
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for recovery of fees and disbursements from debtors by enforcement agents in relation to the procedure for taking control of goods under Schedule 12 to the Tribunals Courts and Enforcement Act 2007 (c.15) (“the Act”). The Act provides a new statutory code for taking control of goods in order to sell them to enforce the payment of debts (replacing the process formerly known as “distress”). By section 62 of the Act, the Schedule 12 procedure is available where an enactment, writ or warrant confers the power to use the procedure. It is also available in relation to commercial rent arrears recovery under section 72 of the Act .

These Regulations apply whenever an enforcement agent uses the Schedule 12 procedure (regulation 3), including in exercise of commercial rent arrears recovery. Regulation 2 makes general interpretative provision.

Regulations 4 to 7 concern the recovery of fees from debtors out of the proceeds (defined in regulation 2). Fees are recoverable by reference to stages of the enforcement procedure as defined in regulation 5 for cases where the enforcement power is derived other than from a High Court writ, and in regulation 6 for High Court writs. Fees are recoverable on a fixed basis for each stage, but in certain situations an additional fee is recoverable as a percentage of the value of the sum to be recovered (regulations 4 and 7). The levels of fixed fees, and the relevant percentages to be applied, are provided for in the Schedule.

Where the enforcement agent and the debtor enter into a controlled goods agreement (defined in accordance with paragraph 13(4) of Schedule 12 to the Act) which the debtor complies with, only the first enforcement stage fee is payable. However, if the debtor does not enter into such an agreement, or does so but breaches the agreement, both the first and second enforcement stage fees are applicable.

Disbursements are also recoverable from the debtor out of the proceeds, and are addressed in regulations 8, 9, and 10. They may only be recovered in accordance with those regulations (regulation 8(1)). Regulation 8 provides for common disbursements regarding storage of goods, hire of locksmiths to enter and to secure premises, and court fees for various applications relating to the Schedule 12 process where the enforcement agent’s application is successful. Regulation 9 provides for costs of sale, including by public auction. Regulation 10 permits application to the court for permission to incur or recover exceptional disbursements (for example, the cost of insuring a valuable or rare item whilst it is out of the debtor’s control).

Regulations 11 and 12 make specific provision to protect debtors. Regulation 11 requires enforcement agents to minimise the fees and disbursements charged where they act in relation to more than one enforcement power. Where practicable, they are expected to deal with the goods together and on as few occasions as possible. Regulation 12 makes provision to protect vulnerable debtors. The enforcement agent is required to give such a debtor an adequate opportunity to obtain assistance and advice prior to removal of the goods. The enforcement stage fee (or fees) is not recoverable unless such an opportunity has been given.

Regulation 13 provides for the order of application of the proceeds where the amount recovered is less than the amount outstanding. Any fees and expenses owed to an auctioneer, and the compliance stage fee for the enforcement agent, are prioritised, with the remaining proceeds being divided pro rata between payment of the debt and payment of the remaining fees and disbursements due to the enforcement agent.

Status: *This is the original version (as it was originally made).*

Regulation 14 requires the enforcement agent to provide the debtor and any co-owner with specified information relating to sale or disposal of the goods, and equivalent provision is also made for the situation where the debtor has paid, or seeks to pay, the amount outstanding prior to sale or disposal. Regulations 15 and 16 make provision for disputes about a co-owner's share of proceeds, and about the amount of fees and disbursements recoverable by the enforcement agent, to be referred to the court for resolution. Regulation 17 prevents recovery of fees or disbursements by an enforcement agent in relation to any enforcement stage during which the enforcement power ceases to be exercisable. Specific provision is made for orders made under section 78 of the Act relating to commercial rent arrears recovery.