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STATUTORY INSTRUMENTS

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**1993 No. 1516**

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

**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(1);

“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(2); 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.

(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(3),

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

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(1) 1970 c. 35.

(2) 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).

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

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–

- (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;”;

(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.”.

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