
STATUTORY INSTRUMENTS

1997 No. 1431

**CUSTOMS AND EXCISE
VALUE ADDED TAX
INSURANCE PREMIUM TAX
LANDFILL TAX**

The Distress for Customs and Excise Duties
and Other Indirect Taxes Regulations 1997

<i>Made</i>	- - - -	<i>9th June 1997</i>
<i>Laid before House of Commons</i>		
	- - - -	<i>9th June 1997</i>
<i>Coming into force</i>	- -	<i>1st July 1997</i>

The Commissioners of Customs and Excise, in exercise of the powers conferred on them by sections 51(1), (2) and (3) of the Finance Act 1997⁽¹⁾ and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation and Commencement

1. These Regulations may be cited as The Distress for Customs and Excise Duties and Other Indirect Taxes Regulations 1997 and shall come into force on 1st July 1997.

Interpretation

2.—(1) In these Regulations—

“authorised person” means a person acting under the authority of the Commissioners;

“costs” means any costs, charges, expenses and fees;

“officer” means, subject to section 8(2) of the Customs and Excise Management Act 1979⁽²⁾, a person commissioned by the Commissioners pursuant to section 6(3) of that Act;

“person in default” means a person who has refused or neglected to pay any relevant tax due from him;

(1) 1997 c. 16; section 51(6) defines “the Commissioners” as meaning the Commissioners of Customs and Excise.

(2) 1979 c. 2.

“relevant tax” means any of the following—

- (a) any duty of customs or excise, other than vehicle excise duty;
- (b) value added tax;
- (c) insurance premium tax;
- (d) landfill tax;
- (e) any agricultural levy of the European Community;

“VAT Act” means the Value Added Tax Act 1994⁽³⁾;

“walking possession agreement” means an agreement under which, in consideration of any goods and chattels distrained upon being allowed to remain in the custody of the person in default and of the delaying of their sale, that person—

- (a) acknowledges that the goods and chattels specified in the agreement are under distraint and held in walking possession; and
- (b) undertakes that, except with the consent of the Commissioners and subject to such conditions as they may impose, he will not remove or allow the removal of any of the specified goods and chattels from the place named in the agreement;

“1994 Act” means Part III of the Finance Act 1994⁽⁴⁾;

“1996 Act” means Part III of the Finance Act 1996⁽⁵⁾;

(2) Any reference in these Regulations to an amount of relevant tax includes a reference to any amount recoverable as if it were an amount of that relevant tax.

Revocations and transitional provisions

3.—(1) The Regulations specified in Schedule 3 are hereby revoked to the extent set out there.

(2) Where a warrant is signed before the coming into force of these Regulations, these Regulations shall apply to anything done, after these Regulations come into force, in relation to that warrant or as a consequence of distress being levied.

Levying distress

4.—(1) Subject to regulation 5 below, if upon written demand a person neglects or refuses to pay any relevant tax due from him an officer may levy distress on the goods and chattels of that person and by warrant signed by him direct any authorised person to levy such distress.

(2) Where a warrant has been signed, distress shall be levied by or under the direction of, and in the presence of, the authorised person.

(3) Subject to regulation 6 below, distress may be levied on any goods and chattels located at any place whatever including on a public highway.

Restrictions on levying distress

5.—(1) Where—

- (a) an amount of any duty of customs or excise (other than vehicle excise duty) or any agricultural levy of the European Community is due and the Commissioners may be required under section 14 of the 1994 Act to review a decision which, if that decision were varied or withdrawn would cause the amount to be reduced or extinguished;

(3) 1994 c. 23.

(4) 1994 c. 9.

(5) 1996 c. 8.

- (b) an amount of insurance premium tax is due and the Commissioners may be required under section 59(6) of the 1994 Act to review a decision which, if that decision were varied or withdrawn, would cause the amount to be reduced or extinguished; or
- (c) an amount of landfill tax is due and the Commissioners may be required under section 54(7) of the 1996 Act to review a decision which, if that decision were varied or withdrawn, would cause the amount to be reduced or extinguished,

no distress shall be levied before expiry of the last day on which the person who is liable to pay the amount concerned is required, by rules made under paragraph 9 of Schedule 12 to the VAT Act, to serve a notice of appeal with respect to that decision.

(2) Where an amount of VAT is due under section 73(9)(8) of the VAT Act no distress shall be levied before expiry of the last day on which the person who is liable to pay the amount concerned is required, by rules made under paragraph 9 of Schedule 12 to the VAT Act, to serve a notice of appeal with respect to that amount.

Goods and chattels not subject to levy

6. No distress shall be levied on any goods and chattels mentioned in Schedule 1 which at the time of levy are located in a place and used for a purpose mentioned in that Schedule.

Times for levying distress

7.—(1) Subject to paragraph (2) below, a levy of distress shall commence only during the period between eight o'clock in the morning and eight o'clock at night on any day of the week but it may be continued thereafter outside that period until the levy is completed.

(2) Where a person holds himself out as conducting any profession, trade or business during hours which are partly within and partly outside, or wholly outside the period mentioned in paragraph (1) above, a levy of distress may be commenced at any time during that period or during the hours of any day in which he holds himself out as conducting that profession, trade or business and it may be continued thereafter outside that period or those hours until the levy is completed.

Costs

8.—(1) A person in respect of whose goods and chattels a warrant has been signed shall be liable to pay to an officer or authorised person all costs, in connection with anything done under these Regulations described in column 1 of Schedule 2, as determined in accordance with column 2 of that Schedule.

(2) An authorised person may, after deducting and accounting for the amount of relevant tax to the Commissioners, retain costs from any amount received.

Sale

9. If any person upon whose goods and chattels distress has been levied does not pay the amount of relevant tax due together with costs within 5 days of a levy, an officer or authorised person may sell the distress for payment of the amount of relevant tax and costs; and the officer or authorised person, after deducting and retaining the amount of relevant tax and costs shall restore any surplus to the owner of the goods upon which distress was levied.

(6) Section 59 was amended by section 34 of, and paragraph 5 of Schedule 5 to the Finance Act 1995 (c. 4).

(7) Section 54 was amended by S.I. 1996/1529, article 4.

(8) Section 73(9) was amended by section 26(1) of, and paragraph 11 of Schedule 3 to the Finance Act 1996 (c. 8); section 26(1) and Schedule 3 were brought into force by S.I. 1996/1249 (c. 21).

Disputes as to costs

10.—(1) In the case of any dispute as to costs, the amount of those costs shall be taxed by a district judge of the county court of the district where the distress was levied, and he may make such order as he thinks fit as to the costs of the taxation.

(2) In the application of this regulation to Northern Ireland, in the case of any dispute as to costs, the amount of those costs shall be taxed in the same manner as costs in equity suits or proceedings in the county court in Northern Ireland.

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9th June 1997

E. Woods
Commissioner of Customs and Excise

SCHEDULE 1

Regulation 6

GOODS AND CHATTELS NOT SUBJECT TO LEVY

1. Any of the following goods and chattels which are located in a dwelling house at which distress is being levied and are reasonably required for the domestic needs of any person residing in that dwelling house—

- (a) beds and bedding;
- (b) household linen;
- (c) chairs and settees;
- (d) tables;
- (e) food;
- (f) lights and light fittings;
- (g) heating appliances;
- (h) curtains;
- (i) floor coverings;
- (j) furniture, equipment and utensils used for cooking, storing or eating food;
- (k) refrigerators;
- (l) articles used for cleaning, mending, or pressing clothes;
- (m) articles used for cleaning the home;
- (n) furniture used for storing—
 - (i) clothing, bedding or household linen;
 - (ii) articles used for cleaning the home;
 - (iii) utensils used for cooking or eating food;
- (o) articles used for safety in the home;
- (p) toys for the use of any child within the household;
- (q) medical aids and medical equipment.

2. Any of the following items which are located in premises used for the purposes of any profession, trade or business—

- (a) fire fighting equipment for use on the premises;
- (b) medical aids and medical equipment for use on the premises.

SCHEDULE 2

Regulation 8(1)

SCALE OF COSTS

<i>Matter</i> <i>(1)</i>	<i>Costs</i> <i>(2)</i>
1. For attending to levy distress where payment is made of an amount of relevant tax due and distress is not levied:	£12.50.
2. For levying distress—	£12.50.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

<i>Matter</i> (1)	<i>Costs</i> (2)
(a) where an amount of relevant tax demanded and due does not exceed £100:	
(b) (b) where an amount of relevant tax demanded and due exceeds £100:	12½% on the first £100, 4% on the next £400, 2½% on the next £1,500, 1% on the next £8,000, ¼% on any additional sum.
3. For taking possession of distrained goods—	£4.50 per day.
(a) where a person remains in physical possession of goods at the place where distress was levied (the person to provide his own food and lodgings):	
(b) (b) where possession is taken under a walking possession agreement:	£7.00.
4. For appraising goods upon which distress has been levied:	Reasonable costs of appraisal.
5. For arranging removal and storage of goods upon which distress has been levied:	Reasonable costs of arrangement.
6. For removing and storing goods upon which distress has been levied:	Reasonable costs of removal and storage.
7. For advertising the sale of goods upon which distress has been levied:	Reasonable costs of advertising.
8. For selling the distress—	15% of the sum realised.
(a) where a sale by auction is held at the auctioneer’s premises:	
(b) (b) where a sale by auction is held elsewhere:	7½% of the sum realised and the auctioneer’s reasonable costs.
(c) (c) where a sale by other means is undertaken:	7½% of the sum realised and reasonable costs.
9. In addition to any amount specified in 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.	

SCHEDULE 3

Regulation 3(1)

REVOCATIONS

<i>Statutory Instrument Number</i>	<i>Title of Regulation</i>	<i>Extent</i>
S.I.1994/1774	The Insurance Premium Tax Regulations 1994	regulation 42
S.I. 1995/2518	The Value Added Tax Regulations 1995	regulation 212
S.I. 1996/1527	The Landfill Tax Regulations 1996	regulation 48

EXPLANATORY NOTE*(This note is not part of the Regulations)*

These Regulations, which come into force on 1st July 1997, revoke and re-enact with certain amendments, regulations concerning distress specified in Schedule 3 applicable to value added tax, insurance premium tax and landfill tax and provide for the levying of distress for the recovery of all the taxes and duties under the care and management of the Commissioners of Customs and Excise. In addition to minor and drafting amendments, the Regulations also make the following changes of substance:—

- (a) *regulation 4(1)* provides for any officer of Customs and Excise (rather than an officer of a specified rank) to levy distress in relation to all duties and taxes under the care and management of the Commissioners;
- (b) *regulation 4(3)* provides for the levying of distress at any place;
- (c) *regulation 6* excludes from levy certain goods used for purposes specified in Schedule 1;
- (d) *regulation 7* establishes the times for levying distress;
- (e) *regulation 8(1) and Schedule 2* establish a scale of costs, charges, expenses and fees (“costs”);
- (f) *regulation 9* provides for the sale of the distress if payment of the relevant tax together with costs is not made within 5 days of a levy. Where previously the officer or authorised person was under a duty to sell the distress on the expiry of that period, he now has a discretion whether to do so.
- (g) *regulation 10* provides for taxation of disputed costs.