

2021 No. 1288

ENFORCEMENT, ENGLAND AND WALES

TAKING CONTROL OF GOODS

**The Taking Control of Goods (Fees) (Amendment) Regulations
2021**

<i>Made</i>	- - - -	<i>17th November 2021</i>
<i>Laid before Parliament</i>		<i>18th November 2021</i>
<i>Coming into force</i>		<i>9th December 2021</i>

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by section 90 of, and paragraphs 50 and 62 of Schedule 12 to, the Tribunals, Courts and Enforcement Act 2007(a).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Taking Control of Goods (Fees) (Amendment) Regulations 2021 and come into force on 9th December 2021.

(2) These Regulations extend to England and Wales.

Interpretation

2. In these Regulations “the Fees Regulations” means the Taking Control of Goods (Fees) Regulations 2014(b).

Amendments to the Fees Regulations

3.—(1) The Fees Regulations are amended as follows.

(2) In regulation 2 (interpretation)—

(a) after the definition of “Schedule 12” insert—

““sum equivalent to VAT” has the meaning given to it by regulations 18(2) and (3);”;
and

(b) after the definition of “sum to be recovered”, insert—

““VAT” means Value Added Tax”.

(3) In regulation 4 (recovery of fees for enforcement related services from the debtor)—

(a) for paragraph (1), substitute—

(a) 2007 c. 15. Section 90 was amended by section 25(8) of the Crime and Courts Act 2013 (c. 22).

(b) S.I. 2014/1.

- “(1) The enforcement agent may recover from the debtor—
 - (a) the fees indicated in the Schedule; and
 - (b) where the creditor is not VAT-registered, the sum equivalent to VAT on those fees,

in accordance with this regulation and regulations 9, 11, 12, 13, 16, 17 and 18, by reference to the stage, or stages, of enforcement for which enforcement-related services have been supplied.”;
- (b) in paragraph (2), after “paragraph (1)” insert “and the sum equivalent to VAT on those fees”;
- (c) in paragraph (3) after “stage,” insert “and the sum equivalent to VAT on that fee.”; and
- (d) after paragraph (5) insert “(6) The fees indicated in the Schedule are exclusive of VAT.”.
- (4) In regulation 8 (disbursements recoverable from the debtor)—
 - (a) for the heading substitute “Other fees and disbursements recoverable from the debtor”;
 - (b) for paragraph (1), substitute—

“(1) The enforcement agent may recover from the debtor the fees and disbursements set out in this regulation and regulations 9 and 10 and, where the creditor is not VAT-registered, the sum equivalent to VAT on those fees and disbursements, only in accordance with this regulation and regulations 9, 10, 11 and 18.”; and
 - (c) for paragraph (3), substitute—

“(3) The fees and disbursements referred to in this regulation and regulations 9 and 10 and the sum equivalent to VAT on those fees and disbursements, may be recovered out of proceeds.”.
- (5) In regulation 9 (disbursements recoverable from the debtor in relation to sale of goods by auction or by private sale)—
 - (a) for the heading substitute “Other fees and disbursements recoverable from the debtor in relation to sale of goods by auction or by private sale”;
 - (b) in paragraph (4), for the words after paragraph (b) substitute—

“the enforcement agent may recover from the debtor a fee of 7.5% of the sum realised by the sale of the goods in addition to the fees set out in the Schedule and, where the creditor is not VAT-registered, the sum equivalent to VAT on that fee.”; and
 - (c) after paragraph (4), insert “(5) The fee in paragraph (4) is exclusive of VAT.”.
- (6) In regulation 13(4)(b), after “disbursements” insert “and the sum equivalent to VAT on those fees and disbursements.”.
- (7) In regulation 14(2), after “(1)(b)(iv)” delete “, except in relation to disbursements to which regulation 9(4) applies”.
- (8) After regulation 17, insert—

“Recovery from debtors of the sum equivalent to VAT

18.—(1) Where the creditor is VAT-registered the enforcement agent may not recover VAT on the fees or disbursements under these Regulations, or the sum equivalent to VAT.

(2) Where the creditor is not VAT-registered the enforcement agent may recover from the debtor a sum equivalent to VAT only in accordance with these Regulations.

(3) For the purposes of these Regulations, the sum equivalent to VAT is an amount of the same value as the VAT the creditor is liable to pay on —

- (a) the fees indicated in regulation 9(4) and the Schedule; and
- (b) the disbursements set out in regulations 8, 9 and 10.”.

17th November 2021

David Wolfson
Parliamentary Under-Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Taking Control of Goods (Fees) Regulations 2014 (“the Fees Regulations”) to clarify the application of VAT to the fees and disbursements in those Regulations and the recoverability of a sum equivalent to it, which is an enforcement cost, from the judgement debtor in particular circumstances, the details of which are set out below. In addition, the description of the charge in regulation 9(4) is amended to a fee instead of a disbursement.

Specifically, these Regulations amend the Fees Regulations as follows.

Regulation 2 is amended to define “sum equivalent to VAT” and “VAT”.

Regulation 4(1) is amended to provide that the sum equivalent to VAT is recoverable from the debtor in addition to the fees in the Schedule, in accordance with the Regulations, including regulation 18.

Regulation 4(2) is amended to provide that the sum equivalent to VAT can be recovered from proceeds.

Regulation 4(3) is amended to specify that the prescribed fees set out in the amended regulations that are applicable where a stage is not completed are recoverable from the debtor together with the sum equivalent to VAT on those fees.

Regulation 4(6) is added to make clear that the fees set out in the Schedule are exclusive of VAT.

Regulation 8(1) is amended to provide that the fees and disbursements in regulations 8, 9 and 10 are recoverable from the debtor together with the sum equivalent to VAT, in accordance with those Regulations and regulation 18.

Regulation 8(3) is amended to provide that the sum equivalent to VAT on those fees and disbursements may also be recovered from proceeds.

Regulation 9(4) is amended to correctly identify the sum therein as a fee, not a disbursement, recoverable in addition to the fees set out in the Schedule, with the consequential implications, including as to the application of VAT.

Regulation 9(5) is inserted to set out that the fee in regulation 9(4) is exclusive of VAT.

Regulation 13(4) is amended to provide that where the proceeds are less than the amount outstanding the sum equivalent to VAT may also be recovered from the debtor together with the fees and disbursements permitted under that regulation.

Regulation 14(2) is amended to provide that the fee in regulation 9(4) is not excluded from the requirement to provide a receipt.

Regulation 18(1) is inserted to provide that where a creditor is VAT registered the enforcement agent may not recover from the debtor VAT or the sum equivalent to VAT on the fees or disbursements in the Fees Regulations.

Regulation 18(2) is inserted to provide the sum equivalent to VAT is only recoverable from the debtor where the creditor is not VAT registered.

Regulation 18(3) is inserted to provide that the sum equivalent to VAT for the purposes of the regulations is a sum equivalent to VAT only on the fees in regulation 9(4) and the Schedule and the disbursements in regulations 8, 9 and 10.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen.