

APPENDIX 1

QUESTION NO: 298

**Chun an Aire Dlí agus Cirt agus
Comhionannais**

**To the Minister for Justice and
Equality**

QUESTION: * To ask the Minister for Justice and Equality if he will give an update on plans to regulate cash for gold outlets; and if he will make a statement on the matter.

- Patrick Nulty

* For **WRITTEN** answer on **Tuesday, 8th May, 2012.**

ANSWER:

My Department is examining all relevant criminal justice aspects of the cash for gold trade in consultation with An Garda Síochána and a report of this examination which is at an advanced stage will allow for the necessary comprehensive assessment of the position and the development of any necessary and effective measures to address any gap that currently exists in the law in respect of the matter. I might add that the assessment to which I have referred will have regard to the views of relevant stakeholders.

APPENDIX 2

Criminal Justice (Theft and Fraud Offences) Act 2001

The informal purchase of jewellery is not specifically regulated in criminal legislation; however the circumstances under which jewellery is being bought and/or sold may indicate the commission of certain offences, for example handling stolen property and / or possession of stolen property under sections 17 and 18 of the Criminal Justice (Theft and Fraud Offences) Act, 2001.

Section 17 of the Act in essence provides that a person is guilty of handling stolen property if he or she, knowing that the property was stolen or being reckless as to whether it was stolen, dishonestly receives or arranges to receive it, or undertakes, or assists in, its retention, removal, disposal or realisation by or for the benefit of another person, or arranges to do so. A person guilty of handling stolen property is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 10 years or both.

Section 18 of the Act in essence provides that a person who, without lawful authority or excuse, possesses stolen property knowing that the property was stolen or being reckless as to whether it was stolen, is guilty of an offence. A person guilty of an offence under this section is liable on conviction on indictment to a fine or imprisonment for a term not exceeding 5 years or both.

APPENDIX 3



Chairman

Revenue 

Oifig na gCoimisinéirí Ioncaim
Caisleán Bhaile Átha Cliath
Baile Átha Cliath 2
Éire

Kevin Condon

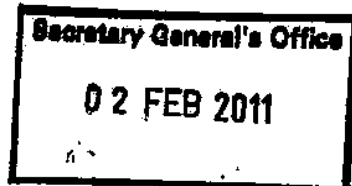
www.revenue.ie

Office of the Revenue Commissioners
Dublin Castle
Dublin 2
Ireland

CRMS 460/11

Mr. Seán Aylward,
Secretary General,
Department of Justice and Law Reform,
94, St. Stephen's Green,
Dublin 2.

28 January 2011



Dear Seán,

Your recent letter to me regarding the "cash for gold" businesses was very timely.

The Cash for Gold business is already on our radar under the "Cash business" heading and in the course of drawing up Business Plans for 2011, we had concluded that it is a sector which we need to know a lot more about with a view to deciding how risky it is from a Revenue point of view, and where in the transaction chain the greatest risks lie.

With this in mind there will be a number of projects carried out to improve our understanding of the business and the risks. In this context, it would be very helpful if you could provide appropriate contact details in An Garda Síochána to enable a sharing of research and analysis.

Like any other business, there are income tax and business tax obligations on this sector. Tax clearance generally applies where a sector is licenced, regulated or in receipt of a public contract, none of which apply to this sector. We are familiar with the UK VAT regime – a reverse charge - and we apply it already to other sectors. In this year's Finance Bill a reverse charge has been introduced for the scrap metal sector, for example. When we have a better understanding of the risks in the cash for gold business we will be in a position to decide whether it is appropriate for this sector.

Yours sincerely,

Josephine Feehily

Josephine Feehily
Chairman

APPENDIX 4

Our Ref: 140/07/040034/1

29 February 2012

Department of Justice and Equality
94 St. Stephen's Green
Dublin 2

I refer to your former Secretary General's letter of 17th January 2011 (sent to this Department's former Secretary General) on the subject of the increase in outlets offering to purchase gold from the public.

From the consumer legislative point of view there is a fundamental problem in addressing this issue. The principal law on consumer protection is the Consumer Protection Act, 2007 which transposed the Unfair Commercial Practices Directive [Directive 2005/29/EU]: this is a maximum harmonisation measure. The Unfair Commercial Practices Directive and the transposing Act offers protections to consumers against certain misleading, aggressive and prohibited practices. However, the basis upon which the Directive and the Act applies is that a "consumer transaction" is the "promotion of a product to a consumer". In other words this is what we call a business to consumer transaction and not the other way round. In the case of outlets offering to purchase gold from the public, the "consumer" goes into or posts precious metal articles to a business which offers a price for the precious metal. Such a transaction is not covered by the Directive or the Act. Therefore, as far as consumer legislation is concerned selling precious metals to a trader would not be covered by consumer legislation.

Hallmarking legislation is also mentioned in the letter. Hallmarking is the legislation which obliges traders selling articles made from gold, silver or platinum to be assayed (or tested for the fineness of the precious metal) and marked (with the standard of the fineness and the entity which undertook the test). The assaying and marking is undertaken by the Assay Office in Dublin Castle under legislation going back to the seventeenth century. As well as the fineness mark there are optional marks such as markers or sponsor's mark and a date letter (i.e. a letter represents a specific year). Whereas some of the information provided by hallmarking requirements might be of assistance to the Garda Síochána in their efforts to control the alleged criminal aspect of this trade it should be born in mind that not all traders comply with hallmarking legislation and there is an increasing amount of articles of precious metals which

originate outside Ireland who have no hallmarking requirements at all. I therefore do not think that the hallmarking regime can offer any assistance to you in this matter.

As regards the law of contract, there is, in any contract for the sale of goods, an implied condition that the seller has a right to sell the goods [section 12 of the Sale of Goods and Supply of Services Act, 1893 as inserted by section 10 of the Sale of Goods and Supply of Services Act, 1980]. Contract law does not impose any obligation on the buyer to verify this implied condition of the contract.

For your information, the National Consumer Agency has received no complaints from consumers in this matter. The Department's Competition & Consumer Section received a certain amount of correspondence on this subject in late 2010/early 2011 but very few since then.

The delay in replying is regretted.

Yours sincerely,

APPENDIX 5

Pawnbrokers Act, 1964 (Extracts)

Pawnbrokers Act, 1964

Pawnbroker's
books and
records.

16.—(1) Every pawnbroker shall in the course of his business—

- (a) keep a pledge book and a sale book in the form set out in Part I and Part II, respectively, of the Fourth Schedule, and
- (b) use, as occasion requires, the documents set out in the Third Schedule in the forms therein specified.

(2) Every pawnbroker shall in the course of his business clearly and legibly enter, as occasion requires, in any book or document required to be kept or used by him such particulars as are specified in the Third and Fourth Schedules and it shall be the duty of every pawnbroker to make all enquiries necessary for the purpose of complying with this subsection.

(3) A pawnbroker who fails to comply with any requirement of this section shall be guilty of an offence.

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Pawnbrokers Act, 1964

General
restrictions on
pawnbroker.

19.—(1) A pawnbroker shall not—

- (a) knowingly take anything in pawn from a person under the age of sixteen years whether offered for pawning by that person on his own behalf or on behalf of another person;
- (b) take anything in pawn from a person who appears to be intoxicated;
- (c) take anything in pawn from a person whom he knows to be a habitual drunkard;
- (d) purchase or take in pawn or exchange a pawn-ticket issued by him or by another pawnbroker;
- (e) purchase, except at an auction held under this Act, any pledge in pawn with him;
- (f) make any contract or agreement with any person pawning or offering to pawn any article, or with the owner of any article, for the purchase, sale or disposition thereof within the redemption period;
- (g) employ any person under the age of sixteen years to take goods in pawn;
- (h) take in pawn any article where he is aware or has reasonable grounds for suspecting that the pawning would be a contravention of section 25;
- (i) take in pawn any firearm or ammunition; or
- (j) sell or otherwise dispose of any pledge except in accordance with this Act.

(2) A pawnbroker who contravenes any provision of subsection (1) of this section shall be guilty of an offence.

(3) Where a pawnbroker is charged with taking a thing in pawn from a person under the age of sixteen years whether offered for pawning by that person on his own behalf or on behalf of another person, it shall be a good defence for him to show that he did not know and had no reason to suspect that the person was under the age of sixteen years.

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Pawnbrokers Act, 1964

Offences relating to
pawning and
redeeming.

23.—Any person who—

- (a) offers to a pawnbroker any article by way of pawn being unable or refusing to give a satisfactory account of the means by which he came into possession of the article;
- (b) wilfully gives false information to a pawnbroker about the ownership of an article offered by him to the pawnbroker by way of pawn or about his name or address or the name or address of the owner of the article; or
- (c) redeems or attempts to redeem or procures another person to redeem or attempt to redeem a pledge without being entitled to do so,

shall be guilty of an offence.

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Pawnbrokers Act, 1964

Unlawful pawning of property of another. 25.—(1) A person who knowingly pawns any article which is the property of another person without the consent of that other person shall be guilty of an offence.

(2) Where a person is convicted of an offence under this section, the court may, in addition to any fine imposed, order him to pay to the owner of the article by way of compensation a sum not exceeding the full value of the article as determined by the court.

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Pawnbrokers Act, 1964

PART IV

Supplemental and Miscellaneous

Notification by Garda Síochána of lost and stolen property. 35.—(1) It shall be the duty of every Superintendent of the Garda Síochána to notify forthwith and to give a full description to all pawnbrokers within the district to which he is attached of any property lost, stolen or otherwise fraudulently obtained or disposed of.

(2) Where a pawnbroker is offered or shown or has in his possession property of a description notified to him under subsection (1) of this section, he shall without delay inform a member of the Garda Síochána at the nearest Garda Síochána station of the fact and shall take all reasonable steps to detain any person offering or showing such property and seize the property and to deliver the person and the property as soon as practicable into the custody of a member of the Garda Síochána.

(3) A pawnbroker who fails to comply with a requirement of subsection (2) of this section shall be guilty of an offence.

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Pawnbrokers Act, 1964

Duty of pawnbroker in certain suspicious circumstances.

37.—(1) Where it appears to a pawnbroker that—

- (a) the circumstances in which a person offers an article to him by way of pawn are suspicious, or
- (b) the person attempting to redeem a pledge has no right or bona fide claim of right to redeem the pledge,

the pawnbroker shall require the person to inform him of the means by which the article or the pawn-ticket, as the case may be, came into his possession.

(2) Where a person who is required by a pawnbroker to give information under subsection (1) of this section is unable or refuses to give to the pawnbroker a satisfactory account of himself or of the means by which the article or the pawn-ticket in question came into his possession, or gives any information about the article or pawn-ticket or about his name or address or the name or address of the owner of the article which appears to the pawnbroker to be false, or if the pawnbroker has any other reason to suspect that the article or pawn-ticket has been stolen or otherwise unlawfully or wrongfully obtained, the pawnbroker shall immediately report the circumstances to a member of the Garda Síochána at the nearest Garda Síochána station and shall take all reasonable steps to detain the person and seize the article or pawn-ticket and to deliver the person and the article or pawn-ticket as soon as practicable into the custody of a member of the Garda Síochána.

(3) A pawnbroker who fails to comply with any requirement of this section shall be guilty of an offence.

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Pawnbrokers Act, 1964

Power of entry, etc. 46.—(1) A member of the Garda Síochána may enter at all reasonable times any premises in respect of which a pawnbroker's licence is in force and may inspect the premises and any articles therein and may call for the production of and examine any books, catalogues, documents or records kept in the premises.

(2) (a) Where a member of the Garda Síochána finds in the course of an inspection under this section any article which he has reasonable grounds for believing to have been stolen, unlawfully obtained or unlawfully pawned, he may seize, carry away and detain the article or impound the article in the pawnbroker's premises.

(b) Where a member of the Garda Síochána carries away an article under this subsection, he shall give to the pawnbroker a receipt for the article.

(c) Where a member of the Garda Síochána impounds an article under this subsection, the pawnbroker shall, when so requested by a member of the Garda Síochána, produce the article at the hearing of the application provided for by subsection (3) of this section.

(3) Where a member of the Garda Síochána detains or impounds any article under this section, he shall, as soon as is reasonably possible, apply to the District Court for an order for the disposition of the article and, on such application, the Court shall—

(a) if satisfied that the article was stolen, unlawfully obtained or unlawfully pawned, order the return of the article to its owner, and

(b) in any other case, order the return of the article to the pawnbroker concerned.

(4) The Court, when making an order under this section for the return of an article to its owner, may order such return either with or without payment by the owner to the pawnbroker of the whole or part of the amount of the loan obtained by virtue of the pawning of the article and shall have regard to any failure on the part of the owner to exercise reasonable care in the protection of his property, except to the extent that the pawnbroker has been unjustly enriched.

(5) A member of the Garda Síochána shall not exercise the powers conferred by this section unless he is authorised in writing so to do by a member of the Garda Síochána not below the rank of inspector and, when exercising any of such powers, he shall, if requested by any person affected, produce the authorisation.

(6) A person—

(a) who obstructs or interferes with a member of the Garda Síochána in the exercise of a power conferred by this section, or

(b) who, on being called on under this section by a member of the Garda Síochána to produce any book, catalogue, document or record in his power, possession or procurement, refuses to do so, or

(c) who fails to comply with a request under paragraph (c) of subsection (2) of this section, shall be guilty of an offence.

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APPENDIX 6



**AN BILLE UM DHÉILEÁLAITHE DRAMH-MHIOTAIL
AGUS MIOTAIL LÓMHAIR, 2011
SCRAP AND PRECIOUS METAL DEALERS BILL 2011**

*Mar a tionscraíodh
As initiated*

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title and commencement.
2. Definitions.

PART 2

PRECIOUS METAL DEALERS

3. Precious Metals — Record of the transaction.
4. Waiting period.
5. Dealer Registration and Garda access.
6. Precious Metal Dealers Penalties.

PART 3

SCRAP METAL DEALERS

7. Purchasing of scrap metal — Identification and Record Keeping.
 8. Waiting period.
 9. Dealer Registration and Garda access.
 10. Scrap Metal Dealers Penalties.
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AN BILLE UM DHÉILEÁLAITHE DRAMH-MHIOTAIL
AGUS MIOTAIL LÓMHAIR, 2011
SCRAP AND PRECIOUS METAL DEALERS BILL 2011

BILL

5 *entitled*

AN ACT TO AMEND THE LAW AS IT RELATES TO THE
PURCHASING, SELLING, TRADING, CONSIGNMENT
SELLING, OR OTHERWISE TRANSFERRING FOR
10 VALUE, MORE THAN THREE TIMES PER YEAR,
SECOND-HAND PROPERTY THAT IS A PRECIOUS OR
SCRAP METAL.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

15 1.—(1) This Act may be cited as the Scrap and Precious Metal Short title and
Dealers Act 2011. commencement.

(2) This Act shall come into operation on such day or days as the
Minister may appoint by order or orders either generally or with
reference to any particular purpose or provision and different days
20 may be so appointed for different purposes or different provisions.

2.—(1) In this Part “Minister” means the Minister for Justice Definitions.
and Equality.

(2) In this Part and throughout the Act “precious metals” or
“precious metal” means gold, silver and platinum.

25 (3) In this Part and throughout the Act “scrap metal” means:

(a) scrapped metal;

(b) metal waste originating from or extracted from metal pro-
cessing activities;

(c) metal derived from the body of a vehicle but which is no
30 longer in use as a portion of such vehicle;

(d) metal derived from construction and demolition waste;