
STATUTORY INSTRUMENTS

1993 No. 1516 (S.197)

NATIONAL ASSISTANCE SERVICES

**The Charging Orders (Residential
Accommodation) (Scotland) Order 1993**

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| <i>Made</i> | - - - - | <i>14th June 1993</i> |
| <i>Laid before Parliament</i> | | <i>25th June 1993</i> |
| <i>Coming into force</i> | - - | <i>16th July 1993</i> |

The Secretary of State, in exercise of the powers conferred on him by section 23(5) and (6) of the Health and Social Services and Social Security Adjudications Act 1983(1) and of all other powers enabling him in that behalf, hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Charging Orders (Residential Accommodation) (Scotland) Order 1993 and shall come into force on 16th July 1993.

Interpretation

2. In this Order—

“the 1970 Act” means the Conveyancing and Feudal Reform (Scotland) Act 1970(2);

“the 1983 Act” means the Health and Social Services and Social Security Adjudications Act 1983;

“accommodation” has the same meaning as the expression “Part III accommodation” has in section 21(8) of the 1983 Act(3); and

“charging order” means a charging order made under section 23 of the 1983 Act.

Forms

3.—(1) The form set out in Form 1 of the Schedule to this Order or a form as similar thereto as circumstances permit shall be the form of a charging order.

(1) 1983 c. 41.

(2) 1970 c. 35.

(3) Section 21(8) of the 1983 Act was amended by the National Health Service and Community Care Act 1990 (c. 19), Schedule 9, paragraph 25(2).

(2) The form set out in Form 2 of the Schedule to this Order or a form as similar thereto as circumstances permit shall be the form of a discharge of a charging order.

Amount due under charging order

4. The amount due by the debtor under a charging order at any time shall be the aggregate of—
- (a) the debt due by him at that time to the local authority in respect of the provision of accommodation referred to in section 23(1) of the 1983 Act; and
 - (b) any interest thereon at that time as specified in section 24 of the 1983 Act⁽⁴⁾,

as certified by the director of finance of the local authority in whose favour the charging order was made and the director of finance of that local authority may substitute an amended certificate on cause shown.

Application of Part II of the 1970 Act

5.—(1) The provisions of Part II of the 1970 Act shall apply to a charging order made under section 23 of the 1983 Act after the date of coming into force of this Order as if it was a standard security in a form prescribed in Schedule 2 to the 1970 Act, subject to the exceptions specified in paragraph (2) below and to the modifications specified in paragraph (3) below.

- (2) The following provisions of Part II of the 1970 Act shall not apply to a charging order, namely—
- (a) section 9(1) to (5) (the standard security);
 - (b) section 10(1) to (3) (import of forms of, and certain clauses in, standard security);
 - (c) section 11(1) (effect of recorded standard security);
 - (d) section 12 (standard security may be granted by person uninfected); and
 - (e) section 14 (assignment of standard security).

(3) Subject to the exceptions specified in paragraph (2) above, the provisions of Part II of the 1970 Act shall apply subject to the following modifications, namely—

- (a) as if there was substituted a reference to “charging order” for any reference to “standard security” in those provisions, other than in section 13 or where the context otherwise requires;
- (b) as if, in section 10(4) (implied assignment of title deeds), for the reference to “The forms of standard security contained in Schedule 2 to this Act”, there was substituted a reference to “The form of charging order set out in Form 1 in the Schedule to the Charging Orders (Residential Accommodation) (Scotland) Order 1993”;
- (c) as if, in section 13(1) (ranking of standard securities), for the words from “subsequent security” to “conveyance so recorded”, there was substituted the words “charging order over the same interest in land or any part thereof, being a charging order so recorded”;
- (d) as if, in section 17 (discharge of standard security), for the reference to “Form F of Schedule 4 to this Act”, there was substituted a reference to “the form of discharge set out in Form 2 in the Schedule to the Charging Orders (Residential Accommodation) (Scotland) Order 1993”;
- (e) as if, in section 19(1) (calling-up of standard security), there was inserted at the end the following proviso:—

“provided that the local authority shall not be entitled to call up a charging order for non payment of the amount due by the debtor under the charging order while the debtor is alive, except in the event of—

(4) Section 24(2) of the 1983 Act was substituted by section 45(3) of the National Health Service and Community Care Act 1990.

- (a) the insolvency of the debtor; or
 - (b) the sale or transfer of the interest in land subject to the charging order; or
 - (c) the calling up of a standard security over the security subjects.”;
- (f) as if, in section 30(1) (interpretation of Part II), there was inserted before the first definition of “creditor” the following definition:–
- ““charging order” means a charging order made under section 23 of the Health and Social Services and Social Security Adjudications Act 1983;” and
- (g) as if, in paragraph 8 (entitlement of creditor to call up the standard security) of Schedule 3 (the standard conditions), there was inserted at the end the following proviso:–
- “provided that the local authority shall not be entitled to call up a charging order for non payment of the amount due by the debtor under the charging order while the debtor is alive, except in the event of–
- (a) the insolvency of the debtor; or
 - (b) the sale or transfer of the interest in land subject to the charging order; or
 - (c) the calling up of a standard security over the security subjects.”.

St Andrew’s House,
Edinburgh
14th June 1993

Fraser of Carmyllie
Minister of State, Scottish Office

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE

Article 3

FORM 1 FORM OF CHARGING ORDER THE HEALTH AND SOCIAL SERVICES AND SOCIAL SECURITY ADJUDICATIONS ACT 1983 Charging Order

We (name of local authority), in exercise of the powers conferred upon us by section 23 of the Health and Social Services and Social Security Adjudications Act 1983 ("the 1983 Act"), hereby make a charging order over All and Whole (here describe the security subjects as in Note 1 hereto) being an interest in land held by (name and designation of debtor) in respect of any debt due or to become due by the said (name of debtor) to us in respect of the provision by us of accommodation for the said (name of debtor), all in terms of the said section 23, together with any interest thereon as specified in section 24 of the 1983 Act as amended [see Note 3].

[to be attested by local authority]

NOTES TO FORM 1

Note 1—The security subjects shall be described by means of a particular description or by reference to a description thereof as in Schedule D to the Conveyancing (Scotland) Act 1924(a) or as in Schedule G to the Titles to Land Consolidation (Scotland) Act 1868(b), or where appropriate in accordance with the provisions of section 15(1) of the Land Registration (Scotland) Act 1979(c). Where the security subjects consist of an interest in land, other than ownership of the land, amend the description appropriately.

Note 2—Where a title to the subjects is recorded in the Register of Sasines but the debtor does not have a recorded title, insert at the end a clause of deduction of title as follows:— Which subjects (or as the case may be) were last vested (or are part of the subjects last vested) in A.B. (designation of person last infert) whose title thereto (was recorded in the Register for (or the said Register of Sasines) on (or, if the last infertment has already been mentioned, say in the said A.B. as aforesaid)), and from whom the said (name of debtor) acquired right by (there specify shortly the writ or writs by which that right was so acquired). Where the interest in the subjects is registered in the Land Register for Scotland but the debtor is not registered as entitled to the registered interest, in terms of section 15(3) of the Land Registration (Scotland) Act 1979 it is not necessary to insert a clause of deduction of title in the deed if evidence of sufficient links in title are produced to the Keeper of the Registers of Scotland on registration.

Note 3—Insert amendments to Section 24 of the 1983 Act; the current amendments are made by section 45(3) of the National Health Service and Community Care Act 1990.

FORM 2 FORM OF DISCHARGE OF CHARGING ORDER THE HEALTH AND SOCIAL SERVICES AND SOCIAL SECURITY ADJUDICATIONS ACT 1983 Discharge of Charging Order

We (name of local authority), in consideration of £ being the whole amount secured by the charging order aftermentioned paid by (name and designation of debtor or as the case may be) hereby discharge the charging order over All and Whole (describe the security subjects as indicated in Note 1 to Form 1 in this Schedule), which charging order was made by us in our favour dated and (recorded in the Register of Sasines for on) (or as appropriate registered under Title No.).

[to be attested by local authority]

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for a local authority in Scotland, England or Wales to secure a debt in respect of unpaid charges for residential accommodation provided by the authority against the debtor's interest in land in Scotland.

It prescribes the forms to be employed for charging orders and for discharge of these orders (Article 3); the method for ascertaining the amount due under a charging order at any time (Article 4); and the extent to which the provisions of Part II of the Conveyancing and Feudal Reform (Scotland) Act 1970 apply to such a charging order and the modifications to such provisions as apply (Article 5).