

Procedural Guidelines for Alcohol Product Seizure

This document should be read in conjunction with section 125A of the Finance Act 2001 and section 1094 of the Taxes Consolidation Act 1997

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1. Overview of Guidelines

These guidelines apply where a person is required to hold a licence for the wholesale or retail sale of alcohol products and a tax clearance certificate is required for the granting of that licence and either (i) an application for that licence has been refused solely or partly on the grounds that the applicant does not hold a tax clearance certificate or (ii) no application has been made for a licence or tax clearance certificate requirements have not been fulfilled.

In such circumstances, alcohol products held for wholesale or retail sale are liable to forfeiture.

The purpose of these guidelines is to provide guidance to officers on the procedures which should be followed in such cases.

The applicable statutory provisions are section 125A of the Finance Act 2001 (as inserted by section 48 of the Finance (No.2) Act 2013 and amended by section 97 and Schedule 3 of the Finance Act 2014), which concerns the forfeiture of alcohol products on unlicensed premises, and section 1094 of the Taxes Consolidation Act 1997, which relates to tax clearance certificates in relation to certain licences.

The consolidated texts of section 125A and section 1094 as at 1 April 2017 are included at Appendix 4 and Appendix 5 respectively.

2. Objective

The primary aim of the relevant legislation is to address situations where a person does not hold the necessary licence relating to the wholesale or retail sale of alcohol products.

In such circumstances products are liable to forfeiture where the person has:

- (a) been made aware of the seriousness of the situation by virtue of the 20-day warning letter under section 125A of the Finance Act 2001, and
- (b) has failed to engage with Revenue following the issue of a 20-day warning letter (see paragraph 8).

3. Enforcement Authorisation Procedures

An officer does not require authorisation to issue a 20-day warning letter. However, it is recommended that letters are issued by Assistant Principals.

Seizure is effected under section 141 of the Finance Act 2001. Seizure action can only be taken by officers authorised by the Revenue Commissioners to exercise that power. Assistant Principals in enforcement units should ensure that all officers undertaking enforcement action under that provision are appropriately authorised by the Revenue Commissioners.

4. Liaison between local Revenue District and Enforcement Units

The operation of section 125A requires active cooperation and liaison between Revenue districts and enforcement units.

Where a person 'genuinely engages' (see paragraph 8) with Revenue following receipt of the 20-day warning letter, it may be appropriate to discontinue further action.

It is important, therefore, that communication is maintained, on all aspects of the case, between the Assistant Principal in the local Revenue District concerned, the Office of the Collector General and Enforcement Units from the time of the issuing of the warning letter until a determination is made as to what further action, if any, is required.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

7. Notification Procedures

7.1. 20-day Warning Letter

Once a case is selected as suitable for seizure action by the local Revenue district, a 20-day warning letter should be issued in accordance with section 125A(2). This should be issued by registered post and in the approved format (see Appendix 1).

The letter should be addressed to the person (and with regard to partnerships, the "precedent partner") who:

- is required to hold a licence in relation to the sale of alcohol at the premises concerned, and
- in relation to that licence is also required to hold a tax clearance certificate.

The 20-day warning letter must be accompanied by a schedule of outstanding taxes in the format provided in Appendix 2 that clearly outlines the amounts of outstanding taxes. A copy of the warning letter should also be forwarded on the date of issue to the Assistant Principal responsible for enforcement.

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[...]

8. Genuine Engagement

Genuine engagement is where the taxpayer submits all outstanding returns and payments to the Collector General's Office or submits acceptable proposals to the Collector General's Office to begin a tax payment arrangement in line with Revenue's "**Guidelines for Phased Payment/Instalment Arrangements**".

If the Collector General's Office are satisfied that the taxpayer has genuinely engaged with Revenue within 20 days of the delivery of the warning letter then this fact should be recorded on ITS/CRS or RCM and the Assistant Principal in the local district should be informed that the proposed seizure action should be discontinued.

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[...]

11. Seizure Procedures

11.1. Powers of officers

Alcohol products liable to forfeiture under section 125A should be seized by an officer of the Revenue Commissioners authorised for the purposes of section 141 of the Finance Act 2001.

11.2. Access to premises

A search warrant is required and should be prepared for submission to a Judge of the District Court in accordance with the requirements and example at Appendix 3.

Accompanying Information is also required for the application to the District Judge. Samples of these documents and some associated general guidance notes are attached at Appendix 3. This document should be sworn before a District Court Judge. A copy of the warning letter issued and the schedule of outstanding taxes that accompanied the letter should also be provided to the Judge.

A warrant should not seek authority for a search for alcohol products held in any part of a premises that is a private dwelling or is in amounts that indicate that the products are for private use and not for wholesale or retail sale.

11.3. Seizure

The seizing officer must comply with the provisions of the search warrant and the relevant legislation regarding a Notice of Seizure.

A detailed inventory of all products seized from a premises must be prepared and the inventory should be confirmed and signed by the owner/person in charge of the premises. If the owner/person in charge refuses to sign the inventory the officer should note this on the inventory and sign the document. A copy of the inventory should be included with the Notice of Seizure. Additional information on the procedures to be observed is available at Appendix 3.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

12. Post seizure

A Notice of Seizure under section 142 Finance Act 2001, should be issued in all cases except instances where the alcohol products are seized in the presence of the owner who received a warning letter. Guidelines on issuing a Notice of Seizure are given at Appendix 3.

A party may make a claim to the Commissioners in accordance with section 127 of the 2001 Act that the goods seized are not liable to forfeiture, within one month of the date of the seizure of the goods or the date of a Notice of Seizure.

A notice of claim should be acknowledged and forwarded to the National Prosecutions and Seizures Office, Business Division for processing in accordance with sections 127 and 128 of the Finance Act 2001.

The return of the seized goods, other than on foot of a notice of claim, may be allowed in accordance with the Commissioners' discretion under section 144(2) of the Finance Act 2001 if a party genuinely engages with the Collector General's Office within 30 days of the seizure.

If the Assistant Principal in the Collector General's Office is satisfied that the taxpayer has genuinely engaged with Revenue within 30 days of the seizure, then the following actions should take place:

- The engagement with Revenue should be recorded on RCM
- On receiving notification of the engagement in writing the Assistant Principal of the enforcement unit should contact the National Prosecutions and Seizures Office, Business Division, to arrange the release of the seized products to the person concerned.

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[...]

13. Appendix 1: Warning Letter

Date Day, Month, 20XX

Ref:

[XXXXXXX VAT/PREM Local Property Tax] **Quoting references for all taxheads for which there are tax arrears]**

Name:

Address:

Re: Notification of Liability to Forfeiture of Alcohol Products

under section of the 125A Finance Act 2001

Dear Sir/Madam,

Our records show that you do not hold a current Intoxicating Liquor Licence for the sale of alcohol products at [**Name and Address of the Public House or other outlet concerned**]. Please note that you are required to have such a licence and to furnish a tax clearance certificate pursuant to section 1094 of the Taxes Consolidation Act 1997 in connection with that licence.

Our records also show that, because you have outstanding tax liabilities and /or returns, as set out in the attached schedule, a Tax Clearance Certificate could not be granted to you in present circumstances. **(This will have to be adapted in the case of a Partnership, partner, or other person referred to in section 1094(2)(a), (2)(b) or (2)(c) respectively)**

Under section 125A of the Finance Act 2001, any alcohol products that are held for sale on an unlicensed premises are liable to forfeiture, where the person who should hold the licence does not satisfy all the requirements for a tax clearance certificate. Any alcohol products that are held for sale at the premises named above are, accordingly, liable to forfeiture, and may be seized by an authorised Revenue Officer after twenty days from the date of this notification.

To apply for a Tax Clearance Certificate, or advance an application already made, you must arrange to settle all the outstanding tax liabilities [and submit all outstanding returns].

Yours faithfully,

Assistant Principal

Address:

Telephone:

E mail:

14. Appendix 2: Sample Schedule of Outstanding Taxes

Taxpayer's Name:

Ref:

Please note that interest has been accruing at the applicable rate from the due dates on the schedule

2 December 2017

Reg No	Tax	Period	Due Date	Charge	Amount
1234567A	PAYE/PRSI	1/12/2011 to 31/12/11	23 Jan 2012	P30/Estimate	€5,537.00
1234567A	VAT	1/11/2011to 31/12/2011	19 Jan 2008	S22 Est.	€6,120.00
1234567A	LPT*	1/1/2014 to 31/12/2014	1 Jan 2014	P30/Estimate	€404.00
TOTAL:					€12,061.00

*Schedule of Properties included in the LPT Return/Estimate

Property ID	Period	LPT Due
1234567AB	1/1/2014 to 31/12/2014	€202.00
1234568AB	1/1/2014 to 31/12/2014	€202.00

15. Appendix 3: Templates

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

15.2. Information and Search Warrant

The [templates](#) for a search warrant under section 136(5) of the 2001 Act and for the information that must be completed in applying for such a warrant are available in Appendix 5 of the Customs and Excise Enforcement Procedures Manual – Appendices.

The following material is either exempt from or not required to be published under the Freedom of Information Act 2014.

[...]

15.4. Notice of Seizure

Notice of Seizure

Finance Act 2001, Section 142

Revenue Commissioners

Name and Address

Notice is hereby given that certain goods, to wit;

were seized by me, pursuant to Section 141 of the Finance Act 2001, as amended, on the _____ day of _____ 20XX at _____
_____ on the grounds that the said goods were liable to forfeiture under Section 125A of the Finance Act 2001.

Dated this _____ day of _____ 20XX.

Authorised Officer.

Information regarding Seized Goods

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

When 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 that the goods are not liable to forfeiture. A notice of claim must:

- be made **within one calendar month** from the date of the notice of seizure,
- be made in writing,
- be addressed to the Officer who seized the goods, in whose area the goods were seized or to the Revenue Commissioners, National Prosecutions and Seizures Office, Áras Ailigh, Bridgend, Lifford, Co Donegal,
- clearly state the claimant's full name and address and the basis on which the claim is grounded.

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 and the Revenue Commissioners may sell or destroy them, or otherwise dispose of them as permitted by law.

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

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[...]

16. Appendix 4: Section 125A of the Finance Act 2001

(as inserted by section 48 of the Finance Act (No.2) 2013 and as amended by section 97 and schedule 3 of the Finance Act 2014)

Non-Statutory Consolidated Version (for Reference Purposes Only)

125A. Forfeiture of alcohol products on unlicensed premises

(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.

(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—

(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

(b) where paragraph (ii) of subsection (1) applies, a notice under subsection (2), has been sent.

17. Appendix 5: Section 1094 of the Taxes Consolidation Act 1997

Non-Statutory Consolidated Version (for Reference Purposes Only)

1094. Tax clearance certificates in relation to certain licences.

(1) In this section -

"the Acts" means -

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

and any instruments made thereunder;

"beneficial holder of a licence" means the person who conducts the activities under the licence;

"licence" means a licence, permit or authorisation, as the case may be, of the kind referred to in -

- (a) the proviso (inserted by section 156 of the Finance Act, 1992) to section 49(1) of the Finance (1909-1910) Act, 1910,
- (b) the further proviso (inserted by section 79(1) of the Finance Act, 1993) to section 49(1) of the Finance (1909-1910) Act, 1910,

- (c) section 7(3), 7B(3) or 7C(3) of the Betting Act 1931,
- (d) the proviso (inserted by section 79(3) of the Finance Act, 1993) to section 19 of the Gaming and Lotteries Act, 1956,
- (e) [deleted]
- (f) [deleted]
- (g) [deleted]
- (h) section 101 of the Finance Act, 1999,
- (i) [deleted]
- (j) section 93, 116 or 144 of the Consumer Credit Act, 1995,
- (k) subsection (2A) (inserted by section 106 of the Finance Act, 2000) of section 62 of the National Cultural Institutions Act, 1997,
- (l) subsection (1A) (inserted by section 172 of the Finance Act, 2001) of section 2 of the Intoxicating Liquor (National Concert Hall) Act, 1983,
- (m) subsection (3) (inserted by the Finance Act, 2002) of section 122 of the Finance Act, 1992,
- (n) subsection (1A) (inserted by the Finance Act, 2002) of the Finance (1909-10) Act, 1910,
- (o) section 21 of the Intoxicating Liquor Act 2003, and
- (p) section 1 of the Intoxicating Liquor (National Conference Centre) Act 2010;

"market value", in relation to any property, means the price which such property might reasonably be expected to fetch on a sale in the open market on the date on which the property is to be valued;

"PPS number" in relation to an individual, means the individual's personal public service number within the meaning of section 262 of the Social Welfare Consolidation Act 2005;

"specified date" means the date of commencement of a licence sought to be granted under any of the provisions referred to in paragraphs (a) to (p) of the definition of "licence" as specified for the purposes of a tax clearance certificate under subsection (2);

"tax clearance access number" has the meaning given to it by subsection (5)(b);

"tax reference number", in relation to a person, means -

- (a) in the case of an individual, the individual's PPS number, and
- (b) in any other case -
 - i) the reference number stated on any return of income form or notice of assessment issued to the person by a Revenue officer, or
 - ii) the registration number assigned to that person under section 65 of the Value-Added Tax Consolidation Act 2010;

"tax clearance certificate" shall be construed in accordance with subsection (2).

- 2) Subject to subsection (3), the Collector-General shall, on an application to him or her by the person who will be the beneficial holder of a licence due to commence on a specified date, issue a certificate (in this section referred to as a "tax clearance certificate") for the purposes of the grant of a licence if -
- (a) that person and, in respect of the period of that person's membership, any partnership of which that person is or was a partner,
 - (b) in a case where that person is a partnership, each partner,
 - (c) in a case where that person is a company, each person who is either the beneficial owner of, or able directly or indirectly to control, more than 50 per cent of the ordinary share capital of the company,

has or have complied with all the obligations imposed on that person or on them by the Acts in relation to -

- i) the payment or remittance of the taxes, interest and penalties required to be paid or remitted under the Acts, and
- ii) the delivery of returns.

(2A) Compliance with the obligations imposed on a person referred to in subsection (2) may be reviewed from time to time by the Collector-General and a tax clearance certificate issued under subsection (2) may be rescinded by the Collector-General where those obligations are found at the time of any review not to be complied with.

- 3) Subject to subsection (4), where a person (in this section referred to as "the first-mentioned person") will be the beneficial holder of a licence due

to commence on a specified date and another person (in this section referred to as "the second-mentioned person") was the beneficial holder of the licence at any time during the year ending on that date, and -

- (a) the second-mentioned person is a company connected (within the meaning of section 10 as it applies for the purposes of the Tax Acts) with the first-mentioned person or would have been such a company but for the fact that the company has been wound up or dissolved without being wound up,
- (b) the second-mentioned person is a company and the first-mentioned person is a partnership in which -
 - i) a partner is or was able, or
 - ii) where more than one partner is a shareholder, those partners together are or were able,

directly or indirectly, whether with or without a connected person or connected persons (within the meaning of section 10 as it applies for the purposes of the Tax Acts), to control more than 50 per cent of the ordinary share capital of the company, or

- (c) the second-mentioned person is a partnership and the first-mentioned person is a company in which -
 - i) a partner is or was able, or
 - ii) where more than one partner is a shareholder, those partners together are or were able,

directly or indirectly, whether with or without a connected person or connected persons (within the meaning of section 10 as it applies for the purposes of the Tax Acts), to control more than 50 per cent of the ordinary share capital of the company,

then, a tax clearance certificate shall not be issued by the Collector-General under subsection (2) unless, in relation to the activities conducted under the licence, the second-mentioned person has complied with the second-mentioned person's obligations under the Acts as specified in subsection (2).

(3A) Where -

(a) the first-mentioned person will be the beneficial holder of a licence due to commence on a specified date on foot of a certificate granted or to be granted under section 2(1) (as amended by section 23 of the Intoxicating Liquor Act, 1960) of the Licensing (Ireland) Act, 1902,

(b) the second-mentioned person was the beneficial holder of the last licence issued prior to the specified date in respect of the premises for which the certificate referred to in paragraph (a) was granted, and

(c) the acquisition of the premises by the said first-mentioned person was for a consideration of less than market value at the date of such acquisition,

then, subsection (3) shall apply as if -

(i) the reference to the year ending on that date were a reference to 5 years ending on that date, and

(ii) the reference to the activities conducted under the licence was a reference to the activities conducted by the second-mentioned person under the last licence held by the said person prior to the specified date.

(4) Subsection (3) shall not apply to a transfer of a licence effected before the 24th day of April, 1992, or to such transfer effected after that date where a contract for the sale or lease of the premises to which the licence relates was signed before that date.

(5)

(a) A person applying for a tax clearance certificate under this section shall apply to the Collector-General in such electronic format as the Revenue Commissioners require.

(b) A tax clearance certificate issued to a person under this section shall include a unique number (in this section referred to as the 'tax clearance access number') assigned by the Collector-General.

(c) A person to whom a tax clearance certificate is issued under this section shall provide the tax reference number and tax clearance access number to any person who is required to verify the validity of the tax clearance certificate using those numbers.

(d) Where a person who is required to verify the validity of a tax clearance certificate is provided with any person's tax reference number and tax clearance access number for the purpose of

verifying the validity of the certificate, those numbers shall be used by the person for that purpose only and shall not be used by that person at any other time or for any other purpose.

- (6) Where an application for a tax clearance certificate under this section is refused or rescinded by the Collector-General, he or she shall as soon as is practicable communicate in writing such refusal or rescission and the grounds for such refusal or rescission to the person concerned.
- (7)
- (a) Subject to paragraph (b), a person aggrieved by a decision made in respect of that person to refuse an application for, or to rescind, as the case may be, a tax clearance certificate may appeal the decision to the Appeal Commissioners, in accordance with section 949I, within the period of 30 days after the date of the notice of that decision.
- (b) No appeal lies under this subsection -
- i) in relation to any amount of tax or interest due under the Acts, or
 - ii) until such time as any amount under the Acts that is due to be remitted or paid, and that is not in dispute, is remitted or paid.
- (8) The following shall be in such electronic format as the Revenue Commissioners may make available for the time being for any such purpose:
- (a) applications made for tax clearance certificates;
 - (b) the issue of tax clearance certificates by the Collector-General;
 - (c) the refusal or rescission of tax clearance certificates by the Collector-General;
 - (d) the verification of tax clearance certificates by persons who are required to verify such certificates.
- (9) [deleted]