

## **Chapter 5: GUIDELINES & PROOFS FOR SPECIFIC EXCISE OFFENCES**

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**Introduction.**

Except where relief or exemption from the tax applies, Vehicle Registration Tax is chargeable on registration of a vehicle in the State. All motor vehicles in the State, other than those brought in temporarily by visitors, must be registered with the Revenue Commissioners. Staff should have particular regard to the fact that:

- The chargeable event is registration (or declaration of conversion or change of use for vehicles with TOR restrictions) and
- There is a time lag between the arrival in the State and when registration becomes legally due. In the case of vehicles held by authorised dealers, registration becomes legally due when a vehicle is brought into first use on the roads. In the case of a vehicle acquired by a person other than an authorised dealer, the law requires that it be registered and the tax paid not later than 30 days following its arrival in the State (Article 8(1) of S.I. No. 318/92 as amended by Article 3(f) S.I. 400 of 2010).

**Overall Strategy – Voluntary Compliance**

One of the core objectives of Revenue is to maximise voluntary compliance and deter evasion/avoidance. The emphasis on this objective is reflected in Revenue's current Statement of Strategy where one of the key objectives refers, inter alia, to the need to achieve the highest possible levels of voluntary compliance. The practical implementation of this policy in relation to VRT involves the following sequence of action:

- Increase public awareness of the legal requirement to register/pay and the penalties for non-compliance;
- Ensure prompt follow-up action where the warnings/demands are ignored;
- Seize vehicles where warnings/demands are ignored or where there are aggravating circumstances and
- Prosecute offenders where seizure is not appropriate.

Full details of these procedures are set out in Section 5 of the VRT Instruction Manual.

**Statute of Limitations**

It should be noted that there is a time limit of one year within which VRT prosecution proceedings must be taken (Statute of Limitations, S. 126(5)(a), Finance Act 2001) except

- In the case of offences involving fraudulent repayment claims and certain obstruction cases when proceedings, under S.1078 Taxes Consolidation Act 1997 (see Appendix 5), can be taken up to 10 years after the offence was committed and
- In the case of summary offences under S.119 – 122, Finance Act 2001 when proceedings can be taken up to 3 years after the offence was committed (S. 126(5)(b), Finance Act 2001).

In any event, all offences should be reported promptly as a Judge may dismiss a case even within the time limit if s/he considers that there have been unnecessary delays.

It should be noted that the Statute of limitations does not apply to detention/seizure of vehicles. Hence, a vehicle may be detained or seized regardless of the amount of time, which has elapsed since the offence (carrying the forfeiture penalty) was allegedly committed. However, such action should only take place in exceptional circumstances and should be clearly justified.

**Proofs required for successful VRT prosecutions**

Chapter 4.3 of this manual lists the main offences associated with VRT (together with some practical examples/explanations) and the penalties involved. Some guidance now follows on the types of proofs required to support a prosecution case under the various offences. It should be noted that the list of proofs is not exhaustive. Cases should only be submitted for prosecution where reliable evidence is available and the basis on which decisions were made should be set out and substantiated.

Offence – Description/Example	Typical Proofs Required to Support a Case
<p><b>[1] Possession of an unregistered vehicle.</b></p> <p>This offence occurs when a State resident, who is not an authorised person, is found in possession of i.e. physically in charge of a vehicle, in excess of the statutory period allowed for registration.</p> <p>Where a State resident is encountered for the first time in possession of a vehicle legally brought into the State by a qualified person, on a temporary basis, the Officer should issue a verbal warning to the State resident and to the person granted TE, where possible, that they are in breach of VRT legislation and that any future similar occurrence may result in the seizure of the vehicle (possession offence).</p> <p>.</p> <p><u>Exceptions:</u></p> <ul style="list-style-type: none"> <li>• <i>An authorised dealer (if the vehicle is used in accordance with terms of authorisation).</i></li> <li>• <i>If the vehicle is the subject of an exemption <u>and</u> is being used in accordance with the terms involved.</i></li> </ul>	<ul style="list-style-type: none"> <li>❑ A certificate of non registration from the CVO in respect of the vehicle on the date of the alleged offence to show that it was unregistered.</li> <li>❑ Evidence that the defendant was in possession of the vehicle on the date of the offence. This will normally include a statement from the detecting officer that the offender was detected driving or in possession of the vehicle on a specific date &amp; time and at a particular place.</li> <li>❑ Confirmation from the local Control Officer that the defendant is not an authorised person.</li> <li>❑ Evidence of demands (VRT 31) and any warnings issued.</li> <li>❑ Proof that the vehicle was in the State longer than the time allowed for registration following its entry into the State [i.e. a period greater than that allowed by S.I. No. 318/1992 Art. 8(1) as amended by Art. 3(f) of S.I. 400 of 2010]. This should consist of such evidence as <ul style="list-style-type: none"> <li>• Observations by officers, with dates, times and locations of sightings.</li> <li>• An admission, preferably under caution, from the suspected offender.</li> <li>• Proof of insurance cover over a period in the State in the name of the suspected offender.</li> </ul> </li> <li>❑ Evidence that the offender is a State resident. This should consist of such evidence as:- <ul style="list-style-type: none"> <li>• Proof of having a dwelling house in the State.</li> <li>• Proof of having personal ties in the State.</li> <li>• Employment in the State.</li> <li>• Registered on electoral list in the State.</li> <li>• In receipt of benefits in the State.</li> <li>• Paying taxes in the State.</li> <li>• Children in educational establishments in the State.</li> </ul> </li> </ul>

Offence – Description/Example	Typical Proofs Required to Support a Case
<p><b>[2] Possession of a vehicle in breach of TOR Regulations.</b></p> <p>This mainly concerns vehicles, which have been allowed permanent relief on transfer of residence (or on transfer of business) and the restrictions imposed on disposal are broken.</p> <p><u>Notes:</u>  <i>The person in possession of the vehicle at the time of breaching the restrictions/limitations imposed can also be charged with contravening the VRT regulations generally – see offence No.[17].</i></p> <ul style="list-style-type: none"> <li>▪ <i>The person who disposed of the vehicle may be prosecuted for:</i> <ul style="list-style-type: none"> <li>(i) <i>failure to pay VRT due – see offence No. [3]. In a TOR or VRT repayment situation, VRT becomes due on change in the use to which the vehicle is put – S. 132(6), F.A. 1992 and Art. 9(3), S.I. 59/92.</i></li> <li>(ii) <i>contravening the VRT regulations generally – see offence No.[17].</i></li> </ul> </li> <li>▪ <i>For advice on breaches of other provisions such as inheritance, diplomatic relief etc., consult the VRT Seizures &amp; Prosecutions Section, Bridgend. (See S.I. 59/93)</i></li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Evidence to show that an exemption had been granted under Section 134 of the Finance Act 1992 (the form of application C&amp;E 1076 or 1077).</li> <li><input type="checkbox"/> A copy of the Vehicle Registration Certificate showing details of the restriction on disposal.</li> <li><input type="checkbox"/> Evidence to establish the identity of the person in possession of the vehicle and to show that s/he was not the person to whom the relief was granted.</li> <li><input type="checkbox"/> Evidence, <u>with dates, times and locations</u>, of frequently observing the vehicle at a premises other than that of the applicant.</li> <li><input type="checkbox"/> Details, including dates, of warnings given.</li> <li><input type="checkbox"/> A cautioned interview of the person to whom relief was granted and who disposed of the vehicle.</li> <li><input type="checkbox"/> An admission, preferably under caution, by the possessor of the vehicle that s/he was not the applicant and had acquired possession of the vehicle.</li> <li><input type="checkbox"/> Evidence that the vehicle was in the possession of a person, other than the applicant, on a regular basis. Dates and times to be given.</li> </ul>

Offence – Description/Example	Typical Proofs Required to Support a Case
<p><b>[3] Failure to pay any VRT due:</b></p> <ul style="list-style-type: none"> <li>▪ <i>on an unregistered vehicle</i></li> <li>▪ <i>on a converted vehicle</i></li> <li>▪ <i>on a vehicle which was granted relief on TOR but where the limitations imposed were subsequently broken.</i></li> </ul> <p><u>Examples:</u></p> <ul style="list-style-type: none"> <li>▪ <i>where a person has supplied false details (i.e., age, model, condition, mileage) in order to reduce the VRT payable.</i></li> <li>▪ <i>A bogus claim for TOR exemption supported by false documentation (this could arise if the applicant has never resided abroad, or did not take up any residence in the State or the vehicle did not satisfy the requirements as regards tax-paid, personal property, possession and use).</i></li> <li>▪ <i>Where a person declares a vehicle for registration but then disputes the liability and refuses to pay. (The proper procedure in such cases is for the customer to pay the VRT demanded and to lodge an appeal, with the basis for the appeal clearly shown &amp; supported).</i></li> <li>▪ <i>Other reliefs from VRT such as the registration of a vehicle under the inheritance provisions where the claim was supported by a bogus copy of a will.</i></li> </ul>	<ul style="list-style-type: none"> <li>❑ Evidence that the vehicle has been registered in the State or that a declaration has been lodged for the purpose of registration.</li> <li>❑ Evidence that it was granted relief from VRT to which it was not entitled or that a lower rate of VRT was charged than that which was liable if proper particulars had been disclosed.</li> <li>❑ If possible, a statement accepting liability should be obtained after caution.</li> <li>❑ A cautioned interview of any third party that supplied false or incorrect documentation to the person concerned.</li> <li>❑ Evidence that documentation is bogus.</li> <li>❑ Evidence that the details of the vehicle, which govern the amount of VRT payable had been altered in order to lessen the amount payable.</li> </ul> <p><u>Notes:</u></p> <ul style="list-style-type: none"> <li>▪ <b><i>The law is framed in such a way that VRT only becomes due on making of a declaration (i.e. in effect, at time of registration) However, in a TOR case where a declaration is made at the registration stage but VRT is exempted, the VRT will become due subsequently if the use of the vehicle changes e.g. if the vehicle is disposed of within the time limit [ by virtue of S. 132(6), F.A. 1992].</i></b></li> <li>▪ <i>If the applicant has an entitlement to the relief but the evidence produced to support the claim is bogus the offence occurs under Section 139(1)(f) of the Finance Act 1992.</i></li> </ul>

Offence – Description/Example	Typical Proofs Required to Support a Case
<p><b>[4] Breach of Temporary Exemption Regulations by the person who was granted TE.</b></p> <p><u>Examples:</u>  <i>This heading covers situations where a TE-qualified person brings an unregistered vehicle into the State and then breaches one of the conditions of Art. 5, S.I. 60/93, such as:</i></p> <ul style="list-style-type: none"> <li>▪ <i>disposing of the TE vehicle, by sale, hire or loan to a State resident.</i></li> <li>▪ <i>using unregistered TE vehicle, for cabotage of persons or goods within the State unless authorised by law (cabotage offences should be dealt with by warning and notification to the Department of Transport, Tourism and Sport.</i></li> <li>▪ <i>failing to remove the vehicle from the State within one year (but this may not apply to persons who are in the State on a task of definite duration).</i></li> </ul> <p><u>Notes:</u>  <i>(i) a first offence involving a simple breach of the TE Regulations may be dealt with by way of verbal warning. .</i>  <i>(ii) Where a State resident is encountered for the first time in possession of a vehicle legally brought into the State by a qualified person, on a temporary basis, the Officer should issue a verbal warning to the person granted TE and to the State resident, where possible, that they are in breach of VRT legislation and that any future similar occurrence may result in the seizure of the vehicle. See possession offence No. [1].</i></p>	<ul style="list-style-type: none"> <li>❑ A certificate of non registration from the CVO in respect of the vehicle on the date of the suspected offence to show that it is unregistered.</li> <li>❑ Evidence that the vehicle was being used in breach of the temporary exemption provisions e.g. dates, times and locations observed on loan to a person ineligible for TE.</li> <li>❑ Details and copies of any warnings/demands (VRT 31) issued.</li> <li>❑ If possible, an admission should be obtained after caution that the person concerned availed of TE and failed to comply with the associated regulations.</li> <li>❑ If possible, a cautioned statement from any State resident who may have taken possession of the vehicle in question.</li> <li>❑ An admission of culpability, preferably under caution, from the suspected offender.</li> </ul>

Offence – Description /Example.	Typical Proofs Required to Support a Case
<p><b>[5] To be knowingly concerned with the evasion of VRT</b></p> <p><i>Note: Intended for cases of protracted or concerted Fraud normally involving dealers and a number of vehicles. Persons associated with the fraud or implicated in it in any way can also be dealt with under this provision.</i></p>	<ul style="list-style-type: none"> <li>□ Evidence that fraud has taken place.</li> <li>□ Evidence that the accused person(s) knowingly or recklessly took steps to evade VRT (a) for himself; (b) with another individual.</li> <li>□ A statement of admission, preferably under caution, by the person(s) concerned or in the case of any other person who might have been in collusion with him/her or on whose behalf s/he acted.</li> <li>□ Evidence to prove that the suspect had the intention to evade, or to assist in the evasion of, VRT and took steps for that purpose.</li> </ul>
<p><b>[6] Possession of a vehicle on which its registration plates are not displayed or are not displayed in the prescribed manner.</b></p> <p><i>Notes:</i>  <i>(i) Three working days are allowed from date of registration before display of plates becomes legally due (under Art. 9(5) S.I 318/92).</i>  <i>(ii) A first offence should be dealt with by way of written warning</i></p>	<ul style="list-style-type: none"> <li>□ Evidence that the vehicle has been registered in the State (Cert. of registration from the CVO).</li> <li>□ Evidence that the registration plates have not been displayed within 3 working days of registration – dates, times and locations must be quoted.</li> <li>□ Evidence that the registration plates have been displayed but that because of the place of display or colour or size etc. they do not conform with the requirements of S.I. 318 of 1993.</li> <li>□ Evidence that the vehicle was in the possession of a particular individual, preferably in a public place, when the offence was detected.</li> <li>□ Evidence of warnings issued.</li> </ul>

Offence – Description/Example	Typical Proofs Required to Support a Case
<p><b><i>[7] Possession of a converted vehicle, which has not been declared or declared but the additional VRT has not been paid.</i></b></p> <p><u>Note:</u></p> <ul style="list-style-type: none"> <li>▪ <i>This offence applies to the <u>person in possession</u> irrespective of who was responsible for making the declaration or for delivering a vehicle. In other words, a person is guilty of an offence if in possession of a converted vehicle where particulars of the conversion have not been declared, or, if declared, where the VRT due has not been paid.</i></li> <li>▪ <i>If evidence of delivery is available, offence No. [8] also applies.</i></li> </ul>	<ul style="list-style-type: none"> <li>• Certificate of Registration from the C.V.O., which includes a statement of the amount of VRT paid.</li> <li>• Original application for registration.</li> <li>• Evidence that the vehicle has been converted, including details of the amount of VRT evaded.</li> <li>• Evidence of possession of the vehicle by an unauthorised person.</li> <li>• Evidence of warnings issued (if any).</li> </ul> <p><b><u>Points to remember concerning Offences relating to possession of converted vehicles – S.139 (1) (f) v.s. S.139(3)(ee), Finance Act, 1992.</u></b></p> <ul style="list-style-type: none"> <li>• VRT legislation [S.139(1)(f)] contains an offence for failure to comply with the requirement on a person under S.131 (4) of the Finance Act 1992 to declare the prescribed particulars of a converted vehicle in his/her possession. However, this particular offence <u>does not carry a forfeiture penalty</u>.</li> <li>• Where a conversion could possibly involve a repayment claim (e.g. disabled driver's claim), check with the Central Repayments Office, Monaghan before taking action.</li> </ul>
<p><b><i>[8] Delivery to an unauthorised person of an unregistered vehicle or a converted vehicle on which the additional VRT has not been paid.</i></b></p> <p><u>Notes:</u></p> <ul style="list-style-type: none"> <li>▪ <i>This charge normally applies to the converter. However, it can also be taken against a person who is not a converter but who sells on a converted vehicle.</i></li> <li>▪ <i>See also offence No. [12] below which covers the situation <u>where an authorised person delivers a converted vehicle.</u></i></li> </ul>	<ul style="list-style-type: none"> <li>○ Certificate of Registration from the C.V.O, which includes a statement of the amount of VRT paid.</li> <li>○ Original application for registration. .</li> <li>○ Evidence that the vehicle has been converted, including details of the amount of VRT evaded.</li> <li>○ Evidence as to who did the conversion and who delivered the converted vehicle.</li> <li>○ Witness statement from the present owner.</li> <li>○ Evidence of warnings issued (if any).</li> </ul>



Offence – Description/Example	Typical Proofs Required to Support a Case
<p><b>[9] Display of false/switched registration plates</b></p> <p><u>Note:</u>  <i>This applies to registration numbers, which are in, or purported to be in, the vehicle register.</i></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Evidence in the form of Vehicle Registration Certificate that the vehicle has been allocated a different number from that displayed.</li> <li><input type="checkbox"/> Evidence that the number of the displayed registration plate does not refer to the vehicle in question.</li> <li><input type="checkbox"/> Evidence as to who was responsible for displaying the wrong registration plate on the vehicle; if possible by way of a cautioned statement.</li> </ul>
<p><b>[10] False or misleading Declaration.</b></p> <p><u>Notes:</u></p> <ul style="list-style-type: none"> <li>▪ <i>A false TOR declaration on any false information supplied for registration purposes can come under this heading. The details requiring to be declared for registration are outlined in Art. 7 of S.I. 318 of 1993 (as amended by S.I. 400 of 2010) and include make, model, colour etc. of the vehicle concerned.</i></li> <li>▪ <i>If the false information involved an attempt to evade VRT at the time of registration, it should be dealt with as an offence under section 139(3)(d) of the Finance Act, 1992 for which seizure power exists.</i></li> <li>▪ <i>All other false declarations can be prosecuted under S. 139 (1)(a), Finance Act 1992 as outlined here</i></li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Evidence that the declaration contains false or misleading information.</li> <li><input type="checkbox"/> If possible, a cautioned statement from the person that the declaration is false or misleading.</li> <li><input type="checkbox"/> Evidence of examination of the vehicle concerned to confirm that the declaration contains false or misleading information.</li> <li><input type="checkbox"/> Original of the declaration in question (C &amp; E 1076/1077 etc.).</li> </ul>
<p><b>[11] Obstruction Offences.</b> <i>Obstruction offences arising in connection with Revenue powers to stop vehicles, enter/search, seek information, seize and detain vehicles. Failure to give name and address is also an obstruction offence.</i></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Clear evidence of obstruction, preferably by more than one officer.</li> <li><input type="checkbox"/> Positive identification of the individual who committed the obstruction.</li> </ul>

Offence – Description/Example	Typical Proofs Required to Support a Case
<p><i>[12] An authorised person i.e. TAN holder who:</i></p> <ul style="list-style-type: none"> <li>▪ <i>Delivers an unregistered vehicle to (or makes one available for use by) an unauthorised person.</i></li> <li>▪ <i>Delivers a converted vehicle which has not been declared and where the additional VRT due on conversion has not been paid.</i></li> </ul> <p><u>Note:</u></p> <p>See also offence No. [8] above, which covers the situation where an <u>unauthorised</u> person delivers a converted vehicle.</p>	<ul style="list-style-type: none"> <li>□ Interview both the person who authorised the delivery and the authorisation holder (TAN holder), if not the same person, take relevant documents (e.g. invoices, Bill of Sale) and obtain a statement, preferably under caution, once offence has been established.</li> <li>□ Evidence to show that the vehicle was delivered to an unauthorised person and the date of delivery. A witness statement should be taken from the person who took delivery of the vehicle. However, if separate offences have been committed by the person who received the vehicle, a cautioned interview is appropriate.</li> <li>□ Certificate of non-registration from the CVO.</li> </ul> <p><u>Converted vehicles:</u></p> <ul style="list-style-type: none"> <li>□ Cautioned interview of converter, obtain evidence of delivery, place of delivery, take relevant documents (e.g. invoices).</li> <li>□ Cautioned interview of owner.</li> <li>□ A CVO certificate stating the amount of VRT, which had been originally paid on the vehicle and the category originally recorded.</li> <li>□ Original application for registration.</li> </ul>

Offence – Description/Example	Typical Proofs Required to Support a Case
<p><b>[13] Use of an unregistered Vehicle (held by an Authorised dealer i.e. TAN holder) in a public place in breach of prescribed conditions.</b></p> <p>Example:</p> <p>An authorised person who uses, or permits his staff/family to use, an unregistered vehicle:</p> <ul style="list-style-type: none"> <li>○ for private transport purposes;</li> <li>○ outside of the permitted hours;</li> <li>○ for travelling more than 3,000 km in the State.</li> </ul> <p><u>Notes:</u></p> <p>(i) <i>The authorised dealer who allows the vehicle to be used outside the conditions is the offender in these cases.</i></p> <p>(ii) <i>An unauthorised person who uses an unregistered vehicle can be prosecuted under the possession provision covered above (See offence No. [1]). It must be ensured that this person is not connected with the business of the authorised dealer (e.g. staff member).</i></p>	<ul style="list-style-type: none"> <li>□ Evidence (i.e. date, time &amp; place of sightings) of the vehicle being used in breach of the conditions.</li> <li>□ Evidence of the identity of the person using the vehicle.</li> <li>□ Evidence that the person or company is authorised (copy of authorisation from local Control Officer).</li> <li>□ Evidence that the vehicle is unregistered (certificate of non registration from CVO).</li> <li>□ A cautioned interview of offender.</li> <li>□ Evidence of use in the State for more than 3,000 km.</li> <li>□ The comments of the Control Officer should also be obtained in relation to the authorised person's record of compliance.</li> </ul>

Offence – Description/Example	Typical Proofs Required to Support a Case
<p><b>[14] Failure by Authorised Person to:</b></p> <ul style="list-style-type: none"> <li>a) <i>account for unregistered &amp; converted vehicles;</i></li> <li>b) <i>lodge returns of all unregistered vehicles received, stored, converted &amp; disposed of;</i></li> <li>c) <i>Keep records</i></li> </ul> <p><u>Example:</u></p> <p><i>An offence occurs when an authorised person is found in possession of:</i></p> <ul style="list-style-type: none"> <li>▪ <i>An unregistered vehicle, which had not been recorded at time of receipt/time of disposal in his stock record as required by Article 17(1) of S.I. 318 of 1992.</i></li> <li>▪ <i>A converted vehicle, which was not recorded on conversion in his stock record as required by Article 17(1) of S.I. 318 of 1992.</i></li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Evidence that the person is an authorised person.</li> <li><input type="checkbox"/> Evidence that the dealer was in possession of an unregistered vehicle or a converted vehicle, which has not been recorded on the stock record. The evidence of two officers is advisable in relation to the stock record and a copy or print-out of it would be useful supporting material.</li> <li><input type="checkbox"/> Evidence that the receipt, disposal or conversion of the vehicle has not been recorded in the dealer's stock record.</li> </ul> <p><b><u>Note:</u></b></p> <p><i>It is presumed that the dealer has had the regulations explained to him by the Control Officer and that s/he has been requested to comply. The Control Officer should always be consulted before taking any action to ascertain if the dealer is habitually non compliant or s/he has only lapsed on this occasion. While technically the power of forfeiture may be available under this section nevertheless it should only be resorted to after reporting the facts through local management to the VRT Seizures &amp; Prosecutions Section, Bridgend.</i></p>

Offence – Description/Example	Typical Proofs Required to Support a Case
<p><b>[15] Issue or be in possession of document purporting to be a Certificate.</b></p> <ul style="list-style-type: none"> <li>▪ <i>This arises where a person possesses a false vehicle registration certificate.</i></li> </ul>	<ul style="list-style-type: none"> <li>❑ Evidence (e.g. from the CVO, Rosslare) that the document resembles a vehicle registration certificate and that it is false.</li> <li>❑ An admission, preferably under caution, that the document is a forgery.</li> <li>❑ Evidence, if available, that a particular person was in possession of the vehicle, which the document is purporting to be for.</li> </ul>
<p><b>[16] Interference with Certificate</b></p> <p><i>This covers any type of unauthorised alteration to a vehicle registration certificate.</i></p> <p><u>Notes:</u></p> <ul style="list-style-type: none"> <li>▪ <i>The offender is the person who altered the certificate and may not necessarily be the person in possession of the certificate.</i></li> <li>▪ <i>If the alteration is done with a view to evading VRT there may also be an offence under Section 139(3)(d) of the Finance Act 1992.</i></li> </ul>	<ul style="list-style-type: none"> <li>❑ Evidence that the certificate was altered in any way. The CVO, Rosslare is in a position to verify the details on the certificate prior to any unauthorised alterations.</li> <li>❑ Evidence as to who was responsible for the alteration etc., if possible by means of a cautioned admission from the person concerned or some other person with direct knowledge of the alteration.</li> </ul>

Offence – Description/Example	Typical Proofs Required to Support a Case
<p><b>[17] Offences under S. 139(1)(f) FA 92 .</b></p> <p><i>This is a “catch-all” provision, which covers any breaches of the law or regulations which are not specifically covered in S. 139(1)(a) to (e). This provision can also be used in conjunction with specific charges under S. 139(3).</i></p> <p><i>Examples :</i>  <i>Breach of TE conditions.</i>  <i>Failure to declare the prescribed particulars of a converted vehicle.</i></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Evidence that a Regulation has been breached in respect of a vehicle in the State.</li> <li><input type="checkbox"/> Evidence as to the person responsible for the breach.</li> <li><input type="checkbox"/> If possible, an admission of liability after caution.</li> </ul>
<p><b>[18] Fraudulent Repayment Claims.</b></p> <p><u>Notes:</u>  1) Legal proceedings in connection with fraudulent repayment claims can be taken under Section 1078, Taxes Consolidation Act 1997(reproduced at Appendix 5). Fraud occurs where:</p> <ul style="list-style-type: none"> <li>▪ <i>Fraudulent intent (mens rea) can be shown on the part of the applicant and</i></li> <li>▪ <i>The person gained financially as a result of the fraudulent claim (e.g. a financial gain arises under the demonstration scheme if VAT is paid on the <u>VRT exclusive</u> price when the vehicles disposed of following demonstration).</i></li> </ul> <p>2) New cars are VAT paid at VRT <u>exclusive</u> price. Used cars are VAT paid at VRT <u>inclusive</u> price. If a car is declared as sold at the VRT exclusive price, this is, in effect, implying that it is a new car.</p>	<p>Proofs will vary from case to case but the following are some typical requirements:</p> <p><u>General.</u></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Full details of TAN/Authorisations held should be provided.</li> <li><input type="checkbox"/> Original records documents relating to the claims should be uplifted from the trader (under S. 136, Finance Act 2001). The originals should be retained as exhibits and copies placed on file.</li> <li><input type="checkbox"/> Whatever available evidence that the claim is fraudulent should be submitted – this may take the form of statements under caution or witness statements (as appropriate).</li> <li><input type="checkbox"/> If possible, an admission of the offence should be obtained after caution.</li> </ul>

**Note: Statute of Limitations.**

A time limit of one year applies to all excise licence prosecution proceedings (Section 126(5)(a), Finance Act, 2001).

However, it is desirable that offences be reported promptly as a Judge may dismiss a case even within the time limit if s/he considers that there have been unnecessary delays.

**Except in exceptional circumstances, offences should be reported to the Investigations & Prosecutions Division, Áras Áiligh, Bridgend, Co Donegal, within three months of the date of detection.**

Offence – Description/Example	Typical Proofs Required to Support a Case
<p><b><u>Intoxicating Liquor.</u></b></p> <p>As regards intoxicating liquor, the most common situations encountered by Customs &amp; Excise involve the sale of alcohol by publicans, restaurants, supermarkets etc. without the required licence. There are two essential requirements for successful prosecution:</p> <ol style="list-style-type: none"> <li>1) Proof of trading, and</li> <li>2) Identification of the person responsible for running the premises.</li> </ol> <p><b><u>General Notes:</u></b></p> <ul style="list-style-type: none"> <li>▪ <i>The fact that a person was a licence holder in the previous year is not sufficient to prove that that person is responsible for running the premises in any subsequent year.</i></li> <li>▪ <i>In the case of a 'family' run premises, a member of the family e.g. spouse may accept responsibility for the running of the premises; in such cases if the last licensee was another family member, that person should also be interviewed and asked if s/he is responsible for the running of the premises.</i></li> <li>▪ <i>Where a company is the responsible entity, the relationship of individuals to the company should be established e.g. Director, Company Secretary etc. It is important, in order to take charges against the company, that a person in authority (such as those mentioned above) accept responsibility for the running of the premises on behalf of the company.</i></li> </ul>	<p><b><u>Evidence to prove unlicensed trading involves:</u></b></p> <ul style="list-style-type: none"> <li>❑ Purchase of alcohol: evidence that alcohol was ordered (spirits in preference to beer or lager), was observed being poured and that it was paid for, the price being commensurate with what one would expect to pay for such a drink</li> <li>❑ Evidence that it looked and smelt like alcohol, that it was tasted and on doing so the officer was satisfied that it was the alcoholic drink ordered. <u>Note:</u> officers should not take away or retain samples of the alcohol purchased as there is no legal provision for producing scientific analysis as evidence in Court to prove that a substance is alcohol.</li> <li>❑ Where bottles of alcohol are purchased (e.g. shop, supermarket etc.) they should be retained and treated as an exhibit for possible presentation in court. Any receipts obtained should also be retained as an exhibit.</li> <li>❑ If the alcohol purchased is Irish Coffee, it may be more difficult to secure a conviction but the case would be greatly strengthened if the officer can give evidence that s/he actually saw spirits being poured into the glass.</li> </ul> <p><b><u>Identification of the person responsible for running the business involves:</u></b></p> <ul style="list-style-type: none"> <li>❑ Interview the person who sold the drink and ask who is responsible for the running of the premises.</li> <li>❑ If s/he indicates that it was somebody else, that person should be <u>cautioned</u>, interviewed and asked: <ul style="list-style-type: none"> <li>▪ If s/he is responsible for the running of the premises.</li> <li>▪ If the person who sold the alcohol was acting on his/her behalf; and</li> <li>▪ To explain the unlicensed trading.</li> </ul> </li> </ul> <p>Any documentation e.g. receipts should be shown to him/her and confirmation obtained that it relates to his/her premises.</p> <p><b><u>Specific Notes:</u></b></p> <ul style="list-style-type: none"> <li>▪ <i>Evidence of persons on the premises, display of stock, signs etc. are not sufficient on their own to prove unlicensed trading. However, they provide useful additional evidence and should be noted by officers.</i></li> <li>▪ <i>All statements by the accused should be made under caution, if at all possible.</i></li> <li>▪ <i>Manufacturing and wholesale dealing offences are rare and, where they arise, officers should obtain advice on the procedures to be followed/proof required.</i></li> </ul>



Offence – Description/Example	Typical Proofs Required to Support a Case
<p><b><u>Mineral Oil Traders</u></b></p> <p>Successful enforcement in the mineral oil area also involves obtaining proof of trading and identifying precisely who is responsible for running the business.</p> <p><u>General Notes:</u></p> <p>The fact that a person was a licence holder in the previous year is not sufficient to prove that that person is responsible for running the premises in any subsequent year</p> <p>Where a company is the responsible entity, the relationship of individuals to the company should be established e.g. Director, Company Secretary etc. It is important, in order to take charges against the company, that a person in authority (such as those mentioned above) accept responsibility for the running of the premises on behalf of the company.</p> <p>In many cases a person/company may be trading under a trading name and that is likely to be the name which will appear on the documentation obtained. It is important that the company/person who accepts responsibility for carrying on the business admits that the trading name (and any documentation under that name) relates to that company/person.</p>	<p><u>Evidence to prove unlicensed trading involves:</u></p> <ul style="list-style-type: none"> <li>○ Purchase of oil: evidence that a particular type of mineral oil was purchased and that it was paid for, the price being commensurate with what one would expect to pay for such oil.</li> <li>○ Evidence that the mineral oil was pumped into the tank of the officer's car. NB: It is an essential element of the offence that the oil has been sold for combustion in the engine of a motor vehicle.</li> <li>○ If possible, obtain a receipt, on headed paper, for the purchase. If obtained, the original should be retained as an exhibit for possible presentation in court (only a photocopy should be transmitted on the detection file).</li> <li>○ Evidence that the oil was pumped from a tank bearing a particular name of mineral oil.</li> </ul> <p><u>Identification of the person responsible for running the business involves:</u></p> <ul style="list-style-type: none"> <li>○ Interview the person who pumped the oil and ask who is responsible for the running of the premises.</li> <li>○ If s/he indicates that it was somebody else, that person should be cautioned, interviewed and asked: <ul style="list-style-type: none"> <li>○ Is s/he is responsible for the running of the premises;</li> <li>○ If the person who pumped the oil was acting on his/her behalf; and</li> <li>○ To explain the unlicensed trading.</li> <li>○ Any documentation e.g. receipts should be shown to him/her and confirmation obtained that it relates to his/her premises.</li> </ul> </li> </ul> <p><u>Specific Notes:</u></p> <ul style="list-style-type: none"> <li>▪ <i>While it is not crucial for proving the offence whether the oil is pumped by the officer on a self-service basis or by an attendant, it may be desirable that the oil be pumped by the person on duty since that person may subsequently accept responsibility for the running of the premises or alternatively may indicate who is responsible.</i></li> <li>▪ <i>There is no need to take a sample of oil from the pump concerned. It will be sufficient to state that a particular type of oil was ordered and that it was pumped from a tank bearing the name of that type of oil.</i></li> </ul>

Offence – Description/Example	Typical Proofs Required to Support a Case
<p><b><u>Auctioneers/House Agents.</u></b></p> <p>In the case of auctioneers, two offences can arise:-</p> <ol style="list-style-type: none"> <li>1) acting as or representing himself as carrying on the business of an Auctioneer without a license; and</li> <li>2) conducting an auction without a licence.</li> </ol> <p>In the case of house agents there is only one offence – acting as or representing himself as carrying on the business of house agent without a licence. A house agent is a person who provides a service for the sale, purchase and letting of houses by means <u>other than</u> by auction.</p> <p><b><u>General Notes:</u></b></p> <ul style="list-style-type: none"> <li>▪ <i>The fact that a person was a licence holder in the previous year is not sufficient to prove that that person is responsible for running the premises in any subsequent year.</i></li> <li>▪ <i>Where a company is the responsible entity, the relationship of individuals to the company should be established e.g. Director, Company Secretary etc. It is important, in order to take charges against the company, that a person in authority (such as those mentioned above) accept responsibility for the running of the premises on behalf of the company.</i></li> <li>▪ <i>In many cases a person/company may be trading under trading name and that is likely to be the name which will appear on the documentation obtained. It is important that the company/person who accepts responsibility for carrying on the business admits that the trading name (and any documentation under that name) relates to that company/person.</i></li> </ul>	<p><b><u>Evidence to prove unlicensed trading involves:</u></b></p> <ul style="list-style-type: none"> <li>• In the case of unlicensed auctioneers: <ul style="list-style-type: none"> <li><input type="checkbox"/> newspaper advertisements for an <u>auction</u>.</li> <li><input type="checkbox"/> advertisement of <u>auctions</u> in the window of premises.</li> <li><input type="checkbox"/> advertisement sheets which auctioneers use to advertise the auction of a property etc.</li> </ul> </li> <li>• In the case of unlicensed house agents: <ul style="list-style-type: none"> <li><input type="checkbox"/> newspaper advertisements of properties to sell or let.</li> <li><input type="checkbox"/> advertisements seeking properties to sell or let.</li> <li><input type="checkbox"/> advertisements of a similar nature in the window of the premises and advertising sheets advertising properties for sale or to let.</li> </ul> </li> </ul> <p>In all cases, the documentation mentioned (which must relate to the date of detection) should be obtained, originals retained and treated as exhibits for possible presentation in court (only photocopies to go on file).</p> <ul style="list-style-type: none"> <li>○ In the case of an unlicensed auction: <ul style="list-style-type: none"> <li><input type="checkbox"/> Evidence that the officer actually attended the auction.</li> <li><input type="checkbox"/> Evidence as to who carried out the auction.</li> </ul> </li> </ul> <p><b><u>Identification of the person responsible for running the business involves:</u></b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Interview the person with whom the officer deals in the premises (or the person who conducted the auction as the case may be) and ask who is responsible for the running of the premises (or the auction);</li> <li><input type="checkbox"/> If s/he indicates that it was somebody else, that person should be cautioned, interviewed and asked: <ul style="list-style-type: none"> <li><input type="checkbox"/> if s/he is responsible for the running of the premises (or the auction);</li> <li><input type="checkbox"/> if the person with whom the officer dealt (or the person who conducted the auction) was acting on his/her behalf; and</li> <li><input type="checkbox"/> to explain the unlicensed trading.</li> </ul> </li> </ul> <p>Any documentation (such as the advertisements mentioned above) should be shown to him/her and confirmation obtained that it relates to his/her premises.</p>

Offence – Description/Example	Typical Proofs Required to Support a Case
<p><b><u>Gaming Machines.</u></b></p> <p>The law requires that each gaming machine which is available for play in a public place must have a licence displayed on it (in accordance with Section 43(2)(c) of the Finance Act, 1975 as amended by Section 71(1)(a)(ii) of the Finance Act, 1993). This includes machines which are switched off, unplugged etc. unless the Revenue Commissioners certify that they cannot be played because they are stored in a place which is inaccessible to the public.</p> <p><i>General Notes:</i></p> <ul style="list-style-type: none"> <li>▪ <i>Where a company is the responsible entity, the relationship of individuals to the company should be established e.g. Director, Company Secretary etc. It is important, in order to take charges against the company, that a person in authority (such as those mentioned above) accept responsibility for the running of the premises and operation of the machines on behalf of the company.</i></li> <li>▪ <i>In many cases a person/company may be trading under a trading name and that is likely to be the name which will appear on the documentation obtained. It is important that the company/person who accepts responsibility for carrying on the business admits that the trading name (and any documentation under that name) relates to that company/person.</i></li> </ul>	<p><u>Evidence to prove unlicensed trading involves:</u></p> <ul style="list-style-type: none"> <li>□ Evidence that the machines were available for play in a public place. All machines on the premises can be regarded as available for play unless some/any of them have been certified by the Revenue Commissioners as being unavailable for play (this should be established in advance of the enforcement visit to the premises).</li> <li>□ To obtain evidence and to prove that the machines were used for gaming purposes the officer must play the machines and, if successful, attempt to gain a payout. A detailed account is required of how the machines were played and how the gain or credit was accumulated.</li> <li>□ The officer should examine the machines and be satisfied that no current licence is displayed on them.</li> <li>□ The make and serial number of each machine and description of the game should be noted as well as whether the machines were in play, unplugged etc.</li> <li>□ It should be established if licences were actually obtained in respect of the machines but not displayed.</li> </ul> <p><u>Identification of the person responsible for making the machines available for play involves:</u></p> <ul style="list-style-type: none"> <li>□ Interview the person who appears to be responsible in the premises and ask if s/he is responsible for the running of the premises and for making the machines available for play.</li> <li>□ If s/he indicates that it was somebody else, that person should be cautioned, interviewed and asked: <ul style="list-style-type: none"> <li>□ If s/he is responsible for making the machines available for play;</li> <li>□ If the person who was interviewed at the premises was acting on his/her behalf and</li> <li>□ To explain the unlicensed trading.</li> </ul> </li> </ul> <p><u>Specific Notes:</u></p> <ul style="list-style-type: none"> <li>▪ Following the enactment of S. 114, F.A. 1995, officers of C &amp; E have power of entry to all public places where gaming machines are believed to be available for play (and not just premises which are covered by a Gaming Licence which was the case previously).</li> <li>▪ Enforcement action in relation to: <ul style="list-style-type: none"> <li>□ Failure to hold a gaming Licence for any place where gaming machines are available for play; and</li> <li>□ The availability of gaming machines in locations where gaming is prohibited is a matter for the Gardai. Officers should advise Gardai of instances which come to their notice.</li> </ul> </li> <li>▪ Any gaming machine which is available for play without a current licence displayed on it is liable to forfeiture (exclusive of its contents) and may be seized under Section 141 Finance Act, 2001.</li> <li>▪ Obstruction of an officer in the course of duty in relation to gaming machines is an offence under Section 43 (10), Finance Act, 1975.</li> </ul>

Offence – Description/Example	Typical Proofs Required to Support a Case
<p><b><u>Amusement Machines</u></b></p> <p>The law requires that all amusement machines which are available for play in a public place must have a licence displayed on them (even machines which are switched off, unplugged etc). unless the Revenue Commissioners certify that they cannot be played because they are stored in a place which is inaccessible to the public. There is also the additional legal requirement to hold an amusement machine permit for the public place involved.</p> <p><u>General Notes:</u></p> <ul style="list-style-type: none"> <li>Where a company is the responsible entity, the relationship of individuals to the company should be established e.g. Director, Company Secretary etc. It is important, in order to take charges against the company, that a person in authority (such as those mentioned above) accept responsibility for the operation of the machines on behalf of the company.</li> <li>In many cases a person/company may be trading under a trading name and that is likely to be the name which will appear on the documentation obtained. It is important that the company/person who accepts responsibility for carrying on the business admits that the trading name (and any documentation under that name) relates to that company/person</li> </ul>	<p><u>Evidence to prove unlicensed trading involves:</u></p> <ul style="list-style-type: none"> <li>In the case of unlicensed machines <ul style="list-style-type: none"> <li>Evidence that the machines were available for play in a public place. All machines on the premises can be regarded as available for play <u>unless</u> some/any of them have been certified by the Revenue Commissioners as being unavailable for play (this should be established in advance of visiting the premises).</li> <li>Evidence that the machine(s) is/are used for amusement and not gaming purposes, if necessary by playing the machine(s) to prove that no more than the opportunity to play once more without paying, or a non-monetary prize of no more than €7 in value, may be won by a successful player.</li> <li>The officer should examine the machines and be satisfied that no current licence is displayed on them. A check should also be made to see if the name of the game on the VDU matches the name on the cabinet containing the game (this will prevent any subsequent doubts or difficulties regarding the identification of the game).</li> <li>The make and serial number of each machine and description of the game should be noted as well as whether the machines were in play, unplugged etc.</li> <li>It should be established if licences were actually obtained in respect of the machines but not displayed.</li> </ul> </li> <li>In the case of failure to hold a permit: <ul style="list-style-type: none"> <li>Evidence that the officer sought production of the permit.</li> <li>If the operator is unable to produce a permit s/he should be <u>cautioned</u> and asked for an explanation for the unlicensed trading.</li> </ul> </li> </ul> <p><u>Identification of the person responsible for making the machines available for play</u></p> <p>Under the legislation, it is an “operator” who is guilty of offences relating to amusement machines. An operator is defined as the owner, hirer or lessee of the machines or any person involved in the control of the machines. The following points should be borne in mind when compiling a prosecution case:</p> <ul style="list-style-type: none"> <li><u>Caution</u> and interview the person who appears to be the operator and ask if s/he is responsible for the running of the premises and for making the machines available for play.</li> <li>The particular reason why that person can be regarded as an “operator” should also be established from him/her.</li> <li>Obtain the operator’s explanation for the unlicensed trading.</li> <li>If any other persons are mentioned who could be regarded as operators, they should also be <u>cautioned</u> and interviewed along the same lines.</li> </ul> <p><u>Specific Notes:</u></p> <ul style="list-style-type: none"> <li>Any amusement machine which is available for play without a current licence displayed on it is liable to forfeiture (exclusive of its contents) and may be seized under Section 141 Finance Act, 2001. Powers of entry, search and uplift of documents etc. are provided for in Section 125, Finance Act, 1992.</li> </ul>

Offence – Description/Example	Typical Proofs Required to Support a Case
<p><b><u>Bookmakers – Licence and Registration of Premises.</u></b></p> <p>Unlicensed and unregistered bookmaking normally arises where bookmakers fail to renew or never held a licence/registration. Unregistered trading also arises where a bookmaker has been removed from the register as a result of failure to pay betting duty.</p> <p><u>Notes:</u></p> <ul style="list-style-type: none"> <li>▪ <i>The Investigations &amp; Prosecutions Division, Áras Áiligh, Bridgend, Co. Donegal should be consulted in regard to the registration status of a bookmaking premises before attempting to make a detection. This may influence the enforcement strategy e.g. (a) if the premises is registered, the detection can focus on breaches of the Betting Duty (Certified Returns) Regulations and other potential fraudulent practices or (b) if the premises is unregistered/deregistered, the detection can focus on the acceptance of bets in an unregistered premises.</i></li> <li>▪ <i>In the case of bookmakers whose premises have been removed from the register, a charge can be taken under Section 78(6) of the Finance Act, 2002 which provides that a person shall not accept a bet in any premises which are not for the time being registered and a person who does so is guilty of an offence carrying a penalty of €3,000 , as amended by S. 82, F.A. 2006.</i></li> </ul>	<p><u>Evidence to prove unlicensed trading involves:</u></p> <ul style="list-style-type: none"> <li>□ Evidence of bets placed:- the officer must be in a position to state that a bet was placed and accepted by a particular individual.</li> <li>□ Where possible, bets should be in written form. Where bets are placed verbally, it is essential that they are witnessed by another officer who will be in a position to give evidence that they were placed.</li> <li>□ The duplicate betting dockets should be retained and treated as exhibits for possible presentation in court. In addition, the original dockets and the daily betting register should be uplifted from the bookmaking office and retained as exhibits.</li> <li>□ If the detection is not in a bookmaking office (e.g. pubs), such documentation may not exist and it is therefore essential that a witnessing officer can confirm that s/he observed the bets being placed and accepted by the particular individual. Possession should be taken of any relevant documents, e.g. notebooks, records etc. found on the premises and these should be retained and treated as exhibits for possible presentation in court.</li> <li>□ It is desirable that bets be placed with the person responsible for running the premises e.g. the bookmaker, publican etc. However, the person who accepts the bets in an unlicensed/unregistered premises can be charged with illegal trading even if that person is not responsible for running the business. In such cases, the person who accepted the bets should be <u>cautioned</u> and interviewed to establish who is responsible for the running of the premises.</li> <li>□ If s/he indicates that it was somebody else, that person should be <u>cautioned</u>, interviewed and asked <ul style="list-style-type: none"> <li>○ If s/he is responsible for the running of the premises</li> <li>○ If the person who accepted the bets was acting on his/her behalf; and</li> <li>○ To explain the unlicensed trading</li> </ul> </li> <li>□ Any documentation should be shown to him/her and confirmation obtained that it relates to his/her premises.</li> </ul>

Offence – Description/Example	Typical Proofs Required to Support a Case
<i>Failure to pay any betting duty within a prescribed period.</i>	<ul style="list-style-type: none"> <li>❑ Evidence that the records were inspected and the bet placed by the officer (or some specific detail relating to it) has not been entered.</li> <li>❑ The records should be retained as an exhibit for possible presentation in court.</li> <li>❑ Evidence as to when the payment was received – Betting duty returns should be stamped, dated &amp; initialled immediately on receipt so that this evidence can be given.</li> </ul>
Making any statement or representation in a return for betting duty which to hi/her knowledge is false or misleading.	<ul style="list-style-type: none"> <li>❑ Evidence that the total duty for a period in the Return was compared with the total in the Bookmakers office records (they should correspond).</li> <li>❑ Evidence of having established that a bet placed by the officer had not been entered in the records and Return and, consequently, not duty-paid.</li> </ul>
<p><i>Any person employed by or acting for a bookmaker in a registered premises knowingly:</i></p> <ol style="list-style-type: none"> <li>1. Making a false entry on any slip or other record by means of which a bet is made</li> <li>2. substituting a document that is false for any slip or other document by means of which a bet is made,</li> <li>3. entering false particulars of any bet in any book or record,</li> <li>4. being concerned or involved in the fraudulent evasion or attempted evasion of betting duty.</li> </ol>	<ul style="list-style-type: none"> <li>❑ Evidence that a bet was paced with the person.</li> <li>❑ Evidence that the accused person was knowingly involved in evasion.</li> <li>❑ A cautioned statement of admission from the person or from any other person who might have been in collusion with him/her.</li> <li>❑ An interview, following caution, with the person covering whether s/he was aware that the activities in which s/he was involved were fraudulent.</li> </ul>

Offence – Description/Example	Typical Proofs Required to Support a Case
Acceptance of bets in an unregistered premises (e.g. a betting office which is not registered or has been deregistered <u>or</u> a pub).	<ul style="list-style-type: none"> <li>□ Evidence in the form of Register, original docket and duplicate (returned at time bet was placed).</li> <li>□ Ability to identify person who accepted the bet.</li> <li>□ Where the unregistered premises is not a betting office (e.g. a pub):- Evidence that a bet was placed, witnessed by a second official where possible.</li> </ul>

#### **Identification of the person responsible for Betting Duty offences**

The person responsible is the bookmaker who has been approved under the Regulations by the Collector. Good practice in compiling a prosecution case involves:

- Caution and interview the person dealt with in the premises, outline the offence and ask if s/he is responsible for the running of the premises.
- If s/he indicates that it was somebody else, that person should be cautioned, interviewed and asked:
  - If s/he is responsible for running the premises;
  - If the person who was interviewed at the premises was acting on his/her behalf; and
  - To give an explanation for the offence.

Any documentation should be shown to him/her and confirmation obtained that it relates to his/her premises.

#### **Duplicate betting dockets:**

Photocopies of duplicate dockets issued during betting detections should be made and retained as the bet involved may prove successful and the docket would have to be returned to claim winnings.

#### **Further Advice:**

The Investigations & Prosecutions Division, Áras Áiligh, Bridgend, Co Donegal should be consulted for any further advice required in relation to Betting Duty Offences.

Offence – Description/Example	Typical Proofs Required to Support a Case
<p>1) <i>Inviting an offer to treat for</i> (i.e. having on display);</p> <p>2) <i>Offering for sale;</i></p> <p>3) <i>Keeping for sale or delivery;</i></p> <p>4) <i>Being in the process of delivering tobacco products which do not have tax stamps affixed appropriate to the type and denomination of the pack concerned.</i></p> <p><u>Notes:</u></p> <ul style="list-style-type: none"> <li>▪ <i>The tobacco products in question as well as any goods packed with or used to conceal them and any vehicle or conveyance used to transport them may be seized under Section 141, Finance Act 2001, as amended.</i></li> <li>▪ <i>S.78(6) of the Finance Act 2005 provides that in a prosecution, it can, until the contrary is shown, be presumed that:</i> <ol style="list-style-type: none"> <li>1) <i>duty paid had not been paid on the products</i></li> <li>2) <i>the products were being kept for sale; and</i></li> <li>3) <i>an officers opinion is sufficient to determine that an item is a cigarette or a tobacco product.</i></li> </ol> </li> <li>▪ <i>Unstamped tobacco products which are on display (terminology used in the law is “inviting an offer to treat for”) constitute an offence even where an actual sale is not witnessed. However, if they are stored out of sight, this particular offence would not be pursued.</i></li> </ul>	<ul style="list-style-type: none"> <li>❑ It must be shown firstly that the tobacco packs in question did not have tax stamps affixed or that the tax stamps affixed were not appropriate to the rate of duty payable on the products. The officer should examine the smallest denomination pack (e.g. packs of 10 or 20 cigarettes) in the possession of the seller in order to establish these facts. The officer should also open some packs to satisfy himself/herself that they contain tobacco products and, accordingly, be in a position to confirm this (if required) at Court.</li> <li>❑ In order to prove an offence of “offering for sale”, the officer must produce evidence that the person was observed selling the tobacco products or that the officer was offered such products by the alleged offender. The officer need not purchase the tobacco products to obtain evidence, although a purchase by an officer from the person involved would be strong evidence.</li> <li>❑ Keeping for sale, i.e. storage in this context refers to large quantities of tobacco products rather than merely an individual’s duty free allowance. Evidence relating to ownership of premises, control or responsibility for the goods, or a record of observation in relation to sale and storage of product by an individual or individuals must be provided.</li> <li>❑ Delivery could be a more difficult fact to prove as this act is unlikely to be overt – it is normally accomplished through meetings between the offender and other persons, in private or by telephone. A witness statement corroborated by other statements or a cautioned statement by the offender would be best evidence in the absence of direct evidence by the detecting officer that an offer was made to him/her.</li> <li>❑ Evidence that the tobacco products were not moving under the duty suspension system should be provided.</li> <li>❑ In the case of delivery, the officer must show that the consignment was not covered by an A.A.D. or T1 declaration.</li> </ul> <p><u>Specific Note:</u></p> <p><i>Section 78(6)(d), Finance Act 2005 removes any need for scientific analysis of a product to prove that it is a tobacco product and that consequently an offence was committed. The stated opinion of an officer that an item is a cigarette or a tobacco product is sufficient to sustain a prosecution.</i></p>



Offence – Description/Example	Typical Proofs Required to Support a Case.
<ul style="list-style-type: none"> <li>▪ <b><i>Counterfeiting, altering or making use of counterfeited/altered tax stamps.</i></b></li> <li>▪ <b><i>To be knowingly concerned in the holding, selling or dealing in counterfeited/altered tax stamps.</i></b></li> </ul> <p><u>Notes:</u></p> <p>1) <i>Making fraudulent use of counterfeited or altered tax stamps can arise in several situations. For example:-</i></p> <ul style="list-style-type: none"> <li>❑ <i>Placing tax stamps of a lesser denomination/duty rate on products of a higher duty liability;</i></li> <li>❑ <i>Misappropriation and use of tax stamps on tobacco products which are not duty paid</i></li> <li>❑ <i>Use of tax stamps which have been declared to have been stolen.</i></li> </ul> <p>2) <i>Forfeiture</i></p> <p>The actual counterfeit or altered stamps themselves are liable to forfeiture under S.78(7), finance Act, 2005</p> <p>The tobacco products are liable to detention under Section 140, Finance Act 2001, as amended. The products may subsequently be seized, if appropriate, under Section 141, Finance Act 2001, as amended.</p>	<p><u>In relation to the counterfeiting or altering of tax stamps:</u></p> <ul style="list-style-type: none"> <li>❑ Evidence that the individual was observed, by officers, in the process of making up the counterfeit tax stamps or altering tax stamps. This would require observation of the complete counterfeiting process.</li> <li>❑ Such observations/evidence would have to be supported by expert witness statements. These statements would refer to the differences in the tax stamps complained of in comparison with a genuine tax stamp produced for or on behalf of the Commissioners. The expert would have to be from the printing organisation which produced the tax stamps released by the Commissioners and would have to show that s/he was familiar with the printing, make up and distribution of the tax stamps from their organisation.</li> <li>❑ Evidence to the effect that the bogus tax stamps had not been issued by the Commissioners could be provided by way of witness statement from a person within the branch of the Commissioners responsible for the control and distribution of the stamps.</li> <li>❑ While a cautioned statement by the offender may not be necessary, it should be taken if tendered.</li> </ul> <p><u>In relation to the fraudulent use of counterfeit or altered tax stamps:</u></p> <ul style="list-style-type: none"> <li>❑ The officer must prove that the person was acting fraudulently i.e. wilfully and with knowledge that the use of the tax stamps would act to deceive and to ultimately result in the evasion of duty on the tobacco products. The element of mens rea must be proven.</li> <li>❑ Best evidence is a cautioned statement from the offender.</li> </ul> <p><u>In relation to the holding, selling or dealing in counterfeit or altered tax stamps:</u></p> <ul style="list-style-type: none"> <li>❑ Mens rea on the part of the offender is required (“knowingly concerned”) and, therefore, the offence may prove difficult to establish. Possession, sale and passing on of the counterfeit or altered tax stamps is sufficient evidence to sustain an offence.</li> <li>❑ Best evidence is a voluntary, cautioned statement from the offender or corroborated witness statements regarding the offender’s involvement with the holding, selling or dealing in the stamps.</li> </ul> <p><u>General</u></p> <ul style="list-style-type: none"> <li>❑ In all cases, the counterfeit or altered tax stamp itself is a necessary exhibit and should be retained as evidence for presentation in court.</li> </ul>

Offence – Description/Example.	Typical Proofs Required to Support a Case
<i>Resisting, obstructing or impeding an officer (or a member of the Garda Síochána) in the exercise of powers relating to tobacco tax stamps.</i>	<ul style="list-style-type: none"> <li>□ Clear evidence of obstruction, preferably by more than one officer</li> <li>□ Positive identification of the individual who committed the obstruction</li> </ul>
<i>Provision of false or misleading information or refusal to supply information reasonably required by an officer (or Garda) in relation to tobacco tax stamps.</i>	<ul style="list-style-type: none"> <li>□ Evidence that false or misleading information was supplied.</li> <li>□ If possible, a cautioned statement from the person that the information given was false or misleading</li> <li>□ Evidence of examination of the tobacco products concerned to confirm that the information provided contained false or misleading information.</li> <li>□ Evidence, preferably from two officers, that the alleged offender refused to give information which was reasonably required and which was in that person's possession/procurement.</li> </ul>