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*Number 30 of 1996*

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**PROCEEDS OF CRIME ACT, 1996**

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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.

[4th August, 1996]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

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

“the applicant” means a member or an authorised officer 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 any member or, as appropriate, any authorised officer;

“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;

“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*;

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“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;

“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 the commission of an offence;

“property” includes money and all other property, real or personal, heritable or moveable, including choses in action and other intangible or incorporeal property and references to property shall be construed as including references to any interest in property;

“the respondent” means a person in respect of whom an application for an interim order or an interlocutory order has been made or in respect of whom 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).

(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.

Interim order.

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

(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 £10,000,

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. S.2

(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 £10,000,

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

(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,

(b) in case the application is under *subsection (4)*, by the applicant to the respondent unless the Court is satisfied that it is not reasonably possible to ascertain his or her whereabouts.

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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.

Interlocutory order.

3.—(1) 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 *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 £10,000,

the Court shall 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 £10,000:

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

(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 (1) of subsection (1)* applies, or that the order causes any other injustice, discharge or, as may be appropriate, vary the order.

(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 S.3  
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—

- (a) in case the application is under *subsection (1) or (4)*, by the applicant to the respondent, unless the Court is satisfied that it is not reasonably possible to ascertain his or her 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.

4.—(1) Subject to *subsection (2)*, where an interlocutory order has Disposal order.  
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.

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(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.

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.

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—

(a) the respondent 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

(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 S.6  
restrictions as the Court considers necessary or expedient for the  
purpose of protecting the value of the property concerned and avoid-  
ing 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 appli-  
cation be given to him or her.

7.—(1) Where an interim order or an interlocutory order is in Receiver.  
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 prop-  
erty 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 con-  
trol 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.

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
- (b) in proceedings under *section 3*, in oral evidence,

Provisions in  
relation to evidence  
and proceedings  
under Act.

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

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not less than £10,000, 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.

Affidavit specifying property and income of respondent.

**9.**—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.

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)*. S.10

(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)*.

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.

Bankruptcy of  
respondent, etc.

(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.

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.

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—

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- (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.

**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. Immunity from proceedings.

**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. Seizure of certain property.

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

**16.**—(1) Where—

Compensation.

- (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,

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S.16 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.

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.

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

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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