What is a "Dawn Raid"

"Dawn raid" is the colloquial expression given to an unannounced inspection of a company's premises, usually as part of an ongoing investigation by regulatory or law-enforcement authorities. Any company, no matter its size, may be subject to a dawn raid. Dawn raids are usually triggered by a complaint e.g. from an employee, customer, competitor, an anonymous tip, or an individual subject to investigation by a state agency. They may also be initiated by authorities on their own initiative.

There are currently 16 agencies or regulators with the power to conduct unannounced or surprise visits to company premises:

1. The Health and Safety Authority
2. The Corporate Enforcement Authority
3. An Garda Síochána
4. The Revenue Commissioners
5. The Competition and Consumer Protection Commission
6. The Data Protection Commission
7. The Environmental Protection Agency
8. The Central Bank of Ireland
9. The Commission for Aviation Regulation
10. The Commission for Communications Regulation
11. The Commission for Regulation of Utilities
12. The European Commission
13. The Health Information and Quality Authority
14. The Health Products Regulatory Authority
15. The National Standards Authority of Ireland
16. The Pharmaceutical Society of Ireland, the Pharmacy Regulator

Note, while the Workplace Relations Commission does not routinely conduct dawn raids, it does have powers to conduct unannounced visits in certain circumstances, and businesses should prepare for these in the same manner as they would any other dawn raid.

The Irish regulatory authorities do not raid business premises capriciously or without good reason. It is therefore prudent to assume that if a dawn raid is conducted at your business, the authorities are investigating an issue which could result in a substantial fine, imprisonment, a restraint on trading, disqualification as a director, or a combination of all four.

Avoidance

The best preparation for a dawn raid is to ensure that it does not occur in the first place. The business sector your company trades in will dictate whether your regulatory exposure is greatest in the area of employment law, health and safety law, financial compliance or other. This guide is therefore generic in nature. However, you should always avail of professional advice in any area requiring regulatory compliance. Compliance is the best avoidance measure.

In General

- Do not obstruct investigators. Ensure you and your staff are professional and cooperative.
- Do not attempt to destroy documents, electronic records or any other evidence.
- Keep a record of what is searched, what is taken away, the names of those involved in the search, and any employees who were the subject of individual investigation.
- Call a lawyer immediately and advise them of the nature of the investigation.
- Know your rights:
    - If conducted under warrant, the search should be limited to the scope of that warrant.
    - You have the right to receive an inventory of anything seized.
    - You have the right to withhold or have returned any legally privileged documentation.
    - While you should answer factual questions, you may refuse to answer questions to which the answers may be self-incriminating.

Preparation

1. Develop a Dawn Raid protocol.
2. Appoint a Dawn Raid Response Team.
3. Share guidance with staff.
4. Train staff.
5. Exercise.
6. Review (to include an after-raid review).

Develop a Dawn Raid Protocol

Your dawn raid protocol is dependent on the size and sector of your business, and will address issues such as the need to identify the purpose, scope and basis for an investigation, how to identify all officials, who is to manage internal communication regarding any raid, how staff are to interact with officials etc. A draft protocol is annexed to this guide.

The protocol should cover (at a minimum):

1. Arrival
    a. Greet officials and request them to wait in an empty and private meeting room whilst a member of response team is informed.
    b. Notify the most senior person on site and all other relevant personnel in line with dawn raid protocol.
    c. Do not contact any third parties.
    d. Record the time of entry and the number of officials.
    e. Request and take a copy of the written authorisation or warrant and identification documents from officials and pass on immediately to the response team.
    f. Contact your lawyers. Send them a copy of the authorisation and other documentation provided, and confirm the number of officials present.

g. The owner or senior manager should discuss the investigation mandate with the company's lawyers as soon as possible.
h. The owner or senior manager should request that officials await the arrival of company lawyer(s) but should not obstruct them if they do not agree to wait.
i. If there is an issue with the authorisation or identification documents (wrong names, dates, addresses etc.) inform the officials and request they delay the investigation until this is resolved.
j. The owner or senior manager should try to establish the purpose of the investigation, whether it is the only one (or is there another taking place elsewhere) and emphasise the company's determination to cooperate.

2. <u>During the Raid</u>
    a. The response team should be on site as soon as possible.
    b. Check the company dawn raid protocol to refresh staff on the issue.
    c. Circulate all company staff with an email informing them:
        i. A raid is taking place.
        ii. The company is co-operating as required by law.
        iii. There must be no deletion or destruction of documents.
        iv. Third parties must not be told.
        v. Who is the designated company liaison person on the response team.
        vi. The broad scope of the investigation (to the extent that is known).
    d. The owner or manager should try to agree a structure to the investigation, and what is required of the business.
    e. Where possible, the business should appoint a member of staff to shadow each member of the investigation team.
    f. Keep a detailed log of events: where investigators go, what they look at, who they speak to, what questions they ask, what answers they receive, any objections raised by the business (e.g. removal of personal records).
    g. Documents taken by officials should be copied before they depart.

3. <u>Process</u>
    a. Company management should try to meet the senior investigator and agree "rules of engagement," including:
    b. Company personnel will shadow investigators.
    c. What procedure investigators will adopt in seizing material, documentation, or electronic material.
    d. What procedure investigators will adopt for privileged, private or commercially sensitive documents.
    e. What procedure investigators will adopt for questioning staff.
    f. Who is in charge on the company side (it will normally be the senior member of the response team), and who is leading the investigation team.
    g. Who is responsible for photocopying or data copying.

Appoint a Dawn Raid Response Team

The selection of your dawn raid team is also dependent on the size and sector of your business. It may simply be the business owner, or in their absence, a named member of their family. In larger businesses, it will include senior management, in-house or external lawyers, IT managers and reception staff. The dawn raid response team will be responsible for interacting with officials and taking decisions during the dawn raid.

Share Guidance with Staff

A protocol is of no use on its own. It should be shared with staff, and point-of-contact staff (e.g. gate security, receptionists, shop managers, warehouse managers) must know their roles under the protocol. They must be capable of establishing the bona fides of the dawn raid team, and must know how and who to contact in the dawn raid response team.

Train staff

Organise dawn raid training for employees likely to come in contact with officials and the dawn raid response team.

Exercise

Organise dawn raid training for employees likely to come in contact with officials and the dawn raid response team. At the very least, a dawn raid protocol should be trained on a “desk-top” basis, preferably with staff in their normal working locations.

Review (to include an after-raid review)

- Inform all employees that the officials have left/the raid has ended.
- 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.

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.

Public Relations

The mere fact that a dawn raid has taken place on a business premises can have a significant reputational impact on a company. Consider taking professional public relations advice preferably before, but certainly after, a dawn raid has taken place.

[DRAFT] DAWN RAID PROTOCOL FOR [COMPANY]

This is a suggested format for a Dawn Raid Protocol but is not exhaustive. Please seek legal, accounting, or technical advice if your company's requirements go beyond the areas covered below.

The [COMPANY] Dawn Raid Response Team is [EXPAND AS NECESSARY]:

	Name	Mobile Number	email
Lead:			
Deputy:			
[DEPARTMENT]			
[DEPARTMENT]			
[DEPARTMENT]			

1. RECEPTION

a. Greet officials upon arrival.
b. Request them to tender their identification, warrant (if in possession of a warrant) or authorisation and the reason for their visit.
c. Take a copy of the written authorisation or warrant and identification documents from officials and pass on immediately to the response team.
d. Request them to wait in [LOCATION] while you inform management.
e. Record the time of entry and the number of officials in the party.
f. Notify the most senior person on site and all other relevant personnel in line with dawn raid protocol.
g. Do not contact any third parties.
h. Contact your lawyers. Send them a copy of the authorisation and other documentation provided, and confirm the number of officials present.
i. [SENIOR MANAGER] should discuss the investigation with the [LAWYER] as soon as possible.
j. [SENIOR MANAGER] should request that officials await the arrival of company lawyer. Do not obstruct party if they do not agree to wait.
k. If there is an issue with the authorisation or identification documents (wrong names, dates, addresses etc.) inform the officials and request they delay the investigation until this is resolved.
l. [SENIOR MANAGER] will meet the senior member of the investigation party and establish:
    i. The purpose of the investigation.
    ii. Whether this is the only investigation/site.
    iii. [COMPANY] is determined to cooperate fully with the investigation.
    iv. Whether [COMPANY] staff may shadow investigators.
    v. What procedure investigators will adopt in seizing material, documentation, or electronic material.

vi. What procedure investigators will adopt for privileged, private or commercially sensitive documents.
vii. What procedure investigators will adopt for questioning staff.
viii. Who is in the point of contact for [COMPANY] and who is the point of contact for the investigation team.
ix. Who is responsible for photocopying or data copying.

2. WHILE THE RAID IS TAKING PLACE

a. All members of the [COMPANY] response team must return to site as soon as possible.
b. [SENIOR MANAGER] should circulate this dawn raid protocol to all staff by email and inform them:
    i. A raid is taking place.
    ii. The company is co-operating as required by law.
    iii. There must be no deletion, destruction or hiding of documents.
    iv. Third parties must not be told.
    v. [SENIOR MANAGER] is the designated company liaison person on the response team.
    vi. What is the scope of the investigation (to the extent that is known).
c. [SENIOR MANAGER] will request to agree a structure to the investigation, what and who are required of [COMPANY].
d. [SENIOR MANAGER] will appoint a member of staff to shadow each member of the investigation team, if possible.
e. [DESIGNATED PERSON] will keep a detailed log of events: where investigators go, what they look at, who they speak to, what questions they ask, what answers they receive, any objections raised by the business (e.g. removal of personal records).
f. [SENIOR MANAGER] will request a copy of documents to be taken by investigation party officials before they depart the premises.

3. AFTERMATH

a. [SENIOR MANAGER] will ensure al staff are advised that the investigation is over.
b. [SENIOR MANAGER] will secure all documentation from staff members and those shadowing the investigation team.
c. [SENIOR MANAGER] will notify staff of when the debrief will take place (if the debrief is not to be held immediately).
d. [SENIOR MANAGER] will notify insurers or other affected entities as required.