

Customs and Excise Enforcement Procedures Manual

APPENDICES

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CONTENTS

Contents

Appendix 1.....	3
Appendix 2: Section 1078, Taxes Consolidation Act 1997.....	5
1078B. Presumptions.....	12
1078C. Provision of information to juries.....	14
Appendix 3: Specimen Charges.....	14
A. Specimen charges for Excise offences under Section 119 Finance Act 2001 (as amended).....	15
B. Specimen charge for Evasion of Common Customs Tariff Duty	16
C. Specimen charges for VAT offences.....	17
Appendix 4: Powers of Detention	19
Appendix 5: Information and Search Warrant.....	21
Appendix 6: Sample Witness Statement – Excise Licences	28
Specimen statement made pursuant to Section 21 of the Criminal Justice Act 1984	28
Appendix 7: S.I. 146/2010 - Control of Excisable Products Regulations 2010, Regulation 25	29
Appendix 8: Offences, Penalties and Proceedings under the Finance Act 2001 (as at July 2017)	30
Appendix 9: Offences and presumptions in certain proceedings relating to mineral oils (as at July 2017)	56
Sections 102 and 103, Finance Act 1999	56
Appendix 10: Specimen Notices of Seizure	63
A. Notice of Seizure under the Customs Act 2015, Section 18	63
B. Notice of Seizure under the Finance Act 2001, Section 142.....	65
C. Notice of Seizure under the Finance Act 2001, Section 142.....	67
D. Notice of Seizure under the Finance Act 2001, Section 142.....	69
Appendix 11: Criminal Justice Act 1994 as amended by the Proceeds of Crime (Amendment) Act 2005	71

Appendix 1

Language	Wording
Irish	Ní gá duit aon ní a rá mura mian leat é, ach rud ar bith a deireann tú tógfar síos i scríbhinn é agus is féidir é a úsáid i bhfianaise.
English	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.
Dutch	U bent niet verplicht iets te zeggen als u dat niet wilt, maar alles wat u zegt wordt opgeschreven en kan als bewijs tegen u gebruikt worden.
Spanish	No tiene usted la obligación de decir nada, a menos que lo desee, pero tenga en cuenta que todo lo que diga será registrado por escrito y puede ser utilizado como evidencia.
Italian	Lei ha il diritto di non dire nulla, a meno che non ritenga opportuno parlare, ma in tal caso verrà preso nota scritta id tutto quello che dice e ciò porterà essere usato come prova nel processo.
French	Vous n'êtes pas oblige(e) de faire une déclaration sauf si vous le désirez, mais toute déclaration éventuelle sera enregistrée par écrit et pourra être utilisée comme pièce á conviction.
German	Sie sind nicht verpflichtet, eine Aussage zu machen, wenn Sie dies nicht wünschen, doch alles was Sie sagen, wird schriftlich ausgesetzt und kann in der Beweisführung verwendet werden.
Latvian	Jums ir tiesības klusēt, ja vien jūs nevēlaties runāt, bet viss ko jūs teiksiet tiks pierakstīts un var tikt izmantots kā liecība prēt jums.
Russian	вы не обязаны что-либо говорить. Вы можете говорить, только если желаете этого, однако все, что вы скажете, будет записано и может быть представлено в качестве показания.
Lithuanian	Jūs neprivalote nieko sakyti nebent to noretumėte patys, bet viskas ką sakote bus užrašyta ir gali būti pateikta kaip įrodymas
Bulgarian	не сте задължен да казвате каквото и да е, освен ако пожелаете, но всичко което кажете ще бъде записано и може да бъде използвано като доказателство.

Language	Wording
Romanian	Nu sunteți obligat(ă) să spuneți nimic, decât dacă doriți să o faceți, dar orice veți spune se va nota și poate fi folosit într-o ulterioară mărturie.
Polish	Nie jest Pan/Pani zobowiązany/a do składania zeznań, ale jeżeli złoży Pan/Pani zeznania dobrowolnie wszystko zostanie zapisane i może być użyte przeciwko Panu/Pani.

Appendix 2: Section 1078, Taxes Consolidation Act 1997

1078. Revenue offences

(1) In this Part -

"the Acts" means –

- (a) the Customs Acts,
- (b) the statutes relating to the duties of excise and to the management of those duties,
- (c) the Tax Acts,
- (ca) Parts 18A, 18B, 18C and 18D,
- (d) the Capital Gains Tax Acts,
- (e) the Value-Added Tax Consolidation Act 2010, and the enactments amending or extending that Act,
- (f) the Capital Acquisitions Tax Consolidation Act 2003, and the enactments amending or extending that Act,
- (g) the statutes relating to stamp duty and to the management of that duty, and
- (h) Part VI of the Finance Act, 1983,
- (i) the Finance (Local Property Tax) Act 2012,

and any instruments made thereunder and any instruments made under any other enactment and relating to tax;

"authorised officer" means an officer of the Revenue Commissioners authorised by them in writing to exercise any of the powers conferred by the Acts;

"tax" means any tax, duty, levy or charge under the care and management of the Revenue Commissioners.

(1A) (a) In this subsection -

"facilitating" means aiding, abetting, assisting, inciting or inducing;

"fraudulent evasion of tax by a person" means the person -

- (a) evading or attempting to evade any payment or deduction of tax required under the Acts to be paid by the person or, as the case may be, required under the Acts to be deducted from amounts due to the person, or
- (b) claiming or obtaining, or attempting to claim or obtain, relief or exemption from, or payment or repayment of, any tax, being relief, exemption, payment or repayment, to which the person is not entitled under the Acts,

where, for those purposes, the person deceives, omits, conceals or uses any other dishonest means including –

- (i) providing false, incomplete or misleading information, or
- (ii) failing to furnish information,

to the Revenue Commissioners or to any other person.

(b) For the purposes of this subsection and subsection (5) a person (in this paragraph referred to as the “first-mentioned person”) is reckless as to whether or not he or she is concerned in facilitating –

- (i) the fraudulent evasion of tax by a person, being another person, or
- (ii) the commission of an offence under subsection (2) by a person, being another person,

if the first-mentioned person disregards a substantial risk that he or she is so concerned, and for those purposes “substantial risk” means a risk of such a nature and degree that, having regard to all the circumstances and the extent of the information available to the first-mentioned person, its disregard by that person involves culpability of a high degree.

(c) A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if the person –

- (i) is knowingly concerned in the fraudulent evasion of tax by the person or any other person,
- (ii) is knowingly concerned in, or is reckless as to whether or not the person is concerned in, facilitating –

(I) the fraudulent evasion of tax, or

(II) the commission of an offence under subsection (2) (other than an offence under paragraph (b) of that subsection), by any other person, or

(iii) is knowingly concerned in the fraudulent evasion or attempted fraudulent evasion of any prohibition or restriction on importation for the time being in force, or the removal of any goods from the State, in contravention of any provision of the Acts.

(1B) A person is guilty of an offence under this section if he or she, with the intention to deceive–

(a) purports to be, or

(b) makes any statement, or otherwise acts in a manner, that would lead another person to believe that he or she is,

an officer of the Revenue Commissioners.

(2) A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if the person -

(a) knowingly or wilfully delivers any incorrect return, statement or accounts or knowingly or wilfully furnishes any incorrect information in connection with any tax,

(b) knowingly aids, abets, assists, incites or induces another person to make or deliver knowingly or wilfully any incorrect return, statement or accounts in connection with any tax,

(ba) knowingly or wilfully possesses or uses, for the purpose of evading tax, a computer programme or electronic component which modifies, corrects, deletes, cancels, conceals or otherwise alters any record stored or preserved by means of any electronic device without preserving the original data and its subsequent modification, correction, cancellation, concealment or alteration,

(bb) provides or makes available, for the purpose of evading tax, a computer programme or electronic component which modifies, corrects, deletes, cancels, conceals or otherwise alters any record stored or preserved by means of any electronic device without preserving the original data and its subsequent modification, correction, cancellation, concealment or alteration,

(c) claims or obtains relief or exemption from, or repayment of, any tax, being a relief, exemption or repayment to which, to the person's knowledge, the person is not entitled,

(d) knowingly or wilfully issues or produces any incorrect invoice, receipt, instrument or other document in connection with any tax or in connection with the importation into the State or exportation from the State of any goods in contravention of any prohibition or restriction on their importation or exportation for the time being in force,

(dd) (i) fails to make any deduction of dividend withholding tax (within the meaning of Chapter 8A of Part 6) required to be made by the person under section 172B(1),

(ii) fails, having made that deduction, to pay the sum deducted to the Collector-General within the time specified in that behalf in section 172K(2),

- (iii) fails to make any reduction required to be made by the person under section 172B(2),
 - (iv) fails, having made that reduction, to pay to the Collector-General the amount referred to in section 172B(2) (d), which amount is treated under that section as if it were a deduction of dividend withholding tax (within the meaning of Chapter 8A of Part 6), within the time specified in that behalf in section 172K(2), or
 - (v) fails to pay to the Collector-General, within the time specified in that behalf in section 172K(2), an amount referred to in section 172B(3) (a) which is required to be paid by the person to the Collector-General and which is treated under that section as if it were a deduction of dividend withholding tax (within the meaning of Chapter 8A of Part 6),
- (e) (i) fails to make any deduction required to be made by the person under section 257 (1),
- (ii) fails, having made the deduction, to pay the sum deducted to the Collector-General within the time specified in that behalf in section 258 (3), or
- (iii) fails to pay to the Collector-General an amount on account of appropriate tax (within the meaning of Chapter 4 of Part 8) within the time specified in that behalf in section 258 (4),
- (f) fails to pay to the Collector-General appropriate tax (within the meaning of section 739E) within the time specified in that behalf in section 739F,
- (fa) fails to comply with the requirement in section 960S(4),
- (g) fails without reasonable excuse to comply with any provision of the Acts requiring-
- (i) the furnishing of a return of income, profits or gains, or of sources of income, profits or gains, for the purposes of any tax,
 - (ii) the furnishing of any other return, certificate, notification, particulars, or any statement or evidence, for the purposes of any tax,
 - (iii) the keeping or retention of books, records, accounts or other documents for the purposes of any tax, or

(iv) the production of books, records, accounts or other documents, when so requested, for the purposes of any tax,

(h) knowingly or wilfully, and within the time limits specified for their retention, destroys, defaces or conceals from an authorised officer -

(i) any documents, or

(ii) any other written or printed material in any form, including any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in a legible form, which a person is obliged by any provision of the Acts to keep, to issue or to produce for inspection,

(hh) knowingly or wilfully falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, any books, records or other documents -

(i) which the person has been given the opportunity to deliver, or as the case may be, to make available in accordance with section 900(3), or

(ii) which the person has been required to deliver or, as the case may be, to make available in accordance with a notice served under section 900, 902, 906A or 907, or an order made under section 901, 902A or 908,

(i) fails to remit any income tax payable pursuant to Chapter 4 of Part 42, and the regulations under that Chapter, or value-added tax within the time specified in that behalf in relation to income tax or value-added tax, as the case may be, by the Acts,

(ii) (i) fails to deduct tax required to be deducted by the person under Chapter 2 of Part 18, or

(ii) fails, having made that deduction, to pay the sum deducted to the Collector-General within the time specified in that behalf in Chapter 2 of Part 18, or

(iii) (i) fails to deduct local property tax required to be deducted by the person under Part 10 of the Finance (Local Property Tax) Act 2012, or

(ii) fails, having made that deduction, to remit the sum deducted to the Collector-General within the time specified in Chapters 1, 2 or 3, as the case may be, of Part 10 of the Finance (Local Property Tax) Act 2012,

or

- (j)
 - (i) obstructs, impedes, assaults or interferes with any officer of the Revenue Commissioners, or any other person, in the exercise or performance of powers or duties under the Acts for the purpose of any tax or in connection with the importation into the State or exportation from the State of any goods in contravention of any prohibition or restriction on their importation or exportation for the time being in force, or
 - (ii) attempts in any way to coerce or intimidate any officer of the Revenue Commissioners, or any other person, in connection with the performance of powers or duties under the Acts.

(3) A person convicted of an offence under this section shall be liable -

(a) on summary conviction to a fine of €5,000 which may be mitigated to not less than one fourth part of such fine or, at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both the fine and the imprisonment, or

(b) on conviction on indictment, to a fine not exceeding €126,970 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years or to both the fine and the imprisonment.

(3A) Where a person has been convicted of an offence referred to in subparagraph (i), (ii) or (iv) of subsection (2) (g), then, if an application is made, or caused to be made to the court in that regard, the court may make an order requiring the person concerned to comply with any provision of the Acts relating to the requirements specified in the said subparagraph (i), (ii) or (iv), as the case may be.

(3B) A person shall, without prejudice to any other penalty to which the person may be liable, be guilty of an offence under this section if the person fails or refuses to comply with an order referred to in subsection (3A) within a period of 30 days commencing on the day the order is made.

(4) Section 13 of the Criminal Procedure Act, 1967, shall apply in relation to an offence under this section as if, in place of the penalties specified in subsection (3) of that section, there were specified in that subsection the penalties provided for by subsection (3) (a), and the reference in subsection (2) (a) of section 13 of the Criminal Procedure Act, 1967, to the penalties provided for in subsection (3) of that section shall be construed and apply accordingly.

(5) Where an offence under this section is committed by a body corporate and the offence is shown to have been committed with the consent or connivance of or to be attributable to any recklessness (as provided for by subsection (1A) (b)) on the part of any person who, when the offence was committed, was a director, manager, secretary or other officer of the

body corporate, or a member of the committee of management or other controlling authority of the body corporate, that person shall also be deemed to be guilty of the offence and may be proceeded against and punished accordingly.

(6) In any proceedings under this section, a return or statement delivered to an inspector or other officer of the Revenue Commissioners under any provision of the Acts and purporting to be signed by any person shall be deemed until the contrary is proved to have been so delivered and to have been signed by that person.

(7) Notwithstanding any other enactment, proceedings in respect of an offence under this section may be instituted within 10 years from the date of the commission of the offence or incurring of the penalty, as the case may be.

(8) Section 1 of the Probation of Offenders Act, 1907, shall not apply in relation to offences under this section.

(9) Sections 530U, 987(4) and 1052(4), subsections (3) and (7) of section 1053, subsections (9) and (17) of section 1077E, and sections 1068 and 1069, and sections 115(9) and 116(16) of the Value-Added Tax Consolidation Act 2010, shall, with any necessary modifications, apply for the purposes of this section as they apply for the purposes of those sections, including, in the case of such of those sections as are applied by the Capital Gains Tax Acts, the Corporation Tax Acts, or Part VI of the Finance Act, 1983, the purposes of those sections as so applied.

(10) Any summons, notice, order or other document relating to proceedings under this section, or relating to any appeal against a judgement pursuant to such proceedings, may be served by an officer of the Revenue Commissioners.

1078A. Concealing facts disclosed by documents

(1) Any person who -

(a) knows or suspects that an investigation by an officer of the Revenue Commissioners into an offence under the Acts or the Waiver of Certain Tax, Interest and Penalties Act 1993 is being, or is likely to be, carried out, and

(b) falsifies, conceals, destroys or otherwise disposes of material which the person knows or suspects is or would be relevant to the investigation or causes or permits its falsification, concealment, destruction or disposal,

is guilty of an offence.

(2) Where a person -

(a) falsifies, conceals, destroys or otherwise disposes of material, or

(b) causes or permits its falsification, concealment, destruction or disposal,

in such circumstances that it is reasonable to conclude that the person knew or suspected -

(i) that an investigation by an officer of the Revenue Commissioners into an offence under the Acts or the Waiver of Certain Tax, Interest and Penalties Act 1993 was being, or was likely to be, carried out, and

(ii) that the material was or would be relevant to the investigation,

the person shall be taken, for the purposes of this section, to have so known or suspected, unless the court or the jury, as the case may be, is satisfied having regard to all the evidence that there is a reasonable doubt as to whether the person so knew or suspected.

(3) A person guilty of an offence under this section is liable -

(a) on summary conviction to a fine not exceeding €5,000, or at the discretion of the court, to imprisonment for a term not exceeding 6 months or to both the fine and the imprisonment, or

(b) on conviction on indictment, to a fine not exceeding €127,000 or, at the discretion of the court, to imprisonment for a term not exceeding 5 years or to both the fine and the imprisonment.

1078B. Presumptions

(1) In this section –

"return, statement or declaration" means any return, statement or declaration which a person is required to make under the Acts or the Waiver of Certain Tax, Interest and Penalties Act 1993.

(2) The presumptions specified in this section apply in any proceedings, whether civil or criminal, under any provision of the Acts or the Waiver of Certain Tax, Interest and Penalties Act 1993.

(3) Where a document purports to have been created by a person it shall be presumed, unless the contrary is shown, that the document was created by that person and that any statement contained therein, unless the document expressly attributes its making to some other person, was made by that person.

(4) Where a document purports to have been created by a person and addressed and sent to a second person, it shall be presumed, unless the contrary is shown, that the document

was created and sent by the first person and received by the second person and that any statement contained therein -

(a) unless the document expressly attributes its making to some other person, was made by the first person, and

(b) came to the notice of the second person.

(5) Where a document is retrieved from an electronic storage and retrieval system, it shall be presumed unless the contrary is shown, that the author of the document is the person who ordinarily uses that electronic storage and retrieval system in the course of his or her business.

(6) Where an authorised officer in the exercise of his or her powers under subsection (2A) of section 905 or subsection (3) of section 908C has removed records (within the meaning of section 905 or 908C, as the case may be) from any place, gives evidence in proceedings that to the best of the authorised officer's knowledge and belief, the records are the property of any person, the records shall be presumed unless the contrary is proved, to be the property of that person.

(7) Where in accordance with subsection (6) records are presumed in proceedings to be the property of a person and the authorised officer gives evidence that, to the best of the authorised officer's knowledge and belief, the records are records which relate to any trade, profession, or, as the case may be, other activity, carried on by that person, the records shall be presumed unless the contrary is proved, to be records which relate to that trade, profession, or, as the case may be, other activity, carried on by that person.

(8) In proceedings, a certificate signed by an inspector or other officer of the Revenue Commissioners certifying that a return, statement or declaration to which the certificate refers is in the possession of the Revenue Commissioners in such circumstances as to lead the officer to conclude that, to the best of his or her knowledge and belief it was delivered to an inspector or other officer of the Revenue Commissioners, it shall be presumed unless the contrary is proved, to be evidence that the said return, statement, or declaration was so delivered.

(9) In proceedings, a certificate, certifying the fact or facts referred to in subsection (8) and purporting to be signed as specified in that subsection, may be tendered in evidence without proof and shall be deemed until the contrary is proved to have been signed by a person holding, at the time of the signature, the office or position indicated in the certificate as the office or position of the person signing.

(10) References in this section to a document are references to a document in written, mechanical or electronic format and, for this purpose "written" includes any form of notation or code whether by hand or otherwise and regardless of the method by which, or the medium in or on which, the document concerned is recorded.

1078C. Provision of information to juries

(1) In a trial on indictment of an offence under the Acts or the Waiver of Certain Tax, Interest and Penalties Act 1993, the trial judge may order that copies of any or all of the following documents shall be given to the jury in any form that the judge considers appropriate:

- (a) any document admitted in evidence at the trial,
- (b) the transcript of the opening speeches of counsel,
- (c) any charts, diagrams, graphics, schedules or agreed summaries of evidence produced at the trial,
- (d) the transcript of the whole or any part of the evidence given at the trial,
- (e) the transcript of the closing speeches of counsel,
- (f) the transcript of the trial judge's charge to the jury,
- (g) any other document that in the opinion of the trial judge would be of assistance to the jury in its deliberations including, where appropriate, an affidavit by an accountant or other suitably qualified person, summarising, in a form which is likely to be comprehended by the jury, any transactions by the accused or other persons which are relevant to the offence.

(2) If the prosecutor proposes to apply to the trial judge for an order that a document mentioned in subsection (1) (g) shall be given to the jury, the prosecutor shall give a copy of the document to the accused in advance of the trial and, on the hearing of the application, the trial judge shall take into account any representations made by or on behalf of the accused in relation to it.

(3) Where the trial judge has made an order that an affidavit by an accountant or other person mentioned in subsection (1) (g) shall be given to the jury, the accountant, or as the case may be, the other person so mentioned -

- (a) shall be summoned by the prosecution to attend at the trial as an expert witness, and
- (b) may be required by the trial judge, in an appropriate case, to give evidence in regard to any relevant procedures or principles within his or her area of expertise.

Appendix 3: Specimen Charges

A. Specimen charges for Excise offences under Section 119 Finance Act 2001 (as amended)

***Dublin Metropolitan District / District Court Area of _____**
District No. _____

Accused Name:

Address:

Charge 1 (Evasion of Excise Duty on excisable products imported from another member state or from a third country)

Offence alleged: That you, on _____ at _____, within the *Dublin Metropolitan District/District Court Area aforesaid, were concerned in the evasion of a duty of Excise on excisable products to wit, _____ cigarettes with intent to defraud the State, either directly or indirectly, of such duty contrary to Section 119 of the Finance Act 2001, as amended. The estimated value of the goods concerned is €_____.

Charge 2 (Attempted evasion of Excise Duty on excisable products imported from another member state or from a third country)

Offence alleged: That you, on _____ at _____, within the *Dublin Metropolitan District/District Court Area aforesaid, were concerned in the attempted evasion of a duty of Excise on excisable products to wit, _____ cigarettes with intent to defraud the State, either directly or indirectly, of such duty contrary to Section 119 of the Finance Act 2001, as amended. The estimated value of the goods concerned is €_____.

Charge 3 (Dealing with excisable products imported from another member state or from a third country without payment of excise duty)

Offence alleged: That you, on _____ at _____, within the *Dublin Metropolitan District/District Court Area aforesaid, did deal with excisable products to wit, _____ cigarettes with intent to defraud the State, either directly or indirectly, of such duty contrary to Section 119 of the Finance Act 2001, as amended. The estimated value of the goods concerned is €_____.

*delete inapplicable part

B. Specimen charge for Evasion of Common Customs Tariff Duty

***Dublin Metropolitan District / District Court Area of _____**
District No. _____

Accused Name:

Address:

Offence alleged: That you, on _____ at _____ ,
within the *Dublin Metropolitan District/District Court Area aforesaid, did evade customs
duties (Common Customs Tariff) chargeable on the importation of goods, to wit,
_____ with intent to defraud
the State, either directly or indirectly, of such duties contrary to Section 14(1)(a) of the
Customs Act 2015.

The estimated value of the goods concerned in this charge is €_____.

*delete inapplicable part

Note: The above specimen relates to an indictable charge only.

C. Specimen charges for VAT offences

Charge 1 (Dealing in goods on which VAT was evaded)

* Dublin Metropolitan District / District Court Area of _____
District No. _____

Accused Name:

Address:

Offence alleged: That you, on _____ at _____,
within the *Dublin Metropolitan District/District Court Area aforesaid, did deal with goods, on
which Value-Added Tax was for the time being payable on importation, to wit,
_____ with intent to defraud the State, either directly or indirectly, of
such Value-Added Tax contrary to section 14(1)(b) of the Customs Act 2015, as applied by
Section 53(3) of the Value-Added Tax Consolidation Act 2010. The estimated value of the
goods concerned is €_____.

*delete inapplicable part

Charge 2 (Evasion of VAT)

* Dublin Metropolitan District / District Court Area of _____
District No. _____

Accused Name:

Address:

Offence alleged: That you, on _____ at _____,
within the *Dublin Metropolitan District/District Court Area aforesaid, did evade Value-Added
Tax, chargeable on importation on certain goods, to wit, _____,
with intent to defraud the State, either directly or indirectly, of such Value-Added Tax contrary
to section 14(1)(a) of the Customs Act 2015, as applied by section 53(3) of the Value-Added
Tax Consolidation Act 2010. The estimated value of the goods concerned is €_____.

*delete inapplicable part

Charge 3 (Attempted Evasion of VAT)

*** Dublin Metropolitan District / District Court Area of _____**
District No. _____

Accused Name:

Address:

Offence alleged: That you, on _____ at _____,
within the *Dublin Metropolitan District/District Court Area aforesaid, did attempt to evade
Value-Added Tax, chargeable on importation on certain goods, to wit,
_____, with intent to defraud the State, either directly or indirectly, of
such Value-Added Tax contrary to section 14(1)(a) of the Customs Act 2015, as applied by
section 53(3) of the Value-Added Tax Consolidation Act 2010. The estimated value of the
goods concerned is €_____.

*delete inapplicable part

Appendix 4: Powers of Detention

A. Power of detention under the Customs Act 2015

Power to detain goods and conveyances

33. (1) Where an officer of customs has reasonable grounds to suspect that any goods –

- (a) are being or have been imported, or
- (b) are being, or are intended to be, exported,

either without payment of any duty of customs payable on them or in contravention of any prohibition or restriction on their importation or exportation, the goods may be detained by the officer until such examination, enquiries or investigations as may be deemed necessary by him or her, or by another officer, have been made for the purpose of determining to the satisfaction of either such officer whether or not the goods were imported, or were being, or were intended to be, exported.

(2) Where any goods are detained by an officer under *subsection (1)*, all conveyances and other things made use of in their importation or exportation, as the case may be, may also be detained by the officer.

(3) Where a determination referred to in *subsection (1)* has been made in respect of any goods, or upon the expiry of 30 days from the date on which those goods were detained, whichever is the earlier, the goods, together with any conveyances, or things detained with them under *subsection (2)*, shall either be seized as liable to forfeiture under the Customs Acts, or released, as appropriate.

(4) Where an officer of customs has reasonable grounds to suspect that any goods being imported or exported are goods that may be required as evidence in any criminal proceedings under any enactment other than the Customs Acts, the officer may detain such goods for such period of time as may be required to determine if they are so required as evidence and may place such goods in the custody of the Garda Síochána or another authority as appropriate for the purpose of such proceedings.

B. Power of detention under the Finance Act 2001

Detention of
goods and
vehicles.

140.—(1) Where an officer reasonably suspects that any excisable products, or any other goods, are liable to forfeiture under the law relating to excise then –

- (a) all such excisable products or other goods,
- (b) any other thing being made use of in the conveyance of such products or goods, and

- (c) any vehicle in or on which or attached to which in any manner any such excisable products or goods are found,

may be detained by such officer until such examination, enquiries or investigations as may be deemed necessary by such officer or another officer, have been made for the purposes of determining whether or not such products, goods, thing or vehicle are liable to forfeiture.

Amended
by S.93(b) of
FA2005.

(2) Where a member of the Garda Síochána reasonably suspects that any excisable products, other goods or other thing or any vehicle is liable to forfeiture under section 78 of the Finance Act 2005, such products, goods, other thing or vehicle may be detained by such member until such examination, enquiries or investigations as may be deemed necessary by such member or another member, or by an officer, have been made for the purposes of determining whether or not such products, goods, other thing or vehicle are liable to forfeiture.

(3) Where an officer or a member of the Garda Síochána reasonably suspects -

- (a) that a vehicle has not been registered in any of the registers established and maintained under Chapter IV of Part II of the Finance Act, 1992,
- (b) that a vehicle has been converted (within the meaning of that Chapter) and a declaration in relation to such conversion has not been made under section 131 of the Finance Act, 1992, or
- (c) that vehicle registration tax has not been paid in respect of a vehicle,

then such officer or member may detain such vehicle for such period as is required to carry out such examination, enquiries or investigations as may be deemed necessary by such officer or member to determine to his or her satisfaction whether or not -

- (i) such vehicle has been registered,
- (ii) such declaration has been made, or
- (iii) such vehicle registration tax has been paid.

(4) When a determination referred to in subsection (1), (2) or (3) has been made in respect of any excisable products, other goods, other thing or a vehicle or on the expiry of a period of one month from the date on which such products, goods, other thing or vehicle were or was detained under that subsection, whichever is the earlier, such products, goods, other thing or vehicle are to be either seized as liable to forfeiture under the Customs Acts or under section 141, or released.

Appendix 5: Information and Search Warrant

The following pages contain specimens of Information and Search Warrant under Section 136(5) of the Finance Act 2001 and Section 29 of the Customs Act 2015.

Section 136(5) of the Finance Act 2001

A search warrant under Section 136 of the 2001 Act should be used to search in any case where the officer has reason to believe that there are excisable products at a premises, regardless of the origin of the goods. Section 136 of the 2001 Act can be used if an officer is unsure whether the products being searched for are prohibited or subject to excise law.

Section 29 of the Customs Act 2015

The Customs Act 2015 came into operation on 31st December 2016. The search warrant power under Section 29 of that Act should be used to search for any thing that is liable to forfeiture under the Customs Acts or any records relating to transactions that are in contravention of the Customs Acts.

AN CHÚIRT DÚICHE



THE DISTRICT COURT

Information

Section 136(5) of the Finance Act 2001

*Dublin Metropolitan District /District Court Area of..... District No.....

The information of

attached to.....who says on oath:-

I am an Officer of the Revenue Commissioners, authorised in writing by the Revenue Commissioners to exercise the powers conferred by Chapter 4 of Part 2 of the Finance Act 2001 and I have reasonable grounds for suspecting that

* **(a)** certain goods to wit,.....

.....

.....

the same being goods which are liable to forfeiture under the law relating to excise,

* and/or

* **(b)** records relating to transactions in contravention of the law relating to excise,

* is/are kept or concealed on or at the premises or place, namely,

.....

..... at.....in the

*District/Court Area aforesaid.

The grounds for so suspecting are as follows (use the back of this form or a separate sheet as necessary):.....

.....

I hereby apply for a warrant to search the said premises or place pursuant to Section 136(5) of the Finance Act 2001.

Signed..... (Informant)

Sworn before me at.....

this.....day of20.....,

Signed.....

Judge of the District Court

*delete inapplicable part

AN CHÚIRT DÚICHE



THE DISTRICT COURT

Search Warrant**Section 136(5) of the Finance Act 2001**

*Dublin Metropolitan District /District Court Area of District No.....

Whereas from the information on Oath and in writing under section 136(5) of the above mentioned Act sworn before me on this day, by
 An Officer of the Revenue Commissioners, authorised in writing by the Revenue Commissioners to exercise the powers conferred by Chapter 4 of Part 2 of the Finance Act 2001, of

I AM SATISFIED that there are reasonable grounds for suspecting that

* (a) certain goods to wit,

.....

the same being goods which are liable to forfeiture under the law relating to excise,

* and/or

* (b) records relating to transactions in contravention of the law relating to excise,

* is/are kept or concealed on or at the premises or place, namely,

.....

at..... in the * District/Court

Area aforesaid.

THIS IS TO AUTHORISE youthe said Officer of the Revenue Commissioners, accompanied by such other officers and such other persons as may be necessary,

- (a) at any time or times within one month from the date hereof, to enter, if necessary by the use of reasonable force, the said premises or place at
in the *District/Court Area aforesaid,
- (b) to search or cause to be searched such premises or place and to inspect any thing or record found there,
- (c) to require any person present to produce for inspection any record or thing in that person's possession, custody or procurement,
- (d) to seize any thing found there, or in the possession of a person there, if there are reasonable grounds for suspecting that the thing is liable to forfeiture under the law

- relating to excise, or exercise, in relation to any thing so found or in the possession of such a person, the power of detention under section 140 of the Finance Act 2001,
- (e) to remove, or cause to be removed, from there any thing or record that the said Officer has reason to believe may be of value to the investigation of an excise offence, or as evidence in proceedings under excise law, or for the purpose of assessing any duty payable under excise law or any other tax payable under the Acts within the meaning assigned to that term by section 1078(1) of the Taxes Consolidation Act 1997 and to retain such thing or record for so long as it is reasonably required for these purposes, and
 - (f) to take any other steps which may appear to the said Officer to be necessary for preserving any such thing or record and preventing interference with it.

The authority conferred by this search warrant to retain (or to cause to be retained) any record or thing includes:

- (a) in the case of books, documents or records, authority to make and retain a copy of the books, documents or records, and
- (b) authority to remove and, for as long as necessary, retain, any computer or other storage medium in which records are kept and to inspect, copy, or cause to be copied, such records.

An officer acting pursuant to this search warrant may:

- (a) operate any computer at the premises or place that is being searched, or cause any such computer to be operated by a person accompanying the officer,
- (b) operate any computer removed from the premises or place searched under the warrant or cause such computer to be operated by a person accompanying the officer, and
- (c) require any person at the premises or place who appears to the officer to be in a position to facilitate access to the records and information held in a computer, or to records and information that can be accessed by the use of that computer-
 - I. to give to the officer any password or guidance necessary to operate it,
 - II. to enable the officer to examine the information accessible by the computer in a form in which the information is visible and legible, or
 - III. to produce the information in a form in which it can be removed and in which it is, or can be made, visible and legible.

Any record or thing retained by an officer pursuant to this search warrant which is required for the purposes of any legal proceedings, whether criminal proceedings or otherwise, may be retained for so long as it is reasonably required for those purposes.

Dated this.....day of20.....

Signed.....

Judge of the District Court

To: (name of officer obtaining warrant)

Address: (officer's address)

*delete inapplicable part

AN CHÚIRT DÚICHE



THE DISTRICT COURT

INFORMATION**Section 29 of the Customs Act 2015**

*Dublin Metropolitan District/ District Court Area of District No.....

The information of

attached to..... who says on oath:-

I am an officer of customs and I have reasonable grounds to suspect that *a thing liable to forfeiture under the Customs Acts *and/or records relating to transactions in contravention of the Customs Acts, to wit,

.....

*is/are kept or concealed on or at premises or land of, namely,

.....

at

..... in the *District/District Court Area aforesaid.

The grounds for so suspecting are as follows (use the back of this form or a separate sheet as necessary):

.....

I hereby apply for a warrant to search the said premises or land pursuant to section 29 of the Customs Act 2015.

Signed
 (Informant)

Sworn before me at

thisday of 20

Signed

Judge of the District Court

*delete inapplicable part

AN CHÚIRT DÚICHE



THE DISTRICT COURT

Search Warrant

Section 29 of the Customs Act 2015

*Dublin Metropolitan District/District Court Area of District No.....

Whereas from the information on Oath and in writing under section 29 of the above mentioned Act sworn before me this day, by an officer of Customs authorised in writing by the Revenue Commissioners to exercise the powers conferred by the said Act, of

I AM SATISFIED that there are reasonable grounds to suspect that

* (a) a thing liable to forfeiture under the Customs Acts to wit,

.....

*and/or

* (b) records relating to transactions in contravention of the Customs Acts

.....

*is/are kept or concealed on or at premises or land, namely,.....
at.....
 in the *District/District Court Area aforesaid.

THIS IS TO AUTHORISE you, the said officer of customs, accompanied by such other officers of customs or persons or both as you consider necessary, at any time or times within one month from the date of issue of this warrant, to enter, if necessary by the use of reasonable force, the said premises or land at
 in the *District/District Court Area aforesaid.

(a) to search the premises or land,

(b) to require any person found on the premises or land to remain there for the duration of the search,

(c) to examine anything found on the premises or land,

(d) to inspect any record found on the premises or land, and

- (e) if there are reasonable grounds to suspect that anything found is liable to forfeiture under the Customs Acts, or that anything found, including records, may be required as evidence in any proceedings under the Customs Acts or any other enactment, to seize or detain the thing as liable to forfeiture or, in the case of records, to detain them for so long as is reasonably required.

Dated this day of 20

Signed
Judge of the District Court

To : (name of officer obtaining warrant)
Address : (officer's address)

*delete inapplicable part

Appendix 6: Sample Witness Statement – Excise Licences

Specimen statement made pursuant to Section 21 of the Criminal Justice Act 1984

I, John Smith, aged over 18 years, am an Executive Officer employed by the Revenue Commissioners in the General Compliance and Customs & Excise Unit of the Border, Midlands and West Region, Co. Galway.

I have examined the records held by the Revenue Commissioners pertaining to the issuing of Intoxicating Liquor Licences and I declare that on 5th April 2017, A.N. Other of 'Joyful Pubs Limited' was not the holder of a current licence for the sale of intoxicating liquor at B_____, Co. Galway.

I declare that this statement is true to the best of my knowledge and belief and I have made this statement knowing that if it is tendered in evidence, I will be liable to prosecution if I state in it anything which I know to be false or did not believe to be true.

SIGNED: _____

NAME: John Smith

DATE: 10th September 2017

Appendix 7: S.I. 146/2010 - Control of Excisable Products Regulations 2010, Regulation 25

In determining, for the purposes of section 104(2) of the Act 2001, whether or not any excisable products in the possession, control or charge of a person are excisable products which were imported for a commercial purpose or are held or used for such purpose, as the case may be, the Commissioners shall have regard to the following:

- a) the reasons given by such person for having control or possession of the excisable products;
- b) the occupation or commercial status of such person including whether or not such person is a person approved by the Commissioners to produce, process, hold, receive or dispatch excisable products;
- c) the premises or place where the excisable products are held;
- d) the means of transport used to bring the excisable products into the State;
- e) any documentation or other information relating to the excisable products;
- f) the nature of the excisable products including the nature and condition of any package or container in which the excisable products are packed or contained;
- g) whether or not the purchase price of the excisable products includes value-added tax of the Member State in which the excisable products are acquired;
- h) the frequency with which such person imports excisable products;
- i) the conduct of such person in relation the excisable products including the persons intentions at any time in relation to the excisable products; and
- j) the quantity of the excisable products, taking account of the quantities shown in the following table:

Quantities of excisable products for the purpose of Regulation 25

Description of Product	Quantity
a) Cigarettes	800
b) Cigarillos (cigars weighing not more than 3 grammes each)	400
c) Cigars	200
d) Tobacco products other than in a form at (a), (b) or (c)	1 kilogram
e) Spirits	10 litres
f) Intermediate products	20 litres
g) Wine	90 litres (including 60 litres of sparkling wine)
h) Beer	110 litres

Appendix 8: Offences, Penalties and Proceedings under the Finance Act 2001 (as at July 2017)

CHAPTER 3

Offences, Penalties and Proceedings.

Interpretation (Chapter 3).

118. [Deleted by S.46(1)(a), FA 2011.]

Evasion of excise duty.

119.—(1) It is an offence under this subsection for any person to take possession, custody or charge of, or to remove, transport, deposit or conceal, or to otherwise deal with, excisable products in respect of which any duty of excise is for the time being payable, with intent to defraud, either directly or indirectly, the State of such duty.

(2) It is an offence under this subsection for any person to be concerned in the evasion or attempted evasion of a duty of excise on excisable products with intent to defraud either directly or indirectly the State of such duty.

Amended by S.138 and Schedule 6 of FA2002.

(3) Without prejudice to any other penalty to which a person may be liable, a person convicted of an offence under this section is liable—

Amended by S.77 of FA2008.

(a) on summary conviction, to a fine of €5,000, or, at the discretion of the court, to imprisonment for a term not exceeding 12 months or to both,

(b) on conviction on indictment, to a fine not exceeding—

(i) €126,970, or

Substituted by S.99(a) of FA2010.

(ii) where the value of the excisable products concerned, including any duty or tax chargeable thereon, is greater than €250,000, three times the value of those products,

or, at the discretion of the court, to imprisonment for a term not exceeding 5 years or to both the fine and the imprisonment.

Inserted by S.99(b) of FA2010.

(4) Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence under this section as if, in place of the penalties specified in subsection (3) of that section, there were specified in that subsection the penalties provided for by subsection (3)(a) of this section, and the reference in subsection (2)(a) of section 13 of the Criminal Procedure Act 1967 to the penalties provided for in subsection (3) of that section shall be construed and apply accordingly.

Amendment of Section 34 (amendments relative to penalties) of the Finance Act 1963.

120.—Section 34 of the Finance Act 1963, is amended—

- (a) in subsection (4) by the insertion after "subsection (3) of this section" of "or section 119 of the Finance Act, 2001",
- (b) in subsection (6) by the substitution of the following paragraph for paragraph (c):

[Paragraph (c) of section 34(6) of FA1963 deleted by section 94 of FA2010.]

Offences generally.

121.—It is an offence under this section for any person—

- (a) to contravene or fail to comply with—
 - (i) any provision of section 108A, 109, or 109A, or any provision of Chapter 2A, or 2B, or,
 - (ii) any regulation made under section 153 in relation to such provision,
- (b) to take possession or charge of any excisable products in the knowledge that an offence under paragraph (a) has been committed in relation to such excisable products.

Subparagraph (i) substituted by S.93(p) of FA2010.

Subsection (b) substituted by S.72(a) of FA2012.

Offences in relation to false returns, claims etc.

Section substituted by S.72(b) of FA2012.

122.—It is an offence under this section for any person to deliver any incorrect return, statement or accounts or to furnish any incorrect information—

- (a) in connection with –
 - (i) any claim for relief or repayment under excise law,
 - (ii) the granting of a licence under section 101 of the Finance Act 1999, or
 - (iii) any application for—

Clause substituted by S.33 of FA2016.

(I) authorisation as an authorised warehousekeeper, or approval of a tax warehouse, under section 109,

(II) authorisation as a registered consignor under section 109A,

(III) authorisation as a registered consignee under section 109IA, or

(IV) approval as a tax representative under section 109U,

or

(b) for any other purposes in relation to any duty of excise.

Resisting, obstructing, giving false information.

123.—It is an offence under this section for any person to—

(a) [**Deleted** by S.72(c) of FA2012.]

(b) fail without lawful and sufficient excuse to comply with any requirement imposed on them under any provision of Chapter 4,

(c) fail without lawful and sufficient excuse to give—

(i) his or her name, address and date of birth, or

(ii) any other information,

when required to do so under any provision of Chapter 4, or to give any such name, address or other information which is false or misleading.

Penalty.

Amended by S.77 of FA2008.

124.—Without prejudice to any other penalty to which a person may be liable, a person convicted of an offence under sections 121, 122 or 123 is liable on summary conviction to a fine of €5,000.

Administrative penalties for breach of provisions or regulations.

Section inserted by S.99 of FA2003.

Subsection (1) substituted by S.47 of FA2004 and amended by S.128 of FA2007 and S.70(1)(b) of

124A.— (1) An authorised warehousekeeper who contravenes or fails to comply with—

(a) any condition imposed on him or her under section 109, or

(b) any requirement imposed on him or her under—

(i) this Part,

FA2008.

- (ii) Chapter 3 of Part 2 of the Finance Act 2005,
- (iii) Chapter 1 of Part 2 of the Finance Act 1999,
- (iv) Chapter 1 of Part 2 of the Finance Act 2003, or
- (v) any regulation made under the provisions referred to in subparagraphs (i) to (iv),

is liable to a penalty of €1,500 for each such contravention or failure.

(2) [**Deleted** by S. 97, and Part 2 of Schedule 4, of F(No. 2)A 2008.]

Forfeiture.

125.—(1) Any excisable products in respect of which an offence has been committed under section 119 or 121 or any goods which are packed with or used in concealing such products, are liable to forfeiture and, where any such products are found in, on, or in any manner attached to, any vehicle or other conveyance, such vehicle or other conveyance is deemed to have been made use of in the conveyance of such products and shall also be liable to forfeiture.

(2) Where a duty of excise chargeable on any excisable products is not paid at the time at which payment of such duty becomes due or within such longer period as may be permitted for payment by or under any enactment, such products are liable to forfeiture.

(3) Where any goods or vehicles are liable to forfeiture under the law relating to excise, anything containing or that contained such goods or vehicle, and anything made use of in the conveyance of such goods or vehicle, is liable to forfeiture.

Forfeiture of alcohol products on unlicensed premises.

Section inserted by S.48 of F(No. 2)A2013.

125A. (1) Where—

- (a) any person who is required to hold a licence relating to the wholesale or retail sale of any alcohol products, in or on a premises or place, does not hold such a licence, and
- (b) in respect of the granting of such a licence, a tax clearance certificate issued under section 1094 of the Taxes Consolidation Act 1997 is required,

and either—

- (i) an application for such a licence has been refused, solely or partly on the grounds that the applicant does not hold such a tax clearance certificate, or

- (ii) no application for such a licence has been made and the person or—
 - (I) any partnership referred to in subsection (2)(a) of that section,
 - (II) any partner referred to in subsection (2)(b) of that section, or
 - (III) any person referred to in subsection (2)(c) of that section,
 has not complied with the obligations referred to in the said subsection (2),

then, subject to subsections (2) and (3), any alcohol products held for wholesale or retail sale in or on that premises or place shall be liable to forfeiture.

Amended by Sch.
3(5)(b)(i) of FA2014.

(2) Where paragraph (ii) of subsection (1) applies, the Commissioners shall notify the person concerned in writing of the requirement for a licence and for a tax clearance certificate in connection with that licence.

(3) The alcohol products concerned are liable to forfeiture under subsection (1) on the expiry of a period of 20 days from the date on which—

Amended by Sch.
3(5)(b)(ii) of FA2014.

(a) where paragraph (i) of subsection (1) applies, a communication of refusal of a tax clearance certificate under section 1094(6) of the Taxes Consolidation Act 1997, or

Substituted by Sch.
3(5)(b)(iii) of FA2014.

(b) where paragraph (ii) of subsection (1) applies, a notice under subsection (2),

has been sent.

Proceedings in relation to offences.

126.—(1) This section is concerned with proceedings in relation to any offence under or by virtue of the statutes which relate to the duties of excise or to the management of such duties or under any instrument relating to the management of such duties made under statute.

(2) Where there is evidence that an offence has been committed by several persons jointly—

(a) proceedings may be instituted against such persons, jointly or severally, for the recovery of a fine or penalty,

and

- (b) on conviction, such persons shall jointly and severally incur every such fine or penalty.

(3) Where proceedings have been instituted or continued in the name of an officer who has ceased for any reason to be such an officer or being such officer is absent at any time during such proceedings, then such proceedings may be continued in the name of any other officer or of the officer so absent, as appropriate in the circumstances.

(4) Any summons, notice, order or other document relating to proceedings referred to in subsection (1), or relating to any appeal against a judgement pursuant to such proceedings, may be served by an officer.

- (5) (a) Notwithstanding the provisions of any other enactment but subject to paragraph (b), summary proceedings may be instituted within one year from the date of the offence.

- (b) Summary proceedings in respect of an offence under this Chapter may be so instituted within 3 years of the date of the offence.

(6) Section 1 of the Probation of Offenders Act, 1907, shall not apply to offences to which this section relates.

Notice of Claim.

Substituted by S.46(1)(b) of FA2011.

127.—(1) Where anything has, under any provision of excise law, been seized as liable to forfeiture, a person (referred to in this section as “the claimant”) may—

- (a) within one month of the date of the notice of seizure under section 142(1), or
- (b) where no such notice has been given, within one month of the date of the seizure,

give notice in writing to the Commissioners of a claim (referred to in this section as a “notice of claim”) that the thing seized is not so liable.

(2) A notice of claim shall specify the full name and address of the claimant and the basis on which the claim is grounded and, where that address is outside the State, any documents relating to condemnation proceedings under section 128(1) may be served at that address by post.

(3) If, on the expiration of a period referred to in subsection (1), no notice of claim has been given, the thing seized shall be deemed to have been duly condemned as forfeited, and the forfeiture shall apply from the date when the liability to forfeiture arose.

(4) Where a notice of claim has been given, the Commissioners shall, subject to subsections (2) and (3) of section 144, take court proceedings under section 128 for the condemnation of the thing concerned.

**Proceedings for
condemnation by court.**

Substituted by S.46(1)(c)
of FA2011.

128.—(1) Proceedings for condemnation by the court in accordance with section 127(4) (in this section referred to as “condemnation proceedings”) are civil proceedings, and such proceedings shall be commenced in the name of the Commissioners.

(2) Where in any condemnation proceedings the court finds that the thing seized was, at the time of seizure, liable to forfeiture, the court shall condemn it as forfeited, and in any other case the court shall order its release.

(3) Condemnation proceedings may be instituted in the High Court or, if in the opinion of the Commissioners the value of the thing seized (that is to be the subject of such proceedings) does not exceed—

(a) €38,092, the Circuit Court, or

(b) €6,350, the District Court.

(4) In any condemnation proceedings, the claimant or any solicitor acting on behalf of such claimant, shall state on oath that the thing seized was, or was to the best of their knowledge and belief, the property of the claimant at the time of the seizure.

(5) The Commissioners may in their discretion stay or compound any condemnation proceedings, and may restore anything seized which is the subject of such proceedings, and the Minister for Finance may order any such restoration.

(6) Where in any condemnation proceedings judgment is given for the claimant, no officer or other person who made or assisted in making the seizure is liable to any civil or criminal proceedings on account of the seizure or detention of the thing seized, where the court or judge certifies that there was probable cause for making such seizure or detention.

(7) Where, in any condemnation proceedings, anything is

condemned as forfeited, the forfeiture shall apply from the date when the liability to forfeiture arose.

Damages.

129.—Where, in any civil or criminal proceedings against any officer or person on account of the seizing or detention of any thing, judgement is given against the defendant, and where the court or justice certifies that there was probable cause for such seizure or detention, the plaintiff shall not be entitled to any damages, besides the goods seized or the value of such thing, nor to any costs, and the defendant shall not be liable for any punishment or penalty.

Mitigation.

130.—A trial judge may in his or her discretion mitigate any fine or penalty incurred for any offence under or by virtue of excise law, provided that the amount so mitigated is not greater than 50 per cent of the amount of the fine or penalty.

Presumptions.

131.—(1) Where in proceedings, any question of fact arises as to—

Amended by S.72(d) of FA2012.

- (a) whether any excise duty has been paid in respect of any excisable products or other goods which are the subject of such proceedings,
- (b) whether any such excisable products or other goods are of such kind or sort as is alleged in evidence,
- (c) the place from where any excisable products were brought,

the burden of proof shall rest—

Amended by S.72(e) of FA2012.

- (i) in the case of proceedings referred to in subsection (1) of section 126, with the defendant,
- (ii) in the case of proceedings referred to in subsection (2) of section 127, with the claimant,
- (iii) in the case of proceedings commenced by a person claiming any thing seized as liable to forfeiture under the law relating to excise, against the Commissioners, or any officer, or any member of the Garda Síochána involved in such seizure, with the plaintiff.

(2) In any proceedings referred to in section 126(1) involving tobacco products, it shall be presumed until the contrary is shown that a thing is a cigarette or other tobacco product where, in the opinion of an officer, it is contained in any form of packaging which, by virtue of any wording on it, its shape and other characteristics, is indicative of the contents consisting of one or more than one

cigarette or other tobacco product and the officer so states that opinion.

(3) In proceedings under section 121—

(a) any person who, otherwise than in a tax warehouse, produces, processes or holds excisable products on which excise duty has not been paid, or who does not comply with any of the conditions imposed by section 109, is presumed, until the contrary is proved, to have contravened or failed to comply with (as the case may be) that section,

Substituted by S.93(q) of FA2010.

(b) without prejudice to section 104(2), where excisable products which have been released for consumption in another Member State are found in the State and a requirement specified in subsection (1) of section 109T has not been complied with in respect of such excisable products, any person in whose possession or charge such excisable products are found is presumed, until the contrary is proved, to have contravened or failed to comply with that subsection,

Substituted by S.93(q) of FA2010.

(c) where excisable products to which subsection (3) of section 109U applies are found in the State, and a requirement specified in that subsection has not been complied with in respect of such excisable products, any person in whose possession or charge such excisable products are found is presumed, until the contrary is proved, to have contravened or failed to comply with that subsection,

Substituted by S.93(q) of FA2010.

(d) where excisable products to which section 109J applies are found in the State and a requirement or condition specified in that section or in regulations made under section 153 has not been complied with in respect of such excisable products, any person in whose possession or charge such excisable products are found is presumed, until the contrary is proved, to have contravened or failed to comply with (as the case may be) the requirement or condition concerned.

**False evidence,
punishment as for
perjury.**

132.—[Deleted by S.72(f) of FA2012.]

CHAPTER 4

Powers of Officers.

Interpretation (Chapter 4).

Section substituted by
S.73(a) of FA2012.
Inserted by S.44(a) of
FA2015.

Inserted by S.44(a) of
FA2015.

Inserted by S.44(a) of
FA2015.

Inserted by S.44(a) of
FA2015.

Inserted by S.44(a) of
FA2015.

Power to stop vehicles.

Subsection 1(a)
substituted by S.59 of
FA2005.

133.—In this Chapter

“the Acts” has the meaning assigned to it by section 1078(1) of the Taxes Consolidation Act 1997;

“computer” means any electronic device used for information storage or retrieval and includes a mobile phone or any other electronic means of information storage or retrieval;

“computer at the premises or place which is being searched”, includes any other computer, whether at that premises or place, or at any other premises or place, which is lawfully accessible by means of the computer at the premises or place being searched;

“foreign packet” means any item, addressed in the final form in which it is to be carried from a place outside the State and delivered to an address in the State, and includes a postal packet within the meaning of the Communications Regulation (Postal Services) Act 2011;

“information in a non-legible form” has the meaning assigned to it by section 908C of the Taxes Consolidation Act 1997;

“postal services” has the same meaning as in the Communications Regulation (Postal Services) Act 2011;

“officer” means an officer of the Commissioners authorised by them in writing to exercise the powers conferred on officers by this Chapter;

“premises or place” means any building (or part of a building), dwelling, vehicle, any other vessel or place (or part of a place), whatsoever.

134.—(1) An officer in uniform may stop any vehicle in order—

- (a) that such officer, or any officer accompanying such officer, may exercise any power conferred on them by section 135 in relation to excisable products, any other products chargeable with a duty of excise, or any prohibited goods, where there are reasonable grounds to believe that such products or goods are being transported

in or on such vehicle, or

- (b) to examine and take samples of mineral oil under section 135(2)(a).

(2) An officer in uniform or a member of the Garda Síochána may stop any vehicle for any purpose related to vehicle registration tax or the registration of vehicles in any of the registers established and maintained under Chapter IV of Part II of the Finance Act, 1992.

(3) Any person in charge of a moving vehicle shall, at the request of an officer in uniform or a member of the Garda Síochána, stop such vehicle.

(4) Any person in charge of a vehicle shall, whether such vehicle has been stopped by an officer or member of the Garda Síochána under this section, or is already stationary, at the request of an officer or member of the Garda Síochána—

- (a) keep such vehicle stationary for such period as is reasonably required to enable an officer or member to exercise any power conferred on such officer or member by section 135, or
- (b) where such vehicle is in the opinion of such officer or member situated in a place unsuitable for the exercise of any power conferred on such officer or member by section 135, take such vehicle or cause it to be taken to such place as such officer or member may consider suitable for the exercise of such power.

Power to examine and search vehicles and to take samples.

135.—(1) An officer, on production of the authorisation of such officer if so requested by any person affected, or any officer accompanying such officer, may—

- (a) examine a vehicle,
- (b) carry out such searches of a vehicle as may appear to the officer to be necessary to establish whether—
 - (i) anything on or in the vehicle or in any manner attached to the vehicle is liable to forfeiture under the law relating to excise, or
 - (ii) any excisable products being transported in or on, or in any manner attached to, the vehicle, are transported in accordance with any provision of Chapter 2A or 2B to which they may be subject, and

Substituted by S.73(b) of FA2012.

conform in every material respect with the description of such excisable products in any electronic administrative document, simplified accompanying document, or other document that is required, under any such provision, for the consignment of the excisable products concerned, or

- (iii) the vehicle has been, or is required to be, registered in any of the registers established and maintained under Chapter IV of Part II of the Finance Act 1992,
- (c) take samples, without payment, of any excisable products in or on, or in any manner attached to the vehicle, and
- (d) question the person in charge of the vehicle in relation to the vehicle or anything on or in or in any manner attached to the vehicle, and require such person—

- (i) to give, within such time and in such form and manner as may be specified by the officer or accompanying officer, all such information in relation to the vehicle as may reasonably be required by the officer or accompanying officer and is in the possession or procurement of such person,

Amended by S.54(a) of
FA2013

- (ii) within such time and in such manner as may be specified by the officer or accompanying officer, to produce and permit the inspection of and the taking of copies of, or of extracts from, all such records relating to the vehicle and any excisable products in or on, or in any manner attached to, the vehicle, as are reasonably required by the officer or accompanying officer and are in the possession or procurement of the person, and

Substituted by S.73(c) of
FA2012.

- (iii) to produce to the officer or accompanying officer any document referred to in paragraph (b)(ii).

Subsection inserted by S.44(b) of
FA2015.

(1A) Where an officer carrying out a search under subsection (1) reasonably suspects that any excisable products in the vehicle are liable to forfeiture under excise law, then that officer, or any officer accompanying that officer, may—

- (a) search the vehicle for any record or thing that the officer reasonably believes is likely to be of value (whether by itself or together with other information) to the investigation of excisable products liable to forfeiture, or

- for any legal proceedings under excise law,
- (b) inspect and take copies of, or extracts from, any such record (including, in the case of any information in a non-legible form, a copy of, or of an extract from, such information in a permanent legible form),
 - (c) remove, retain and operate any computer found in the vehicle, or in the possession of a person in the vehicle, for the purpose of accessing, reproducing or copying records that an officer reasonably believes to contain information likely to be of value in the investigation of excisable products liable to forfeiture or for any legal proceedings under excise law and to retain such computer for so long as it is reasonably required for this purpose, and
 - (d) require a person who appears to an officer to be in a position to facilitate access to the records and information held on, or which can be accessed by the use of, a computer retained under paragraph (c), to give to the officer any password or guidance necessary to operate the computer for the purpose of accessing the records and information held on, or accessible, by the computer, in a form in which the information is visible and legible.
- (2) An officer, on production of the authorisation of such officer if so requested by any person affected, or a member of the Garda Síochána, may—
- (a) examine and take samples of any mineral oil in any fuel tank or otherwise present on or in any vehicle, or anything attached to any vehicle, for use or capable of being used for combustion in the engine of the vehicle, whether or not the vehicle is attended,
 - (b) examine or inspect any vehicle or anything attached to any vehicle for the purposes of paragraph (a),
 - (c) question—
 - (i) the owner of any vehicle,
 - (ii) any person who for the time being stands registered as the owner of any vehicle in any of the registers established and maintained under Chapter IV of Part II of the Finance Act, 1992,

(iii) any director, manager or principal officer of such owner where the registered owner is not one or more individuals, or

(iv) the person in charge of any vehicle,

in relation to such mineral oil, and require such owner, person, director, manager or principal officer to give to him or her any information in relation to such mineral oil as may reasonably be required and which is in the possession or procurement of such owner, person, director, manager or principal officer, as the case may be.

Entry and search of premises.
Subsection (1) amended by S.70 of FA2008 and by S.44(c)(i) of FA2015.

136.—(1) An officer may, at all reasonable times, on production of the authorisation of such officer if so requested by any person affected, enter a premises or place (other than a dwelling) in, or from, which—

Amended by Sch. 3(5)(c) of FA2014.

(a) the production, processing, holding, storage, keeping, importation, purchase, packaging, offering for sale, sale or disposal of any product referred to in section 97, or the supply of electricity, is being or is reasonably believed by the officer to be carried on,

Amended by S.73(d) of FA2012

(b) the manufacture, distribution, storage, repair, modification, importation, dealing, delivery or disposal of mechanically propelled vehicles is being, or is reasonably believed by the officer to be carried on,

Paragraph (c) substituted by S.53 of FA2014.

(c) bets liable to betting duty are reasonably believed to be accepted or facilities, the use of which is subject to commission charges (within the meaning of section 67B of the Finance Act 2002) liable to betting intermediary duty, are reasonably believed to be provided,

Paragraphs (d) to (f) substituted by S.73(e) of FA2012.

(d) any activity for the provision of postal services, or any other service for the delivery of foreign packets, is being, or is reasonably believed by the officer to be, carried on,

(e) any activity for the supply of electricity or natural gas is being, or is reasonably believed by the officer to be, carried on, or

(f) any records relating to, or reasonably believed by the officer to relate to, the products or activities referred to in paragraph (a), (b), (c) or (e) are kept, or are reasonably believed by such officer to be kept.

Amended by S.44(c)(i) of FA2015.

(2) An officer, on production of the authorisation of such officer if so requested by any person affected, or a member of the Garda Síochána, may—

- (a) enter and inspect any premises or place (other than a dwelling) for the purposes of section 135(2) and bring onto those premises any vehicle being used in the course of his or her duties,
- (b) make such search and investigation of such premises or place as he or she may consider to be proper.

(3) An officer in or on any premises or place pursuant to subsection (1) may there—

Substituted by S.73(f) of FA2012.

- (a) carry out such search and investigation as such officer may consider to be proper, including the examination and the carrying out of searches, under section 135, of any vehicle on such premises or in such place,

Amended by Sch. 3(5)(c) of FA2014

- (b) take account of, and without payment, take samples of any product referred to in section 97 and of any materials, ingredients and substances used or to be used in the manufacture of such product,

Substituted by S.44(c)(ii) of FA2015.

- (c) in relation to any records referred to in subsection (1)(f)—

(i) search for, inspect and take copies of or extracts from any such records (including, in the case of any information in a non-legible form, a copy of, or of an extract from, such information in a permanent legible form),

(ii) require any person present to produce any such records which are in that person's possession, custody or procurement and in the case of information in a non-legible form, to produce it in a legible form or to reproduce it in a permanent legible form,

(iii) remove and, for as long as necessary, retain (or cause to be removed and retained) any record found there, or in the possession of a person present there at the time of the search, where an officer reasonably believes the record is likely to be of value (whether by itself or together with other information)—

(l) to the investigation of an offence under excise

law, or for the purpose of any legal proceedings under excise law, or

(II) as evidence of, or relating to, the commission of an offence under excise law, or

(III) in the assessment of any duty payable under excise law or any other tax payable under the Acts,

and

(iv) take any other steps which may appear to the officer to be necessary for preserving any such record and preventing interference with it,

(d) question any person present in relation to—

(i) any product referred to in subsection (1)(a) or any materials, ingredients or other substances used or intended to be used in the manufacture of such product,

Amended by S.73(h) of FA2012.

(ii) any vehicle,

(iii) any records referred to in subsection (1)(f),

Amended by S.81,
Schedule 3, 5.(c) of
FA2011.

produced or found in or on such premises or place, and such person shall give to such officer all information required of such person which is in his or her possession, custody or procurement, and

Substituted by S.73(i) of
FA2012.

(e) exercise the powers of detention under section 140 and of seizure under section 141.

Inserted by S.73(j) of
FA2012.

(3A) Where an authorised officer in or on any premises or place, referred to in subsection (1)(d) or pursuant to a warrant issued under subsection (5), has reason to believe that a foreign packet contains excisable products, and that any requirement—

(a) under excise law, for payment of the excise duty on such products, or

(b) for any declaration under Council Regulation 2913/92/EEC of 12 October 1992¹, Commission Regulation 2454/93/EEC of 2 July 1993², or Council Regulation 450/2008/EC of 23

¹ OJ No. L302, 19.10.1992, p.1

² OJ No. L253, 11.10.1993, p.1

April 2008³, in relation to such foreign packet,

has not been complied with, then such officer may open such foreign packet and examine its contents.

(4) An officer in or on any premises or place pursuant to this section, or any person accompanying an officer pursuant to subsection (5), may require any person present to give to such officer or such other person his or her name and address.

Subsection (4A) inserted by S.90 of FA2003.

(4A) (a) Where an officer in or on any premises or place pursuant to this section has reason to believe that any concealed pipe, conveyance, utensil or other equipment is being kept or made use of in or on such premises or place with intent to evade alcohol products tax, then such officer or any person assisting such officer may break open any floor or wall of such premises or place, or any ground in or adjoining it, to search for such concealed pipe, conveyance, utensil or equipment.

(b) Where no concealed pipe, conveyance, utensil or other equipment, to which paragraph (a) relates, is found as a result of the breaking open of any floor or wall of any premises or place, then nothing in that paragraph shall be used as a defence in any civil proceedings to a claim arising out of any damage caused by that breaking open.

(5) Without prejudice to any power conferred by subsections (1) to (4), a judge of the District Court may, if satisfied on the sworn information of an officer that there are reasonable grounds for suspecting that—

(a) anything liable to forfeiture under the law relating to excise, or

(b) any records relating to transactions in contravention of the laws relating to excise,

are kept or concealed on or at any premises or place, issue a search warrant.

Subsection substituted by S.44(c)(iii) of FA2015.

(6) A search warrant issued under this section shall be expressed and shall operate to authorise a named officer accompanied by such other officers and such other persons as the officer considers necessary—

(a) to enter, at any time or times within one month of the

³ OJ No. L145, 04.06.2008, p.1

date of issuing of the warrant, (if necessary by the use of reasonable force) the premises or place named or specified in the warrant,

(b) to search, or cause to be searched, such premises or place and to inspect any thing or record found there,

(c) to require any person present to produce for inspection any record or thing in that person's possession, custody, or procurement,

Paragraph inserted by S.35(a) of FA2016.

(ca) to take account of and, without payment, take samples of any product referred to in section 97 and of any materials, ingredients and substances used or to be used in the manufacture of such product,

(d) to seize any thing found there, or in the possession of a person there, if there are reasonable grounds for suspecting that the thing is liable to forfeiture under the law relating to excise, or exercise, in relation to any thing so found or in the possession of such a person, the power of detention under section 140,

(e) to remove, or cause to be removed, from there any thing or record that the officer has reason to believe may be of value to the investigation of an excise offence, or as evidence in proceedings under excise law, or for the purpose of assessing any duty payable under excise law or any other tax payable under the Acts, and to retain such thing or record for so long as it is reasonably required for these purposes,

(f) to take any other steps which may appear to the officer to be necessary for preserving any such thing or record and preventing interference with it.

Subsection inserted by S.44(c)(iv) of FA2015.

(7) The authority conferred by a search warrant issued under this section to retain (or to cause to be retained) any record or thing includes—

(a) in the case of books, documents or records, authority to make and retain a copy of the books, documents or records, and

(b) authority to remove and, for as long as necessary, retain, any computer or other storage medium in which records are kept and to inspect, copy, or cause to be copied, such records.

Subsection inserted by

(8) An officer acting pursuant to a search warrant under this section

S.44(c)(iv) of FA2015.

may—

- (a) operate any computer at the premises or place being searched, or cause any such computer to be operated by a person accompanying the officer,
- (b) operate any computer removed from a premises or place searched under this section or cause any such computer to be operated by a person accompanying the officer, and
- (c) require any person at that premises or place who appears to the officer to be in a position to facilitate access to the records and information held in a computer, or to records and information that can be accessed by the use of that computer—
 - (i) to give to the officer any password or guidance necessary to operate it,
 - (ii) to enable the officer to examine the information accessible by the computer in a form in which the information is visible and legible, or
 - (iii) to produce the information in a form in which it can be removed and in which it is, or can be made, visible and legible.

Subsection inserted by S.44(c)(iv) of FA2015.

(9) Any record or thing retained by an officer under this section which is required for the purposes of any legal proceedings, whether criminal proceedings or otherwise, may be retained for so long as it is reasonably required for those purposes.

Power to stop, question and search for intra-Community baggage.

Section inserted by S.73(k) of FA2012, substituted by S.54(b) of FA2013.

136A.— Where an officer has reason to believe that a person entering the State may, in relation to excisable products in the baggage of the person or otherwise transported by that person, be committing an offence under section 119 or 121, the officer, on production of the authorisation of that officer if so required by that person, may—

- (a) require that person to stop, and to give to that officer—
 - (i) the name, address and date of birth of that person,
 - (ii) any information in relation to such excisable products or baggage, and
 - (iii) such excisable products for examination,

and

(b) examine any such baggage and excisable products.

**General provision
concerning samples.**

137.—[Deleted by S.73(l) of FA2012.]

Substitute fuels

137A. — (1) In this section—

Section inserted by
S.35(b) of FA2016.

“business” means any employment, trade, profession or vocation;

“relevant person” means any person who has procured or has or had possession, custody or control of a relevant product;

“relevant product” means any product in liquid form.

(2) A word or expression used in this section and which is also used in Chapter 1 of Part 2 of the Finance Act 1999 has, unless a meaning is assigned to it in this section or the contrary intention otherwise appears, the same meaning in this section as it has in that Chapter.

(3) An officer may make such enquiries of any person as the officer deems appropriate to establish the use or intended use of a relevant product and such person shall give to such officer all information required of such person which is in his or her possession, custody or procurement.

(4) (a) Subject to paragraph (b), where an officer forms an opinion that a relevant product is a substitute fuel or an additive, the powers set out in sections 134 to 136 and section 140 shall apply in respect of that relevant product.

(b) An officer may form an opinion that a relevant product is a substitute fuel having regard to the following:

(i) the relevant person’s business;

(ii) the relevant person’s stated reasons for procuring or having possession, custody or control of the relevant product;

(iii) the nature of the relevant product, including the nature of any package or container;

(iv) the relevant person’s conduct, including his or her use, or stated intended use, of the relevant product or any refusal to disclose his or her use, or intended use, of the relevant product;

(v) the quantity procured or purchased of the relevant product;

(vi) the frequency of deliveries of relevant products to the relevant person;

(vii) any document or other information whatsoever about the relevant product;

(viii) any other circumstances that appear to be relevant.

(5) Where the officer forms the opinion that the relevant product is a substitute fuel or additive that relevant product shall, in accordance with the provisions of Chapter 1 of Part 2 of the Finance Act 1999, be liable to mineral oil tax.

Powers of officers in respect of certain tobacco products

Section substituted by S.49 of F(No. 2)A2013.

138.— (1) Where an officer or a member of the Garda Síochána has reasonable grounds for believing that a person is committing or has committed an offence under section 78 of the Finance Act 2005, then the officer or member may—

(a) require the person to give to that officer or member—

(i) the name, address and date of birth of that person,

(ii) all such information in relation to the tobacco products concerned as may reasonably be required by that officer or member and which is in the possession or procurement of that person, and

(iii) any tobacco products concerned for examination,

(b) examine any tobacco products concerned,

(c) where the officer or member has reasonable grounds to believe that any tobacco products concerned are contained in any receptacle, carry out such search and examination of that receptacle as may be required to establish that such an offence is being, or has been, committed in respect of those tobacco products,

(d) require any person who has possession, custody or control of a receptacle referred to in paragraph (c)—

(i) to give the receptacle to the officer or member, and

(ii) to provide access to the receptacle, as may be

required by the officer or member for the purposes of that paragraph,

and

- (e) detain the person for as long as is reasonably required for the purposes of this section.

(2) For the purposes of paragraphs (c) and (d) of subsection (1), a receptacle does not include any article of clothing on the person concerned.

Power of arrest and detention of persons.

Subsection (1) substituted by S.60 of FA2005.

139.—(1) Where an officer or a member of the Garda Síochána has reasonable grounds to suspect that a person is committing or has committed an offence under—

- (a) section 119,
- (b) section 102(3) of the Finance Act 1999, or
- (c) section 79(5) (inserted by the Finance Act 2005) of the Finance Act 2003,

then such officer or member may arrest such person without warrant.

Amended by S.93(b) of FA2005.

- (2) (a) Where an officer has reasonable grounds to believe that a person is committing or has committed an offence under section 78 of the Finance Act 2005, then such officer may detain the person and, as soon as practicable thereafter—

- (i) present the person, or
- (ii) bring and present the person,

to a member of the Garda Síochána.

- (b) Where a member of the Garda Síochána has reasonable grounds to believe—

Amended by S.93(b) of FA2005.

- (i) that a person is committing or has committed an offence under section 78 of the Finance Act 2005, or

Amended by S.93(c) of FA2005.

- (ii) in case of a person presented or brought and presented to such member by an officer, that an offence under the said section 78 was or had been

committed by the person and the person was duly detained by an officer under paragraph (a) for the offence and was either presented or brought and presented to such member in accordance with that paragraph,

then, such member may arrest the person without warrant.

Designation of secure premises for keeping of detained or seized goods.

Inserted by S.74 of FA2007.

139A.—Any thing detained or seized under the law relating to excise may, in addition to being duly kept by an officer, also be kept in any secure premises or place designated by the Commissioners for such purpose, and the Commissioners may designate a premises or place under the control of a person contracted to them for such purpose.

Detention of goods and vehicles.

140.—(1) Where an officer reasonably suspects that any excisable products, or any other goods, are liable to forfeiture under the law relating to excise then—

- (a) all such excisable products or other goods,
- (b) any other thing being made use of in the conveyance of such products or goods, and
- (c) any vehicle in or on which or attached to which in any manner any such excisable products or goods are found,

may be detained by such officer until such examination, enquiries or investigations as may be deemed necessary by such officer or another officer, have been made for the purposes of determining whether or not such products, goods, thing or vehicle are liable to forfeiture.

Amended by S.93(b) of FA2005.

(2) Where a member of the Garda Síochána reasonably suspects that any excisable products, other goods or other thing or any vehicle is liable to forfeiture under section 78 of the Finance Act 2005, such products, goods, other thing or vehicle may be detained by such member until such examination, enquiries or investigations as may be deemed necessary by such member or another member, or by an officer, have been made for the purposes of determining whether or not such products, goods, other thing or vehicle are liable to forfeiture.

(3) Where an officer or a member of the Garda Síochána reasonably suspects—

- (a) that a vehicle has not been registered in any of the registers established and maintained under Chapter IV of

Part II of the Finance Act, 1992,

- (b) that a vehicle has been converted (within the meaning of that Chapter) and a declaration in relation to such conversion has not been made under section 131 of the Finance Act, 1992, or
- (c) that vehicle registration tax has not been paid in respect of a vehicle,

then such officer or member may detain such vehicle for such period as is required to carry out such examination, enquiries or investigations as may be deemed necessary by such officer or member to determine to his or her satisfaction whether or not—

- (i) such vehicle has been registered,
- (ii) such declaration has been made, or
- (iii) such vehicle registration tax has been paid.

(4) When a determination referred to in subsection (1), (2) or (3) has been made in respect of any excisable products, other goods, other thing or a vehicle or on the expiry of a period of one month from the date on which such products, goods, other thing or vehicle were or was detained under that subsection, whichever is the earlier, such products, goods, other thing or vehicle are to be either seized as liable to forfeiture under the Customs Acts or under section 141, or released.

Seizure of goods and vehicles.

141.—(1) Any goods or vehicles that are liable to forfeiture under the law relating to excise may be seized by an officer.

Amended by S.93(a) of FA2005.

(2) Anything liable to forfeiture under section 78 of the Finance Act 2005, may be seized by a member of the Garda Síochána and shall be delivered to an officer.

Notice of seizure.

142.—(1) Subject to subsection (2), an officer shall give notice of the seizure of anything as liable to forfeiture and of the grounds for seizure to any person who to the officer's knowledge was at the time of the seizure the owner or one of the owners of the thing seized.

(2) Notice under subsection (1) need not be given under this section to a person if the seizure was made in the presence of the person, the person whose offence or suspected offence occasioned the seizure or in the case of anything seized in any ship or aircraft, in the presence of the master or commander of such ship or aircraft.

Amended by S.47(a) of FA2011.

(3) Notice under subsection (1) shall be given in writing and the notice shall include a statement of section 127 and be deemed to have been duly given to the person concerned—

- (a) if it is delivered to the person personally, or
- (b) if it is addressed to the person and left or forwarded by post to the person at the usual or last known place of abode or business of the person or, in the case of a body corporate, at its registered or principal office, or
- (c) if the person has no known address in the State, by publication of notice of the seizure concerned in Iris Oifigiúil.

143.— [Deleted by section 47(b) of FA 2011.]

Power to deal with seizures, before and after condemnation.

S.144(1) amended by S.47(c)(i) of FA2011.

144.—(1) In this section "claimant" has the same meaning as it has in section 127.

(2) The Commissioners may, in their discretion, restore anything seized as liable to forfeiture under the law relating to excise, and the Minister for Finance may order such restoration.

Substituted by S.47(c)(ii) of FA2011.

(3) Without prejudice to subsection (2), the Commissioners may as they think fit, and notwithstanding that the thing seized has not yet been condemned, or deemed to have been condemned, as forfeited—

- (a) if a notice of claim in relation to such thing has been duly given under section 127, deliver it up to the claimant on payment to them of such sum as they deem proper, being a sum not exceeding that which represents the value of the thing, including any tax or duty on it that has not been paid, or
- (b) if the thing seized is, in the opinion of the Commissioners, of a perishable or hazardous nature, or is tobacco products, sell or destroy it.

Substituted by S.47(c)(ii) of FA2011.

(4) If, where anything is delivered up, sold or destroyed under subsection (3), it is held by the court in condemnation proceedings under section 128 that such thing was not liable to forfeiture at the time of its seizure, the Commissioners shall, subject to any deduction allowed under subsection (5), on demand tender to such claimant—

- (a) where a sum has been paid by such claimant under subsection (3)(a), an amount equal to that sum,
 - (b) if the thing has been sold under subsection (3)(b), an amount equal to the proceeds of sale,
 - (c) if the thing has been destroyed under subsection (3)(b), an amount equal to the market value of the thing at the time of its seizure.
- (5) Where the amount to be tendered under subsection (4) includes any sum on account of any duty or tax chargeable on the thing which has not been paid before its seizure, the Commissioners may deduct from the amount so much of it as represents the duty or tax.
- (6) If the claimant accepts any amount tendered under subsection (4), such claimant shall not be entitled to maintain proceedings in any court on account of the seizure, detention, sale or destruction of the thing concerned.
- (7) All goods seized by an officer or by a member of the Garda Síochána as liable to forfeiture shall after condemnation of such goods be either—
 - (a) sold or destroyed, or
 - (b) otherwise disposed of in accordance with regulations made under section 153.
- (8) Notwithstanding any other provision of this Chapter relating to goods seized as liable to forfeiture, an officer who seizes as liable to forfeiture any spirits or any stills, vessels, utensils, wort or other material for manufacturing, distilling or preparing spirits may at the discretion of such officer forthwith spill, break up or destroy any of those goods.

Appendix 9: Offences and presumptions in certain proceedings relating to mineral oils (as at July 2017)

Sections 102 and 103, Finance Act 1999

Offences - Section 102

(1) It shall be an offence under this subsection for a person –

(a) to contravene or fail to comply, whether by act or omission, with the provisions of this Chapter or any regulation made under section 104 or any condition imposed under this Chapter or under such regulation,.

Substituted by S.61(1)(a)(i)
of FA2007

(b) to use as a propellant or to keep in a fuel tank –

(i) any mineral oil on which mineral oil tax at the appropriate standard rate has not been paid,

(ii) any mineral oil containing one or more of the markers prescribed by regulations made under section 104, or

Substituted by S.78(1)(u)
of FA 2012

(iii) any mineral oil containing any marker required by another Member State,

Deleted by S. 50(1)(d)
of FA 2013

(c) Deleted

Paragraphs (d) to (g)
(d), (da) and (e) by
substituted for paragraphs
S.78(1)(v) of FA 2012.

(d) to produce, sell or deal in, keep for sale or delivery, or deliver any mineral oil (other than additives or vehicle gas) for use as a propellant, or any aviation gasoline, where that person is not, in relation to those activities, the holder of an auto-fuel trader's licence granted under section 101(1),

Amended by S.38(1)(i)
of FA 2016

(e) to produce, sell or deal in, keep for sale or delivery, or deliver any gas oil or kerosene that is, under section 97, liable to a rate lower than the appropriate standard rate, where that person is not, in relation to those activities, the holder of a marked fuel trader's licence granted under section 101(2),

(f) where that person is the holder of an auto-fuel trader's licence granted under section 101(1), or a marked fuel trader's

licence granted under section 101(2), to fail to display the licence at the premises or place to which that licence relates, or

(g) to contravene, or fail to comply with, a temporary prohibition of trade order under section 102A.

Inserted by S.61(1)(a)(iii)
of FA2007

(1A) It shall be an offence under this subsection-

(a) to invite an offer to treat for, offer for sale, keep for sale, or to sell, or

(b) to deliver, keep for delivery, or to be in the process of delivering, or to keep,

for use as a propellant –

(i) any mineral oil on which mineral oil tax at the appropriate standard rate has not been paid,

(ii) any mineral oil containing one or more of the markers prescribed by regulations made under section 104, or

Substituted by S.78(1)(w)
of FA 2012

(iii) any mineral oil containing any marker required by another Member State.

Inserted by S.43(b) of
FA 2011

(1B) It shall be an offence under this subsection for a person –

(a) to sell or keep for sale, or

(b) to deliver or to keep for delivery,

any mineral oil to which a rate lower than the appropriate standard rate has been applied, and to which markers have, accordingly, been added as prescribed, where such person has failed to comply with a condition prescribed or otherwise imposed under section 97(3), for the sale, keeping for sale, delivery or keeping for delivery (as the case may be) of such mineral oil.

Amended by S.77
of FA 2008

(2) Without prejudice to any other penalty to which a person may be liable, where such person is guilty of an offence under subsection (1), he or she shall be liable on summary conviction to a fine of €5,000.

Substituted by S.78(1)(x)

(3) It is an offence under this subsection –

of FA 2012

- (a) without the consent in writing of the Commissioners, to remove or attempt to remove or be knowingly concerned in removing or attempting to remove any marker from any mineral oil,
- (b) to knowingly deal in any mineral oil from which a marker has been removed, or to which any thing has been added for the purpose of impeding the identification of a marker in any mineral oil, or
- (c) to keep or have prohibited goods on any premises or other land or on any vehicle.

Amended by S.61(1)(a)
(iv) of FA 2007
by S.43(d) FA 2011

(4) Without prejudice to any other penalty to which a person may be liable, where such person is guilty of an offence under subsection & (1A), (1B) or (3) he or she shall be liable -

Amended by S.77
FA 2008

(a) on summary conviction to a fine of €5,000 or, at the discretion of the Court, to imprisonment for a term not exceeding 12 months to both, or

Amended by S.98(a)
FA2010

(b) on a conviction on an indictment, to a fine not exceeding of €126,970 or, at the discretion of the Court, to imprisonment for a term not exceeding 5 years or to both.

Substituted by S.78(1)(y)
of FA 2012 with effect
from 1 July 2012
(S.I. No. 226 of 2012)

(5) (a) Any mineral oil in respect of which an offence under subsection (1), (1A), (1B) or (3) was committed, and any substance mixed with that mineral oil, is liable to forfeiture.

(b) Where any mineral oil is liable to forfeiture under paragraph (a), for an offence relating to the sale, dealing in, or keeping for sale or delivery of mineral oil at a premises or place, any pumps, vessels or other equipment, used at that premises or place for supplying the mineral oil concerned, are liable to forfeiture.

Substituted by S.94(b)
of FA2003

(6) (a) In the case of an offence under subsection (1), which relate to paragraph (b) of that subsection, that consists of the use of mineral oil as a propellant or keeping of mineral oil in a fuel tank in contravention of that subsection, any vehicle concerned in such offence shall be liable to forfeiture only where -

- (i) a concealed tank, other container or any device, contrivance or method of any kind is employed to conceal the presence in a motor vehicle of mineral oil intended for use as a propellant, or

(ii) the owner or person in charge of the motor vehicle concerned in such offence does not have a permanent address in the State, or

(iii) proof of payment of mineral oil tax at the rate appropriate for use of the mineral oil concerned in a fuel tank is not produced, following interrogation under the provisions of Chapter 4 of Part 2 of the Finance Act 2001, and an officer has reasonable grounds to suspect that mineral oil tax has not been so paid, or

(iv) the offence is a second or subsequent such offence by the person concerned.

(b) Section 125(3) of the Finance Act 2001 does not apply to an offence to which this subsection relates.

(7) Any prohibited goods in respect of which an offence is committed under subsection (3) and any mineral oil found at the place where and at the time at which such offence was committed, any conveyance or container or any other thing which was used for the carriage, storage or concealment of any such prohibited goods or mineral oil shall be liable to forfeiture.

Substituted by S.98(b)
of FA2010

(8) Section 13 of the Criminal Procedure Act 1967 shall apply in relation to an offence under this section as if, in place of the penalties specified in subsection (3) of that section, there were specified in that subsection the penalties provided for by subsection (4)(a) of this section, and the reference in subsection (2)(a) of section 13 of the Criminal Procedure Act 1967 to the penalties provided for in subsection (3) of that section shall be construed and apply accordingly.

Amended by S.46(c)
of F(No.2)A 2013

(9) Where an offence under subsection (1), (1A), (1B) or (3) is committed by a body corporate and the offence is shown to have been committed with the consent or connivance of any person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate or a member of the committee of management or other controlling authority of the body corporate that person shall also be deemed to be guilty of an offence and may be proceeded against and punished as if guilty of the first-mentioned offence.

Consequential provisions relating to offences - Section 102A

Inserted by S.61(1)(b) of
amended by
S.43(f) FA 2011

(1) Where a person licensed under section 101 is convicted of an offence under subsection (1A), (1B) or (3)(b) of section 102 of this Act, or an offence in relation to mineral oil FA2007 & under section 119 of the

Finance Act 2001, then the Court shall, in addition to any other penalty imposed, make an order, referred to in this section as a temporary prohibition of trade order, prohibiting the sale or supply of any mineral oil from any premises licensed in respect of such person under section 101 and concerned in the offence, for a period of –

(a) not less than one day and not more than 7 days for a first offence by such person,

(b) not less than 7 days and not more than 30 days for a second or subsequent offence by such person,

and the Court may also by such order prohibit the sale or supply of any mineral oil from any other premises so licensed in respect of such person.

(2) In determining the duration of a temporary prohibition of trade order the Court may seek, from an officer involved in the investigation of the offence, a report on the circumstances in which it was committed and any other information which the Court may consider to be relevant.

(3) Where a person is convicted of more than one offence to which subsection (1) applies, and all the offences were committed on the same occasion, then only one temporary prohibition of trade order may be made in respect of such offences.

(4) The prohibition period specified in a temporary prohibition of trade order shall commence –

(a) where no appeal is made against the conviction or the prohibition period, on the 30th day after the order is made, or

(b) where such an appeal is made, and the conviction or prohibition period is affirmed, on the 30th day after such affirmation,

and it shall end on the expiry of the period specified in the order, unless such period has been varied on appeal, in which case it shall end on the expiry of the period so varied.

(5) (a) If, on appeal, a conviction resulting in a temporary prohibition of trade order is reversed, such order shall thereupon cease to have effect.

(b) On any appeal –

(i) against a conviction resulting in a temporary prohibition of trade order, or

(ii) relating to the period specified in such order, the Court may vary the period specified in such order.

(6) A temporary prohibition of trade order in respect of any premises shall, for the purposes of this Chapter and any regulations made under section 104, have effect as if that premises were not licensed under section 101 for the period specified in such order.

(7) During the period specified in a temporary prohibition of trade order, the person in respect of whom the premises is licensed under section 101 shall ensure that a prominent notice, stating that the closure is in compliance with the order and specifying the period of prohibition of trade, is affixed to the exterior of the premises in a conspicuous place.

Amended by S.46(d)
F(No.2)A 2013

(8) Where a person is convicted of— (a) an offence under section of 102(1)(g), or (b) a third or subsequent offence to which subsection (1) applies, the Court shall revoke any licence granted to such person under section 101, and no such licence may at any future time be granted to such person.

Presumptions in certain proceedings – Section 103

Substituted by S.97
FA 2000

(1) Where, in proceedings for an offence under section 102 of subsection (1) consisting of the use of mineral oil as a propellant, or the keeping of mineral oil in a fuel tank in contravention of that section, it is proved that a fuel tank contained mineral oil, it shall be presumed (unless the contrary is proved) that such mineral oil was used as a propellant or kept in the fuel tank concerned in contravention of that section, as may be appropriate, and to have been so used or kept by –

(a) the owner of the vehicle concerned or, if a person other than the owner was, at the time of the alleged commission of the offence, entitled to the possession of the vehicle, the person so entitled, and

(b) any other person who at the time of the alleged commission of the offence was in charge of the vehicle.

(2) In any proceedings against a person for selling, delivering, using or keeping for use as a propellant, mineral oil on which mineral oil

tax has not been paid, or on which tax at a rate lower than the 38 rate appropriate to its use as a propellant has been paid, it shall be presumed, until the contrary is proved, that mineral oil tax has not been paid or that mineral oil tax has been paid at such lower rate as the case may be.

Amended by S.127 and
Schedule 2 of FA 2006

(3) Whenever a person who is the owner or the occupier for the time being of premises or land in or on which prohibited goods are found is charged in any legal proceedings under section 102, the prohibited goods shall, until the contrary is proved, be presumed to have been kept by such person in the said premises, or on the said land (as the case may be), in contravention of that section.

Substituted by S.61(1)(c)
of FA2007

(4) Where, in any proceedings for an offence under subsection (1)(b)(i) or (1A)(i) of section 102, it is proved that the mineral oil that is the subject of the offence is heavy oil other than fuel oil or kerosene, with a sulphur content exceeding 50 milligrammes per kilogramme, then it shall be presumed, until the contrary is proved, that mineral oil tax at the appropriate standard rate has not been paid on such mineral oil.

Appendix 10: Specimen Notices of Seizure

A. Notice of Seizure under the Customs Act 2015, Section 18

NOTICE OF SEIZURE

Customs Act 2015, Section 18

Address of Revenue Office

Name _____
 Address _____

Notice is hereby given that certain goods, to wit,

1. (Detailed description of goods including quantity) were seized by me pursuant to section 34 of the Customs Act 2015 on _____ at _____, the said goods being liable to forfeiture under section 17 of the Customs Act 2015.

2. Motor Vehicle Registration number _____ *and trailer number _____ *was/were seized by me pursuant to section 34 of the Customs Act 2015 on _____ at _____, the motor vehicle *and trailer being liable to forfeiture under section 17 of the Customs Act 2015.

Dated: _____

Signed: _____ Officer of Customs

*Delete as appropriate

Explanatory Note (not for issue as part of Seizure Notice)

This notice is to be used when seizing as liable to forfeiture any goods in respect of which an offence has been committed under section 14 or 15 of the Customs Act 2015 or any other goods liable to seizure under section 17 of the 2015 Act.

Please ensure that the information on the next page is issued with this document.

INFORMATION REGARDING SEIZED GOODS

Section 34 of the Customs Act 2015 empowers an officer of Customs to seize any goods or vehicles that are liable to forfeiture under the law relating to customs.

When goods, including means of transportation of the goods, are seized, the Revenue Commissioners may decide to offer terms for release and settle the case by agreement, or to refuse settlement.

The seizure of goods may be contested by the person from whom they have been seized, or by their owner, or a person authorised by him/her, by lodging a Notice of Claim. The Notice of Claim must:

- be made within 30 days from the date of the notice of seizure;
- where no such notice has been given, within 30 days from the date of seizure;
- be made in writing;
- clearly state the claimant's full name and address;
- state the basis on which the claim is grounded;
- be addressed to either -
 - a. the officer who seized the goods, or
 - b. the Assistant Principal of the Office of the Revenue Commissioners in whose area the goods were seized, or
 - c. the Revenue Commissioners, National Prosecutions and Seizures Office, Áras Áiligh, Bridgend, Co Donegal.

When a Notice of Claim is received, the Revenue Commissioners may:

- offer settlement terms,
or
- institute civil proceedings under section 20 of the Customs Act 2015 for the forfeiture of the goods.

If a Notice of Claim is not received, the goods are by law deemed to be forfeit to the State and the Revenue Commissioners may:

- offer settlement terms,
or
- dispose of the goods.

When a customs offence is committed, in addition to seizure of the goods, the offender is liable to prosecution.

Note: On receipt of a Notice of Claim and unless settlement terms are offered and accepted, civil proceedings for the condemnation and forfeiture of the goods will be instituted by the Revenue Commissioners which will necessitate the appearance in Court of the person making the claim or his/her legal representative.

B. Notice of Seizure under the Finance Act 2001, Section 142**NOTICE OF SEIZURE**

Section 142 Finance Act 2001
(as amended by Section 47(a) Finance Act 2011)

Address of Revenue Office

Name _____
Address _____

Notice is hereby given that certain goods, to wit,

1. _____

were seized by me, pursuant to Section 141 of the Finance Act 2001, on _____
at _____,
on the grounds that the said goods were liable to forfeiture under Section 102(5)(a) of the Finance Act 1999.

2. _____

*was/were seized by me pursuant to Section 141 of the Finance Act 2001, on _____
at _____,
on the grounds that the said goods were liable to forfeiture under Section 102(5)(a) of the Finance Act 1999.

Dated this _____ day of _____ 20_____.

Authorised Officer

*Delete as appropriate

Explanatory Note (not for issue as part of Seizure Notice)

The above notice should be used when seizing 1. mineral oil, or 2. pumps, vessels or other equipment at the premises or place supplying the mineral oil.

Please ensure that the information on the next page is issued with this document.

INFORMATION REGARDING SEIZED GOODS

Section 141 of the Finance Act 2001 empowers an authorised officer of the Revenue Commissioners to seize any goods or vehicles that are liable to forfeiture under the law relating to excise.

When goods, including means of transportation of the goods, are seized, the Revenue Commissioners may decide to offer terms and settle the case by agreement, or to refuse settlement.

The seizure of goods may be contested by the person from whom they have been seized, or by their owner, or a person authorised by him/her, by lodging a Notice of Claim. The Notice of Claim must:

- be made within one month from the date of the notice of seizure;
- where no such notice has been given, within one month from the date of seizure;
- be made in writing;
- clearly state the claimant's full name and address;
- state the basis on which the claim is grounded;
- be addressed to either:
 - a. the officer who seized the goods, or
 - b. the Assistant Principal of the Office of the Revenue Commissioners in whose area the goods were seized, or
 - c. the Revenue Commissioners, National Prosecutions and Seizures Office, Áras Áiligh, Bridgend, Co Donegal.

When a Notice of Claim is received, the Revenue Commissioners may:

- offer settlement terms,
or
- institute legal proceedings for the forfeiture of the goods.

If a Notice of Claim is not received, the goods are by law deemed to be forfeit to the State and the Revenue Commissioners may:

- offer settlement terms,
or
- dispose of the goods.

When an excise offence is committed, in addition to seizure of the goods, the offender is liable to prosecution.

Note:

On receipt of a Notice of Claim and unless settlement terms are offered and accepted, civil proceedings for the condemnation and forfeiture of the goods will be instituted by the Revenue Commissioners which will necessitate the appearance in Court of the person making the claim or his/her legal representative.

C. Notice of Seizure under the Finance Act 2001, Section 142**NOTICE OF SEIZURE**

Section 142 Finance Act 2001,
(as amended by Section 47(a) Finance Act 2011)

Address of Revenue Office

Name _____
Address _____

Notice is hereby given that certain goods, to wit,

were seized by me, pursuant to Section 141 of the Finance Act 2001, on _____
at _____

on the grounds that the said goods were liable to forfeiture under Section 125 of the Finance Act 2001 *and/or Section 78(7) of the Finance Act 2005.

Dated this _____ day of _____ 20 _____.

Authorised Officer

*Delete as appropriate

Explanatory Note (not for issue as part of Seizure Notice)

The above notice should be used in instances of unstamped tobacco products or tobacco smuggling.

Please ensure that the information on the next page is issued with this document.

INFORMATION REGARDING SEIZED GOODS

Section 141 of the Finance Act 2001 empowers an authorised officer of the Revenue Commissioners to seize any goods or vehicles that are liable to forfeiture under the law relating to excise.

When goods, including means of transportation of the goods, are seized, the Revenue Commissioners may decide to offer terms and settle the case by agreement, or to refuse settlement.

The seizure of goods may be contested by the person from whom they have been seized, or by their owner, or a person authorised by him/her, by lodging a Notice of Claim. The Notice of Claim must:

- be made within one month from the date of the notice of seizure;
- where no such notice has been given, within one month from the date of seizure;
- be made in writing;
- clearly state the claimant's full name and address;
- state the basis on which the claim is grounded;
- be addressed to either:
 - a. the officer who seized the goods, or
 - b. the Assistant Principal of the Office of the Revenue Commissioners in whose area the goods were seized, or
 - c. the Revenue Commissioners, National Prosecutions and Seizures Office, Áras Áiligh, Bridgend, Co Donegal.

When a Notice of Claim is received, the Revenue Commissioners may:

- offer settlement terms,
or
- institute legal proceedings for the forfeiture of the goods.

If a Notice of Claim is not received, the goods are by law deemed to be forfeit to the State and the Revenue Commissioners may:

- offer settlement terms,
or
- dispose of the goods.

When an excise offence is committed, in addition to seizure of the goods, the offender is liable to prosecution.

Note:

On receipt of a Notice of Claim and unless settlement terms are offered and accepted, civil proceedings for the condemnation and forfeiture of the goods will be instituted by the Revenue Commissioners which will necessitate the appearance in Court of the person making the claim or his/her legal representative.

D. Notice of Seizure under the Finance Act 2001, Section 142**NOTICE OF SEIZURE**

Section 142 Finance Act 2001
(as amended by Section 47(a) Finance Act 2011)

Address of Revenue Office

Name**Address**

Notice is hereby given that certain goods, to wit,

were seized by me, pursuant to Section 141 of the Finance Act 2001, on the _____
_____ at _____

on the grounds that the said goods were liable to forfeiture under Section 125 of the Finance Act 2001 *and/or Section 79(10) of the Finance Act 2003.

Dated this _____ day of _____ 20 ____ .

Authorised Officer

*Delete as appropriate

Explanatory Note (not for issue as part of Seizure Notice)

The above notice should be used when seizing Alcohol under Section 125 of the Finance Act 2001 for smuggling offences and/or for other alcohol offences under Section 79 of the Finance Act 2003.

Please ensure that the information on the next page is issued with this document.

INFORMATION REGARDING SEIZED GOODS

Section 141 of the Finance Act 2001 empowers an authorised officer of the Revenue Commissioners to seize any goods or vehicles that are liable to forfeiture under the law relating to excise.

When goods, including means of transportation of the goods, are seized, the Revenue Commissioners may decide to offer terms and settle the case by agreement, or to refuse settlement.

The seizure of goods may be contested by the person from whom they have been seized, or by their owner, or a person authorised by him/her, by lodging a Notice of Claim. The Notice of Claim must:

- be made within one month from the date of the notice of seizure;
- where no such notice has been given, within one month from the date of seizure;
- be made in writing;
- clearly state the claimant's full name and address;
- state the basis on which the claim is grounded;
- be addressed to either:
 - a. the officer who seized the goods, or
 - b. the Assistant Principal of the Office of the Revenue Commissioners in whose area the goods were seized, or
 - c. the Revenue Commissioners, National Prosecutions and Seizures Office, Áras Áiligh, Bridgend, Co Donegal.

When a Notice of Claim is received, the Revenue Commissioners may:

- offer settlement terms,
or
- institute legal proceedings for the forfeiture of the goods.

If a Notice of Claim is not received, the goods are by law deemed to be forfeit to the State and the Revenue Commissioners may:

- offer settlement terms,
or
- dispose of the goods.

When an excise offence is committed, in addition to seizure of the goods, the offender is liable to prosecution.

Note:

On receipt of a Notice of Claim and unless settlement terms are offered and accepted, civil proceedings for the condemnation and forfeiture of the goods will be instituted by the Revenue Commissioners which will necessitate the appearance in Court of the person making the claim or his/her legal representative.

Appendix 11: Criminal Justice Act 1994 as amended by the Proceeds of Crime (Amendment) Act 2005

PART VI

SEARCH FOR, SEIZURE AND DISPOSAL OF MONEY GAINED FROM, OR FOR USE IN, CRIMINAL CONDUCT

38. - (1) A member of the Garda Síochána or an officer of customs and excise may search a person if the member or officer has reasonable grounds for suspecting that – Seizure and detention

- (a) the person is importing or exporting, or intends or is about to import or export, an amount of cash which is not less than the prescribed sum, and
- (b) the cash directly or indirectly represents the proceeds of crime or is intended by any person for use in connection with any criminal conduct.

(1A) A member of the Garda Síochána or an officer of the Revenue Commissioners may seize and in accordance with this section detain any cash (including cash found during a search under subsection (1)) if—

- (a) its amount is not less than the prescribed sum, and
- (b) he or she has reasonable grounds for suspecting that it directly or indirectly represents the proceeds of crime or is intended by any person for use in any criminal conduct.

(2) Cash seized by virtue of this section shall not be detained for more than forty-eight hours unless its detention beyond forty-eight hours is authorised by an order made by a judge of the District Court and no such order shall be made unless the judge is satisfied -

- (a) that there are reasonable grounds for the suspicion mentioned in *subsection (1)* of this section, and
- (b) that detention of the cash beyond forty-eight hours is justified while its origin or derivation is further investigated or consideration is given to the institution (whether in the State or elsewhere) of criminal proceedings against any person for an offence with which the cash is connected.

(3) Any order under *subsection (2)* of this section shall authorise the continued detention of the cash to which it relates for such period, not exceeding three months beginning with the date of the order, as may

be specified in the order, and a judge of the District Court, if satisfied as to the matters mentioned in that subsection, may thereafter from time to time by order authorise the further detention of the cash but so that—

(a) no period of detention specified in such an order, shall exceed three months beginning with the date of the order; and

(b) the total period of detention shall not exceed two years from the date of the order under *subsection (2)* of this section

(3A) Where an application is made under section 39(1) for an order for the forfeiture of cash detained under this section, the cash shall, notwithstanding subsection (3), continue to be so detained until the application is finally determined.

(4) Any application for an order under *subsection (2)* or *(3)* of this section may be made by a member of the Garda Síochána or an officer of customs and excise

(5) At any time while cash is detained by virtue of the foregoing provisions of this section a judge of the District Court may direct its release if satisfied—

(a) on an application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer, any such grounds for its detention as are mentioned in *subsection (2)* of this section, or

(b) on an application made by any other person, that detention of the cash is not for that or any other reason justified

(6) If at a time when any cash is being detained by virtue of the foregoing provisions of this section –

(a) an application for its forfeiture is made under *section 39* of this Act; or

(b) proceedings are instituted (whether in the State or elsewhere) against any person for an offence with which the cash is connected,

the cash shall not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded

39.—(1) A judge of the Circuit Court may order the forfeiture of any cash which has been seized under *section 38* of this Act if satisfied, on an application made while the cash is detained under that section, that the cash directly or indirectly represents the proceeds of crime or is intended by any person for use in connection with any criminal conduct.⁴

Forfeiture of cash seized under section 38.

(2) Any application under this section shall be made, or caused to be made, by the Director of Public Prosecutions.

(3) The standard of proof in proceedings on an application under this section shall be that applicable to civil proceedings; and an order may be made under this section whether or not proceedings are brought against any person for an offence with which the cash in question is connected.

40. (1) This section applies where an order for the forfeiture of cash (in this section known as “the section 39 order”) is made under section 39 of this Act.

Appeal against Section 39 order

(1) Any party to the proceedings in which the section 39 order is made (other than the Director of Public Prosecutions) may, before the end of the period of 30 days beginning with the date on which it is made, appeal in respect of the order to the High Court.

(2) An appeal under this section shall be by way of a rehearing.

(3) On an application made by the appellant to a judge of the Circuit Court at any time, the judge may order the release of so much of the cash to which section 39 order relates as he considers appropriate to enable the appellant to meet his legal expenses in connection with the appeal.

(4) When hearing an appeal under this section the High Court may make such order as it considers appropriate.

(5) If it upholds the appeal, the judge may order the release of the cash, or (as the case may be) the remaining cash, together with any accrued interest.

(6) Section 39 (3) of this Act shall apply in relation to a rehearing on an appeal under this section as it applies to proceedings under section 39 of this Act.

41. - Cash seized under this Part of this Act and detained for more than Interest

forty-eight hours shall, unless required as evidence of an offence, be held in an interest-bearing account and the interest accruing on any such cash shall be added to that cash on its forfeiture or release.

42. - (1) An order under section 38 (2) of this Act shall provide for notice to be given to persons affected by the order. Procedure

(2) Provision may be made by rules of court with respect to applications or appeals to any court under this Part of the Act, for the giving of notice of such applications or appeals to persons affected, for the joinder of such persons as parties and generally with respect to the procedure under this Part of this Act before any court.

43. - (1) In this Part of the Act - Interpretation
“cash” includes coins and notes in any currency, postal orders, of Part VI
cheques of any kind (including travellers’;

“criminal conduct” means any conduct which –

- (a) constitutes an offence or more than one offence, or
- (b) where the conduct occurs outside the State, constitutes an offence under the law of the state or territory concerned and would constitute an offence or more than one offence if it occurred within the State;

“exported” in relation to any cash, includes its being brought to any place in the State for the purpose of being exported;

“proceeds of crime” has the meaning given to that expression by section 1(1) (as amended by section 3 of the Proceeds of Crime (Amendment) Act 2005) of the Proceeds of Crime Act 1996.

(2) In section 38 of this Act “the prescribed sum” means such sum as may for the time being be prescribed for the purposes of that section by any regulations made under section 44 of this Act.

44. - (1) The Minister may by regulations prescribe a sum for the purposes of section 38 of this Act and in determining under that section whether an amount of foreign currency is not less than the prescribed sum that amount shall be converted at the prevailing rate of exchange. Prescribed sum for purposes of Section 38

1. Where it is proposed to make regulations under subsection 1 of this section, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations shall not be made until a resolution approving of such draft has been passed by each such house.

<p>45. - Any money representing cash which is forfeited under this Part of this Act or accrued interest thereon shall, following the payment of any expenses or remuneration that may have risen in relation to such forfeiture, be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance.</p>	<p>Disposal of cash etc. forfeited under Section 39</p>
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