

Manual on the powers of officers in respect of certain tobacco products under Section 138 of the Finance Act 2001

This document should be read in conjunction with section 138 of the Finance Act 2001
and section 78 of the Finance Act 2005

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1. Introduction

[Section 138 of the Finance Act 2001 \(as substituted by section 49 of the Finance \(No. 2\) Act 2013\)](#)¹ provides Revenue officers with powers in respect of certain tobacco products. Where an authorised officer² has reasonable grounds for believing that a person is committing or has committed an offence under [section 78 of the Finance Act 2005, as amended](#)¹, the officer may require that person to –

- give his/her name, address and date of birth;
- provide all information in relation to the tobacco products concerned which is in the person's possession or procurement, as may be reasonably required by the officer; and
- give the officer any tobacco products concerned for examination.

An officer may examine any tobacco products concerned and, in instances where an officer has reasonable grounds to believe that such tobacco products are contained in a receptacle, the officer may require any person who has possession, control or custody of the receptacle to provide the officer with the receptacle and provide access to the receptacle if necessary. Having received the receptacle, the officer may conduct a search and examination of the receptacle.

[Section 138\(2\) of the Finance Act 2001 \(as amended by section 48 of the Finance Act 2017\)](#) states that “a receptacle includes, but is not limited to, a bag, parcel, carton, item of luggage, container or other thing that may be used in the storage or transport of a good but does not include any article of clothing worn by the person concerned.”.

The powers conferred in [section 138 of the Finance Act 2001](#) are also exercisable by members of An Garda Síochána.

2. Dealing with the Public and Conducting Questioning

2.1. Dealing with the public

When determining the appropriate level of enforcement action, officers should exercise good professional judgement and discretion at all times. Any action taken should be appropriate to the circumstances encountered and proportionate to the suspected offence.

¹All references to legislation are linked to www.betterregulation.com, which provides the latest version of the legislation, including any amendments. You will need a password to access this website if you are not accessing it from Revenue systems.

² Authorised Officer: an officer of the Revenue Commissioners authorised by them in writing to exercise the powers conferred on officers by [Chapter 4 of Part 2 of the Finance Act 2001 \(s133 FA 2001, as amended\)](#).

A key element of such work is ensuring that tasks are completed with minimum confrontation and high levels of professionalism. Using a professional and sensitive approach can turn a potentially difficult encounter into a successful outcome. Members of the public should always be dealt with in a calm, courteous, and even-handed manner.

2.2. Conducting Questioning

Prior to conducting questioning pursuant to [section 138](#) of the Finance Act 2001, a Revenue officer should display his/her authorisation card and identify himself/herself as a Revenue officer. The officer should invoke and explain the powers that he/she is exercising and explain his/her intended actions.

When questioning a person, the officer should -

- a) Require the person to provide his/her name, address and date of birth;
- b) Require information about any tobacco products in that person's possession;
- c) Where appropriate, require access to receptacle(s) in that person's possession (see Section 4 below);
- d) Record all questions asked, replies received and anything else of note in an official notebook (see Section 2.3);
- e) Advise the person of the outcome of the engagement and any follow-up action that may occur.

Any replies to questions other than those outlined at a) must be provided voluntarily by the person being questioned. If the person is led to believe that he/she is obliged to answer any questions other than those outlined at a), then the information provided is at risk of being rendered non-voluntary and may be deemed to be inadmissible as evidence.

The powers under [section 138 of the Finance Act 2001](#) are used where an officer has reasonable grounds for believing that a person has committed an offence. At the outset of an engagement involving section 138 powers, the person should be cautioned as follows -

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

After a caution has been issued, the Revenue officer should ask the person if he/she understands the caution and the person's reply should be noted.

2.3. Notetaking

As far as possible, contemporaneous notes should be taken. While an officer may not be able to compile comprehensive notes that cover every aspect of an engagement, the officer should ensure that all important aspects are recorded.

Notes should include a detailed record of all relevant information such as the location, the time, the circumstances of the engagement (including the relevant legislation) and the physical characteristics of the person concerned. It is important that the Revenue officer takes a careful note of any conversation that takes place, including questions asked and replies received. The officer should also record details of any evidence uncovered or produced.

Notes that are not taken contemporaneously should always be completed within 24 hours of the incident occurring. Notebooks form part of important evidence in any subsequent legal action and the relevant entries may be examined in detail by legal personnel and/or a Judge.

3. Searching for tobacco products

In order to search a receptacle an officer must have reasonable grounds to suspect that the receptacle contains tobacco products which relate to an offence under [section 78 of the Finance Act 2005, as amended](#).

The grounds for conducting a search must be clear in the officer's mind as this may be challenged in subsequent legal proceedings. Consideration should be given on a case-by-case basis to the type of receptacle, whether or not it is being used for its intended purpose, if there is an attempt to conceal the receptacle, and whether the receptacle's contents are obviously displayed or not.

A search of a receptacle should be conducted at the place where the person is stopped and questioned. An officer cannot instruct the owner or person in charge of the receptacle to accompany him/her to another place to conduct the search. However, if the original place is considered to be dangerous or inappropriate, or may cause embarrassment to the owner or person in charge of the receptacle, the search may be conducted in another place that is adjacent or nearby if both parties are agreeable to the change of location.

3.1. Search of person

An officer may not search a person's body or clothing on the person for tobacco products under any circumstances.

3.2. Detention/Seizure of tobacco products

Where an officer suspects that tobacco products are liable to forfeiture under [section 78 \(7\) of the Finance Act 2005](#) and/or [section 125 of the Finance Act 2001](#)³ the products may be detained under [section 140\(1\) of the Finance Act 2001](#) or seized under [section 141 of that Act](#).

If the owner or person in possession of the goods is present, the officer concerned should issue a Notice of Detention or a Notice of Seizure, as appropriate, and explain to the person the grounds and legislation under which the tobacco products are being seized/detained and the process that will follow. If the officer is unable to issue the Notice of Detention or Notice of Seizure at the time of detention/seizure, or if the owner of the tobacco products is not present, a Notice of Detention or a Notice of Seizure should be promptly forwarded by registered post.

Where the goods are detained, the officer should undertake further enquiries and determine, within one month of the day of detention, whether the tobacco products should be seized as liable to forfeiture or released, as provided in [section 140\(4\) of the Finance Act 2001](#)¹.

3.3. Evidence

Any evidence gathered should be recorded and stored in evidence bags under lock and key as soon as is practicable after the engagement is completed.

4. Refusal to engage with Revenue / departing the scene

If a person -

- refuses to answer questions;
- refuses to provide tobacco products in his/her possession for examination;
- refuses to provide a receptacle for searching;
- refuses to provide access to a receptacle; or
- attempts to depart the scene of an engagement with a Revenue officer;

the officer should explain his/her statutory powers to the person and explain that if the person does not cooperate, he/she may be accused of –

³ In some cases, there can be two forfeiture provisions in respect of tobacco tax stamp offences, an offence under section 78 Finance Act 2005 and also an offence under section 119 Finance Act 2001. There can be two forfeiture provisions in such cases, i.e., section 78(7) Finance Act 2005 and/or section 125(1) Finance Act 2001.

¹ All references to legislation are linked to the www.betterregulation.com, which provides the latest version of the legislation, including all amendments made since the Act commenced. You will need a password to access this site if you are not accessing it on Revenue system.

- failing to comply with a requirement of [section 138 of the Finance Act 2001 \(as substituted by section 49 of the Finance \(No. 2\) Act 2013\)](#), which is an offence under [section 123 of that Act](#), or
- obstructing or interfering with a Revenue officer in the exercise or performance of powers or duties, which is an offence under [section 1078\(2\)\(j\) of the Taxes Consolidation Act 1997, as amended](#)¹.

4.1. Detention of a person

If a Revenue officer requires a person to remain at the scene of an engagement until enquiries are completed, the officer should reason with the person and seek their agreement to assist with Revenue's enquiries. In the event that a person refuses to comply with a Revenue officer or attempts to depart the scene, the instructions at section 4 and 4.2 should be followed.

4.2. Attempting to depart the scene

Force may not be used to prevent a person from departing the scene of an engagement. The personal safety of the Revenue officer(s) should always be the first consideration in such situations and an officer must decide whether a situation has reached a stage where it would be prudent to withdraw rather than attempt to continue with an engagement. In any instance where a person departs the scene of an engagement, a report is to be submitted at the earliest opportunity to the officer's line manager with a view, where appropriate, to the pursuit of legal proceedings.

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