
STATUTORY INSTRUMENTS

1997 No. 1431

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

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(1), 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;

“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(2);

“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(3);

“1996 Act” means Part III of the Finance Act 1996(4);

(1) 1979 c. 2.
(2) 1994 c. 23.
(3) 1994 c. 9.
(4) 1996 c. 8.

(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;
- (b) an amount of insurance premium tax is due and the Commissioners may be required under section 59(5) 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(6) 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)(7) 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.

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

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

(7) 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).

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.

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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