
Briefing

Dawn Raids:

Tips for Preparation and Management



INSTITUTE OF DIRECTORS
IN IRELAND

This briefing was produced by the Institute of Directors in association with McCann FitzGerald for use in Ireland. McCann FitzGerald is one of Ireland's premier law firms, providing a full range of legal services to many of Ireland's leading businesses. Clients include international organisations, major domestic concerns, emerging Irish companies and clients in the State and semi-State sectors.

Increased regulation means that organisations may be more likely to face an unannounced regulatory inspection or dawn raid, which can be one of the first steps in an investigation. To minimise disruption and risk to the business, it is important that directors ensure that there are clear internal procedures in place for dealing with unannounced inspections. This includes ensuring staff are trained to enable them to respond effectively and appropriately.

Regulatory Inspections

The powers of investigating officials will vary according to the authority and legislation under which they are appointed. The processes involved in dealing with an inspection will depend on the ambit of the investigation, the approach of the officials and factors specific to the organisation such as size and number of premises. This factsheet looks at some of the more general steps that directors can take to ensure their organisation can respond to an unannounced inspection in a manner that facilitates co-operation and preserves legal rights.

Preparation

Directors can take certain preparatory steps to ensure that their organisation is ready for an unannounced inspection:

- ensure it has robust regulatory compliance programmes in place;
- draft and implement a comprehensive inspection response plan;
- train a core team to deal with such inspections, establish an inspections protocol and rehearse it;

- protect legally privileged documents and confidential and commercially sensitive information;
- have a communications plan in place;
- train staff on the organisation's written inspection procedures and guidelines; and
- maintain clear document management systems to allow efficient responses to officials.

Powers of the officials

When officials arrive they may decide to begin their inspection before senior management and the core team have had an opportunity to take legal advice. If this is the case, it is prudent to assume that they have some or all of the following powers to:

- enter and search all parts of an organisation's premises and vehicles;
- examine, copy and seize documents and information in any form;
- require persons present to produce documents and information and provide oral explanations;
- require access to computers and IT systems and for all relevant passwords to be provided; and
- secure premises for later examination.

Conduct during inspections

It is important to maintain a constructive atmosphere and confirm a willingness to co-operate with officials. Where officials are obstructed whilst exercising their legal powers or if false or misleading information is knowingly given to them, this may be an imprisonable offence and may lead to the organisation and/or individuals being fined. Generally, officials can seek information related to their investigation from anyone on the premises. Responses should be clear and concise and individuals should avoid volunteering information, speculating and answering incriminating questions, unless under caution.

Once the officials arrive, it will help to follow the agreed plan with the core team (it is very important that this team include reception and security as well as senior members of management, the legal and IT departments) and to:

- politely greet officials and check and copy their identity and authorisations;
- explain that the relevant personnel will be contacted immediately and ask officials to wait in a private meeting room;
- call the core team, other relevant senior management and the external lawyers;
- send copies of the authorisations to the external lawyers;

- establish exactly what the officials want to do and agree procedures to be followed, for example, for shadowing officials, seizing material, questioning staff and meeting IT and photocopying needs;
- advise staff to co-operate with officials (and that they must not destroy any documents) but that they are free to raise any concerns with the team in private. Take care to contact all relevant staff (e.g including any working remotely or away on travel);
- take detailed notes and record all questions and answers in relation to any interviews with staff
- take an exact record of material copied or seized (digital and hard copy);
- de-brief at the end of the inspection and prepare a report on the inspection;
- agree follow-up steps with the legal advisers; and
- consider making any necessary notifications to insurers and addressing any public disclosure requirements.

Impact of inspections

Unannounced inspections can be intrusive, disruptive and very unsettling for stakeholders from employees to shareholders and investors. Proper planning, education and communication systems can minimise these adverse effects, reduce the associated risks and mean that the organisation can deal with the inspection in an efficient manner whilst protecting legal rights. It may also be appropriate to consider a public relations strategy (a press release may be required if there are media enquiries).

Further information is available from



Catherine Derrig
Partner
+353 1 607 1710
catherine.derrig
@mccannfitzgerald.com



Rosaleen Byrne
Partner
+353 1 607 1313
rosaleen.byrne
@mccannfitzgerald.com



Laura Treacy
Partner
+353 1 511 1595
laura.treacy
@mccannfitzgerald.com

Alternatively, your usual contact in McCann FitzGerald will be happy to help you further.



INSTITUTE OF DIRECTORS
IN IRELAND

© McCann FitzGerald and Institute of Directors in Ireland 2020. All rights reserved.

Institute of Directors in Ireland, Europa House, Harcourt Street, Dublin 2
01 411 0010 | info@iodireland.ie | www.iodireland.ie

This document is for general guidance only and should not be regarded as a substitute for professional advice.
Such advice should always be taken before acting on any of the matters discussed.

© McCann FitzGerald, September 2020