



AN ROINN DLÍ AGUS CIRT AGUS COMHIONANNAIS  
DEPARTMENT OF JUSTICE AND EQUALITY

## **Report on the Cash for Gold trade**

**June 2012**

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# **The Cash for Gold trade**

## **1. Background**

1.1 Over the past 3 years there has been a significant increase in the number of cash for gold outlets established in towns and cities in the State and a significant amount of advertising for the direct mailing of gold to such outlets or to dedicated postal cash for gold entities. There has also been a significant level of concern expressed by public representatives on behalf of constituents concerned about burglaries of gold items and the possible link to the proliferation of the 'cash for gold' outlets. These concerns have been reflected in negative media coverage of the activities of these outlets with much of this focused on speculation as to the source of the gold being purchased.

1.2 It would appear that most gold offered to these outlets is paid for on a scrap value basis and items are smelted and recycled. Established jewellers also buy gold and jewellery for cash. The increase is probably due to the very high price that gold now commands on international markets (up to \$1700 / ounce recently), and the cash for gold concept would appear to be an international phenomenon. Part of the attraction of these outlets may be accounted for by the recession which is providing an opportunity for people to convert old gold into cash.

## 2. Public representations / Parliamentary focus

2.1 A number of parliamentary questions have been tabled over the past year and a half on the subject of 'cash for gold' shops and there have been two Adjournment motions in the Houses (Dáil, November 2010 and Seanad, December 2010). A number of TDs and local authorities have also made representations to the Minister on the issue. Attached (**Appendix 1**) is the most recent PQ and reply (8 May 2012), which reflects the Minister's position following the debate of a private members Bill which was defeated at Dáil Second Stage on 6 March 2012 (See paragraph 9 of this Report).

2.2. In general, questions and representations have been focused on the proliferation of the outlets, the incidences of burglaries and the need for regulation of the trade.

2.3 The Minister's PQ replies in general have indicated that he has requested and received a report on the matter from the Garda Commissioner, and that the Department was preparing a Report taking the Commissioner's views and all relevant factors into account. The Minister referred to the particular initiative undertaken by An Garda Síochána whereby 'cash for gold' outlets were visited and appraised of their responsibilities under the law.  
(see Paragraph 5, below).

### 3. Crime statistics on burglaries and related offences

3.1 The Commissioner provided the following data on total recorded burglaries in the period 2005 to 2010 (as at 12 December 2010).

2010	2009	2008	2007	2006	2005
24,845	27,831	25,782	24,211	25,315	27,067

The Commissioner provided the following data on burglaries involving jewellery and antique gold in the period 2005 to 2010 (as at 12 December 2010)

2010	2009	2008	2007	2006	2005
2835	3016	2702	2612	3034	3519

The Commissioner stated that it "is difficult to subscribe to the proposition that the increase in cash for gold trading has had an adverse effect on the incidences of burglary offences". The Commissioner did qualify this however by saying that "that is not to say that outlets which purchase gold do not buy stolen goods".

The CSO recorded crime offences (burglary and related offences) over the 2005 - 2011 period shows an average of 25,592 offences. While burglaries in 2010 were down approximately 5% on the 2009 figure, the figures published by the CSO on 30 March 2012 show that burglaries are up by approx 2,000 (from 25,420 to 27,439) or 7.9% in 2011 over 2010. Compared with 2009, the increase in 2011 was approximately 2%.

2011	2010	2009	2008	2007	2006	2005
27439	25420	26911	24683	23603	24788	26381

CSO

#### 4. Legislative position

4.1 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 and the onus is on owners of business to ensure that they are not buying stolen goods. The relevant provisions of the Act are set out in **Appendix 2**. If it is the case that items of substantial value are being paid for by cash in the 'cash for gold' outlets without adequate checks on identity / ownership then these businesses may be in breach of the Theft and Fraud Offences Act, if the items in question have been stolen.

The Commissioner has indicated that the provisions of the 2001 Act are adequate for the purposes of investigating and prosecuting the relevant sections 17 and 18 offences.

4.2 *The Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* addresses transactions where a person (i.e. customer) buys a high value item e.g. gold and jewellery from a dealer (jeweller), and pays in cash to the value of €15,000 or more - or makes a number of separate purchases for smaller amounts to that total value or more. In such cases, there are significant requirements placed on the vendor (jeweller) to carry out 'customer due diligence' i.e. identify the customer, track transactions, identify beneficial owners, report suspicious transactions, train staff and have procedures in place to deal with such transactions. However, the Act does not relate in any way to the dealer in a transaction paying cash to the customer in return for goods, such as in the cash for gold transactions.

The Commissioner has suggested that the Money laundering legislation might be extended to require the owners of the cash for gold outlets to make suspicious transaction reports in the same way as other designated persons are under the Act. (See Conclusions, para. 11, below)

## 5. Department and Garda action to date

5.1 On 10 November 2010, to take account of concerns about the matter, the Secretary General of the Department of Justice and Equality wrote to the Commissioner of An Garda Síochána requesting him to make a report in the matter. The Commissioner was asked:

- for his view as to the extent, if any, that criminal offences are being committed in the procurement and receipt of gold and similar items in transactions carried out at the cash for gold locations.
- to examine in particular whether the trade may be linked generally or in particular areas to burglary offences;
- whether Criminal Justice legislation, and in particular, the Criminal Justice (Theft and Fraud Offences) Act 2001 is adequate in the context of cash for gold transactions;
- whether criminal elements involved in organised crime or otherwise may be connected with the operation and ownership of the cash for gold outlets; and
- whether any new legislative provision may be required to address criminality in respect of cash for gold transactions.

5.2 The Report of the Commissioner was received on 11 January 2011. The Commissioner indicated :

- that there had been an overall decrease both in the number of burglaries recorded in the years 2005 to 2010 and in the number of burglaries recorded involving jewellery/trophies and antique gold in the same period. However he indicated that this didn't mean outlets were not accepting stolen property (para 3, above refers);
- that the relevant provisions of the Criminal Justice (Theft and Fraud Offences) Act 2001 are adequate. (para 4 above refers);

- that the Garda Síochána is not aware of the involvement of criminal elements in the ownership of 'cash for gold' outlets;
- that all premises in the Dublin Metropolitan Area (39 in all) had been visited by Gardaí and the responsibilities of the owners in respect of purchases of the relevant items under the criminal law had been brought to their attention. The Commissioner further indicated that it was the intention to visit all premises in the State.

The Commissioner indicated that it may be worthwhile considering (1) the 2010 Money laundering legislation being extended to include the cash for gold outlets in the suspicious reporting requirements and (2) that legislation to regularise and license the trade be introduced. (These matters are addressed at Conclusions, para. 11, below).

### 5.3 Department response

The Department responded to the Commissioner's report in January 2011, focusing particularly on the Garda initiative in relation to the visiting by Gardaí of outlets, acknowledging this as a significant initiative. The Department indicated that a further report from the Commissioner would be welcome within at most two months when it might be expected that all 'cash for gold' outlets in the State would be visited by An Garda. The Department further indicated that at that point an overall report in the matter would be made to the Minister.

### 5.4 Update by Commissioner

The Commissioner subsequently indicated (letter of 22 February 2011 that -

- all Cash for Gold premises in the State had been visited by An Garda Síochána and the operators had been made aware of their responsibilities and obligations with regard to purchasing gold/jewellery from 'dubious' sources.
- Garda contact information for operators would facilitate the reporting to the Garda Síochána of any suspicious activity.



- Any new premises that may be identified would be visited by An Garda Síochána.

#### 5.5. New Report by Commissioner 1st March 2012

In response to a Department request for an update, the Commissioner submitted a report on 1st March 2012. This report confirmed much of the position adopted by the Commissioner in earlier correspondence referred to previously. Two updates are of interest

- The Garda Síochána has now identified 124 cash for gold outlets and all have been visited by members of the Force.
- The Commissioner notes that “gold items can be melted down very quickly, rendering such gold items unidentifiable and resulting in major difficulties for Gardaí in their efforts to identify and recover such items..”

## 6. **Criminal Justice context / question of wider regulation**

6.1 This Department has primary responsibility for crime policy, criminal justice legislation and matters relevant to Garda operations and in the context of 'cash for gold' transactions is examining all of the relevant aspects.

6.2 Any question of regulation of these transactions per se (or prohibition) would not necessarily be a matter for this Department. There may be a case for wider regulation e.g. a licensing arrangement and the application of various controls on the identification of sellers and of the ownership / origin of goods. On checking some of the cash for gold websites, it is noted that in some cases terms and conditions purport to apply to the transaction e.g. good title to the items, property does not result from illegal activity, the transaction does not breach anti-money laundering requirements; arguably there may be some basis for considering the development of a Code of Practice to apply to all such outlets (short of full regulation).

## 7. Role of other Departments

The Department contacted the Chairman of the Revenue Commissioners to enquire as to the tax clearance position of the outlets and the VAT position in respect of the transactions (and also bringing to her attention information the Department had received in respect of the tax treatment of gold transactions in the UK). A reply was received (**Appendix 3**) and the Chairman indicated that the cash for gold business was "already on our radar". In particular Revenue plan a number of projects to improve their understanding of the business and the risks.

The Secretary General wrote to the Secretary General of the Dept of Enterprise, Trade and Innovation enquiring as to the consumer law and consumer information aspects of the trade, as well as whether pawn broking legislation may have any relevance to the issue.

The Department of Jobs, Enterprise and innovation replied to the effect that consumer legislation is not relevant to the cash for gold transaction. That Department had also indicated that the National Consumer Agency had received no complaint from consumers in the matter. (Letter at **appendix 4**).

## 8. Possible relevant legislative frameworks

In the context of looking at measures which might be taken in the area, there are a number of existing frameworks that can be looked to, such as the provisions of the Pawnbrokers legislation. This legislation provides for the regulation of the activities of pawnbrokers including record keeping requirements relating to pledges of gold, silver and precious metals. There may be scope for the adaptation of these provisions to design effective controls in the area of gold purchasing around such matters as the identification of the seller, information on the source of the valuable and its identification, a requirement to retain the item at the outlet, a requirement to record the transaction and to provide access to items and records to the Garda Síochána.

Section 37 of the Pawnbrokers Act, for example, provides that where it appears to a pawnbroker that the circumstances in which a person offers an article by way of pawn are suspicious, the pawnbroker shall require the person to inform the pawnbroker of the means by which the article came into the person's possession. Where a satisfactory account is not provided the pawnbroker is required to inform a member of the Garda Síochána, and not doing so is an offence. Comprehensive powers relating to entry by a Garda on a premises, impounding of articles, etc. are provided. (See **Appendix 5**).

Some of the 'customer due diligence' and suspicious transaction reporting provisions of the Criminal Justice (Terrorist financing and money laundering) Act 2010 may also be a useful reference.

## 9. Private Members Bill

Deputy Mattie McGrath TD introduced a (Private Members) Scrap and Precious Metal Dealers Bill 2011 at second stage in the Dáil on Friday 2 March 2012. The Bill provided for the regulation of precious metal (gold, silver and platinum) and scrap metal transactions. In summary the Bill provided :

- that dealers must record the details of transactions including the identity of the seller and the origin of the material,
- dealers must retain the material for 30 days,
- dealers must register with An Garda Síochána,
- for offences / criminal sanctions for falsification of records and withholding information from An Garda.

The Bill designated a Ministerial role for the Minister for Justice and Equality and envisaged a central Garda enforcement role.

The Government defeated the Bill on 6th March on the grounds that a number of its provisions were inadequate and that the Government was anticipating the submission by the Department of a Cash for Gold Report and a scrap metal report by the Metal Theft Forum (under the aegis of An Garda Síochána). Those reports would allow for the necessary full assessment of all relevant matters in respect of the trades in question and the development of any necessary measures. (Private Members Bill short title/long title at **appendix 6**).

The Department was also consulted by Deputy John Deasy and Deputy John Paul Phelan in January 2011 in relation to the bringing forward of a (separate) private members Bill aimed at regulating the cash for gold trade by way of a licensing system operated and overseen by the National Consumer Agency. The Department indicated in response that while at that time there appeared to be no immediate grounds for new regulation or new proposals in respect of the criminal law in regard to the issue, the cash for gold trade would be monitored closely by the Department and other relevant agencies.

## 10. Other jurisdictions

Some research has been conducted on the position in respect of this trade in other jurisdictions. Few jurisdictions would appear to have regulated directly in the area, although some US states (e.g. Florida) have taken legislative steps. Indications are that some jurisdictions are focused on the issue of misleading advertising, while the response in some jurisdictions has been mainly operational - including heightened police patrolling of burglary 'hot spots'.

The matter has been raised at a criminal justice EU working party meeting, but with no particular proposal or initiative to date forthcoming.

The position in Northern Ireland merits particular consideration. The relevant Department has confirmed that there is no legislation in Northern Ireland specifically for the regulation of cash for gold outlets and there would appear to be no immediate plans to so regulate. This reflects the general position in the UK where it is considered that the businesses are covered by the general body of consumer protection laws i.e. laws prohibiting unfair contract terms and misleading commercial practices. In addition laws in place regarding the calibration of weighing scales can be applied to cash for gold outlets.

It might be noted that there have been recent reports of police forces calling for regulation of cash for gold shops in the UK, in particular for the recording of transactions and the identification of the seller.

Also the Office of Fair Trading (UK) has taken some action against postal / internet cash for gold companies particularly against the practice of melting down posted items before confirmation that the seller has accepted a given price.

The Department has also been in contact with the UK Serious Offence Crime Agency. That Agency is monitoring trends in gold trading in the UK and has indicated that so far no specific intelligence picture has emerged.

## 11. Conclusions

The following conclusions can be made:

### a. Crime perspective

There is no apparent 'major crime' involvement in the issue. Burglaries in 2011 are up 7.9% on 2010 following a reduction of about 5% on 2009; over the period 2005 to 2011 burglaries have increased from 26,381 in 2005 to 27,439 in 2011 – an increase of 4%. Compared to 2009, the increase in 2011 was 2%.

It can not categorically be stated that there is no connection between criminal activity and the cash for gold trade but up to very recently there has been little or no evidence to suggest that this is the case. However a recent report of a court hearing states that a person before the District Court in Mullingar was caught by a Garda at a Cash for gold shop in Dominick Street Mullingar on 5 March as she tried to sell two rings worth €650. The report stated that she was offered €90 for the rings while under the influence of heroin in the shop.

### b. the Criminal Law

The relevant Theft and Fraud Offences Act 2001, is adequate. The Commissioner's suggestion that the 'suspicious transaction reporting' device under the Money laundering legislation be extended to cash for gold dealers may be worth considering. It should be said (as set out at para. 4.2 above) that this legislation is wholly focused on receipt of cash by traders, as distinct from cash pay outs. The Commissioner's initiative whereby cash for gold outlets are facilitated in contacting the Garda Síochána in relation to suspicious activity would reflect somewhat the arrangements for suspicious transaction reporting under the Money laundering Act.

c. Garda Operations

The visit by Gardaí to all cash for gold outlets has been a priority both for the Department and An Garda, and this is now completed across the State, with 124 outlets visited. This is a significant operational response to the matter.

d. Cross Agency action

Steps have already been taken by other agencies and there is considerable scope for further cross Agency action involving the Department, the Garda Síochána and Revenue to monitor any issues in the trade. Issues arise also in the trade regulation and consumer protection area e.g. the adequacy or relevance in the context of these transactions of the Sales of Goods and Consumer Information legislation, the role of the National Consumer Agency, the weights and measures regime and the interaction of any proposals with pawnbrokers legislation.

e. Wider regulation

It may be that due diligence, ID, reporting and inspection arrangements might be more effectively introduced under new, dedicated legislation / regulations. It is not entirely clear how strong is the case for this, based on the information to hand, or what Department / agency would be involved however, the significant number of outlets alone that the Commissioner refers to – 124 premises – suggests that a regulatory framework is warranted.

f. Concerns of the Public

A significant level of concern about the activities persists. Public representatives both at National and local level have called for regulation of the sector. This has been reflected in a considerable quantity of PQs, as well as Adjournment debates and private members legislation, and motions passed by a number of local authorities.



g. Anti-burglary initiatives

The recent announcement by the Garda Commissioner of a range of measures aimed at tackling gangs involved in burglaries should be mentioned. These measures are encompassed in Operation Fiacla, which is particularly focused on identifying and targeting mobile gangs involved in burglaries around the country so as to disrupt their activities and bring them before the Courts. Specific burglary related initiatives are being implemented in each Garda Region in support of *Operation Fiacla*.

h. Report on Metal Theft

In considering what arrangements might be introduced if necessary, with regard to Cash for Gold outlets, consideration should be given to the expected scrap metal report by the Metal Theft Forum which is under the aegis of An Garda Síochána.

i. Inconsistencies

It is arguably inconsistent that there are specific rules and regulations that apply to pawnbrokers for the protection of the public and to assist the Gardaí and that similar appropriate and adapted rules and regulations do not apply to Cash for Gold outlets. It would, however, create further inconsistency to apply rules and regulations to Cash for Gold outlets that do not also apply to other retail outlets that may trade in second hand gold items such as jewellery and antique retailers. It is however also important to avoid creating unnecessary form filling, expense and bureaucracy for legitimate business that makes no significant contribution to law enforcement or the protection of the public generally.

j. Cross border considerations

The cross-border implications of any proposals would also need careful consideration in so far as contrasting approaches to the issue could have unforeseen consequences for legitimate trade.

## 12. Recommendations

- *While the relevant criminal law is adequate and there has been a strong operational response to the matter, there are grounds for considering the introduction of some controls on the purchase of jewellery and other precious metals at cash for gold outlets and indeed any outlet (e.g. jewellers and antique dealers) where such items are accepted from members of the public for a cash value. The Garda Commissioner reports that there are as many as 124 cash for gold outlets operating and it might be borne in mind that other forms of cash for gold trading are active (e.g. postal and internet services).*
- *The Commissioner has indicated that such a course of action is worth considering, and has indicated specifically that “gold items can be melted down very quickly, rendering such gold items unidentifiable and resulting in major difficulties for Gardaí in their efforts to identify and recover such items..”*
- *Controls could relate to the identification of the seller, information on the source of the valuable and its identification, a requirement to retain the item at the outlet, a requirement to record the transaction and to provide access to items and records to the Garda. Consideration will be required as to how to effectively apply such controls to web-based transactions, effected through postal delivery.*
- *Adequate Garda powers of access, questioning, arrest and search would be necessary to back up the regulatory requirements, but it is not envisaged at this time that any form of registration or licensing involving An Garda Síochána would be necessary or practicable.*
- *The existing law in relation to Pawnbrokers and perhaps other existing statutory frameworks would provide a useful template for some of the regulatory matters being considered (see Appendix 8).*

### 13. **Proposal**

The issues discussed in this report and the recommendations made relating to Cash for Gold outlets cannot be addressed in isolation from other economic activity, nor should new laws nor a new regulatory structure be put in place that is either unnecessary nor of substantial public benefit. It is proposed that initially the Joint Oireachtas Committee on Justice Equality and Defence consider the content of this report; that it considers whether it alone or together with any other appropriate Oireachtas Committee such as the Committee on Jobs, Enterprise and Innovation hold hearings on the issues raised in this report following publication of the Report on Metal Theft and that it obtain the views of all relevant interested parties.

It is further proposed that thereafter the Committee make such report and recommendations to the Houses of the Oireachtas and to Government as it deems proportionate and appropriate in the public interest. In doing so attention should also be paid to the resource implications of implementing any recommendations made, and to any cross border issues applicable to the cash for gold trade and any action or measures proposed.