



# Dawn Raids

Although announced and scheduled inspections remain in our experience the most prevalent form of regulatory investigation, there are times when regulators regard dawn raids as necessary and appropriate. The principles set out in this briefing apply to both announced inspections and dawn raids.

A dawn raid has the potential to cause serious disruption to a business – from when the raid or inspection commences, but also afterwards whilst all parties – including the regulatory body - attempt to work out what the implications of what has transpired may be.

As they may also be the first step in civil or criminal enforcement action, they have the potential to have serious reputational consequences and to lead to exposures in terms of criminal liability, fines, imprisonment, forfeiture, seizure, as well as follow on damages actions.

## Examples of regulatory bodies with the power to carry out unannounced inspections

- The Competition and Consumer Protection Commission
- The European Commission
- The Central Bank of Ireland
- The Data Protection Commission
- The Commission for Regulation of Utilities
- The Commission for Aviation Regulation
- The Revenue Commissioners
- The Health Information and Quality Authority
- The Health and Safety Authority
- The Environmental Protection Agency
- The Workplace Relations Commission
- The Commission for Communication Regulation
- The Pharmaceutical Society of Ireland
- The Food Safety Authority
- The Office of the Director of Corporate Enforcement



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## Why Dawn Raid?

Dawn raids are frequently used as a mechanism to gather evidence and information relevant to an investigation. This may relate to testing compliance with a particular set of rules and regulations or investigating a complaint or a suspicion, based on reasonable grounds, of a potential regulatory breach.

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## Legal framework

Legislation granting powers to a regulator generally make allowance for the regulatory body to appoint persons to be authorised officers or inspectors for the purpose of their guiding legislation.

It is reasonably common for the relevant legislation to provide that when a person is appointed as an authorised officer that they must be given a certificate of their appointment. If therefore, the officials presenting at the organisation purport to be authorised officers or inspectors, it is important to request sight of their appointment document. That document is likely to record the statutory provision pursuant to which they were appointed, which may in turn give some guidance as to nature of the investigation and the powers available to the authorised officer. However, as the authorised officers may have been authorised to exercise their powers for a broad range of functions – it is still important to immediately enquire into scope and purpose of the investigation. This is because the question of whether certain documents or records are relevant to an investigation can only be determined by reference to the purpose and scope of the search.

Some legislative regimes provide that in order to exercise an entry power, the authorised officer must first obtain a warrant, whereas other legislative regimes only require a warrant be obtained where an authorised officer is prevented from entering any premises or place in the exercise of his powers. It is also of course vital to consider the terms of any warrant with a view to establishing its scope and whether any conditionality has been attached. It is common for judges to issue warrants permitting an authorised officer to be accompanied by other authorised officers or members of the Garda Síochána if this is considered necessary by the authorised officer applying for the warrant.

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## Typical investigation powers

As legislative provisions relating to the powers of authorised officers vary from one piece of legislation to another, it is essential that the relevant legislation be examined to ascertain the precise powers of the authorised officers in question. Typical powers include:

- Enter and search all parts of business premises and vehicles
- Enter and search private dwellings but only on production of a warrant



- 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
- Require persons to provide all reasonable assistance including answering questions
- Inspect or test equipment, take samples for testing
- Take photographs or make any record or visual recording
- Secure premises or part of premises for later examination

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## Cooperation and the need to avoid obstruction

Most statutes which confer powers on authorised officers create a number of offences relating to the obstruction of the exercise of those powers. The implications of being found to have obstructed officials are serious, both for any company and particular individuals involved.

The precise penalties vary across different pieces of legislation, by way of example, the Data Protection Act 2018 provides that a person who is found guilty of an obstruction offence (a) on summary conviction, is liable to a class A fine or imprisonment for a term not exceeding 12 months, or both, or (b) on conviction on indictment, to a fine not exceeding €250,000 or imprisonment for a term not exceeding 5 years, or both.

Where a person is under threat of committing an obstruction offence by not providing answers which if given could incriminate him or her, individuals should clearly state that the answers to the questions posed are being provided because of the statutory requirement to do so and the answers are not being provided voluntarily. This approach provides an opportunity to argue against the admissibility of the information at any subsequent criminal trial.

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## The right to privacy

The importance of protecting individuals' and companies' right to privacy when conducting investigations in respect of breaches of competition law was highlighted by the Supreme Court decision of *CRH Plc, Irish Cement Ltd v The Competition and Consumer Protection Commission*<sup>1</sup>. The court found that the CCPC could not access, review or make use of electronic documents unrelated to the investigation and that the CCPC should have engaged with the target of an investigation and agreed a process which ensured that out of scope information was protected. This finding is likely to apply to other regulators in Ireland.

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<sup>1</sup> [2017] IESC 34.



The court raised the need for legislation to provide for a procedure to deal with material unrelated to the matter under investigation. The legislature has not so far responded, though the CCPC has released an extensive Privacy Protocol, ostensibly in response to the court's concerns. In short, the Protocol specifies a procedure whereby the information claimed by the target of an investigation to be private shall be reviewed by CCPC officers who are not involved in the investigation in question, who will make a determination on the privacy claim. Crucially, the Protocol asserts that *“as a matter of principle, the CCPC considers that the CCPC case team is entitled to review, and use in its investigation, any files or documents which the Privacy Review Team has decided are potentially relevant to the CCPC’s investigation even if the Search Target has claimed that the files or documents in question contain private information.”* The Protocol does not address in detail the seizure of irrelevant materials and therefore may not adequately address the concerns raised by the court in this regard. In any event, companies should be cognisant of the Protocol so as to be able to assert their privacy rights in the event of a dawn raid by the CCPC.

Please also see our step by step [Dawn Raid Survival Guide](#)

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## How we can help in the event of a dawn raid

Our experienced lawyers will provide help and support if your business experiences a dawn raid. We understand the powers and procedures of the relevant authorities and have extensive experience of managing dawn raids and investigations. This allows us to advise on both clients the practical and strategic issues that arise during a dawn raid and in any subsequent enforcement action. To ensure your business is prepared for any investigation and properly advised during a dawn raid, we offer the following services:

- Providing on-site dawn raid cover for your company
- Drafting and implementing dawn raid plans and procedures
- Training your staff to ensure that they respond appropriately during an investigation
- Running mock dawn raids to test your procedures

Our lawyers can handle difficult situations on your behalf, without damaging regulatory relationships. Examples of the types of issues that we can assist with include:

- Preventing unlawful access to documents
- Handling disputes in relation to claims of legal privilege
- Dealing with threats of proceedings for obstruction
- Objecting to improper conduct on the part of officials
- Advising on concerns in relation to the questioning of staff
- Advising on issues relating to the seizure of electronic data

## Key Contacts

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