

## **Guidance Manual Finance Act 2015**

### **Amendment of Chapter 4 (Powers of Officers) of Part 2, Finance Act 2001**

This document should be read in conjunction with Chapter 4 of Part 2 of the Finance Act 2001 (Powers of Officers) and section 44 of the 2015 Finance Act.

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## Table of Contents

1. Introduction .....	3
2. Amendments of section 133 (Interpretation).....	3
3. Section 135 (Power to examine and search vehicles and to take samples) .....	4
4. Section 136 (Entry and search of premises) .....	4
4.1. Power of entry under section 136(1): Powers.....	5
4.2. Entry under search warrant under section 136(5): Powers .....	5
4.3. Entry under search warrant under section 136(5): Additional provisions .....	6
Appendix 1 - Consolidated version of Sections 133-136 inclusive of Finance Act, 2001 .....	8

## 1. Introduction

Section 44 of the Finance Act 2015 (“the 2015 Act”) made a number of amendments to Chapter 4 of Part 2 of the Finance Act 2001, which relates to the powers of officers in respect of certain excise matters. In particular, **section 135** (which deals with the power to examine and search vehicles) and **section 136** (which relates to the entry and search of premises) have been amended to provide that the powers of an officer include the power to remove, retain and operate any computer found during a search. In addition, **section 133**, which deals with interpretation, has been amended by the insertion of a number of additional definitions.

This guidance manual outlines all the changes made by the 2015 Act. A consolidated text of Sections 133-136 inclusive of the 2001 Act is available at Appendix 1. 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.

## 2. Amendments of section 133 (Interpretation)

Five new definitions have been inserted into section 133.

- “the Acts” is given the same meaning as is assigned to it by section 1078(1) of the Taxes (Consolidation) Act 1997;
- “computer” is defined as meaning any electronic device used for information storage or retrieval and includes a mobile phone or any other means of electronic information storage or retrieval;
- “computer at the premises or place which is being searched” is defined as including any other computer, whether at that premises or place, or any other premises or place, which is lawfully accessible by means of the computer at the premises or place being searched;
- “information in a non-legible form” is given the same meaning as is assigned to it by section 908C of the Taxes Consolidation Act 1997; and
- “premises or place” is defined as meaning any building (or part of a building), dwelling, vehicle, any other vessel or place (or part of a place) whatsoever.

### 3. Section 135 (Power to examine and search vehicles and to take samples)

Section 135, which provides for the power of an officer to examine and search vehicles, to take samples and to question the person in charge of a vehicle, has been amended by the addition of a new subsection, (1A), which deals specifically with records and computers.

**Subsection (1A)** provides that where an officer carrying out a search under subsection (1) of the section 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:

- 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;
- 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);
- 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 the computer for so long as is reasonably required for that purpose; and
- Require a person who appears to an officer to be in a position to facilitate access to the records held on, or which can be accessed by the use of, a computer that is retained by the officer, 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.

### 4. Section 136 (Entry and search of premises)

Section 136 has been amended by the substitution of new provisions for subsections (3)(c) and (6), and by the insertion of three additional subsections ((7)-(9)). In addition, the expression “premises or place” replaces “premises or other place”.

#### 4.1. Power of entry under section 136(1): Powers

**Subsection (3)** of 136 concerns the powers that an officer may exercise when a premises or place has been entered under subsection (1) of the section. Paragraph (c) of subsection (3) deals with any records relating to, or reasonably believed by the officer to relate to, products or activities referred to in paragraphs (a), (b), (c) or (e) of subsection (1) of the section. The new subsection (3)(c) inserted by the 2015 Act provides that an officer may:

- Search for, inspect and take copies of or extracts from records (including, in the case of any information in a non-legible form, a copy of, or extract from, such information in a permanent legible form);
- Require any person present at the premises or place entered to produce any records which are in the 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;
- Remove and, for as long as necessary, retain (or cause to be removed and retained) any record found at the premises or place entered, or in the possession of a person present there at the time of the search, where the officer reasonably believes the record is likely to be of value (whether by itself or together with other information):
  - I. To the investigation of an offence under excise law or for the purpose of any 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. An officer may also take any other steps which may appear to the officer to be necessary for preserving a record and preventing interference with it.

#### 4.2. Entry under search warrant under section 136(5): Powers

**Subsection (6)** of section 136 sets out the powers that an officer may exercise when entering a premises or place under a search warrant granted by a judge of the District Court pursuant to subsection (5) of the section. The new subsection (6) inserted by the 2015 Act provides that a search warrant 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, to:

- Enter at any time or times within one month of the date of issuing of the warrant (if necessary by the use of reasonable force) the premises or place named or specified in the warrant;
- Search, or cause to be searched, the premises or place and to inspect any thing or record found there;
- Require any person present to produce for inspection any record or thing in the person's possession, custody or procurement;
- 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; (Inserted by s35(a) Finance Act 2016);
- 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 the power of detention under section 140 of the Finance Act 2001;
- Remove, or cause to be removed, 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 the record or thing as is reasonably required for those purposes;
- Take any steps which may appear to the officer to be necessary for preserving a thing or record and preventing interference with it.

#### 4.3. Entry under search warrant under section 136(5): Additional provisions

**Subsection (7)** of section 136, inserted by the 2015 Act, provides that the authority conferred by a search warrant issued under the section to retain (or to cause to be retained) any record or thing includes:

- In the case of books, documents or record, authority to make and retain a copy of the books, documents or records, and
- 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 (8)**, as added by the 2015 Act, provides that an officer acting pursuant to a search warrant under section 136 may:

- Operate any computer at the premises or place being searched, or cause it to be operated by a person accompanying the officer;

- Operate any computer removed from a premises or place searched under the section or cause it to be operated by a person accompanying the officer; and
- 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 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.

The new **subsection (9)** of section 136 provides that any thing or record retained by an officer under section 136 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.

## Appendix 1 - Consolidated version of Sections 133-136 inclusive of Finance Act, 2001

### Powers of Officers

#### Interpretation (Chapter 4).

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

**133.**—In this Chapter

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

Inserted by S.44(a) FA2015.

“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;

Inserted by S.44(a) FA2015.

“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;

Inserted by S.44(a) FA2015.

“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.

Inserted by S.44(a) FA2015.

#### Power to stop vehicles.

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

**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

Substituted by S.73(b) FA 2012.

- 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 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—

Amended by S.54(a) FA 2013

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

Substituted by S.73(c) FA 2012.

Subsection inserted by  
S.44(b) 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 Finance Act 2008 and by S.44(c)(i) of FA2015.

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

Amended by S.73(d) of FA2012

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

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

**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—

- (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,
- (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,
- (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,
- (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) 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)—

(I) 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,

(ii) any vehicle,

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

Amended by S.73(h) of FA2012.

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 1992<sup>1</sup>, Commission Regulation 2454/93/EEC of 2 July 1993<sup>2</sup>, or Council Regulation 450/2008/EC of 23 April 2008<sup>3</sup>, 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.

<sup>1</sup> OJ No. L302, 19.10.1992, p.1

<sup>2</sup> OJ No. L253, 11.10.1993, p.1

<sup>3</sup> OJ No. L145, 04.06.2008, p.1

(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 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 s35(a) FA 2016

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

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