

SCHEDULE 2

CCR ORDER 31

CHARGING ORDERS

Application for charging order

Rule 1.—(1) An application to a county court for a charging order under section 1 of the Charging Orders Act 1979(1) may be made—

- (a) if the order is sought in respect of a fund in court, to the court where the money is lodged;
- (b) subject to (a), if the judgment or order sought to be enforced is that of a county court, to the court in which the judgment or order was obtained or, if the proceedings have been transferred to another court under CPR rule 30.2(1)(b)(ii) or Order 25, rule 2, the court to which it has been transferred.
- (c) subject to (a) and (b), to the court for the district in which the debtor resides or carries on business or, if there is no such district, to the court for the district in which the judgment creditor resides or carries on business.

(1A) An application for a charging order under paragraph 11 of Schedule 4 to the Local Government Finance Act 1992(2) shall be made to the court for the district in which the relevant dwelling (within the meaning of section 3 of that Act) is situated.

(2) The application may be made without notice being served on any other party by filing a witness statement or affidavit—

- (a) stating the name and address of the debtor and, if known, of every creditor of his whom the applicant can identify;
- (aa) certifying the amount of money remaining due under the judgment or order and that the whole or part of any instalment due remains unpaid;
- (b) identifying the subject matter of the intended charge;
- (c) either verifying the debtor's beneficial ownership of the asset to be charged or, where the asset is held by one or more trustees (including where the asset is land which is jointly owned) and the applicant relies on paragraph (b) of section 2 (1) of the said Act of 1979, stating on which of the three grounds appearing in that paragraph the application is based and verifying the material facts;
- (d) stating, in the case of securities other than securities in court, the name and address of the person or body to be served for the purpose of protecting the intended charge;
- (e) stating, where the subject matter is an interest under a trust, or held by a trustee, the names and addresses of such trustees and beneficiaries as are known to the applicant.

Where the judgment or order to be enforced is a judgment or order of the High Court or a judgment, order, decree or award of a court or arbitrator which is or has become enforceable as if it were a judgment or order of the High Court, the applicant shall file with his witness statement or affidavit the documents mentioned in Order 25, rule 11 (a) and (c), and the witness statement or affidavit shall verify the amount unpaid at the date of the application.

(3) Subject to paragraph (1), an application may be made for a single charging order in respect of more than one judgment or order against a debtor.

(1) 1979 c. 53; section 1 was amended by the Administration of Justice Act 1982 (c. 53) sections 34(3), 37, schedule 3, Part II, paragraphs 2, 3, 6; and by the County Courts Act 1984 (c. 28), section 148(1), schedule 2, Part V.

(2) 1992 c. 14.

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

(4) Upon the filing of the witness statement or affidavit mentioned in paragraph (2), the application shall be entered in the records of the court, and if, in the opinion of the district judge, a sufficient case for such an order is made in the witness statement or affidavit, the district judge shall make a charging order nisi fixing a day for the further consideration of the matter by the court.

(5) A copy of the order shall be sent by the court officer to the judgment creditor and, where funds in court are to be charged, shall be served by the court officer on the Accountant-General at the Court Funds Office.

(6) Copies of the order and of the witness statement or affidavit shall be served by the judgment creditor on—

- (a) the debtor;
- (b) the other creditors named in the witness statement or affidavit (unless the district judge otherwise directs); and
- (c) where a trust is involved, on any trustee holding the asset to be charged, where the applicant relies on paragraph (b) of section 2 (1) of the said Act of 1979 and on such other trustees and beneficiaries as the district judge may direct.

(7) Where an interest in securities not in court is to be charged, copies of the order nisi shall be served by the judgment creditor on the person or body required to be served in like circumstances by RSC Order 50, rule 2 (1)(b).

(8) The documents required by the foregoing paragraphs to be served shall be served in accordance with CPR Part 6 not less than 7 days before the day fixed for the further consideration of the matter.

(9) Upon further consideration of the matter service required under paragraph (6) or (7) shall be proved by witness statement or affidavit.

Order on further consideration of application for charging order

Rule 2.—(1) On the day fixed under rule 1 (4) for the further consideration of the matter, the court shall either make the order absolute, with or without modifications, or discharge it.

(2) If an order absolute is made, a copy shall be served by the court officer, in accordance with CPR Part 6 on each of the following persons, namely—

- (a) the debtor;
- (b) the applicant for the order;
- (c) where funds in court are charged, the Accountant General at the Court Funds Office; and
- (d) unless otherwise directed, any person or body on whom a copy of the order nisi was served pursuant to rule 1 (7).

(3) Every copy of an order served on a person or body under paragraph (2)(d) shall contain a stop notice.

Effect of charging order etc.

Rule 3.—(1) Where a charging order nisi or a charging order absolute has been made and served in accordance with rule 1 or 2, it shall have the same effect as an order made and served in like circumstances under RSC Order 50.

(2) The court may vary or discharge a charging order in the like circumstances and in accordance with the same procedure, with the necessary modifications, as a like order made by the High Court.

(3) The powers of the court under rule 2 or the last preceding paragraph, except the power to vary an order made by the judge, may be exercised by the district judge.

Enforcement of charging order by sale

Rule 4.—(1) Proceedings in a county court for the enforcement of a charging order by sale of the property charged shall be commenced by a claim form, which shall be filed in the appropriate court, together with a witness statement or affidavit and a copy thereof—

- (a) identifying the charging order sought to be enforced and the subject matter of the charge;
- (b) specifying the amount in respect of which the charge was imposed and the balance outstanding at the date of the application;
- (c) verifying, so far as known, the debtor's title to the property charged;
- (d) identifying any prior incumbrances on the property charged, with, so far as known, the names and addresses of the incumbrancers and the amounts owing to them; and
- (e) giving an estimate of the price which would be obtained on sale of the property.

(2) The appropriate court shall be—

- (a) if the charging order was made by a county court, that court;
- (b) in any other case, the court for the district in which the debtor resides or carries on business or, if there is no such district, the court for the district in which the judgment creditor resides or carries on business.

(3) A copy of the witness statement or affidavit filed under paragraph (1) shall be served on the respondent with a copy of the claim form and a notice to each respondent of the date of the hearing.

(4) The proceedings may be heard and determined by a district judge.

(5) The net proceeds of sale, after discharging any prior incumbrances and deducting the amount referred to in paragraph (1)(b) and the costs of the sale, shall be paid into court.