

**EXPLANATORY MEMORANDUM TO**  
**THE TAKING CONTROL OF GOODS (FEES) (AMENDMENT) REGULATIONS**  
**2021**

**2021 No. 1288**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 The purpose of this instrument is to amend the Taking Control of Goods (Fees) Regulations 2014 (SI. 2014/1) (“the Fees Regulations”), which set out the fees and disbursements that may be recovered from judgment debtors by an enforcement agent, when carrying out specified enforcement related services. The purpose of this instrument is to clarify the circumstances where a cost equivalent to the VAT incurred on fees and disbursements may be recovered from the judgment debtor.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

**4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.  
4.2 The territorial application of this instrument is England and Wales.

**5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

**6. Legislative Context**

- 6.1 The powers conferred by section 90 of, and paragraphs 50 and 62 of Schedule 12 to, the Tribunal, Courts and Enforcement Act 2007 (“the TCEA 2007”) empower the Lord Chancellor to make these Regulations.
- 6.2 Part 3 of, and Schedule 12 to, the TCEA 2007 replaced the existing laws relating to the seizure and sale of goods for most purposes, and the existing law of rent distress, with a unified procedure to be followed by enforcement agents.
- 6.3 In 2014, three Statutory Instruments that had been made under Part 3 of the TCEA 2007 came into force. The Taking Control of Goods Regulations 2013 (SI 2013/1984) set out the procedure enforcement agents must follow when taking control of goods. The Fees Regulations, which this Statutory Instrument will amend, set out the fees and disbursements that are recoverable from the debtor in respect of the enforcement-related services that are incurred when following the taking control of goods procedure. The Certification of Enforcement Agent Regulations 2014 (SI 2014/421) set out the certification process for enforcement agents in the county court.

## 7. Policy background

### *What is being done and why?*

- 7.1 The Fees Regulations introduced a new fee structure for the recovery of enforcement-related fees and disbursements from a debtor. It replaced the disparate and confusing fee structures which had been in place and which had varied according to debt type. One of the aims of the reforms was to provide clarity and transparency to allow debtors to check whether they had been charged the correct fees. As with the wider reforms, the provisions contained within that instrument were intended to balance the rights of the debtor and the rights of the creditor.
- 7.2 The Ministry of Justice is legislating to clarify the position about the circumstances in which the VAT costs of fees and disbursements can be recovered, because there has been disagreement within the High Court Enforcement industry and amongst other interested parties about whether the creditor or debtor should be responsible for those costs, and whether the Fees Regulations permit enforcement agents to recover costs equivalent to the VAT from a judgment debtor.
- 7.3 In March 2020, the Ministry of Justice and HMRC produced draft guidance to clarify the way in which the VAT costs on High Court Enforcement fees and disbursements should be recovered. The draft guidance set out that, whilst the judgment creditor who receives the service is liable for any VAT due, enforcement services will assist in the onward recovery from the judgment debtor of the costs of enforcement including, where relevant, a sum equivalent to the VAT costs. The draft guidance clarified both when VAT charged to judgment creditors, but which is correctly part of the costs of enforcement, may be collected from judgment debtors and, alternatively, when and how VAT should be collected from judgment creditors.
- 7.4 In March 2020, the Ministry of Justice consulted interested parties about the draft guidance. Many respondents questioned whether the Fees Regulations allowed a sum equivalent to VAT costs to be recovered from judgment debtors because the recovery of VAT costs is not explicitly referred to in those Regulations. The Ministry of Justice considers that the Taking Control of Goods legislation when considered together with the common law position permit a sum equivalent to the VAT costs to be recovered from the judgment debtor, in certain cases where the creditor is unable to recover those costs from HMRC. We have decided, however, to clarify this position in the Fees Regulations, to remove any uncertainty about the matter. We believe that this amendment is consistent with the policy aim of the Fees Regulations to provide clarity and transparency to judgment debtors about the amount of money that enforcement agents can charge them.
- 7.5 On 13 October 2021, the Parliamentary Under Secretary of State for Justice, Lord Wolfson of Tredegar, QC, issued a final version of the guidance to the High Court Enforcement Officers Association and informed them that the Ministry of Justice intended to legislate to put it beyond doubt that it is legally permissible to recover a cost equivalent to VAT from judgment debtors in the circumstances set out in the guidance. Balancing the rights of debtors and the rights of creditors is central to the Fees Regulations and this instrument will ensure that the VAT costs will only be recovered from debtors if they are correctly part of the enforcement costs.
- 7.6 This instrument amends the Fees Regulations to state that in cases where a creditor is not VAT-registered, the enforcement agent may recover from the debtor a sum equivalent to the VAT on the fees and disbursements set out in the Regulations and

the Schedule to it. This amendment is intended to provide statutory confirmation that a sum equivalent to VAT may be recovered from a judgment debt if that sum is correctly part of the enforcement costs. This instrument restricts the recovery of a sum equivalent to VAT on the costs of enforcement from the debtor to cases where a creditor is not VAT registered to provide clarity to all the parties about the circumstances in which a cost equivalent to VAT may be recovered from a debtor.

- 7.7 A technical amendment is made to Regulation 9(4) to identify that the costs of auctioning goods by way of an internet auction site or sold other than by auction, is a fee to the enforcement agent, not a disbursement.
- 7.8 To further support clarity, amendments are also made to make clear that the sums referred to in Regulation 9(4) and in the Schedule, are exclusive of VAT and therefore, the sum equivalent to VAT, where applicable, will be recoverable in addition to those sums.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union and does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.

## **9. Consolidation**

- 9.1 This instrument amends the Fees Regulations. There are no plans to consolidate this legislation.

## **10. Consultation outcome**

- 10.1 In March 2020, the Ministry of Justice consulted a limited number of interested parties on draft guidance about who should pay the VAT on High Court enforcement fees. The responses indicated that it would be beneficial to legislate to clarify whether the Fees Regulations permit VAT costs to be recovered from judgment debtors. Given the clarificatory nature of this amendment and the consultation on the guidance referred to above we have not consulted on this instrument.

## **11. Guidance**

- 11.1 As noted above, the Department has worked with HMRC to produce detailed guidance for High Court Enforcement Officers about when and how VAT charged to judgment creditors, but which is correctly part of the costs of enforcement, may be collected from judgment debtors and, alternatively, when and how VAT will be collected from judgment creditors. The guidance sets out the responsibilities of enforcement agents in ascertaining who the VAT costs should be recovered from.

## **12. Impact**

- 12.1 There is no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 The department has not undertaken an impact assessment as the equivalent annual net direct cost to business is estimated to be below £5m. The instrument is not a regulatory provision and exempt from the Small Business, Enterprise and Employment Act 2015 by virtue of s22(4)(a)(i).

**13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 No specific action is proposed to minimise regulatory burdens on small businesses (employing up to 50 people).

**14. Monitoring & review**

- 14.1 The Ministry of Justice intends to monitor the implementation of the legislation and guidance via ongoing engagement with the High Court Enforcement Officers Association and other interested parties.
- 14.2 The instrument does not include a statutory review clause.

**15. Contact**

- 15.1 Tessa Wearing at the Ministry of Justice email: [Tessa.Wearing@justice.gov.uk](mailto:Tessa.Wearing@justice.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 David Parkin, Deputy Director for Civil Justice and Law, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Parliamentary Under-Secretary of State Lord Wolfson of Tredegar, QC at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.