

1983 No. 1917

DISTRESS

The Distress for Rent Rules 1983

Made 16th December 1983

Coming into Operation 1st January 1984

The Lord Chancellor, in exercise of the powers conferred on him by section 8 of the Law of Distress Amendment Act 1888(a), and section 3 of the Law of Distress Amendment Act 1895(b), hereby makes the following Rules:—

Citation and Commencement

1. These Rules may be cited as the Distress for Rent Rules 1983 and shall come into operation on 1st January 1984.

Interpretation

2.—(1) In these Rules—

“judge” means a judge sitting in a county court district in England and Wales;

“certificate” means a certificate to act as a bailiff granted under the Law of Distress Amendment Act 1888, as amended by the Law of Distress Amendment Act 1895;

“registrar” means the registrar of a county court, and each registrar when there are more than one, and includes a deputy registrar.

(2) A Form referred to by number in these Rules means the Form so numbered in Appendix II to these Rules and may be used with such variation as the circumstances may require.

Forms of Certificate

3.—(1) A general certificate in Form 1 may be granted only by a judge and shall authorise the bailiff named in it to levy at any place in England and Wales.

(2) A special certificate in Form 2 may be granted by a judge or registrar and shall authorise the person named in it to levy only in respect of the distress or distresses to which it applies.

(a) 1888 c. 21.

(b) 1895 c. 24.

Application for Certificate

4.—(1) An application in Form 3 for a general or a special certificate, accompanied by the prescribed fee, shall be made at the county court in whose district the applicant has his principal place of business or his main residence.

(2) The statements in the application in Form 3 shall be verified by the applicant on oath.

Granting of Certificate

5.—(1) The judge or registrar may refuse to grant a certificate to any person on the grounds that:—

- (a) he is not a fit and proper person to hold it; or
- (b) he carries on the business of buying debts.

(2) No certificate shall be granted to any officer of a county court.

Security

6. The applicant shall be required:—

- (a) to give to the registrar by way of bond or deposit; or
- (b) to satisfy the judge or registrar that there is subsisting by way of bond or deposit,

security of £2,500 in the case of a general certificate or £750 in the case of a special certificate for the due performance of his duties.

Duration of Certificates

7.—(1) A general certificate shall, unless previously cancelled or declared void, have effect until the 1st day of February next after it was granted.

(2) A special certificate shall, unless the judge or registrar otherwise directs, have effect for one month from the day it was granted.

Cancellation of Certificates

8.—(1) On an application to cancel or declare void a certificate the judge may, whether he cancels the certificate or not, order that the security shall be forfeited either wholly or in part, and that the amount directed to be forfeited shall be paid to a person aggrieved.

(2) Where an order for the forfeiture of the security, either wholly or in part, is made, but the certificate is not cancelled or declared void, the judge may direct that fresh security under Rule 6 shall be required.

(3) Where a certificate is cancelled or declared void, the order of the judge shall be in Form 4 and, subject to the provisions of paragraph (1) above, the security shall also be cancelled and the deposit (if any) returned to the bailiff.

(4) When a certificate is cancelled, declared void or expires it shall nevertheless continue to have effect for the purpose of any distress where the

bailiff has entered into possession before the date on which the certificate is cancelled, declared void or expires.

(5) When a general certificate is cancelled, declared void or ceases to have effect it shall be returned to the registrar.

List of Certificates

9.—(1) On 1st February each year a list of bailiffs holding general certificates for the time being shall be compiled and exhibited in the court office.

(2) If any certificate is cancelled or declared void the list shall be amended to include that fact, and the court shall publish a notice stating that the certificate has been cancelled or declared void in a local newspaper.

Fees, Charges and Expenses

10. No person shall be entitled to recover from the tenant any fees, charges or expenses for levying a distress, or for doing any act or thing in relation thereto, other than those authorised by the tables in Appendix I to these Rules.

11. In the case of any difference as to fees, charges and expenses between the parties, or any of them, the fees, charges and expenses shall be taxed by the registrar of the county court of the district where the distress is levied, and he may make such order as he thinks fit as to the costs of the taxation.

Production of Certificates and Tables of Fees

12.—(1) Every bailiff levying a distress shall produce his certificate on the request of the tenant.

(2) A bailiff levying distress shall deliver to the tenant or leave on the premises where distress is levied a memorandum in Form 5 setting out the amounts for which the distress is levied and the fees, charges and expenses authorised by these Rules.

Repeal

13. On the coming into operation of these Rules:—

- (a) the Distress for Rent Rules 1953(a), the Distress for Rent (Amendment) Rules 1971(b), 1973(c) and 1979(d) and the Distress for Rent (Amendment No. 2) Rules 1971(e), shall be revoked save with respect to distresses levied before that date; and
- (b) any certificate granted or renewed before these Rules come into

(a) S.I. 1953/1702.

(b) S.I. 1971/1333.

(c) S.I. 1973/474.

(d) S.I. 1979/711.

(e) S.I. 1971/2133.

operation shall continue to be valid for the period for which it was granted.

Hailsham of St. Marylebone, C.

Dated 16th December 1983.

APPENDIX I

TABLE OF FEES, CHARGES AND EXPENSES

1. For levying distress—
- (i) where the sum demanded and due does not exceed £33 £2.50
- (ii) where the sum demanded and due exceeds £33 7½% on the first £100,
2½% on the next £400,
1½% on the next £1,000,
1% on the next £2,500,
½% on the next £6,000
and ¼% on any additional sum.

2. For taking possession—
- (i) where a man is left in physical possession £2.50 per day
- (ii) where walking possession is taken 25p per day

Note: The charge for walking possession is payable only if a walking possession agreement in Form 6 has been signed by the tenant.

A man left in possession must provide his own board in every case.

The possession fee is payable in respect of the day on which the distress is levied, but a fee for physical possession must not be charged where a walking possession agreement is signed at the time when the distress is levied.

3. For appraisalment, where the tenant or owner of the goods by writing requires such appraisalment to be made, 5 per cent on the first £200, 1½ per cent on the next £800, ½ per cent on the next £9,000, ¼ per cent thereafter of the value appraised, whether by one broker or more, with a minimum fee of £2 for each broker.

4. For removal, the reasonable costs and charges attending the removal; the costs and charges are subject to taxation under Rule 11.

5. For sale—
- (i) where the sale is held on the auctioneer's premises, for commission to the auctioneer, an inclusive charge to include all out-of-pocket expenses except costs of removal:—
- on the first £1,000 realised£15.00 per cent
- on any further sum realised£12.50 per cent
- (ii) where the sale is held on the debtor's premises, for commission to the auctioneer, in addition to out-of-pocket expenses actually and reasonably incurred, 7½ per cent on the sum realised.

6. Reasonable fees, charges and expenses, where distress is withdrawn or where no sale takes place, and for negotiations between landlord and tenant respecting the distress, subject to taxation under Rule 11.

7. For the purpose of calculating any percentage charges a fraction of £1 is to be reckoned as £1 but any fraction of a penny in the total amount of the fee so calculated is to be disregarded.

8. In addition to any amount authorised by this Table in respect of the supply of goods or services on which value added tax is chargeable there may be added a sum equivalent to value added tax at the appropriate rate on that amount.

APPENDIX II

FORMS

FORM 1

IN THE
COUNTY COURT
GENERAL CERTIFICATE

[PHOTOGRAPH OF HOLDER)

MR/MRS/MISS

OF

is AUTHORISED TO LEVY DISTRESS in England and Wales under Section 7 of the Law of Distress Amendment Act 1888 and Section 3 of the Law of Distress Amendment Act 1895 and the Rules made thereunder.

Signed

JUDGE

DATE

THIS CERTIFICATE EXPIRES

ON

DAY OF

19 .

FORM 2

SPECIAL CERTIFICATE TO LEVY DISTRESS

IN THE

COUNTY COURT

MR/MRS/MISS

OF

is AUTHORISED under Section 7 of the Law of Distress Amendment Act 1888, to
levy distress on the premises of

at

for rent due

to

of

Signed

JUDGE

DATE

THIS CERTIFICATE EXPIRES

ON

DAY OF

19 .

FORM 3

APPLICATION FOR A CERTIFICATE TO LEVY DISTRESS
IN THE COUNTY COURT

PART ONE

FULL NAME OF APPLICANT

Date of Birth:

Business Address:

Home Address:

STATE WHICH ADDRESS is relied upon in support of your application.

HAVE YOU BEEN CONVICTED of any offence involving fraud or other dishonesty or violence during the past ten years? The Rehabilitation of Offenders Act 1974 applies in relation to this question.

IF THE ANSWER IS YES please give particulars including date and place of any conviction or order:

HAVE YOU PREVIOUSLY held a general certificate?

IF THE ANSWER IS YES please name the court which issued the certificate and state how many years you held it:

HAVE YOU EVER HAD an application for a certificate refused?

HAVE YOU EVER HAD a certificate withdrawn?

IF THE ANSWER TO EITHER OF THE ABOVE IS YES please give particulars including the date the certificate was refused or withdrawn and at which court your application was made:

HAVE YOU EVER HAD judgment entered against you in either the High Court or County Court?

IF THE ANSWER IS YES, please give details:

FORM 3 (back)

ARE YOU IN THE business of buying debts?

PLEASE GIVE ANY INFORMATION which may assist the judge in considering your application:

PART TWO (SPECIAL CERTIFICATE)

ADDRESS of the premises at which distraint is to be levied:

NAME OF LANDLORD on whose behalf distress is to be levied:

PART THREE

I APPLY for a general certificate

a special certificate

I ENCLOSE a fee of £.....

SECURITY

EITHER I ENCLOSE—

- 1. AN INSURANCE BOND MADE OUT IN FAVOUR OF THE REGISTRAR OF THE COUNTY COURT TO THE VALUE OF £.....:
- or
- 2. A DEPOSIT OF £.....

OR THERE IS SUBSISTING

- 1. AN INSURANCE BOND MADE OUT IN FAVOUR OF THE REGISTRAR OF THE COUNTY COURT TO THE VALUE OF £.....:
- or
- 2. A DEPOSIT OF £.....

I ENCLOSE 2 passport sized photographs of myself (required only for a general certificate).

I WILL NOT LEVY DISTRESS at any premises in respect of which I am regularly employed in person to collect rent.

I }
 MAKE OATH AND SAY that to the best of my knowledge the particulars contained in this application and the above statements are true. } Signed

SWORN AT

IN THE COUNTY OF

THIS DAY OF19 .

Before me
Officer of a court appointed by the judge to take affidavits

TO BE COMPLETED BY THE COURT

This application will be heard by the judge

at

on the day of 19 at o'clock

FORM 4

CANCELLATION OF CERTIFICATE

In the County Court

Dated this day of 19

In pursuance of section one of the Law of Distress Amendment Act 1895 I hereby cancel and declare void the certificate granted to A.B. of to act as a bailiff to levy distresses for rent in England and Wales, save and except as to any distress where the said A.B. has entered into possession before the date hereof [or to act as a bailiff to levy a distress on the premises of C.D. of for rent alleged to be due to E.F. of].

Signed

JUDGE

FORM 5 (Back)

SCALE OF FEES

A bailiff authorised to levy a distress for rent is entitled to the following fees, charges and expenses:

1. For levying distress—
 - (i) where the sum demanded and due does not exceed £33 £2.50
 - (ii) where the sum demanded and due exceeds £33

7½%	on the first £100,
2½%	on the next £400,
1½%	on the next £1,000,
1%	on the next £2,500,
½%	on the next £6,000
	and ¼% on any additional sum.

2. For taking possession of the goods—
 - (i) where a man is left in physical possession £2.50 per day
 - (ii) where walking possession is taken 25p per day

Note: The charge for walking possession is payable only if a walking possession agreement has been signed by the tenant.

A man left in possession must provide his own board in every case.

The possession fee is payable in respect of the day on which the distress is levied, but a fee for physical possession must not be charged where a walking possession agreement is signed at the time when the distress is levied.

3. In addition the following fees, charges and expenses may become payable by you:
 - (a) for appraisalment, where the tenant or owner of the goods by writing requires such appraisalment to be made, 5 per cent on the first £200, 1½ per cent on the next £800, ½ per cent on the next £9,000, ¼ per cent thereafter of the value as appraised, whether by one broker or more, with a minimum fee of £2 for each broker;
 - (b) for removal, the reasonable costs and charges attending the removal;
 - (c) for sale:—
 - (i) where the sale is held on the auctioneer's premises, for commission to the auctioneer, an inclusive charge to include all out-of-pocket expenses, except costs of removal:—

on the first £1,000 realised	£15.00 per cent
on any further sum realised	£12.50 per cent
 - (ii) where the sale is held on the debtor's premises, for commission to the auctioneer, in addition to out-of-pocket expenses actually and reasonably incurred, 7½ per cent on the sum realised;
 - (d) reasonable fees, charges and expenses, where distress is withdrawn or where no sale takes place, and for negotiations between landlord and tenant respecting the distress.

Note: For the purpose of calculating any percentage charges a fraction of £1 is to be reckoned as £1 but any fraction of a penny in the total amount of the fee so calculated is to be disregarded.

4. In addition to any amount authorised by this Scale in respect of the supply of goods or services on which value added tax is chargeable there may be added a sum equivalent to value added tax at the appropriate rate on that amount.

FORM 6

FORM OF WALKING-POSSESSION AGREEMENT

DISTRESS FOR RENT RULES 1983

To Bailiff of

For my convenience and in consideration of your not leaving your man in close possession of the goods distrained upon by you at in the position which they now occupy, I hereby agree:—

1. To pay the lawful fees for the man in walking possession.
2. That you and the said man may re-enter the premises at any time while the distraint is in force.
3. That I will not remove or allow to be removed from the premises any goods so distrained.
4. That the goods so distrained are impounded on the premises.
5. That I will inform any person who may visit my premises for the purpose of levying any other distress or execution that you are already in possession of the goods so distrained, and that I will inform you of any such visit.

Dated this day of 19 [Signature]

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules, which regulate the issue of certificates to bailiffs levying distress for rent and the fees, charges and expenses recoverable, replace the Distress for Rent Rules 1953, as subsequently amended. The principal changes made are:—

- (a) a sworn application giving full details of the applicant must be completed (Rule 3);
- (b) security is required in relation to all certificates. Provision is made for security by way of a bond, and the amount of security required is raised (Rule 5);
- (c) general certificates are valid for up to a year and must be granted afresh each year (Rule 6);
- (d) it is made clear that the fees, charges and expenses set out in Appendix I to the Rules are only conclusive as to the amount which can be charged to the tenant.

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