

Sections 14, 14A, 14B, and 14C
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Criminal Assets Bureau Acts 1996 and 2005

Summary:

It is by virtue of section 14 of the *Criminal Assets Bureau Acts 1996 and 2005*¹, that the Criminal Assets Bureau (CAB) can obtain a search warrant from a District Court Judge to search a solicitor's premises.² Section 14³ was amended in 2005 and 2006 by the *Proceeds of Crime (Amendment) Act 2005*⁴ and the *Criminal Justice Act 2006*⁵.

The standard duration of a warrant issued under section 14 is for one week; however, the *Proceeds of Crime (Amendment) Act 2005* inserted a new subsection in the form of **section 14(4A) – under this subsection, the period specified in the warrant can be for a period of up to 14 days** (but not beyond 14 days). Whether such an extension beyond one week is appropriate is at the discretion of the judge depending on “the particular circumstances of the case”.

Other amendments introduced in 2005 include that CAB officers may make and retain copies of records, and seize computers or other storage mediums (subsection (5A)), and operate any computers on the premises (and require to be given access to information in computers) (subsection (6A)).

¹ See section 1(3) of the *Proceeds of Crime (Amendment) Act 2005* for the collective citation of the Criminal Assets Bureau Acts 1996 and 2005 -

<http://www.irishstatutebook.ie/2005/en/act/pub/0001/print.html#sec1>

² The search warrants (court orders) obtained under section 14 of the *Criminal Assets Acts 1996 and 2005* by CAB, are entirely distinct from the warrants or court orders which Revenue Officers can obtain pursuant to sections 908C and 908D of the *Taxes Consolidation Act 1997, as amended*. However, solicitors should note that similar guiding principles can be applied in approaching both of these types of search warrants (CAB or Revenue), as per the documentation available in the members' area of the Society website under 'Best Practice and Obligations' and then 'Court Orders of Client Files'.

³ Of section 14; subsections 1 and 9 were substituted, sections 2, 5, and 7 were amended; new subsections 4A, 5A, 6A were inserted as were sections 14A, 14B and 14C.

⁴ The Proceeds of Crime (Amendment) Act 2005 commenced on 12 February 2005 (the date of enactment of the Act); it is accessible at -

<http://www.irishstatutebook.ie/2005/en/act/pub/0001/print.html>

⁵ Criminal Justice Act 2006, accessible at -

<http://www.irishstatutebook.ie/2006/en/act/pub/0026/print.html>

A substantial change introduced in 2005 was the insertion of three new sections - sections 14A, 14B and 14C.

These sections are entitled; **section 14A “Order to make material available”**, **section 14B “Disclosure prejudicial to making available of material under section 14A”**, and **section 14C “Property held in trust”**.

In the course of an investigation into whether a person has benefited from, or is in receipt or control of, assets or proceeds deriving from criminal conduct, section 14A enables CAB officers to apply to the District Court for a court order to compel “any person” to make “*available any particular material or material of a particular description*” for the purposes of the investigation.

Section 14B is equally of interest; it is an offence under this section for a person who knows or suspects that an application is to be made, or has been made, under section 14A, to “*make any disclosure*” which would be likely to prejudice the making available of the material pursuant to section 14A.⁶ In the context of a solicitor/client relationship, the result of the disclosure (by either the solicitor or the client) could be such that the documentation sought (for example, a client file) is disposed of or removed, so that by the time the order under section 14A is served on the solicitor, the material sought is no longer available.

A defence of ‘*lawful authority or reasonable excuse*’ is available under section 14B(2)(b) as is the defence of proving that the person did not know or suspect that the disclosure would be likely to prejudice the making available of the material concerned (section 14B(2)(a)).

Part of the guidance provided in the article published in the Law Society Gazette, entitled - “[What to do when the CAB comes to call](#)”⁷ – deals with the defence of ‘*lawful authority or reasonable excuse*’ in the context of section 14. The article predates the introduction of sections 14A and 14B but may be instructive in those circumstances nevertheless.

Section 14C allows for an application for a court order to compel individuals to disclose such information they have in relation to a trust (where the judge is satisfied, during the course of the application, that there are reasonable grounds to suspect a person has benefited from, or is receipt or control of, assets or proceeds deriving from criminal conduct), etc. It is an offence to fail or refuse to comply (without reasonable

⁶ This is similar to the ‘tipping-off’ offence contained in the anti-money laundering legislation - section 49 of the *Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 and 2013*.

⁷ “What to do when CAB comes to call” was published in May 2000 in the Law Society Gazette and is available in the members’ area of the Society website under ‘Best Practice and Obligations’ and then ‘Court Orders of Client Files’.

excuse) with a court order issued under this section, and it is also an offence to give information which is false or misleading.

Section 14 of the *Criminal Assets Bureau Act 1996*, as amended by the *Proceeds of Crime (Amendment) Act 2005* and the *Criminal Justice Act 2006*, (cited as section 14, *Criminal Assets Bureau Acts 1996 and 2005*) is set out below in an unofficial and unapproved consolidated fashion.

This document is for general information purposes only and cannot be relied upon as a determinative interpretation or statement of section 14 of the *Criminal Assets Bureau Acts 1996 and 2005*. It ought to be considered in conjunction with the text of the relevant legislation to consider the full extent of the statutory obligations contained therein.

Please note that any amendment to section 14 of the *Criminal Assets Bureau Act 1996* has been made in red. The legislative provision affecting the amendment is stated in grey under each amended provision.

-Unofficial consolidation of section 14 of the
Criminal Assets Bureau Acts 1996 and 2005-

“Search warrants.

14.—(1) If a judge of the District Court is satisfied by information on oath of a bureau officer who is a member of the Garda Síochána that there are reasonable grounds for suspecting that evidence of or relating to assets or proceeds deriving from criminal conduct, or to their identity or whereabouts, is to be found in any place, the judge may issue a warrant for the search of that place and any person found at that place.
(Substituted by section 190 of the Criminal Justice Act 2006⁸)

(2) A bureau officer who is a member of the Garda Síochána not below the rank of superintendent may, subject to subsection (3), if he or she is satisfied that there are reasonable grounds for suspecting that evidence of or relating to assets or proceeds deriving from criminal **conduct**, or to their identity or whereabouts, is to be found in any place, issue a warrant for the search of that place and any person found at that place.

(Amended by section 16(a) the Proceeds of Crime (Amendment) Act 2005)

(3) A bureau officer who is a member of the Garda Síochána not below the rank of superintendent shall not issue a search warrant under this section unless he or she is satisfied that circumstances of urgency giving rise to the need for the immediate issue of the search warrant would render it impracticable to apply to a judge of the District Court under this section for a search warrant.

(4) Subject to subsection (5), a warrant under this section shall be expressed to and shall operate to authorise a named bureau officer who is a member of the Garda Síochána, accompanied by such other persons as the bureau officer thinks necessary, to enter, **within a period to be specified in the warrant** (if necessary by the use of reasonable force), the place named in the warrant, and to search it and any person found at that place and seize and retain **any material (other than material subject to legal privilege) found at that place, or any such material** found in the possession of a person found present at that place at the time of the search, which the officer believes to be evidence of or relating to assets or proceeds deriving from criminal **conduct**, or to their identity or whereabouts.

(Amended by section 16(a) and (b) of the Proceeds of Crime (Amendment) Act 2005)

⁸ Section 190 of the *Criminal Justice Act 2006* commenced on 1 August 2006, S.I. No. 390 of 2006. S.I. No. 390 of 2006 is accessible at <http://www.irishstatutebook.ie/2006/en/si/0390.html>. Section 190 is accessible at - <http://www.irishstatutebook.ie/2006/en/act/pub/0026/sec0190.html>

(4A) The period to be specified in the warrant shall be one week, unless it appears to the judge that another period, not exceeding 14 days, would be appropriate in the particular circumstances of the case.

(Inserted by section 16(c) of the Proceeds of Crime (Amendment) Act 2005)

(5) Notwithstanding subsection (4), a search warrant issued under subsection (2) shall cease to have effect after a period of 24 hours has elapsed from the time of the issue of the warrant.

(Amended by section 16(d) of the Proceeds of Crime (Amendment) Act 2005)

(5A) The authority conferred by subsection (4) to seize and retain any material includes, in the case of a document or record, authority—

(a) to make and retain a copy of the document or record, and

(b) where necessary, to seize and retain any computer or other storage medium in which any record is kept.

(Inserted by section 16(e) of the Proceeds of Crime (Amendment) Act 2005)

(6) A bureau officer who is a member of the Garda Síochána acting under the authority of a warrant under this section may—

(a) require any person present at the place where the search is carried out to give to the officer the person's name and address, and

(b) arrest without warrant any person who—

(i) obstructs or attempts to obstruct that officer or any person accompanying that officer in the carrying out of his or her duties,

(ii) fails to comply with a requirement under paragraph (a), or

(iii) gives a name or address which the officer has reasonable cause for believing is false or misleading.

(6A) A bureau officer who is a member of the Garda Síochána acting under the authority of a warrant under this section may—

(a) operate any computer at the place which is being searched or cause it to be operated by a person accompanying the member for that purpose, and

(b) require any person at that place who appears to the member to have lawful access to the information in the computer—

(i) to give to the member any password necessary to operate it,

(ii) otherwise to enable the member to examine the information accessible by the computer in a form in which it is visible and legible, or

(iii) to produce the information to the member in a form in which it can be removed and in which it is, or can be made, visible and legible,

(Inserted by section 16(f) of the Proceeds of Crime (Amendment) Act 2005)

(7) A person who obstructs or attempts to obstruct a person acting under the authority of a warrant under this section, who fails to comply with a requirement under subsection (6) (a) or who gives a false or misleading name or address to a bureau officer who is a member of the Garda Síochána, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €3,000, or to imprisonment for a period not exceeding 6 months, or to both.

(Amended by section 17 of the Proceeds of Crime (Amendment) Act 2005)

(8) The power to issue a warrant under this section is in addition to and not in substitution for any other power to issue a warrant for the search of any place or person.

(9) In this section—

‘computer at the place which is being searched’ includes any other computer, whether at that place or at any other place, which is lawfully accessible by means of that computer, and

‘material’ includes a copy of the material and a document or record.

(Inserted by section 16(g) of the Proceeds of Crime (Amendment) Act 2005)

Order to make material available.

14A.—(1) For the purposes of an investigation into whether a person has benefited from assets or proceeds deriving from criminal conduct or is in receipt of or controls

such assets or proceeds a bureau officer who is a member of the Garda Síochána may apply to a judge of the District Court for an order under this section in relation to making available any particular material or material of a particular description.

(2) On such an application the judge, if satisfied—

(a) that there are reasonable grounds for suspecting that the person has benefited from such assets or proceeds or is in receipt of or controls such assets or proceeds, and

(b) that the material concerned is required for the purposes of such an investigation,

may order that any person who appears to him or her to be in possession of the material shall—

(i) produce the material to the member so that he or she may take it away, or

(ii) give the member access to it within a period to be specified in the order.

(3) The period to be so specified shall be one week, unless it appears to the judge that another period would be appropriate in the particular circumstances of the case.

(4) (a) An order under this section in relation to material in any place may, on the application of the member concerned, require any person who appears to the judge to be entitled to grant entry to the place to allow the member to enter it to obtain access to the material.

(b) Where a person required under paragraph (a) to allow the member to enter a place does not allow him or her to do so, section 14 shall have effect, with any necessary modifications, as if a warrant had been issued under that section authorising him or her to search the place and any person found there.

(5) Where such material consists of information contained in a computer, the order shall have effect as an order to produce the material, or to give access to it, in a form in which it is visible and legible and in which it can be taken away.

(6) The order—

(a) in so far as it may empower a member of the Garda Síochána to take away a document or to be given access to it, shall authorise him or her to make a copy of it and to take the copy away,

(b) shall not confer any right to production of, or access to, any material subject to legal privilege, and

(c) shall have effect notwithstanding any other obligation as to secrecy or other restriction on disclosure of information imposed by statute or otherwise.

(7) Any material taken away by a member of the Garda Síochána under this section may be retained by him or her for use as evidence in any proceedings.

(8) A judge of the District Court may vary or discharge an order under this section on the application of any person to whom an order under this section relates or a member of the Garda Síochána.

(9) A person who without reasonable excuse fails or refuses to comply with any requirement of an order under this section is guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years or to both.

Disclosure prejudicial to making available of material under section 14A.

14B.—(1) A person who, knowing or suspecting that an application is to be made, or has been made, under section 14A for an order in relation to making available any particular material or material of a particular description, makes any disclosure which is likely to prejudice the making available of the material in accordance with the order is guilty of an offence.

(2) In proceedings against a person for an offence under this section it is a defence to prove that the person—

(a) did not know or suspect that the disclosure to which the proceedings relate was likely to prejudice the making available of the material concerned, or

(b) had lawful authority or reasonable excuse for making the disclosure.

(3) A person guilty of an offence under this section is liable—

(a) on summary conviction, to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years or to both.

Property held in trust.

14C.—(1) For the purposes of an investigation into whether a person has benefited from assets or proceeds deriving from criminal conduct or is in receipt of or controls such assets or proceeds the Chief Bureau Officer or an authorised officer may apply to a judge of the High Court for an order under this section in relation to obtaining information regarding any trust in which the person may have an interest or with which he or she may be otherwise connected.

(2) On such an application the judge, if satisfied—

(a) that there are reasonable grounds for suspecting that a person—

(i) has benefited from assets or proceeds deriving from criminal conduct or is in receipt of or controls such assets or proceeds, and

(ii) has some interest in or other connection with the trust,

(b) that the information concerned is required for the purposes of such an investigation, and

(c) that there are reasonable grounds for believing that it is in the public interest that the information should be disclosed for the purposes of the investigation, having regard to the benefit likely to accrue to the investigation and any other relevant circumstances,

may order the trustees of the trust and any other persons (including the suspected person) to disclose to the Chief Bureau Officer or an authorised officer such information as he or she may require in relation to the trust, including the identity of the settlor and any or all of the trustees and beneficiaries.

(3) An order under this section—

(a) shall not confer any right to production of, or access to, any information subject to legal privilege, and

(b) shall have effect notwithstanding any other obligation as to secrecy or other restriction on disclosure of information imposed by statute or otherwise.

(4) A judge of the High Court may vary or discharge an order under this section on the application of any person to whom it relates or a member of the Garda Síochána.

(5) A trustee or other person who without reasonable excuse fails or refuses to comply with an order under this section or gives information which is false or misleading is guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 5 years or to both.

(6) Any information given by a person in compliance with an order under this section is not admissible in evidence in any criminal proceedings against the person or his or her spouse, except in any proceedings for an offence under subsection (5).

(7) In this section ‘information’ includes—

(a) a document or record, and

(b) information in non-legible form.”

(Sections 14A-C inserted by section 18 of the Proceeds of Crime (Amendment) Act 2005)