

Enforcement Manual

Chapter 2

General Guidelines and Best Practices

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2.1 **Authorisation of Officers.**

All enforcement staff are reminded of the necessity of having proper authority from the Commissioners to perform their enforcement duties. The legal powers conferred on Officers of Custom and Excise can only be used by named Officers who have been properly authorised to exercise functions (including powers and duties) under specified statutory provisions.

Section 858 of the Taxes Consolidation Act, 1997 introduced a new “Identity Card” with the facsimile signature of a Revenue Commissioner to serve as evidence of authorisation in respect of the functions and exercise of Revenue powers which had previously been dealt with separately by the “Authorisation” and “Commission”. The substantive authorisation document itself – of which the Identity Card is evidence – bears an original Commissioner’s signature and is held in Personnel Branch. The actual identity card is issued in two versions (i) a Standard Card and (ii) a Combination Card.

The Standard Card is evidence that the officer is authorised to act in particular areas which are specified on the card itself. The powers covered by the Standard Card relate to legislation which specifically requires an officer to be authorised when exercising enforcement powers contained in such legislation. Examples include the powers contained in the 1993 and 2001 Finance Acts relating to VRT, VAT, Local Collection and certain excisable products (see Part 3.2 of this Manual). More specifically, the Standard Card lists the following powers and functions of which the holder is authorised: -

Legislative Provision	Type of Power/Function.
Taxes Consolidation Act, 1997 <ul style="list-style-type: none"> • Section 851 • Section 903 • Section 904 • Section 905 • Section 961 • Section 962 	<ul style="list-style-type: none"> • Making demands for and collecting tax. • Powers of inspection – PAYE. • Powers of inspection: Income tax (sub-contractors tax) • Inspection of documents & records. • Issue of demand notices & receipts. • Recovery by Sheriff & County Registrar.
Value-Added Tax Act, 1972 <ul style="list-style-type: none"> • Section 18 • Section 27(9A), (10) 	<ul style="list-style-type: none"> • Inspection & removal of records. • Detention & seizure of goods.
Finance Act, 1993 <ul style="list-style-type: none"> • Section 62 	<ul style="list-style-type: none"> • Powers concerning Vehicle Registration Tax.
Finance Act, 2001 <ul style="list-style-type: none"> • Sections 134 – 144 	<ul style="list-style-type: none"> • Powers concerning Excise Duties (including VRT).
European Communities (Intrastat) Regulations, 1993 <ul style="list-style-type: none"> • Article 7 	<ul style="list-style-type: none"> • Powers concerning INTRASTAT.

2.1**Authorisation of Officers.**

The Combination Card empowers Officers to act not only in the specific areas covered by the Standard Card but, in addition, to exercise or perform functions under the Customs Acts and any statutes relating to the duties of excise and the management of those duties (these additional powers would have been previously covered by now defunct C & E Commission). The additional powers covered by the Combination Card can generally be *described* as:

- ❑ The general Customs powers applicable to imports and exports, which include drugs and other prohibited goods
and
- ❑ Excise powers not requiring an Authorisation (e.g. betting duty, excise licence duty).

The following instances may help highlight and demonstrate some of the essential differences between the Standard and Combination Cards and the added benefits of the latter:-

- ❑ A Standard card entitles the holder to stop a vehicle for oil sampling but it would not empower him/her to actually take the sample – the Combination Card is required in order to be empowered to take the sample.
- ❑ A Standard Card entitles the holder to stop a vehicle and check excisable products being transported but it would not empower him/her to take further action if the goods are found liable to forfeiture under the Customs Acts – instead the Combination Card is required.

A fundamental control in this whole area is the strict requirement that Identity Cards are:

- ❑ issued in the correct format (in accordance with Operational Instruction 30/97) only to staff whose day-to-day duties require them
- ❑ used by staff in accordance with the general guidelines in the use of powers and the level of authority required as given in Part 3 of this Manual and in the “Table of Powers & Prior Approvals required” as issued with each Identity card
and
- ❑ withdrawn from use when no longer required.

Collectors and Principal Officers are to ensure that this control is strictly enforced.

Finally, the Identity Card

- ❑ Should be kept safely by the holder
- ❑ If lost, should be reported immediately through normal channels
and
- ❑ Should be returned by the holder through normal channels to Personnel Branch if leaving his/her post and does not require it e.g. transfer, change of duties, retirement, career break etc.

Note: *A person who impersonates an officer of the Revenue Commissioners commits an offence under S 1078 (1B) TCA 1997 inserted by S126 F.A. 2007.*

2.2 *Dealing with the Public & Organising Case Work.*

Dealing with the public.

Officers are, once again, reminded of the strict obligation of exercising courtesy and consideration at all times in dealings with the public. Professionalism as Revenue Officers demands high standards in this important area, even in difficult and provocative circumstances. Attention is drawn to the Customer Service Charter and attendant public entitlements set out in Part 3.1 of this Manual. The Commissioners expect their Customs & Excise Enforcement staff to maintain the high standards of fairness and impartiality established over the years.

In order to avoid unnecessary confrontations and to approach the public in a professional way, the following guidelines should be followed:

<i>Identification</i>	Always identify yourself at the outset by giving your name and stating that you are an officer of Customs & Excise. Produce your Identity Card but do not hand it over – it should be merely shown in such a way that it can be read.
<i>Dress/ Appearance</i>	Be neatly groomed and wear your uniform required or when it is normal practice.
<i>Balanced approach</i>	Do not use more officials than necessary to perform checks or challenges as, otherwise, it could be taken as a heavy handed approach and cause provocation. In many routine cases, the officer should be able to deal with the customer on a one-to-one basis. If more than one official is required, keep the questioning to one, where possible.
<i>Calm, respectful approach</i>	Deal with the public in a calm, courteous, respectful and even-handed way. Be careful that your actions and words are not interpreted as off-hand, insensitive or provocative. Make allowances for the stress that a person is under when challenged. Keep control by not over-reacting to provocative remarks. Always attempt to bring calm to an inflamed situation. This is one of the keys area for ensuring that the job is done with minimum confrontation and maximum professionalism.
<i>Impartiality</i>	Do not assume, or be seen to assume, that a person may be guilty of an offence until you have made the necessary enquiries to enable you form such an opinion.
<i>Sensitivity</i>	People are often tense when challenged in a difficult situation. One insensitive word can very easily lead to a dissatisfied customer. A professional and sensitive approach by an officer can turn many an unpleasant encounter into a successful outcome which does not give rise to unnecessary accusations and complaints.

2.2) Dealing with the Public & Organising Case Work.

The Commissioners recognise that it is almost impossible to achieve the perfect situation in all cases and appreciate the professionalism shown by staff over the years. However, we must continuously strive to maintain, and indeed improve, this level of professionalism in an era where customer (including offender) care is assuming greater importance.

Case Working Arrangements

The following general guidelines apply in relation to the handling of cases:

- ❑ In planning an operation, Case Officers should have regard for the concept of Whole Case Management and take account of all taxes that may be the subject of evasion.
- ❑ When practical, operate in teams of two. Cases should be handled in a manner that will require only the minimum of witnesses in court.
- ❑ In general, one official should do the questioning and another should do the notetaking.
- ❑ In major cases, an Exhibits Officer should be appointed with responsibility for taking custody of all exhibits for production in court.
- ❑ A Case Officer should be appointed to take charge of the case and complete the core report on the case.
- ❑ The Case Officer and Exhibits Officer will, in most case, be the same person.
- ❑ The custody of exhibits should be confined to one officer, where possible. If more than one official has custody, it must be seen in statements and reports that custody passed correctly from one to another.

2.3 *Safety & Security Considerations*

Safety.

Staff should operate within the terms of existing instructions and procedures in regard to safety while on enforcement duties, particularly road safety. The following are some general pointers which are not intended to constitute an exhaustive set of guidelines or to supplant any existing instructions:

- ❑ When driving, staff must at all times, avoid unnecessary speed and exercise due care and caution, with the primary consideration being the safety of themselves and others on the road.
- ❑ Where road-blocks/checkpoints are required, ensure that a location is chosen with due regard to safety, that there is no threat to the safety of staff or other road users, that road and weather conditions are suitable and that advance-warning signs are erected, including flashing lights on official vehicles.
- ❑ The regulations governing the handling of chemicals and samples and the carrying out of roadside examinations should be adhered to and any necessary or recommended protective clothing/equipment (e.g. gloves, eye protection etc.) should be worn.
- ❑ All accidents or incidents should be reported through local management as soon as feasible and the relevant Safety Officer should be advised.

Garda Assistance

Attention is drawn to the fact that, separately from any officer's right as an ordinary citizen to call in the assistance of the Garda Síochána, an officer authorised under Section 905, Taxes Consolidation Act, 1997 may be accompanied by a Garda when entering any premises or place and such Garda may arrest without warrant any person who obstructs or interferes with the authorised officer in the exercise of his/her powers or duties under that Section. The availability of Garda assistance in this way is provided for Section 906, Taxes Consolidation Act, 1997 – see **Chapter 3.4**, page 13 for further details.

Security of Goods Seized/Detained.

Staff should ensure that any goods or property detained or seized and retained locally are held in safe custody and protected from damage. In particular, all necessary steps should be taken to guard vehicles against weather (e.g. frost) or other damage.

2.4 Notetaking

General

It is essential to good practice that a professional, consistent standard is established in relation to notetaking, particularly where notes or written observations may be required to be used later in legal proceedings. To this end, notetaking should be performed using the official issue “REVENUE NOTEBOOK C & E 1110”. The following points should be particularly noted:

- ❑ The notebook is an indispensable tool of an officer. In itself, it is a record of all the officer’s actions in relation to any given case.
- ❑ An officer should normally operate only one notebook. However, a separate, dedicated notebook may be used for each long or complex case/operation.
- ❑ The name and rank of the officer together with the date taken into use should be inserted on the front external cover of the notebook. It should also be numbered on a personal sequential annual basis.
- ❑ Entries should be made in pen or indelible pencil, in sequence on successive pages. All notes relating to a separate offence/incident should commence on a new page as a Judge may wish to hold the notes as an exhibit during the court hearing.
- ❑ It would be impossible for officers to compile comprehensive notes, which would cover every eventuality. However, they should ensure that all important aspects of an investigation are recorded, particularly any details which may be relevant to subsequent court case.
- ❑ Accurate notes are an essential part of every interview. If possible, one officer should put the questions while another takes the notes.
- ❑ The following details, together with points required to prove an offence, should always be noted:

- *Date and time.*
- *Names of all those present & times of arrival/departure.*
- *Location*
- *Identity and address of alleged offender or other interviewee.*
- *Details of cautions, arrest and charge.*
- *Details of questions asked and responses.*
- *Time interview begins and ends, including timing of breaks.*
- *Specific details and description of goods connected with the offence.*
- *Details of the laws under which the officer operated.*
- *Details of evidence produced/uncovered.*

- ❑ An officer should be the only person to write in his/her notebook, except where an entry is corroborated by another officer or a person who has been interviewed signs or initials the notes of the interview. **An interviewee should at all times be asked to sign the notes taken during an interview. If s/he declines to sign the notes, the officer should also record the fact.**

2.4 Notetaking.

- ❑ All entries should be legible and the notebook itself should be kept neat and clean. Please pay particular attention to the following: -

Avoid torn out pages	This could imply that you have something to hide.
Avoid blank pages/spaces	It could be construed that you had left a space so that you could insert something at a later date and then imply that you had made the note contemporaneously. Where entries in a notebook, referring to a particular incident, do not require the full use of the page or the next facing page, the unused portion should be rendered unusable by drawing a diagonal line from the last word of the entry to the end of the unused portion.
Erasures	Never use tippex. If you make a genuine error, cross it out with a single line, initial it and insert the correct version.
Alterations	No additions or amendments may be made to notes once they are written up, and notes should never be rewritten.

- ❑ When the notebook is complete, the front cover should be completed by the insertion of the relevant date. It should then be retained safely for a period of six years.

Contemporaneous Notes.

- ❑ As far as possible notes are to be made contemporaneous to the occurrence being recorded. Where for any reason the notes are not made contemporaneously, details of why they were not should be given at the conclusion of the note. Notes not taken contemporaneously should always be completed within a 24 hour period of the occurrence.

Security of Notebooks

- ❑ Notebooks should never be left lying around. The Officer who operates the notebook should be the only person to write or make entries in it.
- ❑ Operation briefing details should not be inserted.
- ❑ Similarly, you should not include personal details about yourself or your colleagues.

2.4) Notetaking.**Use in Court.**

- ❑ Should you be required to give evidence in Court you may use your notebook to refresh your memory on a particular point. In order to avoid unnecessary delay or fumbling, you should be in a position to locate the entry readily. Reading from your notebook is not permissible – you should be able to give evidence from memory.
- ❑ Notebooks are liable to be called for in Court and relevant entries examined by the Judge, defending counsel or solicitor. You may be questioned searchingly on them. It is important, therefore, that entries should be so made and of such quality that they will stand up to the closest scrutiny. Only entries which are promptly made, are accurate in date, time & details and are free from erasures, will stand up to such a test. Inaccurate details or information in entries will leave you open to the risk of censure by the Court and may well cast doubt in the veracity of your evidence.
- ❑ The Judge may wish to retain the notebook during the court hearing for reference and exhibit purposes. Accordingly, notes should be kept in such a way as to ensure that they may be examined in isolation from the notes of other earlier or later cases.

2.5 *The Judges' Rules.*

The Judges' Rules are a set of rules which apply to the considerations to be taken into account as to whether or not an admission made by an accused person during questioning is to be admitted in evidence at the person's trial. Although originally directed at the police, the principles involved apply equally to all enforcement agencies, including Customs and Excise.

The origin of the Rules was a case before the Court of Criminal Appeal in 1918 when four rules were signed by Lord Chief Justice Alverstone. By 1922, the rules had expanded to a total of nine. These rules have been observed in the State since that date.

The Judges' Rules are reproduced in full below:

- 1. When a police officer is endeavouring to discover the author of a crime there is no objection to his putting questions in respect thereof to any person or persons, whether suspected or not, from whom he thinks that useful information may be obtained.*
- 2. Whenever a police officer has made up his mind to charge a person with a crime, he should first caution such person before asking him any questions, or any further questions as the case may be.¹*
- 3. Persons in custody should not be questioned without the usual caution being first administered.*
- 4. If the prisoner wishes to volunteer any statement, the usual caution should be administered. It is desirable that the last two words of such caution should be omitted, and that the caution should end with the words 'be given in evidence'.*

¹ However, in the case of **The People (D.P.P) v Sean Breen** (Court of Criminal Appeal, March 1995), the following was stated: -

- "The crucial test is whether it (the statement) was obtained in compliance with basic or fundamental fairness".
- "The test of basic fairness, Superimposed in the need for voluntariness, has the merit of ensuring, if the judicial discretion is correctly exercised, that an accused will not wrongfully or unfairly be convicted out of his own mouth".

The court held that the caution should be administered as soon as an officer knew or ought to have appreciated that the suspect was likely to be on the threshold of admitting some involvement in a crime as failure to do so violates the requirements of basic fairness. This case demonstrates that in certain situations it may be necessary to caution earlier than is outlined in Rule 2 of the Judges' Rules.

2.5) The Judges' Rules.

5. *The caution to be administered to a prisoner, when he is formally charged should therefore be in the following words: 'Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence'. Care should be taken to avoid the suggestion that his answer can only be used in evidence against him, as this may prevent an innocent person making a statement which might assist to clear him of the charge.*
6. *A statement made by a prisoner before there is time to caution him is not rendered inadmissible in evidence merely because no caution has been given, but in such a case he should be cautioned as soon as possible.*
7. *A prisoner making a voluntary statement must not be cross –examined, and no questions should be put to him about it except for the purpose of removing ambiguity in what he has actually said. For instance, if he has mentioned an hour without saying whether it was morning or evening, or has given a day of the week and day of month which do not agree, or has not made it clear to what individual or what place he intended to refer in some part of his statement, he may be questioned sufficiently to clear up the point.*
8. *When two or more persons are charged with the same offence and their statements are taken separately, the police should not read these statements to the other persons charged, but each of such persons should be given by the police a copy of such statements and nothing should be said or done by the police to invite a reply. If the person charged desires to make a statement in reply the usual caution should be administered.*
9. *Any statement in accordance with the above rules should, whenever possible, be taken down in writing and signed by the person making it after it has been read to him and he has been invited to make any corrections he may wish.²*

² When a person is being interviewed, every effort should be made at the time to have him/her sign the record of the interview. Where this is not feasible because of the particular circumstances or conditions under which the interview was held, then a further effort should be made at the earliest opportunity, a reference being made to the reason why it was not possible to comply with this requirement on the earlier occasion.

2.6 Questioning and Caution.

General

The power to question persons suspected of offences is an important tool for Customs & Excise officers in their efforts to prevent and detect smuggling and other offences. It is essential to the investigative role that officers are permitted to question any person from whom they think useful information/evidence may be obtained.

The questioning of an individual must be viewed as merely the gaining of information/evidence. It has several functions

- Affording the individual an opportunity to explain his/her involvement in the particular transaction;
- Providing corroboration of other statements, i.e. questioning of witnesses;
- Enabling the officer to form an opinion as to whether an offence has or has not been committed; and
- Identifying the person(s) against whom proceedings should be instituted.

Initial questioning should endeavour to establish all the facts of the case and not merely incriminating details. Information gathered through questioning can be challenged and verified at a later date.

Please remember that any person who is likely to be charged with an offence should be clearly told what is alleged and asked for an explanation, under caution where necessary.

Types of Questioning

Questioning of persons fall into two distinct categories: -

(i) General right to question	(ii) Specific right to question
<ul style="list-style-type: none"> ❑ <i>By virtue of the Judges Rules, there is a general right to question</i> (see Part 2.5). Accordingly, an officer can question anyone, whether suspect or not, from whom the office thinks that useful information may be obtained. ❑ There is no obligation on the person to answer under this provision and the normal rules of caution apply. The individual, therefore, has the right to remain silent throughout the course of questioning, whether s/he been legally cautioned or not. 	<ul style="list-style-type: none"> ❑ <i>A specific right to question is contained in various legislative provisions</i> as set out at Part 3.8 of the Manual. These provisions give an officer a specific right to question in regard to certain matters and there are specific penalties for not answering or supplying the information sought. ❑ The statutory obligations on the person being questioned should be explained to him/her.
<p style="text-align: center;"><u>NOTE RE (ii) ABOVE:</u></p> <p>Evidence required without caution during questioning under legislative provision [i.e. (ii) above] cannot be solely relied upon to obtain a conviction as the Court would probably rule that it denied the accused natural justice through self-incrimination.</p> <p>It is a matter for the Court as to whether such evidence without caution is admissible as corroborating evidence in support of other primary evidence. Accordingly, as much evidence as possible should be obtained under caution [see (i) above & guidelines, next page] even if a legislative provision exists for getting the information.</p>	

2.6 Questioning and Caution.**Standard Procedures**

- ❑ At the outset, officers should establish the identity of the person or persons who are being questioned. This can be confirmed by examination of passport, driver's licence or other documents. In cases where passenger motor vehicles are involved, production of the registration document or alternative evidence of entitlement to possession/ownership of the vehicle should be requested.
- ❑ Where relevant or material to the enquiry, the person should be asked to give details of his/her journey and the reason for travel. The purpose of such questions is to try establish if there is a bona fide reason for travel.
- ❑ Ideally, two officers should be present when questioning a suspect or conducting an interview. An officer should not conduct an interview alone, save in exceptional unavoidable circumstances. It may be necessary for more than two officers to be present if, for example, there is a threat of violence. However, in normal circumstances, more than two leads to unnecessary attendance of witnesses in court. It might be interpreted as intimidatory or threatening to the person being interviewed.
- ❑ During the interview, where possible, one officer should put the questions and another should take notes of all that happens and everything that is said. The guidelines in relation to notetaking at part 2.4 should be fully observed.
- ❑ The times/hour and minute of commencement and completion of any interview, together with the names of those present, should be noted. If, for example, an officer joins the interview, his/her name and time of the arrival (and departure, if appropriate) should be recorded in the notes.

Caution

- ❑ Evidence may be obtained under caution by means of oral and/or written statements (see Part 2.7).
- ❑ Evidence should be obtained under caution insofar as possible as evidence acquired without caution under a statutory provision cannot be solely relied upon to obtain a conviction (see note, previous page).
- ❑ If, during questioning, matters have reached a stage where an officer knows or considers that the suspect is likely to be on the threshold of admitting some involvement in an offence, s/he is to be cautioned in the following term:-
"You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence."
The person should always be asked if s/he understands the caution and the reply noted.

2.6 Questioning and Caution.

Officers should always appreciate the need to caution a suspect at an early stage in accordance with the Judges' Rules and case law (see footnote at Part 2.5, page 9), as this ensures compliance with basic fairness and voluntariness and makes it clear to the person that s/he is not obliged to incriminate him/herself.

- ❑ The wording of the caution is given in thirteen languages in Appendix 1 – Irish, English, Dutch, Spanish, Italian, French, German, Latvian, Russian, Lithuanian, Bulgarian, Romanian and Polish.
- ❑ Care should be taken to ensure that the person understands the caution and, if necessary, it should be repeated and explained. Once a person has been cautioned the officer should never allow that person to make comments “off the record,”
- ❑ It may be necessary during a questioning session to remind a person several times that s/he is still under caution. Examples of this are as follow:-
 - On resumption of questioning where the interview was suspended.
 - On the arrival of an officer either to replace or join an officer who was already conducting the interview.

If a person is to be questioned again in a new interview situation (say next day or where questioning was terminated), then a caution should be re-administered in full.

2.7 Cautioned Statements

A person may opt to make a written statement after caution. The following guidelines relate to such cautioned statements.

- ❑ Avoid the use of pre-prepared forms when taking statements under caution. Statements should be taken down verbatim, without prompting and with no gaps or paragraphs.
- ❑ The statement should begin at the top left-hand side of the page and be signed immediately after and below the last word.
- ❑ The statement should commence “*Statement of X (full name), date of birth, of (address) made to (officer), having been cautioned as follows:*”

“You are not obliged to say anything, unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence.”

The person should be asked if s/he understands the caution.

- ❑ The person should acknowledge at the beginning of the statement that s/he has been cautioned and that the statement is voluntary.
- ❑ The statement should be in the person’s own words and officer should not suggest the use of a particular word or form of words.
- ❑ The statement should, preferably, be in the person’s own writing but a typewriter or word processor can be used. However, if the person asks one of the officials to write out the statement, that fact should also be recorded in the statement.
- ❑ The suspect should be handed the statement to read and offered the opportunity to amend, clarify, add to or delete any detail as s/he wishes. If the person refuses to read or sign, this should be noted on the statement before the officer signs it. Whether the person signs or not, the officials conducting the interview must sign as witnesses. The last sentence of the statement should read either:

“I have read this statement and it is correct. I do not wish to amend, add to or delete anything recorded therein.”

or:

“I have read this statement and it is correct, as amended by me.”

- ❑ A person must never be threatened or offered any inducement in an effort to get a statement or a response to any question.
- ❑ Any corrections should be initialled by the person making the statement.

2.7 Cautioned Statements.

- ❑ The statement should be signed and dated by the person and witnessed by two officials (wherever possible) who should endorse the document below the suspect's signatures with their signatures, date and time.
- ❑ The original statement should then be retained under secure custody for evidential and prosecution purposes. A typed transcript should be prepared and copied to the prosecution report file. No notes, marks or imprints whatsoever are to be applied to the original.

2.8 Search Warrant.

Applying for a Search Warrant.

The decision to issue a search warrant must be taken by the Judge of the District Court or Peace Commissioner, as appropriate. It may be necessary, in subsequent proceedings, to satisfy a court that s/he was in possession of all relevant information when making that decision. It is essential, therefore, that all the information is provided on oath in writing so that it can be produced in evidence at a later date, if required.

- ❑ Search warrants may be issued by the Judge of the District Court for the district in which the warrant is to be executed or a Peace Commissioner authorised for the county in question. The question of whether the Peace Commissioner is authorised for the county concerned should be verified when applying for a warrant.
- ❑ *While a search warrant will ordinarily be issued by a Judge at a sitting of the relevant District Court, where this is not feasible a warrant may be issued by a judge in relation to a relevant district while in any place in the state.
- ❑ All search warrants should be issued by a Judge of the District Court but where this is not practicable, a Peace Commissioner may be used in the case of a search warrant sought under S. 205, Customs Consolidation Act 1876 or S. 5 C&E (Misc. Prov.) Act 1988 (the latter being applicable in connection with Customs matters only). Furthermore, where a Peace Commissioner is used, care should be taken to ensure that the person concerned has no direct connection with Revenue as this could raise concerns about the person's independence.
- ❑ The information to be sworn in applying for a warrant should be presented in written form to the Judge of the District Court or Peace Commissioner. Copies of information and search warrant documents are at Appendix 7. Electronic versions of the various types of search warrant are available on the new version of C-NET.
- ❑ Information from a confidential source should not be disclosed but the officer should be able to confirm the reliability of the informant e.g. previous reliable information given. The phrase normally used is: *"based on information from a confidential and reliable informant."*
- ❑ If there is not enough space to write out all the information in the space provided it may be continued on the back of the form or a separate sheet(s). In such cases always ensure that the Judge of District Court or Peace Commissioner signs and dates the additional page(s) to show that s/he has actually read them before issuing the warrant.
- ❑ Always check the information and warrant to see that they are signed and dated properly and that any deletions or changes in them have been initialled. Both information and warrant should specify the goods or other things being searched for.
- ❑ Always be certain that the name(s) and address(es) on information and warrant documents are accurate and are spelled correctly.

* Section 32A, The Courts (Supplemental Provisions) Act 1961 inserted by S 180 CJA 2006 following the Judgement of the Supreme Court in the Dylan Creaven case.

2.8 Search Warrants.

- ❑ If goods are found which are not specified on the warrant and reasonable suspicion exists that such goods are smuggled, an additional warrant should be procured. In exceptional circumstances, e.g. where there is serious risk that goods may be removed or destroyed, the goods may be detained under the appropriate legislation and removed without procuring an additional warrant.
- ❑ As the information must be sworn, officials should always carry a Bible – do not rely on the Judge or Peace Commissioner to provide one. The oath to be sworn is: *“I swear that I will true answers give to all questions put to me concerning this information”*.
- ❑ The information should be lodged with, or forwarded to, the District Court Clerk for filing and a copy retained by the officer.
- ❑ If it is noticed that the warrant is faulty in any way a new application should be made. A faulty warrant cannot be executed and, under no circumstances, should any alterations be made to a warrant after it has been issued.

Executing Search Warrants.

- ❑ A search warrant issued under Section 205, Customs Consolidation Act, 1876 (see table at Part 3.2) may be executed at any time of the day or night on any day of the week, including Sunday – Section 36, Finance Act, 1924. There is no specified time limit for the execution of a Section 205 warrant. However, there should be no avoidable delay in executing the warrant. If the warrant has not been executed within 24 hours a new warrant should be applied for where it is practicable. A new warrant should also be applied for where the circumstances which originally justified the issue of the warrant have changed.
- ❑ A search warrant issued under either Section 5, Customs & Excise (Miscellaneous Provisions) Act, 1988 or Section 136(5), Finance Act 2001 (see Part 3.7.1) may be executed at any time (or times) within one month of the date of issue. However, there should be no avoidable delay in executing the warrant. If the warrant has not been executed within 24 hours a new warrant should be applied for where it is practicable. A new warrant should also be applied for where the circumstances which originally justified the issue of the warrant have changed.
- ❑ Produce the search warrant for inspection by the owner/occupier of the premises.
- ❑ The warrant must be executed by the officer to whom it was issued.
- ❑ Do not exceed the extent of search authorised by the warrant.

2.8 Search Warrants.

- ❑ The owner/person in charge should be invited to accompany the search team, should circumstances permit.
- ❑ Officers should ensure that they are not left alone in any part of the premises.
- ❑ Avoid all unnecessary damage to goods, including furniture/fittings, and property during the search.
- ❑ After execution, the warrant should be endorsed:
“*executed in the presence of at this... day of 20...*”
by the officer to whom the warrant was issued who should then add his/her signature.
- ❑ The executed warrant must be retained by the officer as an exhibit and a copy placed in the file, along with a copy of the INFORMATION.
- ❑ Once the premises has been vacated, a fresh warrant should be taken out for any subsequent search of those premises.

Recording Search Warrants.

- ❑ Each Enforcement Unit should maintain a local record of search warrants issued, distinguished by the relevant legal provision under which the warrants were granted. A copy of both the information and the warrant should be retained with this record.

2.9 Evidence

General

The available evidence will differ from case to case and it is not possible, in general terms, to indicate exactly what evidence must be produced. In many smuggling cases the whole transaction may be off record (not documented) both in Ireland and in the exporting country. In such cases it is possible that the only evidence from enforcement staff will be the statements of the officials who witnessed the illegal importation. In all cases evidence must be produced to prove that the goods were liable to duty and/or subject to prohibition/restriction at the time of importation/exportation. This is arranged by the Revenue Solicitor in conjunction with the Investigations & Prosecutions Division – it is not a matter for enforcement staff. The question of admissibility, or otherwise, of evidence is a matter for the courts.

Types of Evidence.

The evidence presented in a case will normally consist of:

- ① oral testimony
- ② documentary evidence
- ③ real evidence.

① Oral Testimony

This testimony is the evidence given by a witness in court. It is normally based upon a statement or report previously made. As it would not normally be permissible for a witness to give evidence not contained in his/her statement, it is important that the witness statement contains a full and accurate account of all the relevant facts. Testimony should not include anything of a derogatory or prejudicial nature, and a witness should not refer in his evidence to the accused's bad character or previous convictions.

Hearsay evidence is not admissible. The rule on hearsay provides that:

"a statement other than one made by a person while giving oral evidence in the proceedings is inadmissible as evidence of any fact stated."

Accordingly a statement made by a third party will only be admitted in evidence where the third party himself gives evidence as a witness. This rule further provides that a witness may only speak as to facts observed, and not as to inferences from these facts. A witness appearing as an expert may give evidence of his opinions.

Confessions evidence (i.e. evidence resulting from a confession by the accused) is an exception of the hearsay rule. This is admissible as evidence in criminal proceedings. The courts will, however, be anxious to ensure that the confession:

- Was given freely and voluntarily;
- That there was no breach of the accused constitutional rights; and
- That it was obtained in accordance with the Judges Rules (see Part 2.5).

Finally, it should be noted that the spouse of an accused cannot be compelled to serve as a prosecution witness in any criminal proceedings but there is nothing to prevent him/her serving as a voluntary witness.

2.9 Evidence.

② *Documentary Evidence.*

In general, documentary evidence usually consists of any documents, which relate to any aspect of an investigation.

A party seeking to introduce documentary evidence must, with few exceptions, demonstrate:

- Proof of contents (i.e. that it is an authentic document)
- Proof of due execution (through corroborating evidence to prove that the action referred to in the document actually happened).

A party seeking to rely on the contents of a document must adduce primary evidence of those contents. In practice, this is done by producing the original document in question. Photocopies or other secondary evidence will only be permitted if production of the original is physically or legally impossible e.g. if it has been destroyed.

The following table lists *examples* of the most common types of documentary evidence which could be drawn upon in support of a case:

From Official Sources	From Commercial Sources	From the Investigating Team
<ul style="list-style-type: none"> • Customs declaration, import or export, for the case to be prosecuted. • Copy T form for country of destination/despatch. • Discharged copy T form from country of destination for exports. • IP or other authorisation and the application for such authorisation. • Application(s) for import/export licences or authorisations. • Previous Customs declarations for the same goods and trader. • Company registration details. • VAT registration application. • PAYE details. • Voter's register. • Application for Binding Tariff Information (BTI). 	<ul style="list-style-type: none"> • Purchase contract or purchase order. • Telex, fax or other correspondence between consignee and supplier. • Suppliers invoice. • Purchaser's record of payment. • Stock records to show receipt of the goods. • Credit and/or debit notes for all or part of the goods. • Bills of lading, Airway bills or other transport documents. • Freight/other carriage invoices. • Payment for freight/carriage. • Instructions to clearance agent. • Preferential and/or non-preferential certificates of origin. • Insurance claims and reports. • Warehouse records (Commercial, bonded, ACP). • Copy T Form. 	<ul style="list-style-type: none"> • Copy of detention notice/receipt. • Copy of seizure notice/receipt. • Result of any analysis (including any analysis results submitted by the importer). • Evidence of preservation, custody and continuity of any seized/detained goods. • Record of replies to statutory questions (e.g. S.20, F.A. 1936 and/or S.4, Customs Act 1956 etc. – see Part 3.8 below). • Records, notes of any interviews & cautioned statements. • Search Warrant. • Copy of information.

It may be necessary to substantiate documentary evidence by the witness statement in some cases e.g. where a penalty is based on the value of the goods (treble duty-paid value). If the value cannot be proved by the available documentary evidence, then the goods must be valued by a relevant expert and a witness statement provided for court (see Part 2.12.2). In routine tobacco product cases, (i.e. smuggling by private individuals), the Case Officer may provide a valuation for prosecution purposes having regard to cigarette manufacturer's retail selling price lists in the

2.9	Evidence.
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case of other brands, to the minimum retail prices for cigarettes determined by the Department of Health & Children under Article 17 of S.I. 326/1991.

③ Real Evidence

Real evidence is tangible evidence such as samples of seized goods or the goods themselves. Real evidence is produced as exhibits and the chain of custody needs to be proven as for documentary evidence.

Suppression of Evidence

There are no circumstances that justify the suppression of any piece of evidence. All evidence of every type must be submitted with the report even if some of it weakens the case being made.

Custody and Continuity

When goods/documents are seized it may be necessary to produce them in court at a later date. In these circumstances it is always essential to prove that there was no interference with the exhibits and that they are the goods/documents that were removed during the search.

- ❑ The Case Officer (or a separate Exhibits Officer where one is appointed) is responsible for the proper identification and custody of all exhibits.
- ❑ If it is necessary to store goods temporarily the responsible Officer should arrange for secure accommodation (preferably an official safe). Nobody, other than the responsible Officer or somebody to whom custody has been properly transferred, should have independent access to the goods.
- ❑ When transferring custody to another person always obtain and retain a receipt.
- ❑ When taking over custody, even for a short temporary period, always check that all the goods are present before issuing a receipt.
- ❑ If analysis is necessary a representative sample should be taken to the State Laboratory by the responsible Officer who should retain the analyst's receipt. The responsible Officer should also give a receipt for any goods s/he removes for analysis.
- ❑ The responsible Officer should ensure secure custody of any documents removed from a premises. As with goods, any transfer of custody should be receipted.
- ❑ The responsible Officer should retain secure custody of any documents likely to be needed in evidence e.g. statements, replies to statutory questions, results of analysis. Working copies should be made of all such documents.
- ❑ **Original documentary exhibits should never be placed in the file. They should be retained by the responsible Officer.**

2.10 *Arrest and Charge.*

General

In dealing with Revenue Offences, the arrest of persons is warranted only as an exceptional measure and in exceptional circumstances. Accordingly, it must be exercised, not only in strict conformity with statutory rules, but also within the guidelines set by Commissioners in this highly-sensitive area.

An arrest means “a physical act done with a view to detention” (Henchy, J).

Article 40.4.1 of the Constitution states that:-

“no citizen shall be deprived of his personal liberty save in accordance with the law”

Consequently, an arrest must always be legally permissible and otherwise justified by the surrounding circumstances.

The act of arrest, with a view of subsequent charging with an offence, is part of the legal process designed to ensure the appearance in court of the accused. Persons brought before a court will have either been subject to an arrest (with or without a warrant) or appear on foot of a summons. The latter approach is favoured by the D.P.P. and should be used whenever possible. An arrest should only be effected where it is considered absolutely necessary to secure the appearance before the court of the person accused of an offence.

Provision for the arrest of person is contained in a number of different enactments and these are set out in detail in Part 3.13 of this Manual.

Circumstances in which arrests arise

In practice, a decision to arrest should only be made where the officer has reason to believe that the person will abscond and fail to turn up for trial. Factors to consider in arriving at such a decision include the following:

- The offence is of an extremely serious nature
- The strength of the evidence available against the accused
- The legislation creating the offence includes a provision for arrest or detention
- The person accused of the offence resides outside the state
- The penalty which may be imposed subsequently by the court.

A decision to arrest a person should only be taken following consultation with the Revenue Solicitor who will usually discuss the matter with the D.P.P. Where such consultation is not possible or practicable. For instance at night or at weekends, the Principal Officer, or in his absence the Assistant Principal be consulted.

2.10 Arrest and Charge.

In practice, arrests will usually be justified in the following situations:

- In certain drug detections (specific instructions in regard to the circumstances in which drug smugglers should be arrested have been issued to customs enforcement staff),
- In cases of commercial smuggling involving serious evasion customs or excise duties,
- Serious evasion of import prohibitions or restrictions and, in particular, breaches of the Importation of Dogs and Cats orders 1929 to 1970 (Rabies provisions),
- Serious evasion of an export prohibition,
- In certain oil laundering cases where the offender is not a State resident,
- In certain cases involving the production or processing of illicit alcohol where the offender is not a State resident.

Arrest Procedure

- ❑ An arrest consists of the touching or seizure of a person's body with a view to detention. The mere pronouncement of words is not an arrest. Therefore, an arresting officer should identify himself/herself (If s/he has not already done so), place his/her hand on the person's shoulder and state:
"You are under arrest; a charge will be preferred against you, you are not free to go;".
 When a person is arrested s/he must be given the reason for his/her arrest. This should include details of the relevant legislation.
- ❑ The arrested person must be taken without delay to the nearest Garda Station within the area of the District Court having jurisdiction for the place where the accused was arrested. The officer should identify him/herself to the Member-in-Charge and inform him/her that the person is under arrest and is to be charged with an offence.
- ❑ The Gardaí will usually assist the officer in preparing the charge sheet which will be numbered in a Garda Station series. The wording of the charge is a matter for the arresting officer. The charge will normally be preferred in the arresting officer's name, unless the D.P.P has consented in advance to the charge being preferred in his name. Specimens of charges relating to the more common offences are included at Appendix 6. Three copies of the original fully-completed charge sheet should be made and dealt with as follows:

Original	The arresting officer's charge sheet for presentation in court.
1st copy	For the accused.
2nd copy	For the arresting officer (to record the responses of the accused to the charges).
3rd copy	For the Member-in-Charge of Garda Station.

2.10 Arrest and Charge.

- ❑ Section 34(4), Finance Act, 1963 requires that an estimated value of the goods must be stated on the charge sheet relation to offences under S. 119, Finance Act 2001, S. 186, Customs Consolidation Act 1876 or S. 3, Customs Act, 1956. The estimated value is defined as the price which goods might reasonably be expected to fetch, after payment of any duty chargeable, if they had been sold in the open market around the time of the offence. The value quoted should be based on a written valuation by a person experienced in dealing with the goods concerned. If it is not practical to obtain such a valuation, the officer's own estimate may be used.
- ❑ When the charge sheet is completed, the charges should be read over to the offender and s/he should be cautioned after each charge as follows:

"Do you wish to reply to the charge? You are not obliged to say anything unless you wish to do so but whatever you do say will be taken down in writing and may be given in evidence".

Anything the accused says in reply to the charge(s) should be recorded verbatim on the 2nd copy of the charge sheet, even if it simply consists of "no" or "no comment". This copy, with the recorded replies, will be an exhibit for the Book of Evidence. The original charge sheet should be left intact for the Court.
- ❑ In certain circumstances, the Member-in-Charge may release the arrested person on "station bail". In practice, this will not normally happen for a serious offence. The granting of such bail is entirely at the discretion of the Member-in-Charge. If "station bail" is granted, the officer should obtain a copy of the Recognisance from the Member-in-Charge and present it with the original charge sheet to the Clerk of the District Court before the next sitting.
- ❑ The Gardaí will make the necessary arrangements for the accused to be brought before a Judge of the District Court. Where necessary, they will arrange a special sitting where the arresting officer will be required to give evidence of arrest and where the Judge will decide whether to remand the accused person in custody or to release him/her on bail.

2.11 *Reporting*

General

It is of the utmost importance that detections are reported thoroughly, accurately and promptly to the Investigations & Prosecutions Division (within 24 hours if possible). Reports must contain sufficient detail on all the relevant facts so as to enable the Investigations & Prosecutions Division to establish quickly if there is a likelihood of charges being taken. Detections should be reported as quickly as possible – while there may be some time lag in reporting the more complex cases, the more straightforward cases should be reported immediately but not later than one month after the date of seizure. A delay in reporting an offence and providing the relevant details will compromise the chances of an eventual successful prosecution as Courts regularly apply the maxim “justice delayed is justice denied”.

Report standards and characteristics

In reporting cases, one officer should act as the Case Officer for reporting the detection. S/he should prepare a comprehensive report setting out (a) the background, (b) all the circumstances of the investigation and (c) the facts in chronological order. Standard report forms should be used where they exist. Where possible all reports should be typed.

A report should include the following:-

- ☐ Background, in brief, if the investigation followed a report from another Officer (or other official source) that should be acknowledged.
- ☐ Details of any checks carried out to verify the bona fides of the information should be given – for example, if the information related to the prohibited/restricted goods checks should have been made with the relevant licensing authority to verify that a valid licence had not been issued for the goods.
- ☐ The basis for suspicion/belief that an offence was committed should be clearly stated. If it is based on confidential information from a reliable source that and only that should be stated. ***Details of informants should never be included in a report.*** (see part 2.13).
- ☐ Full details of dates and times.
- ☐ Full and specific details of the parts played by individual officers in the course of the investigation.
- ☐ Full details of any evidence obtained and the manner in which and by whom it has been retained.
- ☐ Details of interviews/questioning of suspects:-
 - The time and date of interviews should be indicated
 - Those present at the interview should be listed
 - Specific details of the questions asked and the responses obtained should be outlined as well as whether such responses were made under caution.
- ☐ Details of relevant legislation.
- ☐ Summary, conclusion and recommendation based on the available information.

2.11 Reporting

Other guidelines on reporting

The report should be based on the officers' notes in the course of the investigation. Individual officers should not make separate reports, other than completing any standard reporting form, at this stage of the investigation. However, in indictable cases where it is decided to initiate proceedings, all officers involved will have to make statements of the part played by them in the investigation. Such statements will form part of the Book of Evidence. In addition, in summary cases where a trial judge directs that the prosecution case be made available to the defence, officers will have to make statements. Again, the importance of excellent notetaking and through reports cannot be over-stressed. They will form the basis of an officer's subsequent statement. It should be noted that the individual officer's notes, the case officer's report and the officer's statement of evidence may all be made available to the defence.

As a report is, essentially, an objective account of an event and its investigation, it should not include any of the following:

Exclude from Reports	Example
Unsubstantiated allegations	<i>"he was involved in drugs"</i>
Hearsay.	<i>"a colleague said he was a criminal"</i>
Unsubstantiated conjecture.	<i>"he was going to sell the wine"</i>
Derogatory remarks.	<i>"he is a chancer"</i>
Details of Informants	<i>"John Smith told me that"</i>

Best Practice – Handling and Arrangement of Reports.

The following are the best practice guidelines when handling reports:

- ☐ Original documents should not be enclosed with reports. They should be retained by the exhibits officer. Only *copies* of original documents should accompany reports.
- ☐ Insert enclosure envelopes with the flap towards the centre of the file to minimise the danger of losing enclosures.
- ☐ Use sufficient envelopes to hold all the enclosures comfortably. Do not force everything into one envelope.
- ☐ List the enclosures inside the front cover of the file – not on the enclosure envelope.
- ☐ Number each folio in the file as you go along for ease of reference.
- ☐ Complicated reports should include an index, headings, paragraph numbers and a summary of the events.

2.12 Statements of Evidence (Officers & Witness).**2.12.1 Officers' Statements of Evidence.**

Officers who are either directly involved in an investigation or other Revenue personnel who may be indirectly involved (e.g. Tariff Classification Unit) will be required to provide statements of evidence in the following circumstances

- All indictable cases
- Some summary trials where the trial judge decides that statements should be given.

In indictable cases, the officer's statement is one of the key elements of the prosecution case. A statement is a written record of the information an officer can give concerning an offence which is likely to lead to a prosecution. It provides a means of informing the authorities and the prosecution lawyers of the evidence which will be given by the officer at the court case. It is crucial, therefore, that the statement is entirely accurate and is a thorough summary of all the facts. It should contain sufficient detail to make the facts quite clear. It can be extremely embarrassing if a prosecutor finds that the evidence which is given by a witness differs quite considerably from the account recorded in a statement.

When statements are prepared, they are sent to the Revenue Solicitor or the relevant State Solicitor who edits them by excluding evidence that perhaps should not be in the statement. For instance, a statement should not refer to hearsay, give details of previous convictions, make a recommendation to prosecute (or otherwise) or make a recommendation for payment of a reward (these should be done in a separate document). The edited statement will be in the book of evidence and will be a statement of the evidence proposed to be given by the officer against the accused person at his/her trial. It is crucial to note that the original statement(s) of an officer (unedited) will normally also be furnished to the defence. In this context, it should again be noted that any notes/reports which an officer may have made in the course of the investigation will be made available to the defence should they obtain an order for discovery of documents. Accordingly, the importance of excellent note-taking and thorough preparation of reports and statements cannot be over stressed.

It should be noted that in certain circumstances, the Investigations & Prosecutions Division may require a statement from an officer in accordance with Section 21 of the Criminal Justice Act. 1984. This enables evidence to be presented in court without the officer having to attend in person to give direct, oral evidence (see Appendix 8).

2.12.1**Officers' Statements of Evidence.****Standards in preparing statements**

There are no standard rules about writing statements; however the following are important points to note in the preparation of a statement by an officer:

- ❑ An Officer's statement should commence:

"I (name) an Officer of Customs & Excise stationed at (.....)"

(continue).

The officer should specify that s/he was an officer of Customs and Excise and/or an authorised officer, on the date of the offence and in respect of any other period relevant to the offence.

- ❑ The facts must be recorded in the first person singular so that they are specifically identified with the officer e.g. *'I saw.....', 'I asked.....'*.
- ❑ Events should be set out in the order in which they occurred and there should be sufficient detail to make the account accurate and free from ambiguity. Dates and times should be accurately stated. Words and phrases used should be clear and times should be accurately stated. Words and phrases used should be clear and not open to different interpretations. Only details relating to the particular offence should be included.
- ❑ When making a statement, officers should always state the basis of their suspicions. The officer should give precise evidence as to his/her observations which led him/her to reasonably hold the suspicion in question.
- ❑ Statements should not include names of informants or details which could lead to the identification of an informant.
- ❑ Statements must include full details of any evidence held by the officer, when and how it was obtained and how it was retained or disposed of.
- ❑ Statements should not include details of previous offences, unsubstantiated allegations, hearsay, conjecture or derogatory remarks.
- ❑ All statements should be typed. The original should be retained by the officer and a copy forwarded either with the file or on request to the Investigations & Prosecutions Division.
- ❑ Statements cannot be recalled for amendment – supplementary statements must be furnished.
- ❑ An officer's statement should conclude with the following declaration:

'This statement consisting of ... pages, signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true'.
- ❑ All statements should be signed and dated.

2.12.2***Witness Statements of Evidence***

Any person who provides corroborative evidence/information or an expert who provides an opinion which is relevant to a case may be required to furnish a witness statement. Expert witnesses, (e.g. valuation) should indicate their qualifications in their statements. These will not necessarily be academic qualifications – in most cases experience in a particular trade will determine the expertise of the witness.

In such cases, it should be noted that the statements furnished are not sufficient to prove their content and that the witnesses will always have to appear in Court and give oral evidence.

Care should be taken that “evidence” is not confused with “information”. For example information on company registration is a matter of public record and this may prove useful in the investigation process. However, if this information is to be produced in evidence a witness from the Companies registration Office who controls and can produce original documents must furnish a statement and appear in court as a witness.

2.13 *Dealing with Informants*

It is not Revenue policy to induce people to give information concerning tax, duty or prohibited goods on the basis of payment of any reward.

Dealing with informants demands the exercise of considerable tact and caution. Contact should be handled by – or at least first discussed with – an officer not below HEO grade. The following points are intended to serve as general guidelines only:

- ❑ Avoid contact with certain types of individuals, which might result in Revenue being brought into disrepute or adverse publicity, for example:
 - ◆ Persons known to be directly involved in criminal activities
 - ◆ Persons seeking to commit Revenue resources to wasteful enquiries
 - ◆ Persons who are actually seeking information under the guise of supplying it.
- ❑ Do not provide the informant with any information about a taxpayer's affairs or about the nature, extent, timing or result of any enquiries carried out or intended to be carried out. Tell the informant this and thank him/her for his/her contribution.
- ❑ Establish, insofar as possible, the bona fides of the informant and the credibility of the information. If relevant to Revenue, make a clear and precise record of the information and seek any clarifications necessary to maximise its usefulness.
- ❑ Where the information being offered is not appropriate to Revenue but might be useful to another State agency (e.g. Department of Social & Family Affairs or the Gardaí), put the informant, if still intent on going ahead, in contact with that other agency.
- ❑ Take care to preserve the anonymity of the informant. It is usually a matter of paramount importance to an informant that the source cannot be traced. The informant should be assured accordingly.
- ❑ Always instruct informants that on no account should they act as ***agent provocateur*** which is defined in case law as “*a person who entices another to commit an express breach of the law which he would not otherwise have committed and the proceeds to inform against him in respect of such offence*”.
- ❑ Always exercise discretion in meeting informants. Where possible, informants should be met by two officers or the “meet” should be covertly covered by a colleague. Choose a location which is away from the office and the officer's home.
- ❑ Do not raise the question of a reward or inducement and make no promises in this regard. The payment of a reward is a matter for the Board **and Officers are not authorised to give undertakings or promises in this regard.** Under no circumstances allow any arrangement that could be construed as a “contract” relationship to develop. Ensure that the informant is aware at all times that s/he is acting quite voluntarily.
- ❑ If the informant insists on a reward consult your supervisor for further instructions.

¹Information Handling Procedures are currently under review in order to bring them in line with existing best practice observed by EU Law Enforcement. This will be set out in an Operational Instruction which is being drafted at present and will be issued in the near future.

2.14 ***Preparing for Court.***

General.

Training is a key element in the development of skills for dealing with court cases. The Revenue Training Branch provides “Legal Courses” which greatly enhance and reinforce the skills and knowledge of staff in this area and support the practical experience gained on the ground.

Staff have to continuously draw on their experience and training as giving evidence in court is never easy. Each case depends on the quality of the evidence and exhibits presented by the witnesses. To achieve success requires careful preparation, clear presentation of the evidence, listening attentively to questions, giving clear answers and using common sense approach.

The following are guidelines for staff involved in court cases:

<i>Preparation</i>	Preparation begins on receiving notification of the case. Check your notebook your case report and witness statement. Check and collect all exhibits that will be necessary to prove your case.
<i>Recap</i>	Refresh your memory on case details. Run over your evidence, making sure to accurately memorise the names, places, dates, amounts/quantities and details of the question & answer session with the defendant.
<i>Dress Code</i>	The importance given to your evidence is very often based on the impression you make upon the Court. Be neatly groomed and wear your full uniform, where provided.
<i>Research</i>	Be prepared for general questions. You may be looked upon as an expert in Court. Make sure you know the Act, sections and regulations under which you are operating, and under which the offence was committed, and any relevant sections of the Act or regulations concerned. You will normally find these in the Summons or in Circuit Court Indictment.
<i>Location/Timely Arrival</i>	Check to ensure you know where the Court is in the town in question to avoid delays on arrival. Arrive in good time before the Court sits.
<i>Pre-trial Consultation</i>	Immediately prior to the hearing, or earlier where necessary, a pre-trial consultation should be sought with the prosecuting solicitor and counsel where appropriate, This helps to ensure that everyone is properly briefed and that no misunderstandings arise. <u>Managers are to take direct and positive steps to see that such consultation occurs wherever possible.</u> Early consultation at H.E.O. or A.P. level is particularly desirable for complex cases. However, remember that the solicitor/counsel cannot coach the witness (e.g. advising the witness to answer in a particular fashion).

2.14 Preparing for Court
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<i>Proof of offence</i>	<p>Offences created by Acts of the Oireachtas do not have to be proved as they are required to be “judicially noticed” in accordance with S. 6 of the Interpretation Act 1937.</p> <p>However, in the case of an offence created by the Statutory Instrument, proof of the offence must be established by furnishing to the Court either an original copy of the relevant Statutory Instrument published by the Stationery Office or an original copy of the edition of Iris Oifigiúil in which details of the making of the said instrument were published.</p> <p>While it would be expected that State Solicitors should be fully aware of their requirement, Case Officers should bring it to their attention, where appropriate.</p>
<i>Addressing the Judge</i>	Address the Judge as “Judge” in both District and Circuit Court.
<i>Identification</i>	Bring evidence of Authorisation with you to Court i.e. your Identity (Standard or Combination) Card.
<i>Exhibits</i>	Ensure you have collected all the exhibits that you will be using including the key to your Exhibits locker. Remember to bring them with you to the witness box if there is no Exhibits Officer in the case.
<i>Mobile Phones</i>	It is considered a contempt of court to have a mobile phone in receiving mode in a Court of Law. Switch it off or do not bring it.
<i>Notebook</i>	It is essential that you have the correct notebook, marked at the correct page, where you have recorded your contemporaneous notes.

2.15 Giving Evidence in Court

The following are guidelines for staff who have to give evidence in court.

<i>Exhibits</i>	When called to the witness box, make sure you have all exhibits you intend to produce in the witness box with you.
<i>Oath</i>	Walk up purposefully to the witness box when called, stand for the Oath, take the Bible in your right hand, keep your left hand on you side, and repeat the words of the Oath as directed by the District Court Clerk or Registrar. S/he will normally ask you to repeat the Oath after him/her. Thereafter, sit down in the witness box.
<i>Identifying yourself</i>	You will normally be asked your name and occupation. If not, before giving evidence give your name and occupation in respect of the period relevant to the date of the offence.
<i>Speak Clearly</i>	When you commence giving evidence, make a voice check and ensure that the last person on the jury is not straining to hear you (or, in the case of the District Court, that the Judge, Solicitors and witnesses hear you clearly).
<i>Replying to questions</i>	<ul style="list-style-type: none"> <input type="checkbox"/> Reply fully to the questions asked of you by the person presenting the case. <input type="checkbox"/> Look towards the party asking the question and, where possible, look towards the Judge and/or Jury when replying <input type="checkbox"/> Avoid volunteering information, even if you feel the prosecutor has forgotten to question you on a particular aspect. Very often, there is a reason for omission. <input type="checkbox"/> Above all, be factual in your answers. If you do not know the answer to a question, you should say so. <input type="checkbox"/> Occasionally in cross-examination you will be asked questions you might find offensive or serious allegations may be made about your conduct. Remember to maintain complete self-control and answer correctly and politely. This will assist your care considerably.
<i>Notebook</i>	Have your original notebook ready with the correct page marked. You are entitled to refresh your memory by reference to notes made at the time. You are not entitled to read from a script or statement.

2.15	Giving Evidence in Court
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<i>Adjournments</i>	<ul style="list-style-type: none"> ❑ If the court is adjourned for any reason while you are in the witness box, you are not free to discuss your evidence with anybody, including other witnesses, during the adjournment. ❑ If the adjournment takes place during your cross-examination you should also avoid contact with the State's Legal team.
<i>Concluding</i>	<ul style="list-style-type: none"> ❑ When your evidence is finished, remember that when returning to your seat you are being watched by the Jury and/or Judge and you should be careful to return quietly without communicating with other in any way. ❑ You should remain in the court unless the prosecution solicitor confirms that you are free to leave.

Other Points to note:

- **Remember to submit a hearing Letter on your return from Court.**
- **Attendance at court and claiming of expenses:**
 - Officers called as witnesses on behalf of the State must attend as required and attendance is regarded as part of their official duties. They are eligible for travelling & subsistence expenses (where applicable) from Revenue subject to the usual regulations. They should not, therefore, claim witness expenses at court. (An exception to this general rule arises in the case of certain civil proceedings – for guidance in relation to any civil case, contact the Investigations & Prosecutions Division).
 - Officers called, through summons or subpoena, as witnesses on behalf of parties other than State are entitled to special leave with pay for the period of necessary absence. Any witness expenses arising in these cases should be claimed at court – contact Personnel Branch for further guidelines.