

1999 No. 980

SOCIAL SECURITY

Distrait by Authorised Officers (Fees, Costs and Charges) Regulations 1999

<i>Made</i> - - - -	<i>25th March 1999</i>
<i>Laid before Parliament</i>	<i>29th March 1999</i>
<i>Coming into force</i>	<i>20th April 1999</i>

The Secretary of State for Social Security, in exercise of powers conferred by sections 121A(8)(a), 189(1) and (3) and 191 of the Social Security Administration Act 1992(b), by this instrument, which contains only regulations made before the end of the period of 6 months beginning with the coming into force of section 63 of the Social Security Act 1998, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Distrait by Authorised Officers (Fees, Costs and Charges) Regulations 1999 and shall come into force on 20th April 1999.

(2) In these Regulations—

- (a) “authorised officer” means an officer of the Secretary of State authorised by him for the purposes of section 121A of the Social Security Administration Act 1992;
- (b) “close possession” means physical possession by the distrainor or a person acting on his behalf of the goods and chattels distrained;
- (c) “total sum certified” means the total amount of any contributions, or interest or penalty in respect of contributions, which an authorised officer certifies a person is liable to pay to the Secretary of State in accordance with section 118(1) of the Social Security Administration Act 1992(c);
- (d) “walking possession” means possession in accordance with an agreement between the distrainor and the distrainee whereby, in consideration of the distrainor not remaining in close possession, the distrainee undertakes not to dispose of the goods distrained or any part thereof, or permit their removal by any person not authorised by the distrainor to remove them.

Ascertainment of fees, costs and charges

2. The fees chargeable on or in connection with the levying of distress and the costs and charges recoverable where distress has been levied shall be those specified in the Schedule to these Regulations, but subject to any provision of that Schedule.

(a) Section 121A is inserted by section 63 of the Social Security Act 1998 (c.14).
(b) 1992 c.5. Section 191 is cited because of the meaning ascribed to the word “prescribe”.
(c) Section 118(1) was substituted by section 62(1) of the Social Security Act 1998.

Deduction of fees, costs and charges by an authorised officer

3. The fees, costs and charges specified in the Schedule to these Regulations shall be deducted by the authorised officer from the sums received on or in connection with the levying of distress or where distress has been levied.

Disputes as to fees, costs and charges

4.—(1) In the case of dispute as to any fees chargeable, or costs and charges recoverable under the Schedule to these Regulations, the amount of those fees, costs and charges shall be taxed.

(2) Such a taxation shall be carried out by the district judge of the county court for the district in which the distress is or is intended to be levied, and he may give such directions as to the costs of the taxation as he thinks fit.

Signed by authority of the Secretary of State for Social Security.

25th March 1999

Stephen C. Timms
Minister of State,
Department of Social Security

SCHEDULE

Regulation 2

<i>Action taken</i>	<i>Fees, Costs and Charges</i>
<i>On or in connection with the levying of distress</i>	
<i>Fees</i>	
For making a visit to premises with a view to levying distress (whether the levy is made or not).	A sum not exceeding £12.50.
Levying distress where the total sum certified is £100 or less.	£12.50.
Levying distress where the total sum certified is more than £100.	12½ per cent. on the first £100 of the amount to be recovered; 4 per cent. on the next £400; 2½ per cent. on the next £1,500; 1 per cent. on the next £8,000; ¼ per cent. on any additional sum.
<i>Where distress has been levied</i>	
<i>1 Taking possession</i>	
Where close possession is taken.	£4.50 for the day of levy only.
Where walking possession is taken.	45p per day, payable for the day the distress is levied and up to 14 days thereafter.
<i>2 Removal and storage of goods</i>	
	The reasonable costs and charges of removal and storage.
<i>3 Appraisalment</i>	
	The reasonable fees, charges and expenses of the person appraising.
<i>4 Sale</i>	
Where the sale is held on the auctioneer's premises, for the auctioneer's commission (to include all out-of-pocket expenses, other than charges for advertising, removal and storage).	15 per cent. on the sum realised plus the reasonable costs of advertising, removal and storage.
Where the sale is held on the debtor's premises, for the auctioneer's commission (not to include out-of-pocket expenses or charges for advertising).	7½ per cent. on the sum realised plus out-of-pocket expenses reasonably incurred and the reasonable costs of advertising.

1. In any case where close possession is taken, an individual left in possession must provide his own board.

2. For the purpose of calculating any percentage fees, costs and charges, a fraction of £1 is to be reckoned as £1, but any fraction of a penny in the total amount so calculated is to be disregarded.

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

The regulations contained in this instrument are made before the end of the period of 6 months beginning with the coming into force of section 63 of the Social Security Act 1998 (“the 1998 Act”) on 4th March 1999. Section 63 of the 1998 Act amended the Social Security Administration Act 1992 (“the Administration Act”) by inserting section 121A into that Act. These regulations, which are made under section 121A of the Administration Act, are therefore exempt by section 173(5)(a) of that Act from reference to the Social Security Advisory Committee and have not been so referred.

These Regulations make provision for fees, costs and charges where an authorised officer distrains upon the goods and chattels of an individual who is in default.

Regulation 1(2) defines “authorised officer”, “close possession”, “total sum certified” and “walking possession”.

Regulation 2 provides that the fees, costs and charges which arise on or in connection with the levying of distress, or where distress has been levied, shall be ascertained from the Schedule to the Regulations. Various different actions are specified in the Schedule, and the relevant charge is given.

Regulation 3 provides for fees, costs and charges to be deducted by the authorised officer on or in connection with the levying of distress or where distress has been levied.

Regulation 4 provides for the district judge of the county court to tax fees, costs and charges that are disputed.

The costs to business of these amendments were covered in the Regulatory Impact Assessment for the Social Security Act 1998 in accordance with, and in consequence of which, these Regulations are made. That Assessment concluded that no costs would be imposed on compliant businesses as distress would only be levied on non-compliant ones. A copy of that Regulatory Impact Assessment has been placed in the libraries of both Houses of Parliament and can be obtained from the Department of Social Security, Better Regulation Unit, 3rd Floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.