

Confiscation of the Proceeds of Crime

In January 1991 the Commission published its Report on [*Confiscation of the Proceeds of Crime \(LRC 35 – 1991\)*](#) following a March 1987 request made by the Attorney General.

In making its recommendations, the commission agreed with the conclusions of the Whittaker Committee of Enquiry into the Penal System that it is unacceptable that offenders or their immediate families should be allowed to retain the proceeds of their crimes whether or not the offenders are given prison sentences. The courts should have the power to ensure the confiscation of assets of this kind.

Two vital considerations inform this Report; the need to “freeze” a suspect’s assets at the earliest possible state and, the fact that it is and always will be virtually impossible to link particular assets with particular crimes.

The Commission proposed:

- (1) That certain offences should be scheduled or designated as offences warranting mandatory confiscation of assets on conviction;
- (2) That a court should have power to freeze the assets of suspects about to be charged;
- (3) That on conviction for a scheduled offence, it should be presumed that all the assets of the person convicted, above a specific value, constitute the proceeds of crime and should be confiscated unless he or she proves otherwise;
- (4) That it should be possible to satisfy a confiscation order by payment of the money value of the assets liable to confiscation;
- (5) That “laundering”, i.e. assisting another to enjoy or dispose of the proceeds of scheduled offences, should be an offence;
- (6) That appropriate provision be made to enable the prosecuting authorities to obtain from the court orders;
 - a. to search for assets liable to confiscation;
 - b. for access to or production of material believed relevant to the investigation of a scheduled offence;
 - c. to obtain information from financial institutions;
 - d. to obtain tax information from the Revenue Commissioners;
- (7) That provision be made for the enforcement of the confiscation orders of other countries

Draft Legislation in Report

Draft legislative provisions are included in the Report.

Information on Implementation

Recommendations of the Commission were implemented by the *Criminal Justice Act 1994*; *Proceeds of Crime Act 1996* and *Proceeds of Crime (Amendment) Act 2005*.