



# Charging Orders Act 1979

## 1979 CHAPTER 53

**E+W**

An Act to make provision for imposing charges to secure payment of money due, or to become due, under judgments or orders of court; to provide for restraining and prohibiting dealings with, and the making of payments in respect of, certain securities; and for connected purposes. [6th December 1979]

### Modifications etc. (not altering text)

- C1 Power to apply conferred by [Local Government Finance Act 1988](#) (c. 41, SIF 81:1), ss. 22, 142, [Sch. 4 para. 28\(2\)](#)
- C2 Act: power to apply conferred (6.3.1992) by [Local Government Finance Act 1992](#) (c. 14), s. 14(3), [Sch. 4 para. 19\(1\)\(2\)\(3\)](#).

### Commencement Information

- II Act not in force at Royal Assent see [s. 8\(2\)](#); Act wholly in force at 3.6.1980.

### *Charging orders*

#### 1 Charging orders. **E+W**

- (1) Where, under a judgment or order of the High Court or a county court, a person (the “debtor”) is required to pay a sum of money to another person (the “creditor”) then, for the purpose of enforcing that judgment or order, the appropriate court may make an order in accordance with the provisions of this Act imposing on any such property of the debtor as may be specified in the order a charge for securing the payment of any money due or to become due under the judgment or order.
- (2) The appropriate court is—
  - (a) in a case where the property to be charged is a fund in court, the court in which that fund is lodged;

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*Changes to legislation: There are currently no known outstanding effects for the Charging Orders Act 1979. (See end of Document for details)*

- (b) in a case where paragraph (a) above does not apply and the order to be enforced is a maintenance order of the High Court, the High Court or a county court;
- (c) in a case where neither paragraph (a) nor paragraph (b) above applies and the judgment or order to be enforced is a judgment or order of the High Court for a sum exceeding [<sup>F1</sup>the county court limit], the High Court [<sup>F2</sup>or a county court]; and
- (d) in any other case, a county court.

In this section [<sup>F3</sup>“county court limit” means the county court limit for the time being specified in an Order in Council under [<sup>F4</sup>section 145 of the County Courts Act 1984] as the county court limit for the purposes of this section and] “maintenance order” has the same meaning as in section 2(a) of the <sup>M1</sup>Attachment of Earnings Act 1971.

- (3) An order under subsection (1) above is referred to in this Act as a “charging order”.
- (4) Where a person applies to the High Court for a charging order to enforce more than one judgment or order, that court shall be the appropriate court in relation to the application if it would be the appropriate court, apart from this subsection, on an application relating to one or more of the judgments or orders concerned.
- (5) In deciding whether to make a charging order the court shall consider all the circumstances of the case and, in particular, any evidence before it as to—
  - (a) the personal circumstances of the debtor, and
  - (b) whether any other creditor of the debtor would be likely to be unduly prejudiced by the making of the order.

#### Textual Amendments

- F1** Words in s. 1(2)(c) substituted for sum by [Administration of Justice Act 1982 \(c. 53, SIF 34\), s. 37, Sch. 3 paras. 2, 3\(b\)\(iv\)](#)
- F2** Words inserted by [Administration of Justice Act 1982 \(c. 53, SIF 34\), s. 34\(3\)](#)
- F3** Words inserted by [Administration of Justice Act 1982 \(c. 53, SIF 34\), s. 37, Sch. 3 para. 6](#)
- F4** Words substituted by [County Courts Act 1984 \(c. 28, SIF 34\), s. 148\(1\), Sch. 2 para. 71](#)

#### Modifications etc. (not altering text)

- C3** S. 1: definition of “charging order” applied (5.4.1993) by [Child Support Act 1991 \(c. 48, SIF 20\), s. 36\(2\)](#), (with s. 9(2)); [S.I. 1992/2644, art. 2](#)

#### Marginal Citations

- M1** 1971 c. 32.

## 2 Property which may be charged. **E+W**

- (1) Subject to subsection (3) below, a charge may be imposed by a charging order only on—
  - (a) any interest held by the debtor beneficially—
    - (i) in any asset of a kind mentioned in subsection (2) below, or
    - (ii) under any trust; or
  - (b) any interest held by a person as trustee of a trust (“the trust”), if the interest is in such an asset or is an interest under another trust and—

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- (i) the judgment or order in respect of which a charge is to be imposed was made against that person as trustee of the trust, or
  - (ii) the whole beneficial interest under the trust is held by the debtor unencumbered and for his own benefit, or
  - (iii) in a case where there are two or more debtors all of whom are liable to the creditor for the same debt, they together hold the whole beneficial interest under the trust unencumbered and for their own benefit.
- (2) The assets referred to in subsection (1) above are—
  - (a) land,
  - (b) securities of any of the following kinds—
    - (i) government stock,
    - (ii) stock of any body (other than a building society) incorporated within England and Wales,
    - (iii) stock of any body incorporated outside England and Wales or of any state or territory outside the United Kingdom, being stock registered in a register kept at any place within England and Wales,
    - (iv) units of any unit trust in respect of which a register of the unit holders is kept at any place within England and Wales, or
  - (c) funds in court.
- (3) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in paragraph (b) or (c) of subsection (2) above, the court making the order may provide for the charge to extend to any interest or dividend payable in respect of the asset.

### **3 Provisions supplementing sections 1 and 2. E+W**

- (1) A charging order may be made either absolutely or subject to conditions as to notifying the debtor or as to the time when the charge is to become enforceable, or as to other matters.
- (2) The <sup>M2</sup>Land Charges Act 1972 and the <sup>M3</sup>Land Registration Act 1925 shall apply in relation to charging orders as they apply in relation to other orders or writs issued or made for the purpose of enforcing judgments.
- (3) In section 49 of the Land Registration Act 1925 (protection of certain interests by notice) there is inserted at the end of subsection (1) the following paragraph—
  - “(g) charging orders (within the meaning of the Charging Orders Act 1979) which in the case of unregistered land may be protected by registration under the Land Charges Act 1972 and which, notwithstanding section 59 of this Act, it may be deemed expedient to protect by notice instead of by caution.”.
- (4) Subject to the provisions of this Act, a charge imposed by a charging order shall have the like effect and shall be enforceable in the same courts and in the same manner as an equitable charge created by the debtor by writing under his hand.
- (5) The court by which a charging order was made may at any time, on the application of the debtor or of any person interested in any property to which the order relates, make an order discharging or varying the charging order.

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- (6) Where a charging order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 1925, an order under subsection (5) above discharging the charging order may direct that the entry be cancelled.
- (7) The Lord Chancellor may by order made by statutory instrument amend section 2(2) of this Act by adding to, or removing from, the kinds of asset for the time being referred to there, any asset of a kind which in his opinion ought to be so added or removed.
- (8) Any order under subsection (7) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Modifications etc. (not altering text)

- C4** S. 3(1)(2)(4)(6) extended by [Insolvency Act 1986 \(c. 45, SIF 66\)](#), [s. 313\(4\)\(5\)](#) (s. 313(5) of the amending Act inserted (*prosp.*) by [2002 c. 40, ss. 261\(2\)\(c\)](#), 279 (with s. 249(6))
- C5** The text of s. 3(3) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1. 2. 1991

#### Marginal Citations

- M2** 1972 c. 61.  
**M3** 1925 c. 21.

PROSPECTIVE

### [<sup>F5</sup>3A Power to set financial thresholds **E+W**

- (1) The Lord Chancellor may by regulations provide that a charge may not be imposed by a charging order for securing the payment of money of an amount below that determined in accordance with the regulations.
- (2) The Lord Chancellor may by regulations provide that a charge imposed by a charging order may not be enforced by way of order for sale to recover money of an amount below that determined in accordance with the regulations.
- (3) Regulations under this section may—
  - (a) make different provision for different cases;
  - (b) include such transitional provision as the Lord Chancellor thinks fit.
- (4) The power to make regulations under this section is exercisable by statutory instrument.
- (5) The Lord Chancellor may not make the first regulations under subsection (1) or (2) unless (in each case) a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (6) A statutory instrument containing any subsequent regulations under those subsections is subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F5** S. 3A inserted (*prosp.*) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), [ss. 94](#), 148(5)

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4 .....<sup>F6</sup> **E+W**

**Textual Amendments**

**F6** S. 4 repealed by *Insolvency Act 1985* (c. 65, SIF 66), s. 235, **Sch. 10 Pt. III**

*Stop orders and notices*

**5 Stop orders and notices.** **E+W**

(1) In this section—

“stop order” means an order of the court prohibiting the taking, in respect of any of the securities specified in the order, of any of the steps mentioned in subsection (5) below;

“stop notice” means a notice requiring any person or body on whom it is duly served to refrain from taking, in respect of any of the securities specified in the notice, any of those steps without first notifying the person by whom, or on whose behalf, the notice was served; and

“prescribed securities” means securities (including funds in court) of a kind prescribed by rules of court made under this section.

(2) The power to make rules of court under section [<sup>F7</sup>84 of the Supreme Court Act 1981] shall include power by any such rules to make provision—

- (a) for the court to make a stop order on the application of any person claiming to be entitled to an interest in prescribed securities;
- (b) for the service of a stop notice by any person claiming to be entitled to an interest in prescribed securities.

(3) The power to make rules of court under [<sup>F8</sup>section 75 of the County Courts Act 1984] shall include power by any such rules to make provision for the service of a stop notice by any person entitled to an interest in any securities by virtue of a charging order made by a county court.

(4) Rules of court made by virtue of subsection (2) or (3) above shall prescribe the person or body on whom a copy of any stop order or a stop notice is to be served.

(5) The steps mentioned in subsection (1) above are—

- (a) the registration of any transfer of the securities;
- (b) in the case of funds in court, the transfer, sale, delivery out, payment or other dealing with the funds, or of the income thereon;
- (c) the making of any payment by way of dividend, interest or otherwise in respect of the securities; and
- (d) in the case of units of a unit trust, any acquisition of or other dealing with the units by any person or body exercising functions under the trust.

(6) Any rules of court made by virtue of this section may include such incidental, supplemental and consequential provisions as the authority making them consider necessary or expedient, and may make different provision in relation to different cases or classes of case.

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#### Textual Amendments

- F7** Words substituted by [Supreme Court Act 1981 \(c. 54, SIF 37\)](#), s. 153(2), [Sch. 5](#)  
**F8** Words substituted by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 148(1), [Sch. 2 para.72](#)

### Supplemental

## 6 Interpretation. **E+W**

(1) In this Act—

“building society” has the same meaning as in the <sup>M4</sup>Building Societies Act [<sup>F9</sup>1986];

“charging order” means an order made under section 1(1) of this Act;

“debtor” and “creditor” have the meanings given by section 1(1) of this Act;

“dividend” includes any distribution in respect of any unit of a unit trust;

“government stock” means any stock issued by Her Majesty’s government in the United Kingdom or any funds of, or annuity granted by, that government;

“stock” includes shares, debentures and any securities of the body concerned, whether or not constituting a charge on the assets of that body;

“unit trust” means any trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under the trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever.

(2) For the purposes of section 1 of this Act references to a judgment or order of the High Court or a county court shall be taken to include references to a judgment, order, decree or award (however called) of any court or arbitrator (including any foreign court or arbitrator) which is or has become enforceable (whether wholly or to a limited extent) as if it were a judgment or order of the High Court or a county court.

(3) References in section 2 of this Act to any securities include references to any such securities standing in the name of the Accountant General.

#### Textual Amendments

- F9** Words substituted by [Building Societies Act 1986 \(c. 53, SIF 16\)](#), [ss. 54\(3\)\(a\)\(5\)](#), 120, Sch. 18 Pt. I para. 14

#### Marginal Citations

- M4** [1986 c. 53\(16\)](#).

## 7 Consequential amendment, repeals and transitional provisions. **E+W**

- (1) ..... **F10**  
 (2) ..... **F11**

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- (3) Any order made or notice given under any enactment repealed by this Act or under any rules of court revoked by rules of court made under this Act (the “new rules”) shall, if still in force when the provisions of this Act or, as the case may be, the new rules come into force, continue to have effect as if made under this Act, or, as the case may be, under the new rules.
- (4) Any notice of such an order registered in the register maintained under the <sup>M5</sup>Land Registration Act 1925 which would have been registrable by virtue of the paragraph inserted in section 49(1) of that Act by section 3(3) of this Act, if section 3(3) had been in force when the notice was registered, shall have effect as if registered by virtue of that paragraph.

#### Textual Amendments

**F10** S. 7(1) repealed by County Courts Act 1984 (c. 28, SIF 34), s. 148(3), **Sch. 4**

**F11** S. 7(2) repealed by virtue of Supreme Court Act 1981 (c. 54, SIF 37), s. 153(2), **Sch. 7** and by County Courts Act 1984 (c. 28, SIF 34), s. 148(3), **Sch. 4**

#### Marginal Citations

**M5** 1925 c. 21.

## 8 Short title, commencement and extent. **E+W**

- (1) This Act may be cited as the Charging Orders Act 1979.
- (2) This Act comes into force on such day as the Lord Chancellor may appoint by order made by statutory instrument.
- (3) This Act does not extend to Scotland or Northern Ireland.

#### Modifications etc. (not altering text)

**C6** Power of appointment conferred by s. 8(2) fully exercised: 3. 6. 1980 appointed by [S.I. 1980/627](#)

**Status:**

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**Changes to legislation:**

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