

WHITE PAPER ON CRIME

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Organised and White Collar Crime



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DEPARTMENT OF JUSTICE AND LAW REFORM

ABOUT THE WHITE PAPER PROCESS - ROLE OF DISCUSSION DOCUMENTS

A White Paper provides a high level statement of Government policy, its rationale and the strategies to give effect to that policy. Development of the White Paper on Crime involves an end-to-end examination of the prevention, intervention and enforcement strategies to combat crime.

A series of discussion documents on key issues will provide structure for consultation during this process. This is the third of these documents. The first two documents dealt with Crime Prevention and Criminal Sanctions respectively. More information about those documents and the outcome of public consultations to date can be found on the Department's website (www.justice.ie).

Each document will include a general, non-specialist overview of the issue in question, together with a number of questions to assist in shaping discussion and feedback.

Comments need not be limited to these specific questions and can be submitted by post or email to:

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Submissions on this document should be made **before the end of December, 2010**.

If making a submission, please state if the views expressed are personal or are being made on behalf of an organisation. If views of an organisation are being submitted, it should be made clear which organisation is represented.

Submissions may be subject to the provisions of the Freedom of Information Acts and may be published. Please indicate if you would prefer your submission to remain confidential or if you do not wish your name to be included in the list of contributors.

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Introduction

The purpose of this paper is to examine a range of criminal activity not covered in detail by the White Paper on Crime discussion documents produced to date. The emphasis in the earlier papers, and in the first paper in particular, was largely on volume or 'street crimes' such as assault, theft and public order offences. These impact greatly on individuals and communities in an immediate and obvious fashion and are often to the forefront in debates on crime.

Other types of criminal activity may appear to be less frequent but undoubtedly cause serious harm and must be confronted as part of an overall crime strategy.

This paper will examine these by looking at organised or 'gangland' crime, as well as white-collar crime and a range of other complex types of criminal activity.

The specific areas covered in detail are:

- drug trafficking
- fraud (including fiscal fraud)
- human smuggling and trafficking
- money laundering
- counterfeiting and piracy
- cybercrime
- tackling white collar crime
- bribery and corruption
- regulatory crime

These types of crime can often attract organised criminals, but can also involve individuals, companies or very *ad hoc* groups. While there are interconnections between several of these fields, each gives rise to its own discrete issues and law enforcement responses.

The various activities examined are diverse but have the common characteristic of being complex or requiring a high degree of organisation, in contrast to a great deal of volume crime. In light of their complexity, the crime control response to these offences typically involves additional strategies over and above those used in traditional law enforcement.

A further feature of these crimes is that they are rapidly evolving and increasingly enabled by new technologies. Accordingly, an important objective in this discussion document is to seek to identify emerging trends with a view to ensuring that the White Paper on Crime anticipates future challenges as far as possible.

Organised Crime

The term 'organised crime' is 'frequently used but difficult to define' (Levi, 1998). One common definition is based on that found in the UN Convention on Transnational Organised Crime and is reflected in Irish legislation. This defines criminal organisations as structured groups, however organised, that have as their main purpose or activity the commission of, or facilitation of, a serious offence.

Organised crime potentially covers a very wide range of activities. Some of these depend on illegal market-based activities, with the criminal taking advantage of demand for goods that are prohibited or highly regulated, as in the case of drugs, prostitution, counterfeit products or trafficking of people. Others are based on fraud and deception, including fraud against the State, as well as fraud against individuals and business. This range of offences is now often facilitated by electronic forms of communication and identity theft. A final category relies upon the capacity to coordinate serious violence and intimidation. This capacity is necessary to carry out theft of high value, well-guarded targets, to manage kidnappings, organise assassinations and run enforcement rackets.

Serious Armed Gang Crime in Ireland

While the nature of organised crime is complex and multifaceted and its various manifestations will be examined in this document, its most immediate and graphic form is armed 'gangland' crime principally associated with the drug trade. While criminals have always relied on weapons, the ease of access to firearms and the willingness to use deadly force have increased. This is most evident in shootings arising from disputes in and between criminal gangs, especially those engaged in the illegal drugs trade.

The growth in organised crime killings became apparent by the mid-1990s (Dooley, 2001) and has grown further since, with the number of murders in which a firearm was used increasing from 4 in 1998 to 23 in 2009. The capacity to organise armed crime has also made possible cash-in-transit thefts and complex 'tiger-kidnappings'. Five such serious kidnapping events took place in 2009.

Shootings associated with criminal gangs have resulted in the deaths and serious injury of uninvolved bystanders, witnesses, and in retaliation against those willing to give evidence against the criminals involved. Police, other emergency workers and journalists have also all been seen to be at grave risk. The awareness within the community that this level of violence can be brought to bear is hugely intimidating and has the potential to corrode local development and crime prevention efforts. Such threats can also act as a significant barrier to successful criminal prosecution.

Combating Organised Gun Crime

Given the significance of the threats posed by organised crime, the Government attaches the highest priority to tackling organised and gun crime and bringing those involved in such activities to justice. One of the main priorities set by the Minister for Justice and Law Reform for An Garda Síochána in 2010 is to combat serious crime, in particular, organised crime through a range of measures, including the use of the Garda specialist units and targeted operations such as Operation Anvil. This Operation commenced in the Dublin area in 2005 to deal with serious gun crime and was extended nationwide in 2006.

The primary focus of Operation Anvil is the targeting of active criminals and their associates involved in serious crime by preventing and disrupting their criminal activity through overt patrolling and static checkpoints by uniform, mobile and foot patrols, supported by armed plain clothes patrols. Up to end of August, 2010 this sustained operation has led to the recovery of over 3,200 firearms, 10,300 arrests for serious crimes such as murder, serious assault, robbery and burglary and over 96,300 searches for weapons, drugs and stolen goods. Property to the value of almost €40 million has been recovered. An Garda Síochána will continue to address the issue of illegal guns through Operation Anvil and other focused operations.

Resources have been committed to these measures against a backdrop of a substantial increase in overall Garda numbers (14,615 at end August 2010 compared with 11,895 at end 2002). In 2009, the budget for Operation Anvil was €21m in 2009, up from €20m in 2008.

In addition to these enforcement measures, the first White Paper on Crime discussion document *Crime Prevention and Community Safety* addressed a range of initiatives designed to promote community development and to tackle the circumstances which give rise to crime. While these initiatives have as a primary objective the enhancement of the living environment, especially public safety, they also have the potential to increase a community's resilience and resistance to those involved in criminal activity.

Criminal Assets Bureau

One very effective tool available to the State since the mid-1990s has been the Criminal Assets Bureau (CAB) which has a non-conviction based forfeiture approach. The Chief Bureau Officer can request the Court to seize assets if, in his opinion, and on the basis of the investigations carried out by the CAB and the evidence before him, those assets have been accrued as a result of criminal activities. If the Court is satisfied with the opinion of the Chief Bureau Officer assets will be frozen. The burden of proof then turns to the person who owns the assets in question to prove that such assets were come by legitimately.

The Bureau has been successful over the years in seizing the proceeds of criminal activity in an effective and visible manner. It represents a new form of policing designed to disrupt and disable the capacity of targeted individuals to participate in further criminal activity. As a result, a criminal investigation can continue while a

financial investigation, a tax examination and a social welfare examination can also proceed. Its success in disrupting criminals has attracted widespread attention internationally and the model of a co-located bureau (with personnel from the Revenue Commissioners and the Department of Social Protection, as well as members of An Garda Síochána) focusing on the proceeds of crime was one of the first of its type in Europe.

A recent and important development at the CAB has been the rapid expansion in the number of trained asset profilers who are now working all over Ireland. There are over 120 trained asset profilers working in An Garda Síochána and 10 trained profilers in the Revenue Commissioners who have become an invaluable resource for the CAB in doing the early groundwork on possible targets and in keeping the CAB informed of developments at local level. While the profilers are based outside the Bureau, their work is being embedded into the CAB and this means that criminals in the State are within the reach of the CAB.

Under European Council Decision 2007/845 JHA the EU developed a network of Asset Recovery Offices for targeting and tracing the proceeds of crime. The CAB is the nominated Assets Recovery Office for Ireland in the European Union Network for Asset Recovery Offices.

The legislation governing the Criminal Assets Bureau is currently being reviewed by a high level group to ensure, in the context of experience gained and changes in criminal behaviour, that it continues to operate in an effective manner.

Specialist Garda Units

An Garda Síochána uses intelligence-led operations in the fight against crime and, in this context, the information and assistance made available to the Gardaí by the public are invaluable in ensuring that those who engage in criminal activities can be brought before the courts.

A significant element of the fight against organised crime and criminal gangs is the use of specialist units which include, the National Bureau of Criminal Investigation, the Garda National Drugs Unit, the Organised Crime Unit, the Criminal Assets Bureau, the Garda Bureau of Fraud Investigation and the Garda Technical Bureau. Each brings expertise and skills in specific areas of policing.

The Organised Crime Unit has the particular remit of targeting those suspected of involvement in organised crime, including the trafficking, importation, sale and supply of drugs.

The actions of all specialist Garda units are coordinated by the Assistant Commissioner with responsibility for National Support Services in order to ensure that a comprehensive approach is taken to tackling issues throughout the State.

The work of these units is at all times guided and supplemented by the Security and Intelligence Section which assists with the provision of intelligence briefings and timely information which are required for Garda operations. An Garda Síochána also

has available to it an expert civilian Analysis Service trained in identifying emerging trends, crime hotspots and enabling a more focused deployment of resources.

Legislation

In addition to the Proceeds of Crime Acts 1995 and 2005, which underpin the work of the Criminal Assets Bureau, several important pieces of legislation have been introduced in recent years which include significant measures targeted at serious organised crime. Some of the key measures are set out in the table below.

Criminal Justice Act 2006	<ul style="list-style-type: none"> • mandatory minimum sentences for certain firearms offences • new offences relating to participation in or assisting the activities of organised gangs • admissibility of witness statements in circumstances where a witness subsequently refuses to stand over the statement, as a result of intimidation, for example
Criminal Justice Act 2007	<ul style="list-style-type: none"> • presumptive minimum sentencing for certain repeat offenders convicted of another offence from a list of scheduled offences considered to arise in the context of organised crime • detention periods for Garda questioning extended for certain offences, including murder and kidnapping using firearms • bail laws amended to allow the prosecution to mount a more effective challenge to bail applications • Courts empowered to impose monitoring orders on persons convicted of serious offences as well as protection of persons orders which prohibit the offender from engaging in intimidating behaviour towards the named person
Criminal Justice (Mutual Assistance) Act 2008	<p>This Act includes provisions that allow Ireland to:</p> <ul style="list-style-type: none"> • take evidence in connection with criminal investigations or proceedings in another country • obtain search, seizure or confiscation in respect of proceeds of crime located in other countries • search for and seize material on behalf of another country • provide mutual assistance in relation to revenue offences • serve a summons or any other court process on a person in Ireland to appear as a defendant or as a witness in another country • enforce, in Ireland, confiscation and forfeiture orders made in another country

Criminal Justice (Amendment) Act 2009	<ul style="list-style-type: none"> • provides that organised crime offences will be tried in the Special Criminal Court unless the DPP directs otherwise • new offence of directing or controlling a criminal organisation, with a penalty of up to life imprisonment • organised crime offences will in general attract higher sentences than non-organised crime offences • insofar as all organised crime offences are concerned, the court will be enabled to draw inferences from failure to answer questions, failure to account for movements, actions or associations • expert Garda opinion evidence on the existence and operations of criminal gangs will be admissible in evidence
Criminal Justice (Surveillance) Act 2009	<ul style="list-style-type: none"> • provides a legal framework for use of evidence gathered through covert surveillance and removes possible impediments to this evidence being used in Court
Criminal Justice (Miscellaneous Provisions) Act 2009	<ul style="list-style-type: none"> • overhauls the licensing of firearms and introduces a more rigorous licensing system • introduces a handgun ban • increases penalty for possessing a knife in a public place
Criminal Justice (Money Laundering and Terrorist Financing) Act 2010	<ul style="list-style-type: none"> • increases the obligations on credit and financial institutions and on lawyers, accountants, estate agents and others with regard to money laundering and terrorist financing • requires designated bodies to identify customers and beneficial owners to report suspicious transactions to An Garda Síochána and the Revenue Commissioners and to have procedures in place to provide, to the fullest extent possible, for preventing money laundering and terrorist financing
Criminal Procedure Act 2010	<ul style="list-style-type: none"> • provides for retrials following acquittals if new and compelling evidence emerges, or where the first trial was tainted by an issue such as perjury or intimidation • provides for a retrial where the judge at the first trial erred in law by, for example, excluding certain evidence • reforms the law relating to victim impact evidence • reforms the law relating to character evidence where the defendant raises issues concerning his own or the character of deceased or incapacitated victims • allows for the return or disposal of property that is evidence in a trial

While these measures tackle organised crime at all levels, they have specific features designed to target senior members of criminal gangs and those involved in directing activities through subordinates and also to deal with witness and jury intimidation. Some of these measures have been the subject of public controversy and debate. In particular, the introduction of the Criminal Justice (Amendment) Act 2009 followed a lengthy debate, including criticism that it undermined the right to a fair trial. Its groundbreaking nature was acknowledged by the Minister but was justified by him and its other supporters as necessary and proportionate in order to ensure the rule of law and to tackle criminal gangs prepared to use violence to disrupt the judicial process.

Other legislation in preparation intended to improve the overall working of the criminal justice system include the Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010 and a proposed Bail Bill. The Criminal Justice (Forensic Evidence and DNA Database System) Bill 2010 aims to provide an updated legal framework for the taking and use of forensic samples in the criminal justice context. A central element of the Bill will be the establishment of a DNA Database System to aid the investigation of criminal offences and to assist in finding and identifying missing or unidentified persons. The DNA Database when established is expected to provide An Garda Síochána with an enhanced intelligence resource and to lead to greater efficiency in the use of Garda time and resources. The purpose of the proposed Bail Bill will be to consolidate and update bail law and to provide for certain improvements to ensure that the bail regime can operate in as effective a way as possible. The preparation of the Bill includes the examination of the extent to which greater guidance could be given to the courts on the need to protect the public against those who present an unacceptable risk of committing a serious offence if granted bail. The Minister for Justice and Law Reform hopes to be in a position to bring proposals to Government before the end of the year.

International Dimensions

Although not exclusively a trans-national phenomenon, much attention focuses on organised crime as a global problem. Many of the market-based activities seek to overcome national regulations and restrictions, and typically involve importation and distribution networks, whether for drugs, contraband or people. Criminal organisations form connections and associations across borders and exploit differences in national legislative and enforcement systems, and in some cases rely on the lack of effective systems in failed states or in 'cyberspace'.

As a consequence, the international law enforcement response has increasingly focused on collaboration between national and multi-national organisations in order to tackle organised crime. This can take place through informal exchange of experience and techniques but is also based on multilateral and bilateral treaties. These treaties can provide for extradition, as well as mutual legal assistance in conducting investigations. The International Police Co-operation Organisation (INTERPOL), facilitates secure communications between police forces in different countries as well as providing access to expertise, analysis and criminal information databases. An Garda Síochána has liaison officers based across a number of international locations and organisations.

At EU level, institutions with responsibility for tackling criminal activity include:

- European Police Office (Europol) and Europol Information System
- European Judicial Co-operation Unit (Eurojust)
- European Police Chiefs Task Force
- European Anti-Fraud Office (OLAF)
- European Agency for Operational Co-ordination at EU External Borders (FRONTEX)

Added to these, are EU legal measures designed to allow for Joint Investigative Teams (JIT) between Member States, as well as the European Arrest Warrant and an EU Convention on Mutual Legal Assistance.

Although not part of the Schengen Agreement dealing with border controls, both Ireland and the UK participate in aspects of the Schengen police co-operation arrangements, including the Schengen Information System. Additionally, the Prüm Decision¹ intensifies cross-border co-operation, particularly in combating terrorism and cross-border crime.

The future work of the EU in the field of Justice and Home Affairs matters for the period 2010-2015 is set out in the 'Stockholm Programme'. An important component of the Programme is a range of measures to improve internal security within the EU by stepping up efforts to combat organised and trans-national crime. These include initiatives to enhance information exchange and training between police forces, to streamline the operation of requests for legal co-operation between Member States, and to bring greater coherence to the efforts of national and EU institutions in tackling organised crime.

¹ Council Decision 2008/615/JHA of 23 June 2008.

Drug Trafficking and Supply

The trafficking and supply of drugs is one of the most prominent and lucrative of organised crime activities. The first White Paper on Crime Discussion Document considered the relationship between drug abuse and crime and the methods which might be applied at individual or community level to tackle drug abuse and associated criminal activity. The focus in this document is on the wider questions surrounding drug importation and supply and related criminality.

The Europol Organised Crime Threat Assessment (2009) concludes that drug trafficking into and across Europe is made possible by various trans-national organised criminal groups. Ireland is situated within what Europol classify as the 'North-West: Atlantic region', while the Netherlands is Europe's main distribution centre for both cocaine, originating from South America, via Spain and West Africa, and heroin, originating from Afghanistan, mainly via Turkey. Together with Belgium, the Netherlands is also the world's largest producer of ecstasy, although production in Eastern Europe is growing. Morocco is the main supplier of cannabis resin, while there is also an increasing trend in localised indoor cannabis cultivation.

According to Europol, indigenous criminal groups in both Ireland and the UK have traditionally purchased goods from groups based in the EU but have also established contacts with suppliers in order to source the drugs directly and improve profit margins. Irish groups are said to be cutting out wholesalers in Spain and the Netherlands and procuring directly. The Garda/PSNI Cross Border Organised Crime Assessment (2008) has also noted the emergence of large-scale cannabis factories developed by crime groups predominantly based outside the island of Ireland, mirroring a wider EU trend.

At a national level, there is very little structured published research on the nature of organised criminal involvement in drug sale and distribution. However, ad hoc evidence in the form of prosecutions, gang-related shootings, Garda seizures, and media reporting, provide indicators of considerable criminal activity of this type.

Prevalence

Estimating the extent of drug use or the size of the drug market in any given jurisdiction is complex, given the illicit nature of the activity. In Ireland, the 2006/2007 Drug Prevalence Survey² found that drug use had generally stabilised since the previous survey in 2002/2003. Cocaine use was found to have grown, albeit from a small base. The prevalence of heroin use has levelled off to an extent in the Dublin area but this has been offset somewhat by its wider dispersal.

² Drug Use in Ireland and Northern Ireland 2006/2007 Drug Prevalence Surveys - National Advisory Committee on Drugs and Public Health Information & Research Branch (PHIRB) in Northern Ireland.

Legislation

While the prohibition of drugs is provided for in the Department of Health & Children Misuse of Drugs Acts, a wide range of criminal justice legislation has as its objective the disruption and punishment of drug trafficking and related activity. As set out earlier, the work of the Criminal Assets Bureau and the Proceeds of Crime Acts, as well as new provisions concerning surveillance and directing organised criminal activity are central to this (Criminal Justice (Surveillance) Act 2009 & Criminal Justice (Amendment) Act 2009, respectively). The Criminal Justice (Drug Trafficking) Act 1996 provides An Garda Síochána with strong powers of detention under which they can hold those suspected of drug trafficking offences for a period of up to seven days without charge. In addition, presumptive minimum sentences for drug trafficking are provided for in the Criminal Justice Act 1999 and are mandatory in any case involving a second such offence (Criminal Justice Act 2006). The 2006 Act also introduced a requirement to register with the Gardaí following completion of a sentence for a serious drug offence.

Furthermore, the Criminal Justice (Psychoactive Substances) Act 2010 makes it an offence, punishable by up to five years imprisonment, to sell or supply for human consumption substances which are not specifically proscribed under the Misuse of Drugs Acts, but which have psychoactive effects. The Act gives powers to An Garda Síochána and the courts to intervene quickly to prevent outlets from selling these products by way of prohibition orders. Failure to comply with such orders can lead to the closure of the outlets in question. The Act also provides full search and seizure powers for An Garda Síochána and Revenue's Customs Service.

Finally, while the legislation introduced to provide for international co-operation in cross-border crime has general application, its use will very often be relied upon in tackling organised criminal drug activity e.g. the European Arrest Warrant and Mutual Assistance arrangements.

National Drugs Strategy (2009-2016)

The Government's policy framework on drugs is the National Drugs Strategy (2009-2016). This is a new Interim Strategy which was formally launched in September 2009. During its development, the Government decided that alcohol should be included with illegal drugs in an overall National Substance Misuse Strategy. The development of a new joint strategy is currently underway.

A key principle underpinning the Government's approach is to address the problem in a partnership way involving the statutory, community and voluntary treatment providers sectors with Local and Regional Drugs Task Forces. The Strategy will be implemented through 63 proposed Actions across 5 pillars: Supply Reduction, Prevention, Treatment and Rehabilitation, Research and Structured Co-ordination. This approach incorporates the work of Local and Regional Drugs Task forces, and Local Policing Fora are being established in each of the Local Drugs Task Force Areas. Progress on the implementation of the Strategy will be monitored by the Office of the Minister for Drugs which operates within the Department of Community, Equality and Gaeltacht Affairs.

EU Drugs Action Plan 2009-2012

Given the global nature of the drugs issue Ireland actively participates in EU and other international fora which devise responses to the problem.

The EU Drugs Action Plan is broadly similar to the National Drugs Strategy. Each EU Member State has jurisdiction and responsibility for dealing with national drug problems. However, as many aspects of drug problems are common to most countries, it is important that Member States address the problem at EU level also.

The EU Drugs Strategy 2005-2012 aims to prevent and reduce drug use. The EU Drugs Action Plan 2009-2012 is the second action plan under the Strategy and its purpose is to ensure that Member States subscribe to the same set of basic principles. The Action Plan centres on two main areas of drugs policy – drug demand reduction and drug supply reduction, and also addresses coordination, international cooperation and information, research and evaluation.

Nationally, the Office of the Minister for Drugs has responsibility for the implementation and coordination of the EU Action Plan on Drugs.

United Nations Commission on Narcotic Drugs

The primary UN drug policy forum is the annual UN Commission on Narcotic Drugs (UNCND). Ireland's primary input to this forum is through our contribution to EU co-ordinated statements and policy positions in relation to UN sponsored resolutions addressing global drugs issues.

Role of An Garda Síochána

An Garda Síochána plays a leading role in tackling the problem of drug misuse locally, nationally, and internationally. The Garda National Drugs Unit targets national and international drug trafficking. At local level, Garda units police the drugs situation, and one aspect of the work of the Garda Diversion Programme is aimed at preventing young people from becoming involved in drug misuse. Local and Regional Drugs Task Forces include representatives from An Garda Síochána and the Probation Service.

Supply Reduction

In assessing the progress made under the National Drug Strategy (2001-2008), attention was drawn to the following measures to disrupt drug trafficking:

- increased levels of Garda resources in local drugs units, in local drug task force areas and in the Garda National Drugs Unit.
- combating drugs a priority in all Policing Plans, both local and national.

- Criminal Assets Bureau now also focused on middle and lower ranking criminals with more than 100 Criminal Asset Profilers in place nationwide.
- An Garda Síochána, Revenue's Customs Service and the Naval Service, making up the Drugs Joint Task Force, and all three agencies developing national and international co-operation with relevant law enforcement and intelligence agencies with the aim of reducing the amount of drugs coming into Ireland.
- the commissioning by the Revenue Commissioners of two Customs Service patrol vessels, 'Suirbheir' and 'Faire', enhancing the ability of the Customs Service to meet its obligations in its primary drug control and anti-smuggling role, while making routine interventions, including surveillance, boarding and search of all types of vessels, aimed at the detection and seizure of prohibited goods and developing intelligence.
- the deployment by the Revenue Commissioners of two X-ray scanning machines for screening freight containers and vehicles.
- assignment of an Irish Customs officer to Europol.
- the establishment of a Maritime Analysis and Operations Centre - Narcotics (MAOC-N), an international and interagency organisation focused on intelligence exchange to tackle large drug shipments by sea and air. The Centre also aims to sever links between transportation networks and shore-based command-and-control personnel. The MAOC-N was set up by seven European countries - Ireland, the UK, the Netherlands, France, Spain, Portugal and Italy. Europol, the European Commission and the US Joint Inter-Agency Drugs Task Force (JIATF) are observers at the Centre.
- introduction of 'Dial to Stop Drug Dealing', an initiative to tackle drug dealing in local communities in Ireland by providing a safe, confidential and anonymous way for individuals to pass on information on drug dealing in their local community.

Drug Seizures

Both the volume and value of seizures of drugs have increased significantly in Ireland since 2000. The volume of drugs seized overall has increased by more than 50% since 2000, representing important operational successes. However, due to the problems associated with estimating the size of the illegal drug market in Ireland, it is difficult to deduce what proportion of the overall illegal drugs market the seizures account for. The National Drugs Strategy concluded that commonly cited estimates of the relationship between supply and seizure have no proven basis.

Fraud

Defining Fraud

The term 'fraud' refers to a number of statutory and common law offences. There is no specific offence of 'fraud' but the most common breaches of law encountered in the investigation of fraud are dealt with in legislation listed in Appendix A.

Fraud can be defined as intentional deception made for personal gain or to cause damage or loss to another person. It can take many forms and can be perpetrated against individuals, private and public organisations and at local, national and international levels. Fraud is a method increasingly used as a means of generating money to fund other types of crime such as drug trafficking, trafficking in human beings, identity fraud, smuggling of goods (e.g. alcohol and tobacco), counterfeiting and terrorism (European Police Office 2009). It is also often an important component in what is understood to be 'white collar' crime.

Harm caused by Fraud

The costs of fraud have an economy-wide impact. Businesses can incur significant financial losses due to misappropriations and financial statement fraud. They can also incur non-financial losses such as damage to their reputation or brand, employee morale, customer relations, share price and relations with other businesses (PricewaterhouseCoopers 2009). Fraud drives up costs for consumers, for example, through increased insurance premiums, and reduces the amount of money available for public services (through non-payment of taxes or false benefit claims). The Exchequer is defrauded through large scale 'fiscal frauds' which can involve smuggling of cigarettes, alcohol and other goods and non-payment of duties and other taxes. Quantifying the full extent of the damage done is difficult since, by its very nature, fraud often goes undiscovered and unreported (National Fraud Authority, 2010 (UK)).

Range of Fraud Offences

Frauds are as varied as human ingenuity and are constantly evolving. Types of fraud include:

- consumer fraud
- cheque fraud
- credit card fraud
- investment fraud
- tax fraud
- oils fraud
- tobacco fraud
- counterfeit intellectual property and products
- counterfeit currency

- charities fraud
- money laundering
- computer fraud

Appendix B gives more detail about these types of fraud.

Combating Fraud

Responses to fraud reflect the varied nature of fraud offences and involve partnerships at national, European and international level between statutory and private bodies. The Garda Bureau of Fraud Investigation (GBFI) investigates fraud on a national basis, principally dealing with the more complex cases. The primary objectives of the GBFI are to: investigate serious cases of commercial fraud, cheque and credit card fraud, computer fraud, money laundering and counterfeit currency; collate information and intelligence and act as a resource centre on fraud related matters; and play a pro-active role in the prevention and detection of fraud. The GBFI maintains extensive liaison with the business and commercial sectors of the community, in addition to all the relevant regulatory agencies within the State. An Garda Síochána also provides a wide range of fraud prevention advice available on its website covering areas such as ATM fraud, identity theft, counterfeit currency, and unsolicited emails.

The Revenue Commissioners also have a role in the investigation of fraud and Criminal Investigation Teams located in the Investigations and Prosecution Division of the Commissioners investigate cases of serious tax and customs fraud.

Multi-Agency Approach

An Garda Síochána work alongside a number of enforcement bodies in detecting breaches of the law, including the Revenue Commissioners, the Competition Authority, the Financial Regulator and the Office of the Director of Corporate Enforcement. Cross-border cooperation involving law enforcement agencies in both jurisdictions in Ireland in the sharing of intelligence, joint operations and joint training is a further tool deployed to respond to organised criminal activity, particularly in relation to fiscal and smuggling frauds.

A high-profile example of multi-agency, cross-border co-operation was Operation Samhna, which involved the seizure of approximately 120 million smuggled cigarettes in Greenore, Co. Louth in October 2009. This operation involved Officers from Revenue's Customs Service, An Garda Síochána, the Criminal Assets Bureau, the Irish Navy and Air Corps and, from Northern Ireland, Officers from HM Revenue & Customs and the Police Service of Northern Ireland. From the outset, the European Anti-Fraud Office (OLAF) was involved and played an important role in co-ordinating the follow-up international investigations in the Philippines where the vessel was loaded, and other countries visited by the vessel en route to Ireland. This seizure is believed to be the largest single seizure made not alone in the State but also in the EU.

EU Anti-Fraud Measures

At a European level, the purpose of the European Anti-Fraud Office (OLAF) is to protect the financial interests of the EU, to fight fraud, corruption and any other irregular activity. It achieves its mission by conducting independent internal and external investigations. It also organises close and regular cooperation between the competent authorities of the Member States in order to coordinate their activities. OLAF supplies Member States with the necessary support and technical know-how to help them in their anti-fraud activities. It contributes to the design of EU anti-fraud strategy and takes the necessary initiatives to strengthen the relevant legislation.

OLAF investigates several hundred cases each year. Fraud against EU Structural Funds is the biggest single category of fraud that OLAF deals with. Technology is vital in OLAF's work. Information is exchanged through the EU Customs Information System, in which customs, police, coastguards, agricultural and public health services pool sensitive data in real time in a single database, and an Anti-Fraud Information System through which hundreds of thousands of messages are exchanged each year.

In 2009, OLAF organised the Diabolo II Joint Customs Operation which brought together all 45 members of the ASEM partnership (EU Member States and most Asian Countries) to combat the global trade in counterfeit goods and to protect legitimate trade in genuine products. The operation led to the seizure of more than 65 million counterfeit cigarettes and 369,000 other counterfeit items (shoes, toys, cameras, headphones, hats, caps, gloves, handbags) representing over 20 different trademarks. OLAF is also in charge of the European Technical & Scientific Centre, which analyses counterfeit coins.

OLAF has cooperation agreements with non-EU countries and close links with Europol and Eurojust (the European judicial cooperation agency set up to improve coordination of the fight against serious crime). In February 2010, the United Nations Office on Drugs and Crime and Eurojust signed an agreement to improve judicial cooperation and intensify the fight against crime, particularly serious crime.

A further measure at EU level to deter criminal activity is Directive 2004/12/EC (Directive of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts) which precludes from participating in a public contract a candidate or tenderer who has been convicted of one or more of the following: participating in a criminal organisation, corruption, fraud, money laundering (Art. 45(2)).

Human Smuggling and the Trafficking of Human Beings

Human smuggling and the trafficking of human beings are profitable forms of organised crime in Ireland, involving both individuals and organised criminal networks both within and outside the State.

Organised crime is believed to be behind a great deal of human trafficking. According to Europol (2009) human traffickers and smugglers are likely to be involved in other types of organised crime like drug trafficking, payment card fraud, identity fraud, counterfeiting and money laundering. Both the trafficking of human beings and people smuggling may involve the use of forged travel documents and the abuse of legal forms of entry, although people legally in the State, and Irish or EU nationals may also become victims of human trafficking.

Definitions - Human Smuggling and Trafficking

While people smuggling and the trafficking of human beings are linked and can involve the same networks, there are fundamental differences between the two. *Human smuggling* involves migrants being facilitated with entry into a State through illegal means. The *trafficking of human beings* is defined as "procuring, recruiting, ... transporting ... or providing a person with accommodation or employment by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception....for the purpose of exploitation... for sexual exploitation, forced labour ...or the removal of organs"³. In the case of adults, there must be an action (procuring or transporting or harbouring), means (coercion or deception, etc.) and purpose (for sexual or labour exploitation or removal of body organs) for human trafficking to occur. In the case of trafficking of children there only needs to be the *action* and *purpose* elements present to meet the definition for human trafficking, irrespective of the *means* used. Human trafficking is often described as a modern form of slavery (Walsh 2009). Human smuggling can lead to trafficking if, for example, the circumstances of the smuggled persons change during the journey or on arrival in the State leading to them becoming victims of violence and exploitation.

Measures to address the issue of Human Trafficking

The Irish Government has taken a very firm stand against trafficking in human beings by putting in place a wide range of legislative and administrative measures in terms of prevention, protection and prosecution.

An Interdepartmental High Level Group was established by the Minister for Justice, Equality and Law Reform to recommend the most appropriate and effective responses to human trafficking. In February 2008, an Anti-Human Trafficking Unit was

³ Sections 1, 2, 3 & 4 of the Criminal Law (Human Trafficking Act) 2008 and Article 3, United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime.

established in the Department of Justice, Equality and Law Reform to ensure that the State's response to trafficking in human beings is coordinated and comprehensive. A Roundtable Forum meets three times each year. In addition, 5 interdisciplinary Working Groups have been established to progress matters and report to the High Level Group in relation to:

- Development of a National Referral Mechanism
- Awareness Raising and Training
- Child trafficking
- Labour Exploitation
- Sexual Exploitation issues

In excess of 35 stakeholders are involved in this process, including representatives from Government, Public Sector Agencies, International Organisations and NGOs.

National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012

The National Action Plan was published in June 2009. The Plan is divided into 4 main headings: Prevention of Human Trafficking; Awareness Raising; Protection of the Victim; and Response to Child Trafficking. It sets out the measures which have already been undertaken to prevent trafficking, protect victims and prosecute offenders. It also identifies areas which require further action. The Plan recognises the need for a co-ordinated approach across Government Departments/Agencies, as well as acknowledging the important role of the non-governmental stakeholders and other international organisations. A copy of the Plan is available on www.justice.ie. and on www.blueblindfold.gov.ie. An Interim Review of the Plan and its implementation is planned for early 2011.

Support for victims

An Administrative Framework, reflecting the provisions of the Immigration, Residence and Protection Bill, was introduced on 7 June 2008. Under the Administrative Arrangements, identification of a person as a suspected victim of trafficking must be by a member of An Garda Síochána in the Garda National Immigration Bureau (GNIB) not below the rank of Superintendent following which he or she makes a recommendation to the Minister for Justice and Law Reform to grant a period of 60 days recovery and reflection in the State.

In terms of protection and assistance, a person presenting to the GNIB as a potential victim of trafficking is offered access to a range of services, including accommodation, health services, crime prevention advice, legal aid, interpretation and education. The Reception and Integration Agency (RIA) accommodates potential and suspected victims of human trafficking (both European Economic Area (EEA) and non-EEA nationals) referred by the GNIB. RIA reception centres also include a medical centre on-site managed by the Health Service Executive which develop individual care plans for each potential or suspected victim of human trafficking.

Where the suspected victim wishes to assist with any investigation or prosecution, they may be granted one or more six-month renewable periods of temporary residence in the State by the Minister.

A wide range of awareness raising and training measures aimed at preventing human trafficking have also been undertaken and are detailed in the *National Action Plan to Prevent and Combat Trafficking of Human Beings in Ireland 2009-2012*.

Extent of Human Trafficking in Ireland

The Department of Justice, Equality and Law Reform *Summary Report of Trafficking in Human Beings in Ireland for 2009* is the first Irish report on suspected and potential victims of trafficking. Due to the clandestine nature of the crime and its overlap with other illegal sectors such as prostitution, estimating the prevalence of human trafficking is highly problematic. The summary report provides ordered and systematic understanding of the information currently available on human trafficking from both governmental and non-governmental sources.

In 2009, An Garda Síochána investigated 68 instances of human trafficking involving 66 potential victims (49 adults and 17 minors). Of these 66 persons, 40 were in the asylum process, 15 required immigration permission, 5 were in the care of the HSE as minors, 4 were EU citizens and 2 voluntarily left the State. 10 persons were granted a period of recovery and reflection under the Administrative Arrangements (1 person did not require it) and, of these 10, 4 persons were subsequently granted temporary residence permits. Investigations of 13 cases of potential trafficking concluded that there was no evidence to support allegations of trafficking. In 2009, a total of 9 persons were prosecuted for Human Trafficking related offences.

Relevant Legislation

Legislation relating to the trafficking of human beings and some of their relevant provisions are outlined below.

<p>Criminal Law (Human Trafficking) Act 2008</p>	<ul style="list-style-type: none"> • prosecution of traffickers of human beings for the purpose of sexual exploitation, labour exploitation or removing their organs • penalties of up to life imprisonment for persons convicted of human trafficking offences • penalties of up to 5 years imprisonment for persons convicted of soliciting a victim of human trafficking for prostitution • satisfies criminal law aspects of the Council of Europe Convention on Action against Trafficking in Human Beings, EU Framework Decision on Combating Trafficking in Human Beings(2002) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2005), supplementing the UN Convention Against Transnational Organised Crime (2000)
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Child Trafficking and Pornography Act 1998	<ul style="list-style-type: none"> • a person who organises or knowingly facilitates the entry into, transit through, or exit from the State of a child for sexual exploitation or who provides accommodation for a child for such exploitation is guilty of an offence and liable to imprisonment for life • a person who, having the custody, charge or care of a child, allows the child to be used for the production of child pornography is guilty of an offence
Sexual Offences (Jurisdiction) Act 1996	<ul style="list-style-type: none"> • a person who transports anyone for the purpose of enabling a sexual offence to be committed is guilty of an offence
Immigration, Residence and Protection Bill 2010	<ul style="list-style-type: none"> • provides for a period of recovery and reflection of 60 days in the State for alleged victims of trafficking. In circumstances where the person trafficked wishes to assist the Gardaí in any investigation or prosecution in relation to the alleged trafficking, a further six months period of residence, renewable, can be granted to enable him or her to do so
Administrative Immigration Arrangements for the Protection of Victims of Human Trafficking	<ul style="list-style-type: none"> • provide for a period of recovery, reflection and residency in the State during the period between the enactment of the Criminal Law (Human Trafficking) Act, 2008 and the full enactment of the provisions of the Immigration, Residency and Protection Bill.

Garda Anti-Trafficking Operations

An Garda Síochána established a Human Trafficking Investigation and Co-ordination Unit within the Garda National Immigration Bureau in January 2009. The role of the Unit is to lead all policy issues in the area of Human Trafficking. The Unit acts as a centre of excellence for the organisation and oversees all investigations where there is an element of human trafficking and provides advice, guidance and operational support for investigations. Furthermore, the prevention and detection of human trafficking and the protection of victims is one of the *2010 Policing Priorities* of An Garda Síochána. Targeting human trafficking networks is one of the key actions under 'Tackling Organised Crime' and is intended to be achieved by working in partnership with international law enforcement agencies.

The Gardaí have been involved in a number of operations investigating trafficking, which have led to prosecutions for offences relating to organised crime:

- Operation Boulder (2008) investigated brothels in the Cork area leading to one person being prosecuted for tax offences and the conviction of three persons for prostitution related offences in April 2010.
- In Operation Sibling (2009), the Gardaí were involved in a joint operation with the Romanian police force which resulted in the prosecution of 3 Romanian nationals in Romania for trafficking of human beings for the purpose of labour

exploitation as well as other types of organised crimes, including organisation of a criminal syndicate, money laundering and firearms offences. One person received a 7 years prison sentence while two others received 5 years prison sentences.

- Operation Abbey (2009 and ongoing) saw the prosecution of an Irish national and two members of his family for the organisation of brothels across Ireland and the UK in which trafficked women from Nigeria were being exploited, two of whom were trafficked for the purpose of sexual exploitation when they were still minors. Three persons were convicted of offences related to organising prostitution and money laundering and sentenced to terms of imprisonment of 7, 4.5 and 2 years imprisonment.
- Operation Mast (2009 and ongoing) has resulted in the arrest of 9 persons on suspicion of offences under the Criminal Law (Human Trafficking) Act 2008 i.e. human trafficking for the purposes of sexual exploitation. As of 9 August 2010, 12 females have been identified, under this Operation, as potential victims of human trafficking and have been afforded access to State services.

Combating trafficking for the purpose of sexual exploitation - other approaches

In 1999, Sweden introduced a law prohibiting the purchase of sexual services. This, in effect, decriminalised the seller of sexual services and criminalised the buyer. A report of a Swedish Government review of the effects of the legislation, now in operation for ten years, was published in July 2010. It reported that the law has had a reducing effect on the levels of on-street prostitution and that the number of women and girls reported as trafficked into Sweden for the purpose of exploitation through prostitution is much lower than in neighbouring countries.

The Minister for Justice and Law Reform has asked the Dignity Project⁴ to examine the Swedish model as part of their two-year research project into best practice in supporting women victims of human trafficking for sexual exploitation. Members of the Dignity Project and officials from the Department of Justice and Law Reform visited Sweden in September 2010. A report of the visit to Sweden is currently being prepared by the Department of Justice and Law Reform officials for consideration by senior management within the Department and the Minister.

⁴ The Dignity Project is an EU funded international interagency research project (with minimum contributions from participating partners) examining models of multi-disciplinary practices in service provision to victims of trafficking for sexual exploitation (women and children) through study visits with a view to identifying good practices and replicating and mainstreaming appropriate models. This Project will result in a final report which will include recommendations for policy and practice at national and EU level which is due to be published in 2011.

Money Laundering

Money laundering is the process of creating an appearance that large amounts of money obtained from criminal activity originated from a legitimate source. It is described as 'the beating heart of trans-national crime' (Serio 2004), is an international concern and international bodies and national governments have been taking major steps in recent decades to combat it. Europol view money laundering as the common denominator of all organised criminal activities. Terrorist activities are also financed with the proceeds of illegal activities.

As organised criminal activity is generally aimed at making money, the ability to launder this money in order to conceal its origins and prevent it being associated with criminal activity is a major concern for all organised crime groups. It is also a means of maximising the disposal of illegal profits and reducing the risk of exposure to law enforcement agencies and rival criminals which holding large quantities of cash can present.

The process of money laundering

The methods used for laundering money are evolving. While there are various approaches to money laundering the activity is generally broken down into three stages: placement, layering and integration (Serio 2004).

Placement

Money is obtained through illegal cash-intensive businesses such as drug trafficking, prostitution, embezzlement and bribery. The main concern of the money launderer is to enter the funds into the legitimate financial system as quickly as possible. Large blocks of cash are broken up into less conspicuous, smaller, multiple deposits and placed in several financial institutions or transformed into other assets so as to avoid detection. The placement of currency in multiple deposits of relatively small amounts is known as structuring or 'smurfing' to avoid certain record-keeping and statutory reporting requirements.

Layering

Once funds have been entered into the system, they are moved as far from the point of origin as possible to conceal or disguise their ownership. Layering involves creating a web of financial transactions to disguise the audit trail and source and ownership of the funds. Funds can be moved electronically from one company, financial institution, or country through two or three others. The use of widely scattered accounts for laundering purposes is especially prevalent in jurisdictions which do not cooperate in anti-money laundering investigations. Layers are created by moving monies in and out of numerous offshore bank accounts of bearer shell companies through electronic funds transfers. Businesses offering money services (e.g. *bureaux de change* and money transmission agents) are frequently used by organised criminals to launder the proceeds of crime. Criminals may make small value transactions in high volume through legitimate outlets which are not aware that their services are being abused,

while other outlets knowingly facilitate the movement of large volumes of currency (SOCA 2009).

Integration

The final stage in the laundering process can be completed through integration of the 'cleaned' money into the legitimate financial system. Popular methods include the purchase of luxury items, real estate, company stock or contributions to charitable organisations. Organised criminal groups can invest in cash-rich legitimate business and subsequently camouflage crime profits within cash generated by these legitimate activities, and falsifying their accounting accordingly ((Europol 2009). Launderers can, for example, grant themselves loans out of the laundered money in the course of a future legal transaction. Furthermore, to increase their profits, they will also claim tax relief on the loan repayments and charge themselves interest on the loan. The sending of false import-export invoices overvaluing goods allows the launderer to move money from one company and country to another with the invoices serving to verify the 'legitimate' origin of the monies placed with financial institutions. Another method is to transfer the money to a legitimate bank from a bank owned by the launderer. These 'off the shelf banks' can be easily purchased in some jurisdictions.

Laundering schemes are complex and can involve combinations of techniques from each stage of activity.

Anti-money laundering measures

Anti-money laundering regulations aim to minimise the exploitation of legitimate systems, and to ensure that an audit trail exists to assist investigations when abuse is detected.

The detection of money-laundering operations involves collaboration and information exchange between financial and other areas of the private sector and enforcement authorities. Without this collaboration, there is little chance that money-laundering operations could ever become known, as they are by nature hidden. Given the confidentiality of the information held, it has been necessary to establish mechanisms (Financial Intelligence Units (FIUs)⁵ between prosecution and enforcement authorities and relevant areas of the private sector to facilitate a flow of information while respecting confidentiality requirements (Thony 2000).

Anti-money laundering regulations have forced criminals to smuggle cash across several jurisdictions in order to place it securely in facilities where they can more readily and easily manage it. These criminals seek to exploit legal loopholes, insufficient or unapplied legislation or crime-friendly financial institutions.

⁵ Ireland is connected to FIU.NET a secured decentralised computer network between Financial Intelligence Units (FIU) within the EU for the exchange of subject data. FIU.NET encourages cooperation and enables FIUs to exchange intelligence quickly, securely and effectively. The main purpose of this cooperation is to further the fight against money laundering and terrorist financing.

In Ireland, anti-money laundering measures are primarily contained in the Criminal Justice Act 1994, as amended. Under the Act, financial and other institutions are obliged to take certain special measures to prevent money laundering. One of these measures is the requirement to establish the identity of customers and report any suspicions of money laundering directly to An Garda Síochána.

The continuing evolution of both national and international anti-money laundering laws and regulations has given organisations a greater responsibility to prevent, detect and report money laundering. Obligations in respect of anti-money laundering now extend beyond the financial sector into a range of designated professions/businesses which include:

- accountants
- auctioneers
- auditors
- estate agents
- tax advisors
- solicitors
- investment business firms
- agencies that provide money remittance services (i.e., those that 'wire' money from one place to another)
- dealers in high value goods (i.e., precious stones, metals, works of art where payment is made in cash for a sum of €15,000 or more)
- casinos
- administration companies providing services to collective investment schemes.

A conviction on charges of money laundering carries a maximum penalty of 14 years imprisonment and an unlimited fine. It is also an offence under the Criminal Justice Act 1994 to provide advice or assistance to anyone engaged in money laundering.

Latest Legislative Developments

The Criminal Justice (Money Laundering and Terrorist Finance) Act 2010 transposes the Third European Union Money Laundering Directive (2005/60/EC) and related Implementing Directive into national law and ensures compliance with the recommendations of Financial Action Task Force (FATF)⁶ in its Third Mutual Evaluation Report on Ireland. The Act repeals parts of the Criminal Justice Act 1994 and consolidates all laws relating to anti-money laundering. One of its key features is to increase customer due diligence obligations imposed on “designated persons”.

⁶ The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering and terrorist financing. Recommendations issued by the FATF define criminal justice and regulatory measures to counter this problem. These Recommendations also include international co-operation and preventive measures to be taken by financial institutions and others such as casinos, real estate dealers, lawyers and accountants. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard. www.FATF-GAFI.ORG

These include credit and financial institutions, lawyers, auditors and accountants, estate agents, trust and company service providers, tax advisers, property service providers, casinos and private members' gaming clubs. Their primary obligations are to identify and verify the identity of the customer and the beneficial owners connected with the customer or the service concerned and to monitor transactions with the customer. Additional measures must also be taken in relation to customers who are not physically present, politically exposed persons and correspondent banking relationships. Designated persons must also:

- report suspicious transactions to their national authorities;
- take supporting measures such as record-keeping, training of personnel and the establishment of internal policies and procedures; and
- avoid the offence of 'tipping-off', that is, making disclosures likely to prejudice an investigation.

The Act also provides that Trust and Company Service Providers must be authorised and that Private Members Gaming Clubs must be registered (for money laundering measures). The categories of designated bodies in respect of which there is no supervisory or competent authority, for example, tax advisers who are not members of a designated accountancy body or the Law Society and dealers in high value goods, will be monitored for the purposes of compliance with the Act, by the Department of Justice and Law Reform. The latter category can include car and boat dealers, jewellers, art dealers and others.

An Anti-Money Laundering Compliance Unit has been established within the Department of Justice and Law Reform. Its principal functions are to:

- administer the authorisation process for Trust and Company Service providers
- administer the registration process for private members' gaming clubs
- undertake compliance monitoring of designated persons assigned by law to the Minister

Other legislation relating to money laundering is listed at Appendix C.

Intellectual Property Crime

What is Intellectual Property?

Intellectual property (IP) refers to the legal rights owned by individuals and organisations in inventions, designs, goods and other creations, produced by intellectual activity in the industrial, scientific and artistic fields (The Anti-Counterfeiting Group 2008). *Intellectual property rights* protect the creators and makers of such products through patents on inventions, trademarks, industrial designs, as well as copyright on artistic works like books, films, music and paintings. 'In today's knowledge-based society intellectual property rights are vital business assets'(European Commission 2009).

Just like physical property, intellectual property can be stolen. IP crime is committed when products are copied and marketed for profit, as if made by the owner but without their consent. There are two types of IP crime: *counterfeiting* and *piracy*. 'Counterfeiting involves the illegal copying of trade marks on products such as clothing and pharmaceuticals. Piracy involves the illegal copying of content such as music, film, sports events, literary works, broadcasts, computer games and software for commercial gain. Copyright infringement also includes illegal copying and downloading of digital content.' (IP Crime Group 2009)

Intellectual Property Crime and Organised Crime

Organised crime groups use the trade in fake goods to generate profit and to fund other forms of organised crime, such as human trafficking, money laundering, firearms and illegal drugs (OECD 2008). The internet and digital technology have presented criminals with an efficient, high speed and anonymous way to conduct IP crime across borders and continents. While luxury goods have traditionally been targeted for counterfeiting and piracy, today a wider variety of mass consumption goods (e.g. foodstuffs, cosmetics, spare parts for cars, toys and various types of technical or electrical equipment) are affected (EC 2009).

Due to the clandestine nature of many counterfeiting and piracy activities it is difficult to accurately assess their scale. The OECD (2009) estimate that, in 2007, global trade in fake goods was worth up to \$250 billion and that does not include goods produced and consumed within countries. The real figure is, therefore, far higher.

Impacts of Intellectual Property Crime

Counterfeiting and piracy are not victimless crimes. Counterfeiting and piracy have a significant adverse economic impact on individuals, companies and governments, on consumer health and safety, on the environment and on wider public safety (OECD 2008, Pfizer 2007, SOCA 2009, Frontier Economics & BASCAP 2009). The market reality of IP crime is that there are supply and demand sides. The corrosive effects of counterfeiting and piracy are underpinned by consumers who promote illegal trade

through their demand for goods. Some consumers are naive, not realising the harm they are doing in buying counterfeit goods, or unaware of the potentially dangerous nature of such goods. Other consumers are more complicit and do not mind colluding with counterfeiters to get a 'good deal'. (Appendix D gives examples of counterfeiting and their impact as presented by the United Nations Interregional Crime and Justice Research Institute.)

Protecting Intellectual Property

The essence of IP protection is a strong focus on having and managing an effective legislative and regulatory system. The nature of IP crime means that it is tackled at national and international levels by employing a collaborative approach between state authorities and the private sector. Increasing consumer awareness is also critical to highlighting the damaging effects of counterfeiting and piracy.

The Irish Government has been making a sustained effort over recent years to ensure that patent, trademark, industrial design and copyright laws, among other IP areas, are kept as up to date as possible. This work arises primarily in the context of EU and other international obligations⁷. Each of the statutes across the main areas of IP specify criminal sanctions by way of fines, imprisonment, or both, for more serious infringements, as well as civil sanctions. For details of relevant Irish legislation see Appendix E.

Enforcement of IP legislation in Ireland

In Ireland, An Garda Síochána and Revenue's Customs Service play an active role in ensuring effective enforcement of the legislation. An Garda Síochána has adopted a proactive approach in tackling IP enforcement issues with the National Bureau of Criminal Investigation (NBCI), established as a response to organised crime. In relation to such matters as DVD piracy, its activities have been maintained at a high level, with searches being carried out throughout the country by the Anti-Racketeering Unit with assistance from the Irish National Federation Against Copyright Theft (INFACT) and the Irish Recorded Music Association (IRMA). Significant quantities of counterfeit DVDs and CDs as well of DVD burners, copiers and scanners have been seized over recent years (Department of Justice, Equality & Law Reform 2008).

The Anti-Racketeering Unit within the National Bureau of Criminal Investigation provides expert guidance and support to Divisional and District Garda personnel tasked with investigating the importation and sale of illicit and counterfeit goods,

⁷ The World Intellectual Property Organisation (WIPO), the UN body charged with the development of global IP rules and the World Trade Organization through its TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement are the two main rule-making bodies at global level in IP Protection. In Europe, the European Patent Office plays a crucial role in the patents field and, in the EU, the Office for Harmonization in the Internal Market (Trade Marks and Designs) promotes and manages the Community Trade Marks and the Community Designs System.

including cigarettes. The sale of goods at markets is the subject of regular and ongoing monitoring by An Garda Síochána for counterfeit goods and products. The Revenue's Customs Service enforcement action to tackle counterfeit or pirated goods has concentrated mainly on the points of importation into the State and has resulted in the seizure of growing quantities and varieties of products. In the course of 2008, Customs had 793 seizures of counterfeit goods valued at €5.8m in addition, some 56 million counterfeit cigarettes were seized. In 2009 there were 1,019 intellectual property rights seizures valued at €2.5m in addition to the seizure of 116 million counterfeit cigarettes.

The Criminal Assets Bureau, in conjunction with the Revenue Commissioners Customs Service and HM Revenue and Customs have been involved in a number of operations targeting the large scale importation of cigarettes by organised crime gangs (An Garda Síochána and Police Service of Northern Ireland 2008). These investigations have resulted in a number of actions by the Criminal Assets Bureau against individuals involved in this activity.

The International Response

The most recent EU Organised Crime Threat Assessment (OCTA) published by Europol assesses counterfeiting as one of the significant criminal sectors. (The OCTA is seen as contributing to a proactive and EU-wide approach in combating organised crime.)

In 2008, customs services across the EU seized about 179 million fake articles compared with 79 million items in 2007 (EC Taxation & Customs Union, 2009).

In 2009, as part of a comprehensive European anti-counterfeiting and anti-piracy plan, the European Commission launched a European Observatory on Counterfeiting and Piracy. The Observatory is composed of members from both the private and public sectors. It is intended to be a platform to collect data, raise awareness, share intelligence, facilitate dialogue, exchange views and share best practices in enforcing intellectual property rights between business and national authorities. The OECD underlines the need for improved information on and analyses of the extent and effects of counterfeiting and piracy on economies in order to develop more informed and effective programmes to combat the illicit practices (OECD 2008).

In July 2010, the European Commission and 24 Member States, including Ireland, signed a 20-year agreement with British American Tobacco (BAT) aimed at tackling the illicit trade in tobacco products. Under the legally binding agreement, BAT will cooperate with the Commission's anti-fraud office, OLAF, in a number of areas and will implement rigorous global controls to prevent illicit trade in its products. BAT will also make payments totalling \$200m (EUR134m) over the next 20 years to the Commission and Member States to help in the fight against contraband and counterfeit cigarettes. The agreement follows similar agreements signed with Philip Morris International (PMI) in July 2004 and Japan Tobacco International (JTI) in December 2007.

The EU legal framework for enforcement of intellectual property rights is outlined in Appendix F.

At an international level, ratification of the TRIPS agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) is compulsory for all World Trade Organisation members. Irish legislation (Appendix E) reflects the provisions of the TRIPS agreement. International negotiations are taking place on the Anti-Counterfeiting Trade Agreement (ACTA) to build on existing international rules in the area of intellectual property, in particular on the TRIPS Agreement. It is intended to conclude those negotiations by the end of 2010.

The UNICRI (United Nations Interregional Crime and Justice Research Institute) has developed the Permanent Observatory on Anti-counterfeiting Systems (POAS) to provide accessible and reliable data covering both the scope and scale of counterfeiting and to assess the most appropriate responses and potential solutions to be undertaken at national and international levels. The POAS has launched the Worldwide Track and Trace Bank (WTTB), the first global anti-counterfeiting data bank, accessible to every producer in every country of the world. Its role is to trace and track every product in the market along all the various links in the commodities' supply chain – from producer to consumer.⁸

Best Practices for Enforcement of Intellectual Property Rights

In 2002, a survey conducted by The World Intellectual Property Organisation (WIPO) indicated that the principal barrier to eliminating counterfeiting and piracy was the lack of appropriate remedies and sanctions. Best practices identified for the implementation of the enforcement provisions of the TRIPS agreement include: national cooperation and coordination involving all relevant stakeholders; international cooperation; public awareness and cooperation; judicial enforcement; administrative enforcement and border control. The challenge for governments is to develop a robust legal framework and complementary strategies in order to effectively address IP crime and its consequences.

⁸ See http://counterfeiting.unicri.it/poas/POAS_brochure.pdf

Cybercrime

What is cybercrime?

Cybercrime (computer crime) has been defined as 'criminal acts committed using electronic communications networks and information systems or against such networks and systems' (European Commission 2007). With the increased use of and reliance on the internet and information and communications technology, cybercrime is a growing international problem which affects all sectors of society - critical infrastructures, society, business and the general public. Organised crime groups are increasingly sophisticated in the way they use technology and exploit communications systems. Cybercrime can cross borders in fractions of a second and touch several people in different countries at the same time.

Cybercrime can involve a broad range of activities which are generally divided into three categories: traditional forms of crime, illegal content and crimes unique to electronic networks (European Commission 2007).

Traditional forms of Crime using Computers as a Tool

Identity theft⁹, phishing¹⁰, spams¹¹ and malicious codes¹² may be used to commit fraud or forgery. Other traditional crimes conducted using computers as a tool include the storage of illegal images, or illegal downloads, or internet-based trade in illegal goods.

Publication of illegal content over electronic communications networks

There has been a marked growth internationally in the number of illegal content electronic sites with, *inter alia*, child pornography, displays of violence, incitement to racial hatred and incitement to terrorism. Action against such sites is difficult because

⁹ Identity theft occurs when someone appropriates another's personal information, such as name, PPS number or credit card number without their knowledge in order to commit fraud or other crimes. The crime takes many forms. Identity thieves may rent an apartment, obtain a credit card, or set up a telephone account in another person's name and the theft may take some time to come to light through, for example, a credit report, a credit card statement or contact by a debt collector.

¹⁰ 'A form of online fraud where fake emails or websites, supposedly from a legitimate company, seek to obtain confidential account details with a view to conducting illegal transactions on the account' (Irish Banking Federation and An Garda Síochána, 2009).

¹¹ Unsolicited commercial emails.

¹² A broad category of software threats to network and systems which can exploit vulnerabilities in computer systems. Any code which modifies or destroys data, steals data, allows unauthorised access, exploits or damages a system, and does something the user did not intend to do is called malicious code. There are various types, including viruses, Trojan horses and Worms.

site owners and administrators are often in countries other than the target country and sites can also be moved very quickly.

Crimes unique to electronic networks

Cybercrime also includes electronic attacks against information systems or organisations and individuals. 'Denial of Service attacks' prevent computer resources being available to intended users by flooding web servers with more data than they can process forcing websites offline. Other such crimes can be committed by gaining unauthorised access to a computer system (hacking), or writing a virus (a type of malicious software to delete stored data). The aims of attacks may be to:

- access information stored on a computer. Information may have a monetary value (corporate espionage), may be valuable to the owner (ransom opportunity) or may be useful for further illegal activity such as fraud.
- impede or alter the functioning of the computer itself
- control a computer to enable it to be used to send spam, host illegal content, or conduct further attacks (The Parliamentary Office of Science and Technology (UK), 2006).

Responses to cybercrime

The trans-national nature of cybercrime has driven a global, collaborative approach to tackling cybercrime.

The Convention on Cybercrime of the Council of Europe (2001) is the only binding international instrument on this issue. It serves as a guideline for any country developing comprehensive national legislation against cybercrime and as a framework for international cooperation between States. Ireland signed the Convention in 2002.

A number of EU instruments address the fight against cybercrime. *Council Framework Decision (2005/222/JHA) on attacks against information systems* aims to fight cybercrime, promote information security, and to enhance cooperation between judicial and other competent authorities through approximating rules on criminal law in relation to attacks against information systems. The main types of criminal offences covered by the Framework Decision are attacks against information systems such as piracy, viruses and denial of service attacks.

In 2007, European Commission published a Communication *'Towards a general policy on the fight against cyber crime'* and the EU Council has since agreed a Concerted Work Strategy against Cybercrime. Actions under the Strategy include:

- strengthening cooperation between public authorities and the private sector
- improving knowledge and training among stakeholders involved in the fight against cybercrime
- reinforcing international technical cooperation with third countries.

Irish Response to Cybercrime

The Irish response to cybercrime reflects the same priorities as those set out in EU strategy. The Computer Crime Investigation Unit (CCIU) at the National Bureau of Fraud Investigation is the primary Garda unit responsible for investigating computer crime in Ireland. The CCIU has been working with the Computer Science Department at UCD since 1998 developing specialist training for law enforcement officials in the area of high tech crime. This has led to the establishment of a Cybercrime Centre in UCD, which delivers specialised training to Irish and international police officers, and has developed highly regarded and much sought after expertise in this complex and rapidly evolving field. The Centre has a team of expert researchers and investigators with extensive knowledge of cyber security, computer and network forensics, and investigation techniques.

At a more general level, a High Tech Forum has also been established involving the Garda authorities and representatives of all of the financial institutions with an internet presence. Membership also includes the Irish Payment Services Organisation, the Irish Bankers Federation and the Internet Service Providers Association of Ireland (ISPAI). The Forum works to exchange information on cybercrime threats and to identify detection and crime prevention measures, while also promoting wide public awareness of cybercrime.

In terms of legislation, the general scheme of a Bill to enable Ireland to ratify the Council of Europe Convention and to implement the European Council Framework Decision will be submitted to Government shortly for approval for drafting by the Department of Justice and Law Reform.

In 2009, the Minister for Communications announced the development of a cyber security strategy for Ireland. The Minister commissioned a report on Ireland's current state of readiness should a cyber attack occur. The report was intended to review current international best practice on cyber security and the structures that should be developed to inform the Government's response to cyber attacks.

Alongside legislative, policy and enforcement initiatives, businesses and individual computer users can play a role in preventing and combating cybercrime. Security technology (e.g. firewalls, encryption, filtering, and strong authentication can prevent and/or detect violations) (ISSA/UCD, 2008). Some further practical, preventive measures are described below.

- | | |
|---------------------------|---|
| Preventing Identity Fraud | <ul style="list-style-type: none"> - Lock all valuable documents in a safe place - Shred unwanted documents such as old utility bills, credit card receipts, etc |
| Phishing | <ul style="list-style-type: none"> - Be wary of clicking on links as they can lead to false sites - If you think you may be a victim of a 'phishing' attack notify the relevant financial institution and An Garda Síochána and change passwords. |

- Online security
- Install a reliable anti-spyware application.
 - Any unsolicited request for bank account information received through pop-up windows should be considered fraudulent and reported immediately.

Source: Irish Banking Federation and An Garda Síochána 2009

Cybercrime and Child Protection

An Garda Síochána's Domestic Violence and Sexual Assault Investigation Unit, operating within the Garda National Bureau of Criminal Investigation, is responsible for the investigation of criminal offences involving child pornography. The Unit contains trained specialists and can be augmented by personnel from other units of the National Bureau of Criminal Investigation if required. Any suspected offence involving the abuse of children through the internet or other technology, whether originating in this jurisdiction or coming to the attention of An Garda Síochána through international agencies or by any other means, is subject to thorough investigation and cooperation by An Garda Síochána. Specialist computer software is available to An Garda Síochána and is utilised to gather information and intelligence on possible suspects operating in this jurisdiction. The Child Trafficking and Pornography Act 1998 provides penalties for child pornography offences. The offence of knowingly possessing child pornography attracts a maximum prison sentence of five years or a maximum fine of €6,350, or both. The maximum penalty for knowingly producing, distributing, printing, publishing, importing, exporting, showing or selling child pornography is a maximum prison sentence of 14 years or an unlimited fine, or both.

The internet is a worldwide phenomenon with no borders and no single organisation controlling it. There is, however, an existing self-regulatory framework for internet service providers (ISPs) in operation in Ireland which actively encourages the adoption of best practice procedures aimed at limiting the proliferation of illegal child pornography content online. Members of the public may report such material to the www.hotline.ie service of the Internet Service Providers' Association of Ireland (ISPAI). If the material is hosted here, and deemed to be illegal and in contravention of Irish law, ISPAI members are obliged to remove such materials. If the material is hosted in another jurisdiction, it is notified to the internet hotline in that jurisdiction and/or to the relevant law enforcement agencies for follow up, with the aim of having illegal content taken down. At present, all mobile phone operators in Ireland, under a voluntary agreement brokered by the European Commission with the GSM Alliance Europe, the association representing European mobile phone operators, implement a form of filtering on their mobile internet service, which prevents access to websites which have been identified as containing child pornography content.

In a number of EU Member States, a system of internet blocking/filtering has been introduced on a voluntary basis, whereby a "blocklist" of sites containing child pornography is made available by the police or other competent authorities, and is used by individual ISPs to prevent access to such content. A number of other Member States have introduced, or are considering introducing legislation requiring ISPs to block access to websites containing child pornography. While it is

acknowledged that internet blocking or filtering systems are not foolproof and can be circumvented in certain circumstances, such filtering systems are understood to be useful in preventing internet users from inadvertently encountering illegal content. The issue of the possible use of blocking/filtering methodologies to prevent access to identified webpages containing child pornography is being considered further by the Department of Justice and Law Reform, Office for Internet Safety with advice from the Internet Safety Advisory Council.

Recently, a draft proposal for a Directive on combating the sexual abuse, sexual exploitation of children and child pornography was published by the European Commission. The draft Directive contains a proposal to require Member States to implement some form of blocking system in relation to websites containing child pornography. Ireland's participation in the adoption and implementation of this measure is subject to Government and Oireachtas approval.

Tackling White Collar Crime

The remaining sections of this document examine a range of economic and regulatory crimes which are sometimes categorised as 'white collar' crime, although some aspects of the criminal activity examined in the first half of this document might also be said to constitute white collar crime, notably some types of fraud. The harm caused by these crimes, directly or indirectly to members of the public and to the wider economy can be quite substantial. Indeed, the harm caused by major instances of fraud can have more substantial long-term impacts on individuals and economies than the offences of many street criminals (Weisburd and Waring 2001).

Over the past two years, debate on the response of the criminal justice system to white collar crime has moved to centre stage, in large part due to the fallout from the international financial crisis. The general public has become more sensitive to white collar crime than heretofore and media attention has also increased significantly. Much of the debate focuses on the view that white collar offenders are treated differently to 'street' criminals, with particular concerns expressed about the length of time required to investigate allegations of white collar crime as well as a historical tendency for sanctions to be more lenient.

Detecting and Prosecuting White Collar Crime

One reason for the lower rate of prosecution and conviction in white collar crime is the difficulty in defining, detecting and investigating it. For some types of white collar crime, such as fraud or embezzlement, the criminal intent is unambiguous. In other instances, the intent is less straightforward, and the persons under investigation may argue that they believed their actions were legal and that they have been guilty, at worst, of misinterpreting complex accounting regulations or having made poor business decisions.

Even where criminal intent is clear, white collar crime is typically committed in privacy, unlike 'street crime'. The victim will often be unaware of the crime, or occasionally, may be reluctant to report the crime. There is often no eyewitness other than the perpetrator; circumstances which are cited as warranting broad protections for whistleblowers are discussed later in this document. A similar case might be made for the introduction of immunities from prosecution for persons who disclose information on illegal activities as in the case of the Cartel Immunity Programme which is operated jointly by the Competition Authority and the Office of the DPP, also discussed later in this document.

In the absence of eyewitness testimony, proof is more likely to depend upon evidence amassed from a complex trail of data. Modern technology generates enormous amounts of material, including on computer hard drives, telephone records and email, which need to be assessed and evaluated in building a case. Therefore, the investigation of white collar cases such as sophisticated fraud, money laundering or other financial crimes are, of necessity, resource intensive, both in terms of duration and expertise.

An area of court procedure which gives rise to difficulties for the prosecution in white collar trials is the 'hearsay rule' which provides that, in general, a witness is not allowed to testify to the truth of something where the direct witness has not been called to prove the truth of the fact stated; a particular problem with regard to computerised records.

Various pieces of legislation have sought to address issues relating to documentary evidence. The Criminal Evidence Act 1992 provides for the admissibility into evidence of documents/uptifted material in circumstances where this material is accompanied by a certificate. A number of statutes address the admissibility of documentary evidence in prosecutions under those particular statutes, e.g., Company Law Enforcement Act 2001, Competition Act 2002, and Companies Act 1990.

The Law Reform Commission (2009) Consultation Paper on Documentary and Electronic Evidence makes wide-ranging recommendations for reform of the law on the admissibility of manually-generated and electronic documents and records in both civil and criminal trials. These are aimed at ensuring more efficient court procedures and point the way to reforms which could facilitate the prosecution of white collar cases. Recommendations in the Consultation Paper include that:

- the law should provide, in general, for the admission of documentary evidence through a person who can demonstrate the integrity of the storage system used (including the storage system for electronic records) even if that person did not originally generate the documentary record;
- for mechanically generated recordings, such as videos or CCTV, any defects in their quality should not rule them inadmissible but should be simply a question of the weight to be given to the recording;
- the Bankers' Books Evidence Act 1879, which allows banking records to be admitted as evidence in court, should be updated and extended to apply to records from all financial institutions; and
- the law on documentary evidence should be technology-neutral and all business records, whether manual or computer-generated, should generally be presumed to be admissible.

Another aspect of investigations and one which can lengthen investigations is the matter of legal privilege. In the execution of warrants and orders under the Criminal Justice (Theft & Fraud Offences) Act 2001 (ss.48 and 52 respectively), persons the subject of warrants or orders do not have to hand over documentation which they consider to be legally privileged. If investigators seize the documentation at issue, the matter may be referred to the High Court for adjudication. Delays may be experienced in relation to the execution of orders where persons separate information which they or their legal advisors consider to be the subject of legal privilege from the rest of the documentation/evidence. Problems may arise when the documents considered to be legal are stored electronically in folders with other non-legally privileged documents.

Finally, due to the complexity of white collar crimes which can often relate to multiple incidents over a protracted period, investigations may require extensive interviews with subjects, and therefore present challenges insofar as compliance with time limits on detention periods is concerned.

White Collar Crime Trials

Apart from lengthy investigations, trials in white collar cases can also be lengthy. This was one of the issues considered by the Government Advisory Committee on Fraud which reported in 1992. The Committee recommended that as much pre-trial preparation as possible be undertaken in serious fraud cases in order to identify the issues which are in dispute to be decided at trial. This would involve firstly the prosecution, then the defence setting out the key facts and legal basis of their respective cases. In 2003, the Fennelly Committee's Report on the Jurisdiction of the Courts recommended the introduction of pre-trial hearings to enable the court, *inter alia*, to establish the likely length of the trial (Working Group on the Jurisdiction of the Courts 2003).

Pre-trial hearings would facilitate a more rapid and efficient progress of trials. It would not be necessary to send the jury out of court for what can be lengthy periods while a procedural issue such as the admissibility of evidence is dealt with. In some cases, the early determination of such issues at a pre-trial hearing would shorten proceedings, either because the prosecution would be forced to abandon the case, or the accused might decide to enter a guilty plea. Pre-trial hearings would also help to make the trials more coherent and comprehensible to the jury.

Juries and White Collar Crime

The presence of juries in white collar crime trials, which can be both complex and lengthy, is another subject of debate. The Government Advisory Committee on Fraud recommended the compilation for the jury of a glossary of technical terms likely to be used during the trial, and which may not be familiar to every juror. The Criminal Justice (Theft and Fraud Offences) Act 2001 is based on recommendations of the Advisory Committee and enables the trial judge to order that the jury be provided with certain documents which the judge considers would assist them in their deliberations. Recently, the Director of Public Prosecutions indicated that he favours an examination of whether complex and lengthy white collar crime trials might be held before panels of judges or juries of experts (Hamilton 2010a.).

In the UK, the Fraud (Trials Without a Jury) Bill 2007 proposed that the prosecution could apply for certain cases to be tried by a judge sitting alone without a jury. Under the Bill, a judge may order the case to be conducted without a jury if he or she is satisfied that the length or complexity of the case is likely to be unduly burdensome to the jury. The Bill proved to be controversial. There was a view that defendants in fraud cases should not have fewer safeguards than those accused of other serious crimes and that there is no justification for treating serious frauds differently from other serious and complex crimes. In particular, many criminal trials depend upon complex evidence, such as that from forensic, medical and technical experts. It was also argued that the length of fraud trials and not the method of trial needs to be addressed.

Sanctions and White Collar Crime

The question of criminal sanctions has been considered generally in the White Paper on Crime *Criminal Sanctions* Discussion Document, but some specific issues arise insofar as sanctions for white collar offences are concerned. It is sometimes argued that where crimes are economic in nature, the punishment should be as well.

The *Criminal Sanctions* Discussion Document drew attention to the limitations of imprisonment as a deterrent and some evidence suggests that these limitations also apply to the white collar criminal (Weisburd and Waring 2001). Instead, restitution by white collar offenders to victims might be considered to be more constructive and economically efficient, because the offender and not the taxpayer pays for the losses caused by illegal activity. White collar offenders are more likely to have assets and to be in a position to pay fines and/or provide substantial economic restitution to their victims. From society's perspective this may be preferable to imposing a prison sentence.

Furthermore, the 'naming and shaming' of a white collar criminal may amount to a substantial penalty in any event, especially if coupled with loss of position or professional status and privileges. Indeed, to the extent that position and status enabled the person to commit the crime in the first place, its loss upon conviction greatly inhibits further opportunities for offending.

Notwithstanding these arguments, there is nevertheless a legitimate concern that white collar criminals should not be treated more leniently than other criminals and that the range of penalties applied should therefore include imprisonment.

Recent debates on prosecuting white collar crime have looked to high profile cases in the US that have resulted in lengthy sentences being imposed by the courts. While long sentences have been handed down, they need to be viewed in comparative terms with sentence length generally in the US. The wide range of penalties provided for white-collar offences in US legislation should also not be overlooked. They include fines, house arrest, community confinement, paying the cost of prosecution, forfeitures, restitution, supervised release. House arrest, for example, has been increasingly used for white collar offenders in response to prison over-crowding (Freidrichs 2007).

Other jurisdictions are addressing the question of sanctions for white collar offenders. Notably, Canada is proposing to amend the fraud provisions of its Criminal Code to respond better to victims of economic crime by providing tougher sentences for offenders. It is intended that sentencing for large-scale fraud should reflect the serious nature of the crime. The proposed legislation would include a two-year mandatory minimum sentence for fraud over \$1million, as well as new statutory aggravating factors that can be applied to sentencing in fraud cases. It would provide the court with the powers to impose a prohibition order preventing the offender having employment or working in a volunteer capacity where they would have authority over other people's money. Additional proposed measures are intended to improve the responsiveness of the Canadian justice system to the needs of victims of fraud through restitution and community impact statements. This latter initiative would permit the Court to seek a Community Impact Statement that would describe

the losses suffered as a result of the fraud perpetrated against a particular community (e.g. a neighbourhood, an association or group).

Bribery and Corruption

Defining bribery and corruption

Bribery is the offering, promising or giving of something in order to improperly influence another in carrying out their duties. Every bribery transaction involves a supply side and a demand side. In some cases, intermediaries are involved in transmitting the bribe, and in certain instances, the bribe is transferred to a third party for that person's benefit rather than for the benefit of the public official. Normally, a private individual or business carries out the supply side of the transaction, but public officials may also initiate bribes. Corruption is defined as 'the misuse of entrusted power for private gain'¹³. It can take many forms in the public and private sectors. Public corruption involves the misuse of public office for private gain, while private corruption is between individuals in the private sector, for example, organised criminals extorting money from a local business.

Responses to Bribery and Corruption

The fight against bribery and corruption has been strengthened substantially on national and international levels in the last number of years. The Prevention of Corruption (Amendment) Act, 2001 gave effect to a number of international Conventions¹⁴.

The Act introduced in certain cases relating to holders of public office a presumption of corruption. Therefore, in criminal proceedings against public officials, if it is proved that any gift, consideration, or advantage has been given to an official and that the person who gave the gift or on whose behalf the gift was given had an interest in the discharge by the official of certain functions, the gift is deemed to have been given and received corruptly unless the contrary is proved (section 4). The section applies to the granting, refusal, withdrawal or revocation by the State of any licence, permit, certificate, authorisation or similar permission. It also applies to the making of decisions relating to the acquisition or sale of property by the State and to any function of the State under the Planning Acts.

Companies can be prosecuted in Ireland if found guilty of offences under the Act, including bribing foreign public officials by Irish nationals and companies and their agents abroad. Some of the consequences of a conviction include:

¹³ See Transparency International Ireland website at http://www.transparency.ie/about_cor/default.html

¹⁴ Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union Official Journal C 195 , 25/06/1997 p.2 - 11; OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 21/1197; and Council of Europe Criminal Law Convention on Corruption 27/01/99.

- prosecution resulting in up to 10 years imprisonment and an unlimited fine;
- seizure of a suspected bribe by the Criminal Assets Bureau (*section 23, Proceeds of Crime Act 2005*);
- possible prevention from bidding on any public contract within the EU; and
- if found to have bribed on projects funded by the World Bank or other international financial institutions, a company can be debarred from bidding on contracts funded by the World Bank, the International Monetary Fund and other institutions.

In 2008, the Minister for Justice, Equality and Law Reform published the Prevention of Corruption (Amendment) Bill 2008 and also launched the Tackling Bribery and Corruption website (www.anticorruption.ie) to raise awareness of Ireland's commitments to tackle corruption. The website, although set up by the Department of Justice, Equality and Law Reform, is one element of a collaborative approach by Government Departments and Agencies to the issue. It informs the public about the consequences of bribery and corruption, both for individuals and for companies working in an international business environment. It also provides access to the relevant Conventions as well as information on how and where to make complaints in situations where they suspect bribery and corruption may be taking place.

The Ethics in Public Office Act 1995 strengthened Irish anti-corruption legislation and requires designated office holders to make a declaration of their property interests and any gifts received by them above a certain sum. Failure to make appropriate disclosure or the making of wrong disclosure is a criminal offence. The Criminal Justice (Theft and Fraud Offences) Act 2001 also contains some legislative provisions against corruption.

Prosecutions for Corruption in Ireland

Over the last decade or so a change in public attitudes due to a greater awareness of the wide-reaching effects of corruption and legislative change have led to a higher rate of prosecution of corruption in Ireland than heretofore.

In 2009, the Council of Europe's Group of States against Corruption (GRECO) published its Third Round Evaluation Report on Ireland. It reports that in the period 2005-2008, 17 prosecutions were directed under the Prevention of Corruption Acts. Prosecutions on indictment were directed in 12 of these cases. Ten cases resulted in convictions on indictment, one person was acquitted, and one case could not proceed due to a serious illness on the part of a key witness. Sentences of imprisonment were handed down in four cases, typically in the 18-30 month range. In the remaining cases, suspended sentences, usually in the 6-12 month range, and in some of the cases a fine were imposed. The maximum fine imposed was €20,000. Summary disposal on a plea of guilty only, was directed in 4 cases pursuant to section 13 of the Criminal Procedure Act 1997 (i.e. the Office of the Director of Public Prosecutions allowed the case to be disposed of in the District Court, as the person pleaded guilty). Two less serious cases were disposed of summarily in the District Court (Council of Europe, GRECO 2009).

The GRECO report gives examples of some of the cases involved. For example, a member of An Garda Síochána was sentenced to four and a half years in prison on

conviction of receiving a bribe of €18,000. In another case, the accused person was sentenced to one year in prison, but the conviction was overturned on appeal. In 2007, three officials and a law agent were convicted of bribery and received suspended sentences along with a collective fine of €50,000. In a case under the Electoral Acts, a person in public office was prosecuted for failing to disclose a political donation. A public official (a former Minister) was found to have, knowingly or wilfully declared false information in relation to his tax affairs, by failing to declare income and was sentenced to 6 months in prison. A local councillor in breach of the ethics legislation as regards land re-zoning, pleaded guilty to seeking to influence a decision of the local authority and charges were successfully brought under the Local Government Act 2001. Another official convicted of fraud, attempted theft, deception and false accounting for the misappropriation of council funds was given a one year sentence and fined €75,000 (Council of Europe, GRECO 2009).

GRECO¹⁵ Third Round Evaluation Report on Ireland

The latest GRECO report on Ireland noted that overall, Irish criminal law complies with the relevant provisions of the Council of Europe Criminal Law Convention on Corruption and its Additional Protocol. The Report states that reform of current legislation could bring greater clarity to the relevant bribery provisions and benefit legal practitioners and the wider public. The Report raises the question of the lack of jurisdiction by the Irish authorities over a national who commits a bribery offence abroad, when this person does not have the status of a public official. (This matter is being addressed in the Prevention of Corruption (Amendment) Bill 2008.)

A Collaborative Approach to Tackling Corruption

The need to tackle corruption from a number of fronts is generally agreed. The UN Global Compact states that 'businesses should work against corruption in all its forms....' (UN 2000). Companies with anti-corruption programmes are found to suffer up to 50 per cent fewer incidents of corruption than their counterparts. Other stakeholders seen as critical in addressing and preventing corruption include "key gatekeepers" such as auditors and accountants as well as the media and consumer and other interested organisations (Transparency International 2009).

Whistleblower Protection

Disclosure of information, in good faith and in the public interest, more commonly called 'whistleblowing' describes the reporting, usually by an employee, of a wrongdoing (e.g. corruption or fraud) by an employer or in an organisation. Given the clandestine nature of much corruption and the fact that both parties to the transaction are often culpable, whistleblowing has been found to provide the primary source for detection of fraudulent behaviour in enterprises (KPMG 2007). Notwithstanding the value of whistleblowing, there can be negative perceptions around whistleblowers as these have traditionally been viewed as informers or

¹⁵ Council of Europe Group of States against Corruption.

disloyal; although that outlook is believed to be changing (Transparency International 2010).

Any system of confidential reporting of suspected offences is complicated and has potential for adverse consequences for the whistleblower, the organisation involved, and other stakeholders. For example, making disclosures anonymously is legally complex and involves consideration of matters such as data protection, privacy and other rights relevant to the person/organisation at the centre of the disclosures. In fact, the fear of defamation claims could prevent a *bona fide* whistleblower from providing important information. Furthermore, the anonymity afforded to whistleblowers is difficult to maintain where the matter is likely to be the subject of judicial proceedings.

Safeguards for whistleblowers against legal action or reprisal for reporting a wrongdoing can be found in legal frameworks and company anti-corruption policies and codes. At an international level, a number of Conventions address whistleblower protection: the UN Convention against Corruption (2003), the Council of Europe Criminal Law Convention on Corruption (1999), and the Council of Europe Civil Law Convention on Corruption (1999).

Under Irish law no one Government Department has exclusive responsibility for the protection of whistleblowers. Following consideration by Government in 2006, it was agreed that the issue would be dealt with on a sectoral basis, that is to say, that individual statutes would, where appropriate, contain specific whistleblower protection provisions related to the activities covered by the legislation in question. This has resulted in provisions for whistleblower protection in a wide number of areas and activities. Appendix G lists some relevant statutes and Bills.

An alternative view is that a sectoral approach should be replaced with a generic one to protect whistleblowers in the public, private and non-profit sectors¹⁶, and that 'the level of awards to whistleblowers that have been subject to reprisal should be of an amount that is "just and equitable" in the circumstances' (Transparency International 2010). That recommendation has been endorsed by the Standards in Public Office Commission which said that the introduction of a comprehensive public interest disclosure and whistleblower protection 'would send out a clear signal that wrongdoing is not to be tolerated' (Standards in Public Office Commission 2010).

Insofar as offences of corruption are concerned, the Prevention of Corruption (Amendment) Bill 2008, currently under consideration by the Dáil, contains a provision affording protection to persons who, in good faith, report suspected corruption offences, as set out in that Bill.

A Bill to be brought before the Houses of the Oireachtas in the autumn will enhance the powers and functions of the restructured Central Bank, particularly concerning the prudential supervision of individual financial institutions; the conduct of business, including the protection of consumer interests; and the overall stability of the financial system. In the context of this Bill the Government will look at the need for specific

¹⁶ The Whistleblowers Protection Bill 2010 was initiated in Dáil Éireann by the Labour Party on 28 January 2010.

legislative protection for whistleblowers in the banking and financial services sectors and will draw on recent experience in Ireland, as well as experience in other jurisdictions.

Whistleblower Protection in Other Jurisdictions

There is no standardised approach in other jurisdictions to whistleblowing. For example, recent financial reforms in the US include financial incentives for whistleblowers that expand a bounty programme compensating whistleblowers who report fraudulent or corrupt activity by their employer. A new fund will pay out between 10% and 30% of the recovered money from a violation of more than \$1 million.

In the United Kingdom, the Public Interest Disclosures Act 1998 provides a basis for whistleblower protection. The Act applies to employees raising genuine concerns about crimes, civil offences — including negligence, breach of contract or administrative law — miscarriages of justice, dangers to health and safety or the environment, and the cover-up of any of these. The Act provides that disclosures may be made by employees and, depending on the circumstances, to the employer, regulators or more widely to the police or MPs, for example. Generally, disclosures are protected where they are made in good faith and where the whistleblower has a reasonable belief that the information tends to show the occurrence of malpractice. Additional requirements apply to disclosures to regulators or wider disclosures, for example, to ensure disclosures are not made for personal gain. Gagging clauses in employment contracts are void in so far as they conflict with the Act. The Act does not provide protection for breaches of the Official Secrets Act or other secrecy provisions. Where a whistleblower is victimised or dismissed in breach of the Act, they can claim for compensation from an employment tribunal.

Tribunals of Inquiry and Commissions of Investigation

Difficulties uncovering and investigating corruption and bribery using traditional methods have been acknowledged (Kilcommins et. al. 2004) and have given rise to the appointment of tribunals of inquiry under the Tribunals of Inquiry (Evidence) Acts 1921 to 2004. Tribunals of inquiry are not courts: they are not involved in the administration of justice, and they have no power to determine civil or criminal liability. The main function of a tribunal of inquiry is to determine the facts in relation to a matter of legitimate public interest which has been identified by its terms of reference and, where appropriate, to make recommendations as to how to prevent a reoccurrence of the matter (Law Reform Commission 2005a).

The Law Reform Commission (2005) in its report on public inquiries noted that a public inquiry may have a significant impact on 'downstream' criminal proceedings. If evidence tendered before a public inquiry is used in subsequent criminal proceedings, this may constitute a breach of the accused person's constitutional right to the privilege against self-incrimination, and adverse publicity generated by a public inquiry may be so unfair as to render a fair trial impossible. The Commission stated that careful consideration should be given to the establishment of tribunals of inquiry

and that they should not be used as a substitute for, or as a preliminary to, criminal proceedings. Tribunals have also been the subject of much criticism because of perceived slow progress and high costs. A Commission of Investigation (under the Commissions of Investigation Act 2004) provides a less expensive and speedier method of investigating matters of significant public concern than a tribunal of inquiry.

The Tribunals of Inquiry Bill 2005 provides for a comprehensive reform and consolidation of the current legislation relating to tribunals of inquiry. It will put in place a modern statutory framework governing all aspects of the operation of a tribunal, from the time of its establishment to the publication of its final report. It sets out detailed procedures of operation and reporting, as well as providing for the suspension and dissolution of a tribunal.

The Bill implements, in large part, the recommendations contained in the Law Reform Commission's 2005 report on Public Inquiries including Tribunals of Inquiry, particularly those relating to the more efficient management and operation of inquiries. The Bill also contains most of the recommendations made in the Comptroller and Auditor General's special report on Tribunals of Inquiry published in 2009.

Regulatory Crime

What are Regulatory Offences?

Regulatory offences are intended to deter potential offenders from harmful behaviour and are generally enforced by independent, statutory, sectoral regulators. Regulatory offences tend to arise in relatively specialist areas, such as:

- financial activity
- trading standards
- environmental protection
- health and safety in the workplace
- employment rights
- immigration controls (including employment permits)
- food safety

Such offences can include financial malpractice, illegal anti-competitive practices, environmental pollution, harms caused in the workplace, the sale of defective and unsafe products, illegal treatment of workers, and breaches of food safety standards.

Enforcement of Regulatory Offences

In regulatory law, the defendant is often a company, or someone who is prosecuted because of their role within a company or organisation. A breach of the regulatory framework may constitute a criminal offence, although in some instances the degree of intent need not match the level which is usually required to constitute a crime. In some instances companies can be held liable simply if their actions gave rise to a proscribed activity, while in others, negligence or failure to take reasonable precautions must be proven.

The maximum sentencing powers for the courts are set out in the relevant statute or statutory instrument and can include the imposition of a financial penalty or custody. Fines are generally the most common form of sanction (see Annual Reports of the Courts Service) and those imposed on companies tend to be higher than those imposed on individuals.

Other enforcement tools available to regulatory bodies include site inspections, notices of non-compliance, civil sanctions such as closure or disqualification, and prosecution. In the area of financial regulation, for example, the Financial Regulator's enforcement tools also include, the powers to impose administrative sanctions, to issue directions, to seek the appointment of an administrator by the High Court, to refer matters to other authorities (An Garda Síochána, Office of the Director of Corporate Enforcement, Office of the Revenue Commissioners). In addition, the Financial Regulator can revoke companies' authorisations, and in certain limited circumstances seek the removal of officers from firms. Under the Central Bank Reform Act 2010, the Financial Regulator has been given new statutory powers where

it has concerns about the fitness and probity of people employed in 'controlled functions'. These include the power to suspend people and to issue prohibition notices forbidding them to carry out a controlled function for a maximum period of two months. The civil courts have a role in determining how long suspensions or prohibitions may last beyond that.

It has been suggested that, internationally, regulatory agencies have considerable discretion in exercising oversight and referrals for criminal prosecutions are rare - a 'light-touch' approach believed to reflect concerns for the economic health of a country or industry (Hawkins 2003; Yeager 1993 as cited in Shover and Scroggins 2009). The emphasis tends to be on ensuring compliance with regulations on the part of organisations which are pursuing what is, at an underlying level, usually legitimate economic activity. Difficulties in controlling and regulating companies can be exacerbated by their presence across a number of jurisdictions, while the legal systems regulating them tend to be limited by national territories. Furthermore, companies can evade national laws by relocating a process illegal in one jurisdiction to a jurisdiction where it is not illegal (McCullagh 2002).

The Extent of Regulatory Crime in Ireland

Calculating the extent of regulatory crime in Ireland is difficult for a number of reasons. As there are various specialised enforcement agencies responsible for overseeing the operations of companies and organisations there is no single source for regulatory crime statistics. It has been argued that an analysis of the information produced by those agencies is difficult to interpret because recorded violations can be limited by the resources available to those agencies and the way in which those resources are deployed, whether through random, unannounced inspections or through inspections in response to complaints (McCullagh 2002). In addition, such complaints may be rare because individual victims of regulatory crime may be hard to identify (e.g. in the case of crime affecting public health or the environment rather than an individual). The victims may be unaware of their victimisation (e.g. unaware that they are using unsafe products), may be reluctant to press for prosecutions for reputational reasons, or have difficulty establishing their victim status (National Crime Forum 1998). It is also argued that because much regulation is designed to use prosecution as a last resort, the number of prosecuted offenders is not indicative of the theoretical level of regulatory crime (Nelken 2002). In some cases, the fines available under the civil sanctions regime may exceed the level of fine that may be imposed by the Courts. Furthermore, it may be that civil sanctioning powers are more nuanced and therefore, more appropriate to ensure that earlier compliance is achieved and that charges or fees are re-imbursed to consumers at the earliest opportunity.

Crime and victimisation surveys are an important source of information on the characteristics of criminal victimisation and on the number and types of crimes not reported to law enforcement authorities. A Crime and Victimisation module was included in the Quarterly National Household Survey in 1998, 2003 and 2006 with modules focused on the more conventional crimes such as burglary, theft, and vandalism. That said, the EU International Crime Survey 2004-2005¹⁷ also addresses

¹⁷ See <http://www.europeansafetyobservatory.eu>

consumer fraud, intellectual property and corruption. There may well be a case for including white collar and regulatory crimes in future Crime and Victimisation surveys to get a more accurate picture of the prevalence of such crimes in Ireland.

Responses to Regulatory Crime in Ireland

A range of regulatory bodies make up the first line of oversight of organisations and their activities. Recently reported enforcement activities of some Irish regulatory bodies are described in the following paragraphs.

The Irish Financial Services Regulatory Authority (Financial Regulator) functions primarily arise under the Central Bank Act 1942 as amended by the Central Bank & Financial Services Authority of Ireland Act 2003 and the Central Bank & Financial Services Authority of Ireland Act 2004.

The Financial Regulator is responsible for the regulation of almost all financial services firms in Ireland including, banks, insurance/reinsurance undertakings, investment intermediaries, mortgage intermediaries, moneylenders and credit unions. Its role has been brought into focus in the last few years as a result of the financial crisis.

In August 2004, under the Central Bank and Financial Services Authority of Ireland Act, 2004, the Financial Regulator was given powers to impose sanctions for prescribed contraventions of legislation or regulatory rules by the majority of entities it regulates.

Following a public consultation in 2005, the Financial Regulator published an outline and guidelines on how it intended to use its administrative sanctioning powers.

In 2005, the Financial Regulator was given additional sanctioning powers under the Market Abuse (Directive 2003/6/EC) Regulations 2005 to impose sanctions on various entities and under S. I. No. 324 of 2005 - Prospectus (Directive 2003/71/EC) Regulations 2005. In 2007, the Financial Regulator was given further sanctioning powers under S.I. No. 277 of 2007 - Transparency (Directive 2004/109/EC) Regulations 2007.

Details of all sanctions in any given year are published annually in its Annual Report. During 2008 and 2009, the Financial Regulator entered into 19 settlement agreements with regulated entities/individuals under its Administrative Sanctions Procedures. A number of those sanctions arose following themed inspections carried out by the Financial Regulator.

The sanctions imposed include three disqualifications of individuals from being persons concerned in the management of a regulated financial services provider, 18 fines (amounting in aggregate to €7,367,000) and 17 reprimands. Details of the individual sanctions imposed are available on the Financial Regulator's website www.financialregulator.ie

Under the Market Abuse Administrative Sanction Procedure to date, the Financial Regulator has imposed sanctions on two companies and one individual resulting in fines of €15,000.

As stated earlier, the Financial Regulator may use its regulatory powers to refuse to grant or renew licences. In general, decisions to refuse or grant licences are appealable to the Irish Financial Services Appeals Tribunal (the Appeals Tribunal). Since the Appeals Tribunal was established there have been four appeals of such regulatory decisions. Those appeals resulted in one decision being affirmed by the Appeals Tribunal, two appeals being struck out and one decision being remitted to the Financial Regulator to re-decide. Details of the Appeals Tribunal's decisions where applicable judgements are available on the Appeals Tribunal's website at www.ifsat.ie

Since 2008, the Financial Regulator has sought the appointment by the High Court of two administrators in relation to a reinsurance company and an insurance company. In the Central Bank and Financial Services Authority of Ireland Annual Report (2009) it is noted that since September 2008, regulation of the institutions benefiting from the State guarantee is more intensive, and reporting requirements for those institutions on governance issues has tightened. A number of formal investigations resulted in matters being brought to the attention of a number of authorities including, An Garda Síochána, the Office of the Director of Corporate Enforcement and the Irish Auditing and Accounting Supervisory Authority. However, certain restrictions apply in circumstances where both a criminal prosecution and administrative sanction are possible. For example, no criminal prosecution may be brought if the Administrative Sanctions Procedure leads to a financial penalty being imposed. If a criminal prosecution has been brought in respect of an offence that also involves a prescribed contravention, and the subject of the sanction is prosecuted and found either guilty or not guilty, then no monetary penalty may be imposed under the Administrative Sanctions Procedure.

In light of the limited penalties available under summary criminal prosecutions, sometimes it is more appropriate to pursue prescribed contraventions pursuant to the Administrative Sanctions Procedure e.g. where it is appropriate to seek disqualification of a person to be concerned in the management of a Financial Service Provider.

The Central Bank Reform Act 2010 is designed to reform the Central Bank and the Irish Financial Services Regulatory Authority (IFSRA). The Act provides for a single fully-integrated Central Bank replacing the two-pillar structure of the Central Bank and Financial Services Authority with a unitary Board called the Central Bank Commission. On commencement, the Act will dissolve the Financial Services Regulatory Authority and abolish the posts of Chief Executive of IFSRA and Consumer Director. Two new posts, Head of Financial Regulation and Head of Central Banking will be established under the new structure.

This is the first stage in a three-stage legislative programme to create a new fully-integrated structure for financial regulation, to enhance the powers and functions of the Central Bank and to consolidate existing legislation. It is seen as an important element in a comprehensive programme to put in place a domestic regulatory framework for financial services intended to maintain the stability of the financial

system and to provide for effective and efficient supervision of financial institutions and markets.

The Competition Authority is responsible for, *inter alia*, the enforcement of competition law under the Competition Acts 2002 and 2006. Sections 4 and 5 of the 2002 Act prohibit anti-competitive behaviour and an infringement of those sections is a criminal offence. The Competition Authority has the right either to seek a criminal prosecution or to pursue the matter in the civil courts or both, where such an infringement arises.

The Competition Authority has identified the pursuit of cartels as a top priority. Cartels are by their very nature conspiratorial. The participants are secretive and are notoriously difficult to detect and prosecute successfully. The Cartel Immunity Programme which is operated jointly by the Competition Authority and the Office of the DPP encourages self-reporting of unlawful cartels by offenders (individuals and corporate undertakings) as early as possible. The Programme provides for the granting of immunity for an offender who violates the Competition Acts, who comes forward to volunteer information which leads to the detection and prosecution of other offenders who might otherwise escape detection. While applications for immunity are made to the Competition Authority, only the DPP can grant immunity on foot of a recommendation by the Competition Authority to grant immunity.

Since 2000, 33 convictions have been secured for offences under the Competition Acts. Ten of those convictions were secured in 2009 by the DPP in relation to the Competition Authority's investigation into price fixing of Citroën vehicles by members of the Citroën Dealers Association. Sanctions were imposed on four undertakings and five individuals who pleaded guilty to fixing prices on Citroën cars and one individual who pleaded guilty to aiding and abetting the commission of an offence of price fixing. Suspended custodial sentences were imposed by the Courts ranging from six to nine months, in addition to fines ranging from €2,000 to €80,000. In one instance, failure to pay the fine imposed resulted in a prison sentence of 28 days (Competition Authority 2010).

The Office of the Director of Corporate Enforcement (ODCE) is statutorily responsible for securing compliance with the Companies Acts and investigates breaches of these Acts and arranges prosecutions. Enforcement Teams of the Office include members of An Garda Síochána assigned to the ODCE. The ODCE may take criminal or civil enforcement actions. The following table gives an overview of ODCE criminal enforcement proceedings in 2009 as compared with 2008.

Overview of ODCE Criminal Enforcement Proceedings in 2009 v. 2008		
Successful	9	4
Unsuccessful	-	-
Withdrawn	1	-
Ongoing	3	-

Source: Office of the Director of Corporate Enforcement Annual Report 2009

The Health and Safety Authority is responsible for enforcing compliance with occupational health and safety law under the Safety, Health and Welfare at Work Act 2005. A total of 38 prosecutions were concluded by the Authority in 2009, of which 23 were on indictment. The first prosecution on indictment under section 80 of the 2005 Act relating to the liability of directors and officers of an undertaking was successfully concluded. Fines totalling €708,850 were imposed for breaches of safety and health legislation during 2008 (Health and Safety Authority 2010).

The National Employment Rights Authority (NERA) is an Office of the Department of Enterprise, Trade and Innovation which aims to secure compliance with employment rights legislation and to foster a culture of compliance in Ireland through: information, inspection, enforcement, prosecution, and protection of young persons

NERA's activities help not only individual workers to obtain their entitlements but also ensure that employers operate on a level playing pitch so that no competitive advantage can be gained by illegally undercutting workers' statutory entitlements in the area of pay and conditions. NERA aims to achieve voluntary compliance and to rectify any identified breaches and to have any sums of money due to employees paid. However, where employers either refuse or fail to rectify identified breaches and/or to pay money due to their employees they are referred for prosecution. NERA can also initiate District Court criminal prosecution cases where an employer has failed to comply with a Labour Court order directing the employer in question to register employees in a relevant pension scheme and/or to remit contributions to the scheme. In 2009, a total of 108 employers were referred for prosecution compared with 70 in 2008. In 27 cases, convictions were secured with fines ranging from €300 to €3,000 (NERA 2010).

The Office of the Revenue Commissioners is responsible for the assessment, collection and management of taxes and duties, including PRSI and other levies on behalf of other Departments. The Office also has responsibility for the enforcement of import and export controls, and, working with other State Agencies, for the interdiction of drugs. Where non-compliance with tax and customs legislation is detected, a range of compliance and enforcement mechanisms, including criminal prosecution, are available to the Revenue Commissioners. The application of appropriate sanctions in cases of serious non-compliance with tax and customs legislation is an essential element in maintaining public confidence in the tax system and in customs controls.

In 2008, the Revenue Commissioners obtained 20 Court convictions for serious tax and duty evasion. In one case, a 3-year custodial sentence suspended to 6 months imprisonment was imposed, the seventh prison sentence imposed by the Courts since 2000 for serious tax offences. At the end of 2008, there were 118 cases at various stages of the prosecution process. During 2008, the Revenue Commissioners expanded the range of prosecutions initiated to include single-issue prosecutions and selected 26 such cases for investigation/prosecution (Revenue Commissioners 2009). In 2009, the Revenue Commissioners obtained 15 Court convictions for serious tax and duty evasion. Of these, 6 cases related to serious tax evasion, down from 15 in 2008. In one case, an individual was released on appeal after serving 4 months of a 20 month sentence. There were 9 Court convictions in 2009 for serious Customs and

Excise offences, four more than in 2008. At the end of 2009, there were 123 cases at various stages of the prosecution process, an increase of 4% on the previous year. During 2009, a total of 548 summary prosecutions were secured, resulting in the imposition of fines amounting to over €864,840. (Revenue Commissioners 2010).

The Environmental Protection Agency (EPA) has a wide range of functions to protect the environment and its primary activities include law enforcement under the Environmental Agency Protection Act 1992. Legal action pursued by the EPA in 2008 included:

- Twenty cases prosecuted in the District Court, 17 of which were against licensees, two related to Waste Electrical and Electronic Equipment Regulations and one related to Drinking Water Regulations. Convictions were handed down in 14 of these cases with the Probation Act being applied in six cases.
- Three cases were refused jurisdiction before the District Courts. Detailed investigations were carried out on these and other cases, resulting in the submission of three files to the Office of the DPP (Environmental Protection Agency 2009).

A review of the EPA's function and role is currently underway.

The Food Safety Authority of Ireland is responsible for the enforcing and monitoring food safety legislation in Ireland (Food Safety Authority of Ireland Act 1998). Twenty eight prosecutions, under food hygiene legislation, were enforced in 2008. All of these prosecutions were made by the Health Service Executive (Food Safety Authority of Ireland 2009).

Corporate Manslaughter

Another area which should be mentioned in this context is corporate manslaughter.

In 2005, the Law Reform Commission published its "Report on Corporate Killing". As corporate entities can be held criminally liable, it is possible that a corporate body could be charged with the common law offence of gross negligence manslaughter. This is also how the liability of individuals would currently be assessed. However, the Commission believes there is considerable ambiguity as to the nature of corporate criminal liability for manslaughter in Ireland. Consequently, it has recommended a statutory corporate manslaughter offence based on a test of gross negligence formulated around a breach of duty of care. It further recommended a derivative or secondary offence of "grossly negligent management causing death". This would provide that where a corporate entity has been convicted of the proposed manslaughter offence, a senior manager, director, or any person acting in a similar capacity and who is found to have acted with gross negligence in a way that contributed to the corporate offence could also be prosecuted personally (Law Reform Commission 2005b).

The Commission's recommendations are currently the subject of consultations with Government Departments. As is normal practice, any legislative proposals in this area

would have to be the subject of a Regulatory Impact Analysis, including consultations with stakeholders.

Regulatory Controls - the current debate

Regulatory frameworks and enforcement mechanisms have been the subject of recent public discourse, primarily as a result of the financial and economic crisis.

As mentioned, the approach to regulation of financial services is undergoing change by means of the Central Bank Reform Act 2010 which will streamline the relevant oversight structures.

Aside from structural changes to the regulatory architecture, other changes to the regulatory regime have been mooted with a view to addressing its perceived weaknesses and failures. It has, for example, been suggested that regulators be given a greater role in the prosecution of offences on indictment as, at present, regulators can only prosecute in the District Court. It has recently been argued that the designation of the DPP as the exclusive prosecutor on indictment might reduce the likelihood of the use of prosecution as a regulatory tool by prosecutors. Should the District Court not accept jurisdiction in a summary prosecution instituted by a regulator, it is argued that the regulator is seen to have lost control in the case. Where a case is prosecuted by the DPP the regulator does not have the final say on what plea is acceptable or how the case should be disposed of¹⁸. Commenting on these views, the DPP advocated caution in departing from the current single agency approach to prosecuting all indictable crime. He also emphasised the close cooperation and consultation between the Office of the DPP and the relevant regulator when prosecuting on indictment in matters pertaining to a regulator's function¹⁹.

The legislative powers accorded to regulatory bodies has also come in for comment. It has been argued that regulatory offences appear to be drafted with little reference to the possibility of prosecution and that the regulatory prosecutor is not in a position to bring additional charges of a more general, criminal type to avoid the perceived pitfalls of exclusively regulatory offences²⁰.

However, another view is that regulatory bodies have been given 'extensive powers of entry, examination, search and seizure' to 'promote outcomes that are more socially beneficial than the destructive effects of the criminal justice system'²¹. As regulatory crimes can be difficult to detect and control and it is difficult to prove intent where there is a diffusion of responsibilities within organisations 'a premium is.... placed on

¹⁸ Farrell, R. (2010) 'Prosecutors, Regulators, Trial by Jury and the Prosecutor's Discretion. In 11th Annual National Prosecutors' Conference Proceedings. April, 2010. Dublin. Available at <http://www.dppireland.ie/> [Accessed 5/05/2010].

¹⁹ Hamilton, J. (2010) 'Opening Address. In 11th Annual National Prosecutors' Conference Proceedings. April, 2010. Dublin. Available at <http://www.dppireland.ie/> [Accessed 5/05/2010].

²⁰ Farrell, R. op.cit.

²¹ Vaughan, B. (2009) 'The Maginot Line of Irish Criminology. Part I: The Rise of the Regulatory Impulse. Irish Criminal Law Journal Vol 19. No. 2. pp.34-39.

achieving compliance without the need for prosecution' (the need to resort to prosecution being seen as a failure of regulation) (Nelken 2002).

A further area of debate surrounds the possible scope for greater use of administrative sanctions. Following from the discussions and conclusions of the 'Macrory Report' in the UK (2008), the Regulatory Enforcement and Sanctions Act 2008 (UK) has created a range of new provisions to give enforcement agencies additional powers to address regulatory wrongdoing, including significant administrative penalties. These are intended to provide for more efficient, specialised and substantial responses to wrongdoing than arise from attempts to bring criminal prosecutions in traditional courts. There are considered, however, to be constitutional limits to the scope to extend the use of administrative penalties in an Irish context, arising from the exclusive authority of the courts in the administration of justice (Art. 34) and the restriction of the determination of criminal matters to the courts (Art 37).

Conclusion

The purpose of this paper has been to provide an overview of some of the complex types of criminal activity faced in modern society.

The harms caused by these activities are substantial and widespread. There are many direct victims, particularly those affected by armed crime, drug crime and human trafficking and exploitation. Less immediately visible is the significant damage caused to legitimate business and private individuals through counterfeiting and fraud, and to the wider community through regulatory abuses and fiscal fraud. New technologies, while providing law enforcement agencies with innovative means of preventing and investigating crime, have also contributed to new types of criminal activity.

Those criminals involved in white collar and organised crime are often less visible than those involved in 'street' crime and can be better equipped to evade detection and prosecution. While some of the crimes discussed in this document may be less likely to involve violence or generate the same fear on the part of individuals, they can nevertheless give rise to serious harm.

It is important that society's overall response to crime includes measures to tackle these offences and that it is sufficiently flexible and adaptable to anticipate new and emerging challenges. The nature of this type of crime calls for partnerships, not just between Government Departments and agencies, but also between communities, businesses and professions, who are often well-placed to identify new trends and propose solutions.

Questions for Consideration

- Are there legislative or structural approaches being applied in other jurisdictions which would have value here in combating organised and armed gang crime?
- What impact can community development programmes have on organised crime?
- Many of the crimes considered in this document depend on demand for illicit goods and services by ordinary citizens. What can be done to reduce such demand?
- Are there legislative, procedural or other approaches in relation to white collar crime being applied in other jurisdictions which would have value in Ireland?
- In the context of regulatory crime, how can an effective and robust regulatory system be best enforced?
- In tackling white collar crime what specific criminal justice strategies might be effective?
- How best can a response to organised and white collar crime be developed across the private sector and communities?
- How can challenges in terms of investigation, prosecution and sentencing of white collar crime cases be overcome?
- Is there sufficient awareness of the nature and costs of the crimes described in this document? If not, how might that awareness be increased?
- Are there evolving aspects of these crimes which need to be anticipated and for which existing responses will not be adequate?

Appendix A

Legislation relevant to fraud offences

Customs Consolidation Act 1876
Bankers Books Evidence Act 1879
Central Bank Act 1971
Misuse of Drugs Act 1977, as amended
Criminal Justice Act 1984
Data Protection Act 1988
Criminal Justice (Forensic Evidence) Act 1990
Criminal Damage Act 1991
Finance Act 1992
Criminal Evidence Act 1992
Criminal Justice Act 1994
Consumer Credit Act 1995
Criminal Justice (Drug Trafficking) Act 1996
Disclosure of Certain Information for Taxation and Other
Purposes Act 1996
Proceeds of Crime Act 1996
Criminal Justice (Miscellaneous Provisions) Act 1997
Non-Fatal Offences Against the Person Act 1997
Taxes Consolidation Act 1997
Offences Against the State (Amendment) Act 1998
Criminal Justice Act 1999
Finance Act 1999
Copyright & Related Acts 2000
Company Law Enforcement Act 2001
Criminal Justice (Theft and Fraud Offences) Act 2001
Finance Act 2001
Prevention of Corruption (Amendment) Act 2001
Criminal Justice (Illicit Trafficking by Sea) Act 2003
Finance Act 2003
Criminal Justice (Terrorist Offences) Act 2005
Proceeds of Crime (Amendment) Act 2005
Criminal Justice Act 2006
Criminal Justice (Mutual Assistance) Act 2008
Criminal Justice (Money Laundering and Terrorist Financing) Act 2010
Various Companies Acts
Various Employment Acts

Appendix B

Examples of types of fraud

Consumer fraud such as lottery/prize scams; internet auction fraud; advance fee fraud; 'phishing and 'pharming' for identity theft; work at home/business opportunity scams and pyramid schemes.

Cheque fraud such as counterfeit cheques not written or authorised by a legitimate account holder; stolen cheques with forged signature; altered cheques where the cheque is properly issued by the account holder but has been intercepted and the beneficiary or the amount has been altered; new account where an identity is stolen or made up by false documents, an account is opened in that name giving scammers the opportunity to steal money from individuals or businesses; and overpaid cheques where a person is overpaid for an item or service with a forged cheque and asked to refund the change only to discover some time later that the cheque is false.

Credit card fraud includes 'skimming' where criminals attach a false front to the card reader of the bank ATM that captures the card number and transmits it wirelessly to the criminals or where the PIN details are captured by a hidden camera placed on the machine; the use of lost or stolen credit cards; card-not-present fraud where criminals obtain the genuine cardholder's details surreptitiously (e.g. by interception of post or by obtaining the victim's discarded payment receipts) and use those details to purchase goods over the phone or on the Internet which are then sold on by the criminals.

Investment fraud occurs where money entrusted to an individual or company is misappropriated. Investment fraud includes: insider trading where corporate insiders violate their company's confidentiality and secretly share or sell private information to an outsider who uses the information not available to the public to buy or sell company shares to make a profit; stock market fraud including wash-trading²² and false prospectus (where a company produces a false prospectus misrepresenting risks or losses to influence potential shareholders to invest); and high yield investment fraud.

Tax fraud involves failure to pay direct, indirect and excise taxes and duties. VAT fraud is among the most frequent types of trade fraud. Organised criminals use a combination of hijacked and missing trader VAT numbers in order to obtain goods VAT free in one jurisdiction and sell such goods in another jurisdiction without accounting for VAT (An Garda Síochána/ PSNI, 2008). Other forms of tax fraud include, failure to pay to the Revenue Commissioners PAYE and PRSI deducted from employees and VAT collected on the sales of the companies; failure to report cash income; vehicle excise duty evasion; and providing false information in tax returns.

continued overleaf

²² Wash trading happens when an investor simultaneously buys and sells shares of the same company through two different brokers creating the appearance of substantial trading activity that will draw in other investors even though no change in ownership has occurred.

continued

Oils fraud is a fraud of particular relevance to Ireland. One type of such fraud is fuel smuggling which occurs as a direct result of the existence of the border and the price difference arising from differences in rates of duty and currency fluctuations. Criminal gangs have developed ways of evading the payment of duties, including by false invoicing or concealment of oil in hidden tanks. A second type of oils fraud is the misuse and laundering of rebated fuels (e.g. marked gas oil and kerosene). These fuels are subject to reduced duty on condition that they are not used in motor vehicles. Misuse occurs when rebated fuels are used in vehicles and by organised criminals involved in fuel laundering. The laundered fuel is sold as legal fuel giving rise to substantial losses of revenue to the Exchequer. A further cost associated with laundered fuel is the illegal dumping of waste produced during the laundering process. (An Garda Síochána & PSNI, 2008)

Tobacco fraud involves smuggling of both contraband and counterfeit tobacco products in a number of ways, including smuggling by passengers arriving by air and large quantities in commercial freight. One of the major successes during 2009 was the Customs led *Operation Samhna* in October 2009 which involved the seizure of 120.3 million cigarettes and represented the largest seizure of cigarettes to date in the European Union. (The cigarettes had a retail value of about €50 million and a potential revenue at risk of approximately €40 million.) The Revenue Commissioners reported 12 significant seizures in maritime freight during 2009, amounting to 172.45 million cigarettes, of which 127.648 million were counterfeit. The ongoing 'Operation Downstream' targeting smuggled cigarettes at retail outlets, markets and other distribution centres that evaded detection at the point of importation has resulted in 284 seizures totalling almost 10 million cigarettes. (Revenue Commissioners 2010).

Counterfeit currency

'Counterfeit currency is produced without legal sanction of the State or Government to resemble some official form of currency closely enough that it may be confused for genuine currency' (An Garda Síochána/PricewaterhouseCoopers 2009). Europol has noted an increase in the amount of counterfeit Euro banknotes and coins due to the 'skilled use of sophisticated equipment, computers and reproduction' in the case of the former and 'the involvement of professionals from the casting industry' in the case of the latter. Europol also notes that the process can be facilitated by 'low awareness of and insufficient attention to security features... on banknotes' (Europol 2009).

Charities fraud

Charities can be particularly vulnerable to fraud for a range of reasons. They rely on goodwill and trust which can sometimes be abused. People can raise funds for a specific charity without that charity being aware of what is being done in its name. As most charities deal in cash donations it can be difficult to ensure that all such donations are handed over to the charity concerned (Fraud Advisory Panel 2009). In Ireland, the sale of bogus Mass cards was the subject of publicity some years ago. The Charities Act 2009 regulates this and other aspects of the operation of charitable organisations.

Appendix C

Money Laundering Legislation

Extradition (European Convention on the Suppression of Terrorism) Act 1987
Criminal Justice Act, 1994
Proceeds of Crime Act 1996
Criminal Assets Bureau Act, 1996
Criminal Justice (Miscellaneous Provisions) Act, 1997
Criminal Justice (Theft & Fraud Offences) Act 2001
Customs & Excise (Mutual Assistance) Act 2001
European Community (Electronic Money) Regulations 2002
Criminal Justice (Terrorist Offences) Act 2005
Criminal Justice (Money Laundering and Terrorist Financing) Act 2010

Appendix D

The Impact of Counterfeit Goods²³

2009: The UK Border Agency (UKBA) seized £1,646,173 of counterfeit goods coming into the country in just four months from 1 April. The fakes seized by UKBA officers include England football shirts, GHD branded hair straighteners, designer watches, handbags, shoes and cigarettes. The hair straightener and cigarettes were made with potentially dangerous materials.

2009: Fake goods worth around £3m seized in one of the biggest-ever counterfeit raids in Manchester. Customs and trading standards officers swooped on a warehouse after a tip-off and found thousands of boxes of bogus gear. Officials believed the warehouse supplied hundreds of shops and market stalls across the country.

2009: A person died in China due to the explosion of his mobile phone equipped with a counterfeit battery. This was the 20th case of its kind since 2002 in China.

2009: Counterfeit and expired drugs seized in Kenya's Eldoret town. Some of the seized drugs had expired almost 10 years previously while others had been banned but were being displayed on the shelves.

2009: At least 20 infants died of kidney failure in Bangladesh and doctors suspected that they had all taken contaminated paracetamol containing diethylene glycol.

2009: A counterfeit teething medicine for babies mixed with diethylene glycol caused the death of 84 children in Nigeria. Diethylene glycol can damage the liver, the kidneys and the central nervous system.

2009: Italian police seized counterfeit merchandise from China worth more than €20 million during raids on 17 warehouses in Rome.

2008: IBM sued a company that it alleged was selling unsafe counterfeit laptop batteries. The company was alleged to be “offering counterfeit IBM products which posed a substantial threat to the safety of the consuming public.” The discovery of the alleged counterfeits happened after a consumer in Ohio bought a battery for a laptop. The battery caught fire and damaged the laptop. After conducting an examination of the faulty battery, IBM learned that it was not genuine.

2008: 14 people killed and over 125 people hospitalized in Ulan Bator, Mongolia, after a local distillery produced liquor containing methanol.

2008: Drinkers in Buckinghamshire told to be wary of buying cheap bottles of “Glen’s” vodka after counterfeit 70cl bottles were found on sale in Chesham, Aylesbury and Downley. Counterfeit vodka has caused blindness and even death in past instances.

²³ Extracts from website of the United Nations Interregional Crime and Justice Research Institute (<http://counterfeiting.unicri.it/risk.php>)

2008: Milk products contaminated with Melamine, an industrial chemical, poisoned over 54,000 children in China; four died and more than 100 were seriously ill.

2008: A report on the impact of hazardous products on the health and environment of Uganda suggested that millions of people could be at risk from the effects of local markets flooded with thousands of cosmetic products containing deadly chemicals. In some severe cases women had lost their hair or had been bleached as a result of using these cosmetics.

2008: Health authorities in Sierra Leone seized a container filled with banned toothpaste from China, which contained high levels of a toxic substance that could cause kidney and liver failure.

2008: Skin cancer, thinning of the skin and severe nerve tissue damage are just a few of the symptoms caused by fake cosmetics that circulated in Tanzania. Counterfeiters were producing their own cosmetics and repacking them into original packages in order to resell them at higher prices. The problem was further amplified as salon owners and workers did not know how to differentiate the counterfeit cosmetics from the genuine ones.

2008: Police seized a massive quantity of narcotics and counterfeit drugs at an illegal pharmaceutical laboratory in Quebec. The seizure, reported to be worth over \$5 million, contained 44,000 ecstasy pills, 83,000 methamphetamine pills, 35 kilograms of bulk powder which could be used to manufacture another 160,000 ecstasy pills. 25,000 “Viagra” tablets and 31,000 “Cialis” tablets were also seized. The laboratory, was capable of producing over 5 million pills a month.

2008: The Australian medicine regulatory authority recalled five batches of the blood thinning drug “Clexane” after they tested positive for a possible contamination. This was a precautionary measure after traces of “Heparin”, the drug linked to severe allergic reactions and deaths in the United States was found. The U.S. Food and Drug Administration identified the contaminant as over-sulfated chondroitin sulphate, a cheap, fake additive often used in counterfeit pharmaceutical production.

2008: In New Zealand Customs a health warning issued urging the public to buy pharmaceuticals only from authorized pharmacies. The warning came after New Zealand authorities were alerted by the Singapore Health Services that counterfeit “Cialis” was being illegally promoted in Singapore. The counterfeit drug was found to contain dangerous levels of a prescription drug used to treat diabetes. It had reportedly caused the death of one person in Singapore as well as caused adverse reactions in almost 100 people.

2008: Airline parts on sale at popular online consumer auction sites. They included valves, gears, flanges, gauges and radar parts.

Appendix E

Legislative Framework for the Protection of Intellectual Property Rights

In Ireland, the primary legal instruments in the IP protection field are the Patents Act 1992, the Trademarks Act 1996, the Copyright and Related Rights Act 2000, and the Industrial Designs Act 2001. These provide both for civil remedies and criminal sanctions and include provisions on search and seizure, delivery and disposal of infringing goods to help legitimate business and rights-holders to respond to piracy.

The Trade Marks Act 1996 introduced measures to deal with the growing problems of the fraudulent use of trade marks and counterfeiting. It provides trade mark proprietors with rights against acts of infringement and broadened the scope of offences to include use of a mark which is identical to, or nearly resembles, a registered trade mark.

The Industrial Designs Act 2001 provides for, *inter alia*, invalidation and rectification procedures where persons who are not entitled to design rights poach those rights from rightful owners.

The main body of current Irish Patents law is contained in the Patents Act 1992. It sets out detailed procedures for the operation of Ireland's patents system as well as providing for national ratification of the European Patent Convention (EPC) and of the WIPO Patent Co-operation Treaty (PCT). The Patents (Amendment) Act 2006 reflects various obligations under international agreements after the 1992 Act including the TRIPs Agreement of 1995, the revision of the European Patent Convention (EPC) and the WIPO Patent Law Treaty.

The Copyright and Related Rights Act 2000 governs the protection of copyright and provides for moral rights, performers' rights, rights in performances, a database right for non-original databases and for rights and remedies against those who unlawfully circumvent technological protection measures designed to protect copyright materials. It has regularly been acknowledged as a good legislative model. Last year, for example, the Business Software Alliance, in its commentary on its annual study of international software piracy, acknowledged that Ireland has 'one of the most stringent copyright laws in Europe'²⁴.

In addition to primary legislation, a number of Statutory Instruments have been made to give effect to EU Directives and Regulations dealing with a range of issues including, civil enforcement of intellectual property rights and customs actions against goods suspected of infringing certain intellectual property rights.

²⁴ Business Software Alliance <http://www.bsa.org/country>

Appendix F

EU Framework to Protect Intellectual Property Rights

Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, OJ L196, 2.8.2003, p.16

Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights; OJ L157, 30.4.2004, p. 16

A long-term strategy for the enforcement of IPR in third countries. COM(2004)749 of 8.11.2004; OJ C 129, 26.5.2005, p.3.

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Council Resolution of 3 March 2010 on the enforcement of intellectual property rights in the internal market, OJ C 56, 6.3.2010, p.1.

Council Resolution of 25.9.2008 on a comprehensive European anti-counterfeiting and anti-piracy plan , OJ C 253, 4.10.2008, p.1.

Council Resolution of 16 March 2009 on the EU Customs Action Plan to combat IPR infringements for the years 2009 to 2012, OJ C 71 of 25.3.2009, p.1.

Appendix G

Acts and Bills containing Protections for Whistleblowers

Acts

Competition Act 2002
Garda Síochána Act 2005
Safety, Health and Welfare at Work Act 2005
Employment Permits Act 2006
Consumer Protection Act 2007
Communications Regulation (Amendment) Act 2007
Health Act 2007
Chemicals Act 2008
Charities Act 2009
National Asset Management Agency Act 2009
Labour Services (Amendment) Act 2009

Bills

Prevention of Corruption (Amendment) Bill 2008
Employment Law Compliance Bill 2008
Property Services (Regulation) Bill 2009
Employment Agency Regulation Bill 2009

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