

Briefing

Dawn Raids:

Survival Guide



INSTITUTE OF DIRECTORS
IN IRELAND

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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.

Overview

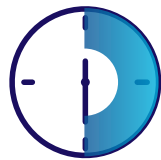


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Before a Dawn Raid

Checklist of Good Practice Measures

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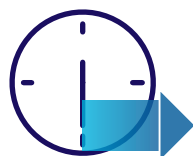


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Before a Dawn Raid

Checklist of Good Practice Measures

Preparation for a Dawn Raid

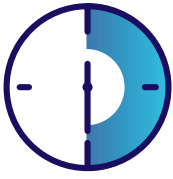
- **Compliance Programme**
Formulate a Compliance Programme with a view to ensuring regulatory requirements are met and which may reduce the likelihood of a dawn raid.

- **Response Team**
Put a dawn raid response team in place to include senior management, in-house lawyers, senior IT and reception staff. The dawn raid response team will be responsible for interacting with officials and taking decisions during the dawn raid.

- **Dawn Raid Protocol**
Establish a dawn raid protocol to address items such as the need to identify the purpose, scope and basis for the investigation, how to identify all officials, who is to manage internal communication regarding any raid, how staff are to interact with officials etc.

- **Dawn Raid Training**
Organise dawn raid training for employees likely to come in contact with officials and the dawn raid response team.

- **Good Housekeeping**
Maintaining a document management policy, a communications policy and a well organised filing system can greatly assist the response to a raid.



During a Dawn Raid

What To Do



Officials Arrive

- Greet officials and request them to wait in an empty and private meeting room whilst a member of senior management is informed
- Notify the most senior executive on site and all other relevant personnel in line with dawn raid protocol
- Do not contact any third parties
- Record the time of entry and the number of officials
- Request and take a copy of the written authorisation and identification documents from officials and pass on immediately to relevant personnel



Initiate Dawn Raid Protocols

- Contact external lawyers and ask them to attend immediately. Send them a copy of the authorisation and identification documents and confirm the number of officials
- Senior executives to discuss the investigation mandate with lawyers with a view to confirming the officials' authority to conduct the investigation



Senior Executive to Meet the Officials

- Request that officials wait for the external lawyers to arrive before commencing – do not obstruct entry if they do not agree as they are not obliged to wait
- If there is an issue with the officials' authorisation and identification documents (wrong organisation, date etc.) point this out and seek to defer the commencement of the investigation until this issue is resolved
- Seek to establish the purpose of the investigation and emphasise the organisation's intention to cooperate
- Try to establish whether other investigations are being conducted simultaneously at any of the organisation's other sites or at the homes of any employees



During a Dawn Raid

- What To Do *cont.*



Assemble the Internal Dawn Raid Response Team

- Refresh on the dawn raid protocol to ensure familiarity with the powers of officials in relation to searching, reviewing and copying documents and questioning
- Reminder of the need for cooperation
- Briefing on the scope of the investigation mandate
- Agree a monitoring framework – each official should be shadowed by a member of the team throughout the raid
- Reminder of the importance of keeping a detailed log of events:
 - Where each official goes, what they look at, who they speak to, what they ask and the answers given
 - All objections and issues raised
- Take a copy of all documents or information provided to or collected by officials
- Circulate contact numbers for each team member, the external lawyers and the lead official
- Send an internal email informing staff that:
 - A raid is taking place
 - The organisation is co-operating as required by law
 - There must be no deletion or destruction of documents
 - Third parties must not be told
 - Give a contact number for a designated liaison person on the internal team
- Consider a public relations strategy and prepare a press release in the event of media enquiries
- Monitor relevant external websites for any announcements relating to the investigation
- Mark confidential business material being seized by officials as “confidential”



Process Meeting with Officials

Agree on practical next steps for the conduct of the raid:

- Ground rules to deal with the shadowing of officials
- Procedure being adopted in relation to the seizure of material, in particular electronic material
- Procedure for privileged and commercially sensitive documents
- Procedure for questioning staff
- Agree lines of communication and confirm lead contact persons
- How copying and IT needs are to be dealt with



During a Dawn Raid

- What To Do *cont.*



Answering Officials' Questions – Interviews

- Only consent to interview after consultation with lawyers who will have considered the powers that the officials have
- Avoid answering:
 - Questions unrelated to the investigation
 - Questions related to correspondence with lawyers
 - Questions asking to interpret or supplement documents without management and lawyers present
- Do not speculate
- Do not volunteer information
- Do:
 - Answer in a factual manner
 - If you do not understand a question say so
 - If you do not know the answer to a question say so and offer to follow up with an answer after the raid
 - Ask a lawyer for advice if uncertain about whether or how to answer a question
 - If you later realise an answer was inaccurate, follow up with the correct answer



Closing Meeting with Officials

- Confirm with the officials whether the investigation is complete or ongoing
- Ensure you have an exact copy of all material copied or seized and have officials sign an agreed inventory
- Discuss and record all unresolved issues, for example with respect to how privileged or potentially out of scope documents are to be dealt with
- Agree procedure in relation to the sealing of any rooms



After a Dawn Raid

Directly After the Officials Leave

- Inform all employees that the officials have left/the raid has ended
- Give any necessary instructions to protect any sealed areas
- Hold a de-brief with the dawn raid response team and collect written reports from all team members
- Decide how to manage outstanding issues regarding relevance of certain documents, application of privilege
- Consider notifying insurers
- Consider public disclosure requirements



Internal Review

Carry out an internal review to assess the company's exposure. This assessment may be time sensitive, for example in the case of a competition law infringement, there may be potential to make a leniency application.

Further information is available from



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

Please also see our [Dawn Raid Guide](#), which discusses the powers of dawn raid officials and the rights of companies being inspected.



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