



# Charging Orders Act 1979

## 1979 CHAPTER 53

### *Charging orders*

#### **1 Charging orders.**

- (1) Where, under a judgment or order of the High Court [<sup>F1</sup>or the family court] or [<sup>F2</sup>the 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;
  - (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 [<sup>F3</sup>or an order for costs made in family proceedings in the High Court], the High Court or [<sup>F4</sup>the family] court;
  - [<sup>F5</sup>(ba) in a case where paragraph (a) does not apply and the order to be enforced is an order of the family court, the family court;]
  - (c) in a case where [<sup>F6</sup>none of paragraphs (a), (b) and (ba)] above applies and the judgment or order to be enforced is a judgment or order of the High Court for a sum exceeding [<sup>F7</sup>the county court limit], the High Court [<sup>F8</sup>or [<sup>F9</sup>the county court]]; and
  - (d) in any other case, [<sup>F9</sup>the county court].

In this section [<sup>F10</sup>“county court limit” means the county court limit for the time being specified in an Order in Council under [<sup>F11</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”.

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- (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.
- [<sup>F12</sup>(6) Subsections (7) and (8) apply where, under a judgment or order of the High Court [<sup>F13</sup>or the family court] or [<sup>F14</sup>the county court], a debtor is required to pay a sum of money by instalments.
- (7) The fact that there has been no default in payment of the instalments does not prevent a charging order from being made in respect of that sum.
- (8) But if there has been no default, the court must take that into account when considering the circumstances of the case under subsection (5).]
- [<sup>F15</sup>(9) In this section “family proceedings” means proceedings in the Family Division of the High Court which are business assigned, by or under section 61 of (and Schedule 1 to) the Senior Courts Act 1981, to that Division of the High Court and no other.]

#### Textual Amendments

- F1** Words in s. 1(1) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 10 para. 38(2)**; S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F2** Words in s. 1(1) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F3** Words in s. 1(2)(b) inserted (22.4.2014) by [The Crime and Courts Act 2013 \(Family Court: Consequential Provision\) Order 2014 \(S.I. 2014/605\)](#), arts. 1, **15**
- F4** Words in s. 1(2)(b) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 10 para. 38(3)**; S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F5** S. 1(2)(ba) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 10 para. 38(4)**; S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F6** Words in s. 1(2)(c) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 10 para. 38(5)**; S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F7** 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)**
- F8** Words inserted by [Administration of Justice Act 1982 \(c. 53, SIF 34\)](#), s. **34(3)**
- F9** Words in s. 1(2)(c)(d) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)
- F10** Words inserted by [Administration of Justice Act 1982 \(c. 53, SIF 34\)](#), s. 37, **Sch. 3 para. 6**
- F11** Words substituted by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 148(1), **Sch. 2 para. 71**

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- F12** S. 1(6)-(8) inserted (1.10.2012) by Tribunals, Courts and Enforcement Act 2007 (c. 15), **ss. 93(2)(6), 148; S.I. 2012/1312, art. 3**
- F13** Words in s. 1(6) inserted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 10 para. 38(2); S.I. 2014/954, art. 2(d) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)**
- F14** Words in s. 1(6) substituted (22.4.2014) by Crime and Courts Act 2013 (c. 22), s. 61(3), **Sch. 9 para. 52; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)**
- F15** S. 1(9) inserted (22.4.2014) by The Crime and Courts Act 2013 (Family Court: Consequential Provision) Order 2014 (S.I. 2014/605), arts. 1, **16**

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

- C1** 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.

- (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—
    - (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

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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.

- (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>F16</sup>Land Registration Act 2002] 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) <sup>F17</sup> .....
- (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.

[<sup>F18</sup>(4A) Subsections (4C) to (4E) apply where—

- (a) a debtor is required to pay a sum of money in instalments under a judgment or order of the High Court [<sup>F19</sup>or the family court] or [<sup>F20</sup>the county court] (an “instalments order”), and
- (b) a charge has been imposed by a charging order in respect of that sum.

(4B) In subsections (4C) to (4E) references to the enforcement of a charge are to the making of an order for the enforcement of the charge.

(4C) The charge may not be enforced unless there has been default in payment of an instalment under the instalments order.

(4D) Rules of court may—

- (a) provide that, if there has been default in payment of an instalment, the charge may be enforced only in prescribed cases, and
- (b) limit the amounts for which, and the times at which, the charge may be enforced.

(4E) Except so far as otherwise provided by rules of court under subsection (4D)—

- (a) the charge may be enforced, if there has been default in payment of an instalment, for the whole of the sum of money secured by the charge and the costs then remaining unpaid, or for such part as the court may order, but
- (b) the charge may not be enforced unless, at the time of enforcement, the whole or part of an instalment which has become due under the instalments order remains unpaid.]

(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.

(6) Where a charging order has been protected by an entry registered under the Land Charges Act 1972 or the [<sup>F16</sup>Land Registration Act 2002], an order under subsection (5) above discharging the charging order may direct that the entry be cancelled.

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- (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.

#### Textual Amendments

- F16** Words in s. 3(2)(6) substituted (13.10.2003) by [Land Registration Act 2002 \(c. 9\)](#), ss. 133, 136(2), [Sch. 11 para. 15](#) (with s. 129); [S.I. 2003/1725](#), [art. 2\(1\)](#)
- F17** S. 3(3) repealed (13.10.2003) by [Land Registration Act 2002 \(c. 9\)](#), ss. 135, 136(2), [Sch. 13](#) (with s. 129, [Sch. 12 para. 1](#)); [Sch. 11 para. 15](#) (with s. 129); [S.I. 2003/1725](#), [art. 2\(1\)](#)
- F18** S. 3(4A)-(4E) inserted (1.10.2012) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), ss. [93\(3\)\(6\)](#), 148; [S.I. 2012/1312](#), [art. 3](#)
- F19** Words in s. 3(4A)(a) inserted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 10 para. 38\(2\)](#); [S.I. 2014/954](#), [art. 2\(d\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)
- F20** Words in s. 3(4A)(a) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), [Sch. 9 para. 52](#); [S.I. 2014/954](#), [art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

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

- C2** 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 (1.4.2004) by [2002 c. 40](#), ss. 261(2)(c), 279 (with s. 249(6)); [S.I. 2003/2093](#), [art. 2\(2\)](#), [Sch. 2](#)

#### Marginal Citations

- M2** [1972 c. 61](#).

PROSPECTIVE

### [<sup>F21</sup>3A Power to set financial thresholds

- (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.

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- (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**

**F21** S. 3A inserted (prosp.) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), **ss. 94**, 148(5)

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.....<sup>F22</sup>

**Textual Amendments**

**F22** S. 4 repealed by [Insolvency Act 1985 \(c. 65, SIF 66\)](#), s. 235, **Sch. 10 Pt. III**

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