

The Distress for Rent Rules 1988

1988 No. 2050 (L.25)

DISTRESS

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

Citation and Commencement

1. These Rules may be cited as the Distress for Rent Rules 1988 and shall come into operation on 1st February 1989.

Interpretation

2. (1) In these Rules—

“Judge” means a Judge of a county court;

“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 a Registrar of a county court;

“court officer” has the meaning given in the Civil Procedure Rules 1998;

“lodge in court” shall have the meaning given in the Court Funds Rules 1987;

“Court Funds Rules” means the Court Funds Rules 1987;

“Table” means the table set out in Appendix 3 to these Rules;

“home county court” means, in relation to any person, the county court in whose district that person has his principal place of business or his main residence;

“issuing county court” means a county court whose name appears in column 2 of the Table; and “the applicant’s issuing county court” means, in relation to an applicant, the county court whose name appears in column 2 of the Table opposite the name of his home

county court;

“issuing area” means, in relation to an issuing county court, the area constituted by the district of that issuing county court and the districts of any other county courts whose names appear in column 1 of the Table opposite the name of that issuing county court;

“appropriate newspaper” means a local newspaper appearing in a list of local newspapers approved by the court officer of the issuing county court for the purpose of publication of notices under rule 5(5).

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

Forms of certificate

3. (1) A [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) . . .

Applications for Certificates

4. [(1) An application for the grant of a certificate shall be made in Form 3.]
- (2) . . .
- (3) . . .
- (4) Applications under this rule shall be filed in the office of [the applicant's issuing county court], accompanied by the fee prescribed by the [County Court Fees Order 1999] for the "commencement of [originating] proceedings for any other remedy or relief", and shall be lodged together with:—
 - (a) . . . two references, one of which may be from the applicant's employer or an approved officer of the Certificated Bailiffs' Association of England and Wales and shall deal with the applicant's knowledge of the law of distress and his previous experience of levying distress, and
 - (b) . . . a certified copy not more than one month old of the result of a search of the Register of County Court Judgments against the applicant's full name and his home and business addresses for the last six years, and
 - (c) . . . two passport sized photographs of the applicant, and
 - (d) . . . copies of the Forms 7, 8 and 9 intended to be used by the applicant when levying distress, which shall conform to the design and layout prescribed in Appendix 2, shall be on paper of durable quality and of the size A4 as specified by the International Standards Organisation, and shall be in a clear and legible printed or type-written form.
- (5) The statements in an application under this rule shall be verified on oath.
- (6) The applicant shall, if so directed, lodge such further evidence as the Judge . . . may reasonably require in support of his application.

Granting of Certificates

5. (1) The Judge . . . shall not grant a certificate to any applicant,
 - (a) who fails to satisfy the Judge . . ., as the case may be, that
 - i) he is a fit and proper person to hold a certificate, and
 - (ii) he possesses a sufficient knowledge of the law of distress; or,
 - (b) who carries on or will be employed in any business which includes buying debts.
- (2) [No application for a certificate shall be granted] except on the personal attendance of the applicant and his examination on oath at the hearing of the application.

- (3) No certificate shall be granted to any officer of a county court.
- (4) The name and address of all applicants for a [certificate] shall be exhibited in the public area of the court office for the 60 days prior to the hearing of the application.
- [(5) The applicant shall cause to be published in an appropriate newspaper a notice in the form set out in paragraph (7) so that the notice appears in three separate editions of that newspaper during the 60 days prior to the hearing of the application.
- (6) The applicant shall, not less than three days before the hearing of the application, file with the court the editions of the appropriate newspaper (or extracts from it) showing the notices referred to in paragraph (5).
- (7) The form of the notice to be published by the applicant shall be:

Notice is hereby given that [name] of [business name and address] has applied to the Judge at [.] county court for a Bailiff's Certificate. Any person who knows of a reason why [name] is not a fit and proper person to be granted a certificate should write to the Court Manager at [name and address of county court] before [date of hearing of application].

- (8) Each issuing county court shall compile and maintain a list of appropriate newspapers published within its issuing area and copies of the list shall be:
- (a) exhibited in the public area of the court office of each county court in the issuing area; and
- (b) given to members of the public on request.]

Security

6. (1) The applicant shall be required to
- (a) lodge in court by way of bond or deposit, or
- (b) satisfy the Judge . . . that there is subsisting by way of bond or deposit,
- security totalling £10,000 . . .
- (2) The security referred to in paragraph (1) above shall be for the due performance of the bailiff's duties and for any reasonable costs, fees and expenses incurred in the investigation of any complaint lodged against the bailiff, or in the cancellation of his certificate, and shall be applied in accordance with rules 8 and 9.
- [(2A) The bailiff shall maintain the security referred to in paragraph (1) above throughout the duration of the certificate.
- (2B) If, at any time during the duration of the certificate, for any reason (other than where rule 9(2) applies), the security referred to in paragraph (1) above no longer exists, or is reduced in value so that it amounts to less than £10,000, the bailiff shall provide fresh security under this rule to the satisfaction of the court.]
- (3) Where a deposit is lodged in court under paragraph (1) above, the provisions of the Court Funds Rules shall apply.

Duration of Certificates

7. (1) A [certificate] shall, unless cancelled, have effect for the period of two years from the date of its grant.

(2) . . .

[7A]. [(1) In this rule “relevant details” means a bailiff’s name, address or other written information appearing on the certificate.

(2) If there is any change in the relevant details, the bailiff shall without delay give written notice of the change to the issuing county court and produce his certificate (“the old certificate”) to the court officer of the issuing county court.

(3) When a bailiff gives notice and produces the old certificate in accordance with paragraph (2) above, the Judge of the issuing county court shall issue to the bailiff a replacement certificate reflecting the change in the relevant details but in all other respects (including, without limitation, the date of expiry of the certificate) the same as the old certificate.

(4) When a replacement certificate is issued in accordance with paragraph (3) above, the court officer shall retain and cancel the old certificate.

(5) No fee shall be payable for the issue of a replacement certificate in accordance with this rule.]

Complaints as to fitness to hold a certificate

8. (1) Any complaint as to the conduct or fitness of any bailiff who holds a certificate shall be made [in Form 4 or, where the complainant has conducted a formal investigation into a complaint by a third party against the bailiff, in Form 5] to the court from which the certificate issued.

(2) Upon receipt of any such complaint as is referred to in paragraph (1), the [court officer] shall send written details of the complaint to the bailiff and require him to deliver a written reply to the court office within 14 days thereafter or within such longer time as the court may specify.

(3) If the bailiff fails to deliver the reply within the time specified, or if upon reading the reply the Judge is unsatisfied as to the bailiff’s fitness to hold a certificate, the [court officer] shall issue a notice summoning the bailiff to appear before the Judge on a specified date and show cause why his certificate should not be cancelled.

[(3A) If upon reading the reply the Judge is satisfied as to the bailiff’s fitness to hold a certificate, the court officer shall issue a notice to the bailiff to that effect and no further action shall be taken in respect of that complaint.]

(4) The [court officer] shall send a copy of the notice [under paragraph (3) or (as the case may be)(3A) above] to the complainant and any other interested party.

[(4A) If, after a notice has been issued under paragraph (3) above, the complainant so applies in writing, and the application is received by the court not later than the date 14 days before the date set for the hearing, the court officer of the court receiving the complaint shall order that the complaint be heard in the issuing county court whose name appears in column 2 of the Table opposite the name of the complainant’s home county court.

(4B) In the event of an order being made under paragraph (4A) above, the court officer of the court receiving the complaint shall forthwith send:

(a) to the court officer of the court hearing the complaint:

(i) certified copies of any relevant entries in the records of the court receiving the complaint; and

(ii) copies of all other documents in his custody relating to the bailiff's certificate and to the complaint; and

(b) to the bailiff and any other interested party, notice of the order made under paragraph (4A) above.]

(5) At the hearing:—

(i) the bailiff shall attend for examination and may make representations, and

(ii) the complainant may attend and make representations.

(6) The procedure to be followed at the hearing, including the calling of evidence, shall be such as the Judge considers just, and he may proceed with the hearing notwithstanding that the bailiff has failed to attend.

[(7) If an order is made under paragraph (4A) above, the court officer of the court hearing the complaint shall, following the hearing, send to the court officer of the court which received the complaint certified copies of the order and all other documents in his custody relating to the bailiff's certificate and to the complaint, including the certified copies and copies sent under paragraph (4B)(a) above.]

Cancellation of Certificates

9. (1) Following the hearing of any complaint under rule 8 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 or amounts directed to be forfeited shall be paid to any complainant by way of compensation for failure in due performance of the bailiff's duties, costs or expenses or, where costs, fees and expenses have been incurred by the court, to Her Majesty's Paymaster General.

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

(3) Where a certificate is cancelled, the order of the Judge shall be in Form 6 and, subject to the provisions of this rule, the security shall be cancelled and the balance of the deposit returned to the bailiff.

(4) When a certificate is cancelled 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 of cancellation or expiry, unless the Judge otherwise directs.

(5) When a [certificate] is cancelled or expires it shall be surrendered to the Judge, unless he otherwise directs.

[(5A) When a bailiff holding a certificate ceases, for any reason, to carry on business as a bailiff he shall forthwith surrender his certificate to the Judge at the

county court which issued the certificate, unless the Judge otherwise directs, and as from the date of the surrender the certificate shall be treated as if it had expired on that date.]

(6) When a certificate is cancelled the [court officer] shall publish a notice [to that effect in an appropriate newspaper, and the costs of the notice] shall be deducted from the security.

[(7) References, in this rule, to the cancellation of a certificate shall not include the cancellation of a certificate upon the issue of a duplicate certificate, in accordance with rule 7A(4).]

Fees, Charges and Expenses

10. No person shall be entitled to charge, or recover from, a 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 1 to these Rules.

11. (1) In the case of any difference as to fees, charges and expenses between any of the parties, the fees, charges and expenses shall upon application be [assessed, by way of detailed assessment under Part 47 of the Civil Procedure Rules 1998,] 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 [detailed assessment].

(2) Where the court in which the [detailed assessment] is conducted is not the court in which the bailiff was granted his certificate and the Registrar is of opinion on the [detailed assessment] that there has been overcharging of such magnitude as to call into question the fitness of a bailiff to hold a certificate, the [court officer] shall send to the court in which the bailiff was granted his certificate a copy of the [completed bill] endorsed with a note of the Registrar's opinion.

(3) The receipt of a bill under paragraph (2), shall be treated as a complaint under rule 8(1).

Levy and Removal

12. (1) Every bailiff levying a distress shall produce his certificate to the tenant if he is present or, in the absence of the tenant, to such other person present as appears to be in control of the premises.

(2) A bailiff levying distress shall deliver to the tenant, or leave on the premises where distress is levied, a memorandum in Form 7 identifying the bailiff and specifying in an Inventory the goods distrained on and setting out the amounts for which the distress is levied and the fees, charges and expenses authorised by these Rules and being actually and necessarily incurred under them.

(3) A bailiff or his agent attending to remove goods from the premises or withdrawing from possession prior to sale of the distrained goods shall deliver to the tenant or leave on the premises where distress is levied a memorandum in Form 9 setting out the expenses of removal authorised by and incurred under these Rules.

List of Certificates

13. [(1) Each issuing county court shall compile a list of bailiffs carrying on business within that court's issuing area and holding certificates as at 1st February every year, and the list shall be exhibited in the public area of the court office of each county court in the issuing area.]

(2) When a certificate is cancelled the list shall be amended to include that fact.

Repeal

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

- (a) the Distress for Rent Rules 1983 shall be revoked save with respect to distresses levied before these Rules come into operation; and
- (b) any certificate granted or renewed before these Rules come into operation shall continue to have effect for the period for which it was granted as if it were a certificate granted under these Rules for all purposes except the application of rule 4; and
- (c) any certificate granted or renewed before these Rules come into operation and expressed to expire between 31st January 1989 and 30th April 1989 shall continue to have effect until 30th April 1989 as if it were a certificate granted under these Rules for all purposes except the application of Rule 4.

Mackay of Clashfern, C

21st November 1988

Statutory Instrument 1988 No. 2050 (L.25)

The Distress for Rent Rules 1988 - *continued*

APPENDIX 1
TABLE OF FEES, CHARGES AND EXPENSES

1. For levying distress—

(i) where the sum demanded and due does not exceed £100	£12.50
(ii) where the sum 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 and ¼% on any additional sum.

2. For attending to levy distress where the levy is not made, the reasonable costs and charges for attending to levy, not exceeding the fees which would have been due under paragraph 1 if the distress had been levied; the costs and charges are subject to taxation under rule 11.

3. For taking possession—

- (i) where a man is left in physical possession, £4.50 per day
- (ii) where walking possession is taken, 45p per day

Note: The charge for walking possession is payable only if a walking possession agreement in Form 8 has been concluded.

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.

4. For appraisal, at the request in writing of the tenant, the reasonable fees, charges and expenses of the broker, subject to taxation under rule 11.

5. For attending to remove, the reasonable costs and charges attending the removal; the costs and charges are subject to taxation under rule 11.

6. 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 of

15% on the sum realised, and the reasonable cost of advertising, removal and storage.

(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% on the sum realised.

7. 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.
8. 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.
9. 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.