

Customs and Excise Enforcement Manual

Chapter 1 Law

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A more recent version of this manual is available.

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1.1 Introduction to the Manual

The guidelines contained in this manual are intended for the use of Revenue officials employed on enforcement duties.

This manual supports the separate instructions which are already in use for the enforcement of various Customs & Excise provisions. The manual is intended as a supplementary aid which provides, in particular:

- An easy reference to the principal legislative provisions available to staff for enforcement purposes
- and
- Guidance on the best practice to follow and an indicative list of the proofs required to achieve a successful conclusion to enforcement action.

This manual is not an interpretation of the laws relating to Customs and Excise. Its purpose is to help ensure that staff employed on enforcement duties are fully aware of:

- The legal powers available to them in dealing with the detection and prosecution of Customs or Excise offences
- and
- The best practice which they should pursue in handling cases with a view to achieving successful enforcement results.

In exercising these powers, officials must be aware of and respect the legal rights of persons being investigated. They must also be mindful of the reasonable expectations of taxpayers arising from Revenue's Customer Service Charter.

1.2 Sources of Law

When lawyers speak of sources of law, they mean the sources of the rules and principles of law which exist in a legal system. These rules and principles come from a number of sources, both internal and external. Irrespective of the source of law, officers must always act within the relevant legislation and as directed by the Revenue Commissioners.

The main sources of Irish Law are:

- Irish Constitution
- Statute Law
- Secondary Legislation
- Common Law
- Case law
- European Law.

1.2.1 The Irish Constitution

The primary source of Irish Law is the Constitution (Bunreacht na hEireann). This is a written document which is comprised of 50 articles. These articles:

- a) Set out the indicants of the nation, its people and the State (Art. 1 – 11)
- b) Establish the institutions of the State including the office of the President (Art. 12 – 14)
- c) Establish a National Parliament (Oireachtas) with exclusive power to make laws, in the form of legislation, incorporating specific rules that must be obeyed (Art. 15-33)
- d) Provide for the establishment of courts, to administer and apply the law of the State (Art. 34 – 39)
- e) Guarantee protection for certain important rights (Art. 40 – 45)
and,
- f) Provide for amendments by way of Referendum (Art. 46 – 50).

Apart from the written text of the constitution, the Irish courts have, through a number of Constitutional decisions, interpreted the fundamental law of the state.

1.2.2 Statute Law

Statute laws. Also referred to as Primary Law, are the Acts enacted by the Oireachtas in the manner prescribed by the Constitution. An Act of the Oireachtas contains rules that are reduced to a written form and tend to be stated in a precise, rather than a general manner, e.g., a tax statute must specify precisely the details of the tax to be levied.

While legislation is proceeding through the Oireachtas it is known as a "Bill". When it is signed by the President it becomes an Act of the Oireachtas. Thus, the Customs & Excise (Miscellaneous Provisions) Bill 1987 became the Customs and Excise (miscellaneous Provisions) Act, 1988 when passed by the Oireachtas and signed by the president.

1.2.3 Secondary Legislation

Delegated or secondary legislation consists of documents enacted by persons/institutions, which are authorised to do so by the legislative organ. For example, Section 141 of the Finance Act, 1992 (primary legislation) delegates to the Revenue Commissioners the power to make such regulations (secondary legislation) as they consider necessary for the purpose of managing the registration of vehicles and the collection of vehicle registration tax. The Commissioners have exercised this power in the form of Regulations e.g. Statutory Instrument No. 318 of 1992 (Vehicle Registration and Taxation Regulations, 1992).

A "Statutory Instrument" means an order regulation, rule, scheme or bye-law made in exercise of the power conferred by statute (Statutory Instruments Act, 1947).

Common Law

Common Law is set of unwritten rules, which have been created by the custom of the people and decisions of the Judges. Within certain narrow limits, popular customs create law, e.g. the establishment of a right of way over land. The rules of common law are found in the decisions of the courts, which are charged with the task of applying them. To ensure consistency, the practice developed whereby courts followed earlier relevant decisions (known as precedents). Many common law offences have been incorporated into the Acts of the Oireachtas.

In practice, most offences prosecuted on behalf of or by the Revenue Commissioners will be covered by Statute, although 'Cheating the State' remains a common law offence.

Case Law

Case law can be defined as the interpretation placed on law by the judiciary. Such interpretations, or previous decisions (known as precedents remain binding in law until overturned by the higher court. The doctrine of precedent, or stare decisis, establishes the methodology by which the relevant legal principles are extracted from earlier decisions. The decisions (judgements) of earlier courts are to be found in law reports. The ratio decidendi, being the reason for the decision, forms a binding precedent for the future, whereas any other statement of law contained in the judgement (commonly known as obiter dicta) is of persuasive value only.

A distinction is drawn between binding authority and persuasive authority. A court is required to follow the former, but, in respect of the latter, it enjoys a discretion. The principle rule that has emerged is that a court must follow the earlier decisions of a superior court. In addition, courts, as a matter of practice, tend to follow the earlier decisions of courts of equal jurisdiction. The latter is not an inflexible rule, so that the Supreme Court is not obliged to follow its own precedents. A Court is not bound by the decisions of a lower court, nor is it bound by the decisions of foreign courts. However, such decisions (especially court decisions of other common law countries) can be of persuasive value.

1.2.4 European Law

Accession to European Union in 1973, committed Ireland to implementing in full the legislative changes adopted by the Community since 1958. Community Law is paramount in those areas of law in which it has competence and accordingly the European Court of Justice can act as a court of referral from the Supreme Court for a decision on a point of law.

The Treaty of Rome (1957) is the constitution of the European Union which lays down the general objectives upon which the community is founded, The method used, to give effect to the general uniformity of policies set out in the Treaty, is by way of making Regulations, issuing Directives, taking Decisions, making Recommendations and delivering opinions.

Regulations have a general scope, are binding in their entirety and are directly applicable in all member states.

Directives are binding as to the result to be achieved and apply to each member state to which they are addressed. While the choice of the method of implementation is left to the state concerned, the Directive must be implemented completely, in the most effective way and within a time limit.

Decisions of the Council or the Commission are binding in their entirety upon those to whom they are addressed. They must be reasoned and notified to whom they are addressed though no particular form of notification if required.

Recommendations and Opinions have no binding force.

The European Court of Justice is a court of reference, and, although not a court of appeal or review, has the supreme power of interpretation of EC law including the Treaties. Decisions of the European Court of Justice are binding force in Irish Law.

1.3 Irish Courts

1.3.1 General

The Constitution of Ireland (Art. 34) provides:

“Justice shall be administered in Courts established by law by judges appointed in the manner provided by the Constitution; and, save in such special and limited cases as may be prescribed by law, shall be administered in public”.

The Judges of all courts are, under the Constitution, completely independent in the exercise of their judicial functions. A judge may not be removed from office except for stated misbehaviour or incapacity and then only by resolutions passed by both Houses of the Oireachtas.

In regard to the trial of offences, the Constitution also provides that no person shall be tried on any criminal charge save in due course of law. Minor offences may be tried by the Courts of summary jurisdiction (District Court) and, except for such minor offences, no person may be tried on any criminal charge without a jury.

The functions of a judge in a trial are to ensure that the trial is conducted properly, to decide questions of law, to sum up the evidence for the jury and to pass sentence.

The Courts established under the Constitution are as follows:-

- District Court
- Circuit Court
- High Court
- Central Criminal Court
- The Special Criminal Court
- The Court of Criminal Appeal
- The Supreme Court.

1.3.2 District Court

The District Court consists of the President of the District Court and 45 Judges. The country is divided into 23 districts, which are further subdivided into Court areas. Each district has one judge permanent assigned to it, with the exception of the Dublin Metropolitan District, where the volume of business requires a number of judges.

The President of the District Court is charged with the prompt and efficient discharge of business of the District Court throughout the country. The District Court is a Court of summary jurisdiction, in which a single Judge sits without a Jury.

Jurisdiction of the District Court:

- Minor offences triable in a summary way;
- Indictable offences triable summarily, with the consent of the accused and for certain offences, the consent of the Director of Public Prosecutions (DPP);
- Indictable offences where the accused wishes to plead guilty and the DPP does not object;
- Preliminary examination of indictable offences. Where the judge is satisfied that there is sufficient evidence she or he remits the case to the Circuit/or Central Criminal Court;
- Civil Matter, Including breach of contract, compensation claims and a large number of licensing provisions.

Special Court

A Special Court is presided over by a judge. The function of such a court is to remand arrested persons either in custody or on bail to an appropriate sitting of the District Court, where the charge will be heard and determined by a judge. Only evidence of arrest and the charges preferred are given at a Special Court.

The Majority of cases involving Customs & Excise will be heard in the District Court.

1.3.3 Circuit Court

The Circuit Court consists of the President of the Court and 24 ordinary judges, most of whom are assigned to a particular Circuit. The country is divided into 8 Circuits – Dublin, Cork, Eastern, Northern, Western, Midland, South Western and South Eastern.

Jurisdiction of the Circuit Court:

The Circuit Court may try any offence on indictment except murder, treason, rape and allied offences and offences under the Offences against the State Act, 1939. An indictable offence is a non-minor offence which must be tried before a Judge and Jury.

The Court may try offences: -

- In the Circuit where the offence has been committed, or
- In the Circuit where the accused has been arrested, or
- In the Circuit where the accused resides.

The Judge sits with a jury of twelve persons and a majority (10 must agree) vote is necessary to determine a verdict. Cases dealt with by the Circuit Court will have been referred to it by District Court. On the application of the DPP or the accused person, the judge is empowered to transfer a criminal trial from one part of his/her Circuit to another, or in exceptional circumstances (e.g. where the accused is unlikely to get a fair trial) to another circuit.

1.3.4 High Court

The High Court consists of the President of the High Court and 21 judges. The Court has power to sit anywhere in the State, but in practice its sittings are held in Dublin.

Under the Constitution, the High Court has full original jurisdiction in and power to determine all matters and questions, whether of law or fact, civil or criminal. The High Court acts as an appeal court from the Circuit Court in civil matters.

The High Court may give rulings on a question of law submitted by the District Court and may hear appeals in certain other circumstances provided by statute e.g. in regard to decisions of the District Court on application for bail.

1.3.5 Central Criminal Court

The High Court exercising its criminal jurisdiction is known as the Central Criminal Court. It consists of a Judge or Judges of the High Court nominated from time to time by the President of the High Court. The Court sits at such times and in such places as the President of the Court may direct and tries criminal cases which are outside the jurisdiction of the Circuit Court e.g. murder, attempt to murder.

1.3.6 The Special Criminal Court

The Offences against the State Act 1939 provides for the establishment of Special Criminal Courts. A Special Criminal Court sits without a jury. Judges of the Special Criminal Court are drawn from a panel of 9. Three Judges are appointed to constitute the court.

1.3.7 The Court of Criminal Appeal

The Court of Criminal Appeal deals with appeals by persons convicted on indictment in the Circuit Court, the Central Criminal Court or the Special Criminal Court. The decision of the Court of Criminal Appeal is final, unless the Court or the Attorney General or the D.P.P. certifies that the decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal be taken to the Supreme Court. The appeal is heard and determined on the report of the official stenographer at the trial.

The Court of Criminal Appeal consists of a Judge of the Supreme Court and Two High Court Judges.

1.3.8 Supreme Court

The Supreme Court has appellate jurisdiction from all decisions of the High Court. The Court also has power to decide whether a Bill (or any of its provisions) which has been passed by both Houses of the Oireachtas and referred to the Court by the President, is repugnant to the Constitution. The Court may also give a ruling on a question of law submitted to it by Circuit Court.

The Supreme Court consists of the Chief Justice and seven Judges. Three or five judges must sit together.