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Reporting obligations in Ireland: Section 19 of the Criminal Justice Act 2011

By Megan Hooper

Ireland has a uniquely broad and all-encompassing mandatory reporting provision which applies to suspected and apprehended white-collar criminal offences. Section 19 of the Criminal Justice Act 2011 ("section 19") was introduced in the wake of the financial crisis of the late 2000s and early 2010s with a view to aiding and facilitating the investigation and prosecution of white-collar crimes during a period when significant examples of corporate malpractice were uncovered.

Section 19 created the offence of "withholding information". This has had the effect of imposing a very widespread mandatory reporting obligation, particularly in the corporate and white-collar crime space, with potential criminal liability for those who fail to comply. This mandatory reporting obligation is intended to address difficulties that have been encountered in investigating corporate wrongdoing and it has significant implications for any internal investigations into possible fraudulent activity.

Corporate clients and individuals alike should be live to the far-reaching and onerous obligations imposed by section 19. Although we are not aware of any reported prosecutions under section 19, the reporting obligation should nevertheless be treated seriously given the potential criminal penalties for non-compliance. In this publication, we summarise section 19 and provide some practical tips on dealing with issues that may arise in connection with it.

Overview of the section 19 reporting obligation

Section 19 provides that a person commits a criminal offence where they:

1. Have information which they know or believe might be of material assistance in:
 - preventing the commission by another person of a "relevant offence"; or
 - securing the apprehension, prosecution or conviction of another person for a relevant offence;
2. Fail to disclose that information to a member of An Garda Síochána (Ireland's national police force) (the "Gardaí") as soon as it is practicable to do so; and
3. Do not have a reasonable excuse for not disclosing the information.

A person who commits the offence in section 19 by withholding information is liable to a maximum penalty of five years' imprisonment and/or a fine of unlimited value.

Although it was primarily directed at persons who may be withholding information in the context of ongoing investigations, the legislation is drafted very broadly so where the reporting obligation is triggered, it also requires pro-active reports of possible relevant offences.

To whom does section 19 apply?

The obligation to make a notification under section 19 applies to any "person". The section is therefore framed very broadly and unlike similar provisions in other jurisdictions is not restricted to any class of persons such as regulated entities or professional advisors. The obligation applies to all corporate entities and natural or legal persons who have reportable information.

What are the relevant offences?

The reporting obligation created by section 19 only applies in respect of information about "relevant offences" which are set out in the schedule to the legislation. Broadly, these are offences relating to:

- Company law;
- Money laundering and terrorist financing;
- Theft and fraud;
- Competition law;
- Cybercrime and misuse of information systems;
- Consumer protection
- Bribery and corruption; and
- Other white-collar crime offences.

When is the obligation to report triggered?

The legislation does not provide guidance about precisely when knowledge or belief about a relevant offence will trigger the legal obligation to make a report. However, it is reasonable and prudent to approach section 19 on the basis that, while a mere suspicion or a hunch that a relevant offence has been committed would usually be insufficient to require a report under section 19, absolute certainty that such an offence has been committed is not required to meet the reportability threshold.



Only information believed to be of material assistance to the Gardaí must be reported, so a person will not necessarily be required to make a report where they have only very limited information about a possible relevant offence.

Section 19 requires reports to be made "as soon as it is practicable to do so". The meaning of this phrase is context dependent. The notification should be made as soon as possible after any reasonable inquiries or investigations have been carried out. An immediate report is therefore not required but where information about possible wrongdoing is uncovered, an organisation should act with reasonable speed to make its own internal inquiries into the potential issues, verify relevant information, reflect on the outcomes of its investigations and take advice about its obligations.

What is a reasonable excuse for not making a report?

The legislation does not define what is a reasonable excuse for not making a report when section 19 would otherwise apply and no official guidance has been provided on this point. It may be a defence to rely on legal professional privilege. The privilege against self-incrimination may also apply, so that a person is not obliged to report their own conduct which



might constitute a relevant offence. This can give rise to complexities in a corporate context where individual personnel are involved in the conduct which potentially gives rise to a reportable offence, and issues may arise depending on whether that conduct arises in the ordinary course of their employment or outside of it. Finally, where an entity is aware that the Gardaí are already aware of the information, an additional report might be deemed superfluous and therefore unnecessary.

Cross-border crime

Section 19 applies to relevant offences which can be tried in Ireland. Typically, this means that the reporting obligation only applies where the offending conduct happened in Ireland. However, in certain contexts, Irish criminal law can apply beyond Ireland's borders, particularly where an Irish resident, citizen or company is involved. Where there is a cross-border element to potential wrongdoing, it is therefore important to carefully analyse the specific behaviour which has given rise to

concern to consider whether the section 19 obligation applies.

Conclusion

Where a company or its employees become aware of potential wrongdoing, it is crucial that they consult with their legal advisors without delay to consider carefully whether the obligations in section 19 apply.

McCann FitzGerald LLP has significant experience in advising companies and individuals about their obligations arising from section 19 and in assisting them with making reports to comply with those obligations. If you require advice or support in relation to any of the issues discussed above, please contact a member of our Investigations and White-collar Crime team.

This article was prepared with contributions from Erin Poole and Conor Cassidy of McCann FitzGerald LLP.



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McCann FitzGerald is one of Ireland's leading law firms, with a history dating back to 1885. Headquartered in Dublin, with offices in London, New York, and Brussels, the firm advises major domestic and international clients across corporate, banking and finance, litigation and dispute resolution, real estate, tax, and asset management/investment funds. It is consistently ranked among Ireland's top-tier practices by Chambers and Legal 500, particularly for M&A, capital markets, and financial services regulation. Known for deep sector expertise in technology, pharmaceuticals, and financial services, McCann FitzGerald combines local market insight with international reach, making it a trusted adviser for complex, high-value transactions and disputes both in Ireland and cross-border.

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