
 STATUTORY INSTRUMENTS

1990 No. 2613

LAND REGISTRATION, ENGLAND AND WALES

The Land Registration (Charges) Rules 1990

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| <i>Made</i> - - - - | <i>19th December 1990</i> |
| <i>Laid before Parliament</i> | <i>8th January 1991</i> |
| <i>Coming into force</i> | <i>1st May 1991</i> |

The Lord Chancellor, with the advice and assistance of the Rule Committee appointed in pursuance of section 144 of the Land Registration Act 1925(a), in exercise of the powers conferred on him by that section, hereby makes the following Rules:-

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Land Registration (Charges) Rules 1990 and shall come into force on 1st May 1991.

(2) In these Rules:

- (a) “the principal rules” means the Land Registration Rules 1925(b);
- (b) a rule referred to by number means the rule so numbered in the principal rules.

New rule 139

2. The following rule shall be substituted for rule 139:

“Charges and incorporated documents

139.—(1) In this rule “incorporated document” means any separate document containing provisions intended by the parties to a charge on registered land to form part of the terms and conditions of the charge, which separate document is referred to in the charge, or in another incorporated document within the meaning hereof.

(2) A charge on registered land may be made by an instrument in Form 45 and a copy of the instrument of charge shall be delivered with it.

(3) Where a charge on registered land is not in Form 45 the requirement to deliver a copy of the instrument of charge extends to any incorporated document.

(4) The requirement in paragraph (3) to deliver an incorporated document shall be deemed to have been fulfilled if:

- (a) in the case where the incorporated document is in a standard form which the Registrar has approved for the purpose of this paragraph, the charge refers to the incorporated document by means of a description approved by the Registrar;
- (b) in the case of an incorporated document of a type approved by the Registrar, an undertaking has previously been given to the Registrar by the proprietor or intending proprietor of a charge (which undertaking has not been with-

(a) 1925 c21. (b) S.R. & O. 1925/1093, to which there are amendments not relevant to these Rules.

drawn) to deliver a copy of the terms of any particular incorporated document of that type when the Registrar so directs;

- (c) in the case of a particular incorporated document, the Registrar accepts or has accepted an undertaking by the proprietor or intending proprietor of a charge to deliver a copy of the terms of that incorporated document when the Registrar so directs.

(5) Application for the approval of the Registrar for the purposes of paragraph (4) may be made to the Registrar at any time and any approval given by the Registrar under that paragraph may be:

- (a) given subject to such conditions as he sees fit;
- (b) modified or withdrawn by the Registrar at any time, but, in the case of approval given under paragraph (4) (a), not so as to impose on any person obligation to lodge the incorporated document in any case where the charge has already been registered.

(6) An undertaking given to the Registrar pursuant to paragraph (4) (b) may be withdrawn by the person who has given it upon his delivering to the Registrar notice in writing identifying the relevant undertaking and specifying a date upon which the withdrawal is to be treated as coming into effect (being a date at least 14 days after the date upon which the notice is delivered to the Registrar) and thereupon the person who has given the undertaking shall be treated as having been discharged from it but only in respect of incorporated documents of the type to which the undertaking relates which are incorporated into charges lodged for registration after the date specified in the notice.

(7) In relation to any particular incorporated document a person who has given an undertaking pursuant to paragraph (4) (b) or paragraph (4) (c) or has already given an undertaking pursuant to sub-paragraph (b) of this paragraph shall be discharged from that undertaking:

- (a) upon his delivering to the Registrar a copy of the terms of the incorporated document; or
- (b) where some other person who the Registrar is satisfied is competent to do so gives an undertaking in the same terms in substitution for it; or
- (c) where the charge which incorporates the incorporated document has been wholly discharged.

(8) In relation to any particular incorporated document any person who has, pursuant to paragraph (4) (b), paragraph (4) (c) or paragraph (7) (b), given an undertaking which has not been withdrawn under paragraph (6) or in respect of which the person has not been discharged under paragraph (7), shall comply with it by delivering to the Registrar a copy of the terms of the incorporated document when directed by the Registrar."

New rule 139A

3.—(1) The following rule shall be inserted immediately after rule 139:

"Obligation to make further advances

139A.—(1) In this rule "incorporated document" has the same meaning as in Rule 139.

(2) The proprietor or intending proprietor of a charge who, under the terms of that charge, is under an obligation to make further advances may apply to the Registrar for a note of such obligation to be entered on the register for the purposes of section 30(3) of the Act.

(3) Except as provided in paragraph (4) below a separate application shall be made in Form 113.

(4) If a proprietor or intending proprietor of a charge so desires the application in Form 113 may be included in the instrument of charge or a deed of alteration of a registered charge but not in any incorporated document.

(5) The Registrar, on receipt of an application made under paragraph (3) or (4) above, shall give effect to it by adding a note to the entry of the charge in such terms as he considers appropriate, but he shall not be required to make any such note unless application is duly made in accordance with this rule."

(2) Form 113 in the Schedule to these rules shall be added at the end of the Schedule to the principal rules.

New rule 151

4. The following rule shall be substituted for rule 151:

"Discharge of a registered charge

151. A discharge wholly or in part of a registered charge shall be made by an instrument in Form 53 and shall:

- (a) where the proprietor of the charge is an individual, be signed by him;
- (b) where the proprietor of the charge is a company registered under the Companies Acts, be executed:
 - (i) under seal in accordance with section 74(1) of the Law of Property Act 1925; or
 - (ii) in accordance with section 36A of the Companies Act 1985; or
 - (iii) otherwise in such manner as the Registrar is satisfied may be authorised under its articles of association;
- (c) where the proprietor of the charge is any other corporate body, either:
 - (i) be executed under seal in accordance with section 74(1) of the Law of Property Act 1925; or
 - (ii) be signed or executed by such person as the Registrar is satisfied has authority, under the instrument or statute constituting or regulating the affairs of the proprietor or otherwise, to bind the proprietor in the discharge of the charge;

but the Registrar shall be at liberty to accept and act upon any other proof of satisfaction of a charge which he may deem sufficient."

Revocation

5. Rule 152 is revoked.

Dated 19th December 1990

Mackay of Clashfern, C.

THE SCHEDULE

FORM 113 — *Application to note an obligation to make further advances. (Rule 139A)*
[Heading as in Form 19]

[Under the provisions of the charge dated (*date*) made between (*parties*)] (*description of the lender as shown in the charge*) is under an obligation to make further advances and application is made to the Registrar for a note to be entered on the register to that effect.

(To be signed by the applicant or his solicitor if the application is not contained in the instrument of charge or deed of alteration thereof)

Note:— The heading and the words in square brackets may be omitted where the application is contained in the instrument of charge or deed of alteration thereof under which the obligation arises.

EXPLANATORY NOTE

(This note does not form part of the Rules)

These Rules:

(1) substitute a new rule 139 of the Land Registration Rules 1925 to take account of the change in style of mortgage documentation and to provide a procedure for the registration of charges which incorporate other documents by reference in the charge deed. These incorporated documents will no longer need to be produced to the Registrar on the registration of a charge provided an undertaking for the production of the document or a particular type of document has been given by the chargee (or the transferee of a charge) to the Registrar, and has not been withdrawn.

(2) provide for a new rule, 139A, which prescribes the procedure and a new Form 113, for an application by a chargee for the entry on the register of a note of an obligation to make a further advance under a charge pursuant to section 30(3) of the Land Registration Act 1925.

(3) substitute a new rule 151 which simplifies the procedure for the discharge of a registered charge. The new rule re-enacts the provisions for the discharge of a charge owned by an individual and prescribes the procedure for charges owned by companies registered in Great Britain and for other corporate bodies for which no express general provision had previously been made. As the rule now covers all corporate bodies rule 152, which formerly prescribed the procedure for the discharge of mortgages of which Building, Friendly or Industrial or Provident Societies were the proprietors, has been revoked.