

Customs and Excise: Accompanying Arrested or Detained Persons

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Introduction

This manual sets out the procedures to be followed where a person arrested or detained under customs or excise law has to be brought to a Garda Station by Revenue officers. It should be read in conjunction with Section 2.10 (Arrest and Charge) of the Customs and Excise Enforcement Procedures Manual.

Relevant Legislation

1. Section 139 (1), as amended, of the Finance Act 2001 provides that, where an officer of the Revenue Commissioners has reasonable grounds to suspect that a person is committing or has committed an offence under-

- section 119 of the 2001 Act,
- section 102(3) of the Finance Act 1999, or
- section 79(5) of the Finance Act 2003,

then that officer may arrest that person without warrant.

2. Section 139 (2) (a) of the 2001 Act provides that where an officer of the Revenue Commissioners has reasonable grounds to believe that a person is committing or has committed an offence under section 78 of the Finance Act 2005, then the officer may detain that person and, as soon as practicable thereafter-

- present the person, or
- bring and present the person,

to a member of An Garda Síochána.

3. Section 32 of the Customs Act 2015 (which came into operation on 31 December 2016) provides that where an officer of customs has reasonable grounds to suspect that a person is committing or has committed an offence under section 14 or 15 of that Act, or under any provision of the Taxes Consolidation Act 1997 that provides that it is an offence to assault an officer of customs, the officer may arrest that person without warrant.

4. In section 139 of the 2001 Act, “officer” means an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred on officers by Chapter 4 of Part 2 of that Act. In section 32 of the Customs Act 2015, “officer of customs” has the meaning assigned to it by section 2 of that Act.

Procedures following Arrest or Detention

5. Where a person is arrested under section 139(1) of the Finance Act 2001 or section 32 of the Customs Act 2015, An Garda Síochána should be contacted as soon as possible and asked to come and take custody of the person and to bring him/her to a Garda Station for charging. Where a person is detained in accordance with section 139(2)(a) of the 2001 Act, contact should be made as soon as possible with An Garda Síochána to request them to come to the scene of the detention so that the person can be presented to them: a member of An Garda Síochána may then arrest the person if he or she has reasonable grounds to believe that an offence under section 78 of the Finance Act 2005 was or had been committed by the person, that the person was duly detained by a Revenue officer and has been presented to him or her in accordance with section 139(2)(a).

6. In circumstances where it is not possible for An Garda Síochána to attend at the scene of an arrest or detention by a Revenue officer, it will be necessary for the Revenue officer(s) concerned to arrange to have the arrested or detained person brought to a Garda station in a Revenue vehicle as soon as possible.

7. The transport of an arrested or detained person to a Garda Station must be undertaken with all due concern for the health and safety of the Revenue officials involved and of the arrested or detained person.

8. It is Revenue's policy that restraints of any kind, such as handcuffs, may not be used when an arrested or detained person is being transported, or in any other circumstances.

9. At least three Revenue officers should accompany an arrested or detained person who is being transported to a Garda station, and at least one of those officers should be female if the person being transported is female. The arrested/detained person should be seated on the back seat of the vehicle directly behind the passenger seat and any door locking mechanisms should be activated. The accompanying officers should be vigilant to the possibility of the arrested/detained person attempting to abscond, or to interfere with or distract the officer driving the vehicle.

10. Every effort must be made to obtain the cooperation of the arrested or detained person. If a person is not compliant when arrested or detained the officer should explain his/her statutory powers and the person concerned should be advised that it is an offence to obstruct, impede, assault or interfere with a Revenue officer in the exercise or performance of his/her powers or duties.*

11. Any instance of an assault on a Revenue officer should be brought immediately to the attention of his or her line manager, and reported at the earliest opportunity to An Garda Síochána.

[*Section 1078(2)(j) of the Taxes Consolidation Act 1997. Under the Customs Act 2015 this provision is amended to create the additional offence of attempting in any way to coerce or intimidate a Revenue officer in connection with the performance of powers or duties.]