

## **Criminal Justice (Money Laundering and Terrorist Financing) Bill 2009: Order for Report Stage.**

### **Source -**

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**Date: Wednesday 17<sup>th</sup> February 2010**

**Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern):**   I move: “That Report Stage be taken now.”

Question put and agreed to.

### **► Criminal Justice (Money Laundering and Terrorist Financing) Bill 2009: Report and Final Stages.**



**Acting Chairman (Deputy Noel O’Flynn):**   Amendments Nos. 1 to 3, inclusive, are related and may be discussed together.

**Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern):**   I move amendment No. 1:

In page 15, line 26, to delete “This section also applies to” and substitute “Subsections (2) to (6) extend to”.

The purpose of amendment No. 1 is to clarify that subsections (2) to (6) extend to proceedings for an offence under subsections 7(a) and (b), that is, sections 10 and 7(1) of the Criminal Law Act 1997, for aiding, abetting, counselling or procuring the commission of an offence under sections 7 to 9, inclusive.

Amendments Nos. 2 and 3 are related and are intended to clarify that subsections (8) and (9) apply to proceedings for an offence under this Part and also to an offence under section 7(1) of the Criminal Law Act 1997, that is, as referred to in subsection 7(b). The basic intention is to clarify the different sections relating to the issue of aiding, abetting, counselling or procuring.

**Deputy Joe Carey:**   On behalf of Fine Gael, I wish to state that we agree to these technical amendments.

**Deputy Dermot Ahern:**   I thank the Deputy.

Amendment agreed to.

**Deputy Dermot Ahern:**   I move amendment No. 2:

In page 15, line 34, after “Part,” to insert the following:

”or an offence under section 7(1) of the Criminal Law Act 1997 referred to in *subsection (7)(b)*.”.

Amendment agreed to.

**Deputy Dermot Ahern:**   I move amendment No. 3:

In page 15, line 42, after “Part,” to insert the following:



”or an offence under section 7(1) of the Criminal Law Act 1997 referred to in *subsection (7)(b)*,”.

Amendment agreed to.

**Deputy Dermot Ahern:**   I move amendment No. 4:

In page 19, line 9, to delete “proceedings” and substitute “proceedings,”.

This is another technical amendment, the purpose of which is to insert a comma after the term “legal proceedings” in section 20(1)(a). It arises as a result of the absence of said comma, which should have been inserted as a result of a previous amendment.



**Deputy Joe Carey:**   Again, we do not have a problem with this amendment, which is technical in nature.

Amendment agreed to.


**Deputy Dermot Ahern:**   I move amendment No. 5:

In page 20, line 34, to delete “solicitor,” and substitute “solicitor, or”.

The purpose of this amendment is to insert the word “or” into section 24, between paragraphs (b) and (c) of the definition of “customer”.



**Deputy Joe Carey:**   Fine Gael has no difficulty with this amendment. We agree to it.

Amendment agreed to.



**Deputy Dermot Ahern:**   I move amendment No. 6:

In page 20, line 42, after “meaning” to insert “of Part 2”.

The definition of “designated accountancy body” in section 24 is by reference to a prescribed accountancy body within the meaning of the Companies (Auditing and Accounting) Act 2003. The purpose of the amendment is to insert the term “of Part 2”, as this is the correct reference within that Act.

**Deputy Joe Carey:**   We agree to this technical amendment.

Amendment agreed to.



**Acting Chairman:**   Amendments Nos. 7 to 9, inclusive, are related and may be discussed together.



**Deputy Joanna Tuffy:**   I move amendment No. 7:



In page 38, between lines 14 and 15, to insert the following:



“ ”cohabitant“ in relation to a person means a person cohabiting with the first-mentioned person as man and wife or in an equivalent same sex relationship;”.

Amendment No. 7 represents an attempt to include a definition of “cohabitant” in the legislation. Chartered Accountants Ireland and **Compliance Ireland** have both pointed out that the Bill does not contain such a definition and that in its absence, the relevant section is unduly vague. This matter was discussed at length on Committee Stage. I recall the Minister of State, Deputy Barry Andrews, indicating at that point that the matter would be considered before Report Stage. Has the Minister considered dealing with the issue raised in our amendment in the meantime?

**Deputy Joe Carey:**   I support the amendment tabled by the Labour Party. Has the Minister considered the knock-on effects on this legislation of the Civil Partnership Bill? The inclusion of this clause would be just and we support the Labour Party on it.

**Deputy Dermot Ahern:**   As Deputies stated, considerable discussion took place on this issue on Committee Stage. I did not take Committee Stage myself but I have seen the proceedings on it. We stated we would re-examine the matter and on balance, while we can understand the import of what the amendments are trying to do we felt it would be better to await the passing of the Civil Partnership Bill which will also deal with the issue of cohabitants and same sex relationships. This Bill is strictly on money laundering and it would be preferable that the full gamut of relationships and family relationship structures would be dealt with at that stage. Originally the term ”cohabitant“ was not in the Bill. It has been included in the Bill to capture persons who are known as ”*de facto*” and who would therefore be subject to the same level of scrutiny as persons in paragraphs (a) and (b) of the definition in section 36(10). Given that we are bringing forward the Civil Partnership Bill we think it is better to deal with it at that stage.

**Deputy Joanna Tuffy:**   Will waiting for the Civil Partnership Bill delay this legislation? It will take time for the Civil Partnership Bill to go through the two Houses. We have completed Second Stage. The Bill contains provisions on qualified cohabitants, cohabitants and civil partners and it is very complicated. Bringing cohabitants into this legislation will make it very complex for those who must comply with it.

**Deputy Dermot Ahern:**   I do not think there will be any difficulty in that we will amend the Civil Partnership Bill in the context of this Bill when it is passed. We do not see any difficulty in the meantime.

Amendment, by leave, withdrawn.

**Deputy Dermot Ahern:**   I move amendment No. 8:

In page 38, to delete lines 22 and 23.

Amendment agreed to.

**Deputy Dermot Ahern:**   I move amendment No. 9:

In page 38, to delete lines 30 and 31.

Amendment agreed to.

**Acting Chairman:** Amendment No. 10 arises out of Committee Stage proceedings. Amendments Nos. 11 to 13, inclusive, are related and amendments Nos. 10 to 13, inclusive, will be discussed together.

**Deputy Dermot Ahern:** I move amendment No. 10:

In page 40, between lines 42 and 43, to insert the following:

“(iv) who is a tax adviser and who is also a member of a designated accountancy body, the Irish Taxation Institute or the Law Society of Ireland.”.

The purpose of this amendment is to include tax advisers in section 40, which provides for reliance on other persons - that is relevant third parties - to carry out customer due diligence. The first amendment inserts a new provision into the definition of “relevant third party” of a person carrying on business as a designated person in the State to include a tax adviser who is a member of a designated accountancy body, the Irish Taxation Institute or the Law Society of Ireland. At present, these provisions include groups such as credit and financial institutions, external accountants and auditors, relevant independent legal professionals and trust or company service providers subject to certain criteria, that is membership of relevant bodies.

On further consideration of the matter, it was decided that tax advisers should also be included. The second and third amendments result from the inclusion of tax advisers and provisions dealing with persons carrying on business in another member state and persons carrying on business in a place designated under section 31. These provisions also include the other groups that I have already mentioned, namely, external accountants, auditors and legal professionals. The inclusion of tax advisers is in line with the intent of the directive. The fourth amendment is to insert text which was required in section 40(4)(a), that is, “and the relevant third party”.

I commend the amendments to the House. Members may have received representations from some of the tax adviser bodies in this respect.

**Deputy Michael D’Arcy:** Is there a defence for somebody who has suspicion on reasonable grounds, acts honestly and with good intention in the belief that something is amiss, makes a report as a designated person but who is incorrect and the information turns out to be unfounded? Without some form of a defence people will be very cagey about reporting potential money laundering or funds being transferred for terrorist purposes. Has the Minister considered this? Perhaps there is a cross-reference to a previous Act on whistleblowers. If somebody acts in an honest way with good intentions there should be a defence on his or her behalf.

**Deputy Dermot Ahern:** To give a simple answer, section 112 on disclosure of information in good faith protects people. Each case will be determined on its merits by a court but section 112 applies to the disclosure in good faith, to a member of the Garda Síochána or to any person who is concerned in the investigation or prosecution of an offence and the section states that a disclosure to which the section applies shall not be treated as a breach of any restriction on the disclosure of information imposed by any other enactment. It would take care of the situation to which Deputy D’Arcy refers.

Amendment agreed to.

**Deputy Dermot Ahern:**   I move amendment No. 11:

In page 41, line 16, after “auditor,” to insert “tax adviser.”

Amendment agreed to.

**Deputy Dermot Ahern:**   I move amendment No. 12:

In page 41, line 34, after “auditor,” to insert “tax adviser.”

Amendment agreed to.

**Deputy Dermot Ahern:**   I move amendment No. 13:



In page 41, line 50, after “employer)” to insert “and the relevant third party”.

Amendment agreed to.

**Deputy Joanna Tuffy:**   I move amendment No. 14:

In page 42, lines 35 and 36, to delete “and the Revenue Commissioners”.

This issue was raised on Committee Stage and arises out of a submission by the chartered accountants’ representative body, which made the point that the section as it is worded involves bureaucratic overload in that two separate reports will be required. In tabling this amendment we are stating that it should be enough to make a report to the Garda Síochána and we should be able to expect that it will be in contact with the Revenue Commissioners where appropriate. I would like the Minister to comment on this.

**Deputy Dermot Ahern:**   I have examined this but I do not understand the point made by the Deputy. I can understand that a body representing accountants would like to restrict as much as possible what it would regard as bureaucracy but from the point of view of getting proper reporting a number of significant pieces of legislation include both the Garda Síochána and the Revenue Commissioners, such as section 59 of the Criminal Justice (Theft and Fraud Offences) Act 2001 and the existing money laundering provisions under section 57 of the Criminal Justice Act 1994. We believe it is necessary to have separate and distinct statutory provisions. Deleting “and the Revenue Commissioners” would weaken the legislation. The number of reports already received by the Garda Síochána under the 2001 Act is low at approximately 100 reports annually in comparison to the figure of approximately 14,500 suspicious transactions reported annually. We would be concerned that if it was restricted solely to the Garda Síochána the number of reports would be curtailed and that would not be preferable.

Amendment, by leave, withdrawn.

**Deputy Joanna Tuffy:**   I move amendment No. 15:

In page 58, line 45, after “oath” to insert “or affirmation”.

This amendment requires the legislation to provide specifically for an oath or an affirmation. When we discussed this issue on Committee Stage, the Minister argued that because the Interpretation Act 2005 would allow for an affirmation, the amendment proposed by the Labour Party was unnecessary. However, we believe it is preferable to include the term “affirmation” because one should not have to rely on the Interpretation Act to clarify legislation. Our law should be self-explanatory and if an oath can include an affirmation, why do we not say so in the Bill? This issue has been raised on a number of occasions by Labour Party Members in the context of other Bills. What is the problem with accepting these two words?

**Deputy Dermot Ahern:** I have dealt with similar proposals from the Labour Party in the context of other legislation. The Interpretation Act 2005 already provides that the word “oath”, in the case of a person for the time being allowed by law to affirm or declare, includes an affirmation or declaration. We do not believe it is preferable to define something in a Bill or Act if it has already been dealt with in the 2005 Act. In any event, if we were to accept the amendment it would be necessary to amend section 17(2), which deals with information given on oath by a member of the Garda Síochána to a District Court judge in regard to an order to suspend a service or transaction. The Oaths Act 1888 allows a person to make an affirmation instead of an oath in all cases where the oath is required by law. References to “declaration” in the context of the Interpretation Act is not relevant in the context of this Bill as they relate to statutory declarations.

Amendment, by leave, withdrawn.

**Deputy Dermot Ahern:** I move amendment No. 16:

In page 78, line 30, to delete “committee or management” and substitute “committee of management”.

This is a technical amendment which corrects a mistake in section 111(a).

Amendment agreed to.

**Deputy Joanna Tuffy:** I move amendment No. 17:

In page 78, line 44, after “purpose,” to insert “as giving rise to civil or criminal liability or”.

This section, which concerns whistleblowers, is inadequate in that it only covers protection against an action for breach of confidence and does not provide immunity from liability for such disclosures. Our amendment is an attempt to rectify this omission. The Minister stated on Committee Stage that our amendment was unnecessary but we suggest it represents an improvement to the legislation.

**Deputy Dermot Ahern:** We do not believe the proposed amendment is necessary. Civil or criminal liability could not arise unless there was a breach of an enactment or rule of law and the section specifically states that the circumstances set out will not constitute such a breach. While I understand Deputy Tuffy’s desire to ensure persons who comply with the law by reporting suspicions are fully protected, we do not believe this is necessary. We have considered the matter and believe that while the amendment might have been relevant to the wording of section 57(7) of the original 1994 Act, the way in which we have drafted section 112 obviates the necessity for making express reference in this respect.



Amendment, by leave, withdrawn.

**Deputy Joanna Tuffy:**   I move amendment No. 18:

In page 78, after line 45, to insert the following:

113. - The Proceeds of Crime Act 1996 is amended in section 4(1) by the substitution of "2 years" for "7 years".

This amendment would reduce from seven years to two years the period that the Criminal Assets Bureau, CAB, must wait before applying for a forfeiture order on seized property. It is intended that the amendment would facilitate the bureau's fight against organised crime, as well as provide a once-off cash income for the Exchequer which we estimate at as much as €50 million. The Minister has noted that the proposal is being examined by his Department and in putting forward the amendment we want to give him an opportunity to outline what is happening in that regard.

**Deputy Dermot Ahern:**   It is better to leave change in this area to the legislation pertaining to CAB rather than provide for it in separate legislation. The Deputy may be aware that some time ago I established a group comprising officials from my Department, policy people and members of CAB to explore proposals in this area, including reducing the number of years. I understand the group will meet tomorrow and I expect it to finalise its views presently, at which point we will move to amend the CAB legislation rather than this Bill. It is better to await the group's final consideration of the issue.

Amendment, by leave, withdrawn.

**Deputy Joanna Tuffy:**   I move amendment No. 19:


In page 81, after line 46, to insert the following:

"(4) Section 3(1) of the Act of 1994 is amended by the insertion of the following definition -

" 'gift' includes a transfer in consideration of natural love and affection or otherwise than for full commercial value, and includes the transfer by one spouse of property to another spouse, or an arrangement between spouses for the joint ownership of any property;".

This amendment deals with a significant shortcoming in the Criminal Justice Act 1994 in regard to dealing with proceeds of crime. The Act allows assets to be restrained and confiscated where a person is charged with drug trafficking or other serious offences but this does not apply to assets transferred by a defendant to his or her spouse. I refer Members to the 2009 High Court judgment in the DPP v. B. This is a major loophole which allows the Act to be undermined.

On Committee Stage, the Minister confined his comment to arguing that the issue falls outside the scope of the Bill. I ask the Minister to respond to the point we are raising in our amendment and to indicate whether he plans to deal with the issue in another Bill.

 *1 o'clock*

**Deputy Dermot Ahern:** My response is similar to the one I gave on Committee Stage. The strong advice from the Attorney General is that the matter should be addressed in other legislation and we are considering that. It would be somewhat unusual to include it in this Bill and other amendments would be needed because we would have to amend the Long Title and the Short Title of the Bill. The Office of the Attorney General has advised that the proposed amendment does not come within the remit of the Long Title and Short Titles of the Bill as set out. I suggest, for the same reasons I outlined previously regarding the CAB legislation, that it would be better to wait for that legislation.

Amendment, by leave, withdrawn.

**Deputy Joanna Tuffy:** I move amendment No. 20:

In page 81, after line 46, to insert the following:

“(5) Section 24 of the Act of 1994 is amended by the insertion after subsection (10) of the following subsection—

“(11) A court may on or at any time after an application under this section direct the respondent to the application to deliver a statement of his or her income and assets, but such a statement shall not be admissible in evidence against the person for any offence other than an offence of contempt of court arising from a breach of an order under this subsection.”

The reason we propose to insert the subsection is that there is a loophole to the effect that the court cannot direct a defendant in a restraint order application to file a statement of assets. That power exists in a confiscation application under section 11 but not at the freezing order stage. In the United Kingdom, the courts have held that such a power is essential. On Committee Stage the response of the Minister was that it was outside the scope of the Bill, but what we want to find out is what is the Minister’s plan for dealing with the loophole to which we drew attention by tabling the amendment.

**Deputy Dermot Ahern:** The same argument is being made by us in regard to this and the other two previous amendments as was made on Committee Stage. If one is to make a change in this respect, one is better making it on the grounding piece of legislation. The type of order one is talking about in this case refers not just to money laundering and terrorist financing offences, but to a number of other types of crime. Therefore, it would be better dealt with in the overall Bill rather than to catch it in this Bill. It is something we are considering in the context of other legislation.

Amendment, by leave, withdrawn.

Bill, as amended, received for final consideration.

Question proposed: “That the Bill do now pass.”

**Minister for Justice, Equality and Law Reform (Deputy Dermot Ahern):** I thank all the Members opposite for their contributions on Second, Committee and Report Stages. This is important legislation. While I have said many times that the money laundering legislation is very modern in this jurisdiction, equally so, the Bill is required to fulfil a directive. While there was some delay, I thank the Opposition for the speed with which it allowed this legislation to pass

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because it is quite important. As is widely known, there are a number of other important pieces of legislation in this area that need to be addressed, and will be addressed.

Deputy Tuffy raised issues that relate to specific legislation and they will be dealt with in that respect. I thank the Members for their understanding in terms of passing the Bill as quickly as possible. I also thank the Acting Chairman and the staff of the House for processing the Bill.

**Deputy Joe Carey:** I welcome the belated transposition of this important EU directive into Irish law. It is critical that this country lives up to its responsibilities both internationally and nationally to prevent criminals living off the proceeds of crime. I regret that the Government did not act sooner which led to the delay in the Bill's enactment. I welcome the passing of the Bill today.

**Deputy Joanna Tuffy:** I welcome the Bill because it is part of the effort to tackle crime, particularly organised crime and money laundering. Reading the background to the Bill reminds one of the sinister world that overlaps with legitimate business because those who carry out crime want to legitimise the money they make through crime and improve their status in society. It is important that the legislation is put in place given that crime has become increasingly sophisticated and makes large quantities of money. At the same time significant suffering is caused.

One often hears the business community complain about there being too much regulation. On the other hand, in the light of recent problems, it is said that the reverse is the case. This type of legislation is necessary. We need to put regulations in place on how professionals deal with people and to ensure that they are cautious and do what they are supposed to do.

The legislation is complex. I sympathise with those who must implement it. I worked briefly as a solicitor and I found all the rules and regulations in terms of accounts hard going. I have sympathy for the concerns on the Bill raised with the Minister and his staff by the professional bodies. I hope that dialogue will continue as the Bill progresses through the Seanad in case there are issues that could be addressed.

While professionals must be conscious of all the regulations, at the same time business needs to be facilitated. People do not wish to lose business because they are implementing regulations, but at the same time the regulations have to be implemented. Two issues in particular were raised with me. There is a great deal of new legislation. Two Acts in particular require reports to be written, but the issues, which relate to money laundering, are similar. Perhaps there is a need to consolidate the legislation. The Minister might comment on that aspect. When the Bill is passed, but before it becomes active, time should be given to the professional bodies to train members in the application of the new legislation.

I tabled amendments on behalf of the Labour Party, which we withdrew. I do not believe in calling for votes on all sorts of things. One should keep working on a particular point. As someone who has been a Member of both Houses, I am aware that many issues that are not agreed in the Dáil are agreed by the Government in the Seanad. I hope the Labour Party can work with the Government to improve legislation such as this. I am sure my colleagues in the Seanad will table further amendments on Committee Stage. I hope the Minister will take on board the points raised.

Question put and agreed to.

