

To

(By e-mail)

**Email**

Freedom.informationteam@homeoffice.gov.uk

**Web** [www.ukba.homeoffice.gov.uk](http://www.ukba.homeoffice.gov.uk)

3 October 2011

Freedom of Information Request - Reference Number 19924

Dear

Thank you for your e-mail of 7 September, in which you ask for *"the Guidance/Guide lines issued to officers for conducting "A-J" or "1-10" interviews to determine possible 'commerciality' in accordance with Paragraph (1B)(e) of the Excise Goods, Beer and Tobacco Products (Amendment) Regulations 2002"*. Your request has been handled as a request for information under the Freedom of Information Act 2000.

I am able to disclose the information which is set out in the enclosed Annex.

Please note there has been a recent amendment to the policy on excise and civil interviews not yet published in the attached guidance which states:

*Excise civil interviews should not be tape recorded but should be recorded contemporaneously in an officer's notebook. Officers must ensure that interviews are recorded accurately and in full to support any seizures made and provide the necessary information to respond to any subsequent appeals or complaints. Civil interviews are not subject to PACE and there is, therefore, no legal requirement for them to be tape recorded.*

*This action will ensure that passengers will be treated in a consistent manner wherever they are interviewed for administrative or civil purposes by a border force officer – either for a customs or immigration reason.*

I hope that this information meets your requirements. I would like to assure you that we have provided you with all relevant information that the Home Office holds.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address

below, quoting reference 19924. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

Information Access Team  
Home Office  
Ground Floor, Seacole Building  
2 Marsham Street  
London SW1P 4DF  
e-mail: [FOIRequests@homeoffice.gsi.gov.uk](mailto:FOIRequests@homeoffice.gsi.gov.uk)

As part of any internal review the Department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. If you remain dissatisfied after this internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.

Yours sincerely  
The Powers, Professionalism & Standards Team

### Excise and Civil Interviews

#### The Law

Customs and Excise Management Act sections that may apply include 157A, 159, 161 (inland), 163 and 163A.

When exercising the powers at sections 163 or 163A an officer MUST have reasonable grounds for the initial stop. Officers must not stop someone in the hope of obtaining grounds through questioning to support a subsequent search.

Officers must always carry out an independent assessment of the importation, taking into account the fact that individuals may bring back any amount of excise goods for their own use or as gifts. Officers should not begin an interview with the sole aim of seizing goods but should approach it with a view to carrying out a fair and impartial assessment, detaining goods only where there are grounds to do so.

When a person travelling into the UK is stopped and any items they are carrying with them searched, the officer involved must make a notebook entry on a new page of their official 100A notebook. The note must

- detail the power used;
- include the "reasonable grounds" for stops made on intra-EU movements when using section 163 or 163A;
- be made either at the time of the stop or at the earliest opportunity afterwards;
- include the date and time of the stop and the person's name.

Officers working inland and exercising powers under CEMA sections 163, 163A or 161 must also record in their notebook

- the power used;
- in all cases, reasons for the stop regardless of whether a search takes place;
- the officer's observations, action and grounds.

Since such cases are civil matters, PACE does not apply and people interviewed are not entitled to free legal advice.

## **Excise and Civil Interviews**

### **Initial Questioning**

Following the stop, it is usual for officers to ask the traveller some initial questions to establish the need for further action. If an officer takes no further action there is no need to keep a record of the intervention.

If the officer takes further action, such as a search or interview, a record of the initial questioning must be made either at the time of questioning or at the earliest opportunity afterwards. The person questioned should be invited to sign the record of initial questioning to the effect that it is a true record.

Where initial questioning identifies further grounds to suspect the person has goods liable to forfeiture, those additional grounds should also be recorded in the officer's notebook.

The person questioned should be invited to sign the record of initial questioning to the effect that it is a true record.

## **Excise and Civil Interviews**

### **Suspected Criminal Activity**

If at any time an officer decides to pursue a potential criminal prosecution, the suspect must be treated in accordance with PACE.

Please see instructions on cautions - interviews.

## Excise and Civil Interviews

### Commerciality Statement

If any goods that may be liable to forfeiture are detected, the following 'Commerciality Statement' must precede any further questioning or interviews:

"You have excise goods in your possession (control), which appear not to have borne UK duty. Goods may be held without payment of duty providing they have been acquired and are held for your own use. I intend to ask you some questions to establish whether these goods are held for a commercial purpose.

If no satisfactory explanation is forthcoming or if you do not stay for questioning it may lead me to conclude that the goods are held for a commercial purpose and your goods (and vehicle) may be seized as liable to forfeiture."

The officer MUST make it expressly clear to the person that

- this is a civil matter and not a criminal one;
- they are NOT under arrest;
- they are free to leave at any time.

The officer MUST also ensure the person being questioned has understood everything said to them. (Please see the chapter below on Special Needs).

If the person indicates they have understood, and there is no reason for the officer to believe otherwise, the officer should note this and proceed with an interview. If the person says they have not understood, the officer should establish which part of the statement they do not understand and why. The officer should then try to explain in clear and simple terms using HMRC notices or leaflets if necessary.

If the person says they want to be interviewed but cannot do so at the time (e.g. because they are on a bus which will leave without them), the goods should be detained and they should be offered an interview at a later date. There is further guidance on this in *Delaying the Excise Interview*.

Officers must record giving the Commerciality Statement, together with any replies, in an official notebook or on a ENF1227 (Record of Interview) form as appropriate. It is not necessary to write the statement out in full; if the officer reads it from an aide memoir, this should be noted in the notebook.

## **Excise and Civil Interviews**

### **Special Needs**

Once the person who has been stopped and questioned agrees to stay and be interviewed, they must be asked if they have any special needs. Any needs identified that might affect the person's ability to participate effectively in the interview (e.g. a hearing difficulty where the interview is being carried out in a noisy environment) should be addressed prior to interview.

The officer should also consider whether the individual has any special need that may not be immediately apparent such as learning difficulties or a mental illness, which will require the attendance of a parent, guardian or other responsible person. If the officer has any concerns they should note their reasons and defer the interview until an appropriate responsible person can attend.

Officers should note that they have considered whether the individual has any special needs, and if so, how these were addressed.

## Excise and Civil Interviews

### Excise Interviews

Where practical, interviews should be conducted by a minimum of two officers and recorded in writing in an official notebook or on a ENF1227 Record of Interview form, or on tape (Interviews).

Note: Officers cannot stop someone if they choose to make a video or audio recording of the interview themselves using their own equipment such as a mobile phone, video camera etc.

At the end of the interview, the interviewee must be given the opportunity to add or clarify points covered in the interview. They must be invited to read, agree, sign, date and time the interview notes. If any disagreement cannot be resolved, their comments should be added at the end of the note and they should be asked to sign, date and time them.

If the interviewee cannot read or write, an independent officer should read the notes to them. If they refuse to sign them, the Senior Officer should ask them why and, if the objection is still not resolved, should endorse the notebook to show the notes were in existence at the time they were shown to the interviewee.

Where it is not practical for two officers to be present during an interview, the interview may be conducted with no witnessing officer. The same rules for Interviews apply.

The notebook record of an officer's actions must include issuing Notice 1 and/or other leaflets as considered appropriate. Where it is decided to seize excise goods, the reasons for seizure must be clearly recorded and explained to the individual.

Notebook entries that are sensitive (such as the reasons for stop) must be treated accordingly and entered on a separate page in accordance with guidance in Notebooks.

## Excise and Civil Interviews

### Delaying the Excise Interview

If an interview cannot follow on from initial questioning, the officer MUST ensure the person being questioned

- chooses to leave (perhaps because they are travelling on a coach that would depart without them);
- is unfit to interview (e.g. under the influence of alcohol or drugs);
- has special needs that cannot be met;
- requires a responsible person to attend with them.

In these or similar circumstances, the interview may be delayed to a future date. The delay should be minimal and the officer must seek to conduct the interview as soon as possible.

Interviewees should be invited to attend for interview on an agreed date at the place where the goods were detained, which will usually be a port or airport. We have no power to demand their attendance at the place the goods were detained but neither are we obliged to carry out the interview elsewhere. However, since the goods and case officer are located where the detention took place, the person may agree to attend there so their goods can be returned (if they are not subsequently seized).

In general, officers should not allow people to attend interviews at other locations as there would be significant financial and resource implications for the Department. In some circumstances, however, it may be the only practical solution, for example when someone has had an operation or accident following their interception and, as a result, is unfit to travel a long distance. There must be clear reasons to justify why normal procedures are not followed. The following should be considered and reasons recorded:

- the quantity and nature of the goods;
- the reason the individual was not interviewed at the time;
- the age, health and background of the individual;
- the likelihood of seizure;
- the stated reason for being unable to attend an interview at the place of detection.

For remote face-to-face interviews, the case officer must ensure

- the interview is conducted by someone experienced in this type of work;
- the interviewer verifies the passenger's identity;
- the interviewer refers back to the case officer for a decision on seizure action.

The same points apply to telephone interviews and in addition

- the written account of the interview should be read to the individual over the phone by an independent officer who then endorses the account to that effect.

Another option is for the officer to conduct a preliminary interview by telephone with the caveat that, if they are not satisfied with the passenger's explanation, a formal interview may still be needed. Such an interview must be recorded in writing at the time or as soon as possible afterwards.