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STATUTORY INSTRUMENTS

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**2016 No. 1024**

**The Insolvency (England and Wales) Rules 2016**

**PART 10**

**BANKRUPTCY**

**CHAPTER 21**

Miscellaneous rules in bankruptcy

**Charging order**

**10.171.**—(1) This rule applies where the trustee applies to the court under section 313 for an order imposing a charge on property consisting of an interest in a dwelling-house.

(2) The respondents to the application must be—

- (a) any spouse or former spouse or civil partner or former civil partner of the bankrupt having or claiming to have an interest in the property;
- (b) any other person appearing to have an interest in the property; and
- (c) such other persons as the court may direct.

(3) The trustee must make a report to the court, containing the following particulars—

- (a) the extent of the bankrupt's interest in the property;
- (b) the amount which, at the date of the application, remains owing to unsecured creditors of the bankrupt; and
- (c) an estimate of the cost of realising the interest.

(4) The terms of the charge to be imposed must be agreed between the trustee and the bankrupt or in the absence of an agreement must be settled by the court.

(5) The rate of interest applicable under section 313(2) is the rate specified in section 17 of the Judgments Act 1838(1) on the day on which the charge is imposed, and the rate must be stated in the court's order imposing the charge.

(6) The court's order must also—

- (a) describe the property to be charged;
- (b) state whether the title to the property is registered and, if it is, specify the title number;
- (c) set out the extent of the bankrupt's interest in the property which has vested in the trustee;
- (d) indicate by reference to any, or the total, amount which is payable otherwise than to the bankrupt out of the bankrupt's estate and of interest on that amount, how the amount of the charge to be imposed is to be ascertained;

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(1) Section 17 is amended by the Statute Law Revision (No 2) Act 1888 (c.57), article 2 of S.I. 1993/564, article 3 of S.I. 1998/2940, Part 1 of the Schedule to the Civil Procedure Acts Repeal Act 1879 (c.59) and article 3(c) of S.I. 1998/3132.

- (e) set out the conditions (if any) imposed by the court under section 3(1) of the Charging Orders Act 1979<sup>(2)</sup>; and
- (f) identify the date any property charged under section 313 will cease to be comprised in the bankrupt's estate and will, subject to the charge (and any prior charge), vest in the bankrupt.

(7) The date referred to in paragraph (6)(f) must be that of the registration of the charge in accordance with section 3(2) of the Charging Orders Act 1979 unless the court is of the opinion that a different date is appropriate.

(8) Where the court order is capable of giving rise to an application under the Land Charges Act 1972 or the Land Registration Act 2002<sup>(3)</sup> the trustee must, as soon as reasonably practicable after the making of the court order or at the appropriate time, make the appropriate application to the Chief Land Registrar.

(9) The appropriate application is—

- (a) an application under section 6(1)(a) of the Land Charges Act 1972<sup>(4)</sup> (application for registration in the register of writs and orders affecting land); or
- (b) an application under the Land Registration Act 2002 for an entry in the register in relation to the charge imposed by the order; and such application under that Act as is necessary to show in the individual register or registers of the dwelling-house that the interest has vested in the bankrupt.

(10) In determining the value of the bankrupt's interest for the purposes of paragraph (6)(c), the court must disregard that part of the value of the property in which the bankrupt's interest subsists which is equal to the value of—

- (a) any loans secured by mortgage or other charge against the property;
- (b) any other third party interest; and
- (c) the reasonable costs of sale.

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(2) 1979 c.53.  
(3) 2002 c.9.  
(4) 1972 c.61.