rights and should be significantly shortened.

There are and remain extensive procedural protections in place, and the amendment of section 16 (proposed in Head 9) will add a further one in the shape of post-disposal compensation.

A separate amendment is proposed to avoid attempts to re-litigate the question of whether property is indeed the proceeds of crime at the section 4 disposal stage. As I've noted, this question is properly dealt with at section 3.

Head 8 provides for the automatic appointment of a receiver over property. This both protects the property, and ensures that the owner is deprived of the benefit of it, once it has been determined that it is proceeds.

The Scheme further provides—

- in Head 3, for judicial extension of the time property may be seized by the District Court to allow for further investigation and the preparation of an application to the High Court;
- in Head 4, for the restraint of services and transactions where they relate to the proceeds of crime; and
- in Head 11 for enhanced information exchange provisions in respect of both domestic and international cooperation.

I look forward to the Committee's consideration of the Scheme.