



# Charging Orders Act 1979

## 1979 CHAPTER 53

An Act to make provision for imposing charges to secure payment of money due, or to become due, under judgments or orders of court; to provide for restraining and prohibiting dealings with, and the making of payments in respect of, certain securities and for connected purposes. [6th December 1979]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Charging orders*

#### **1 Charging orders**

- (1) Where, under a judgment or order of the High Court or a 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, the High Court or a county court;
  - (c) in a case where neither paragraph (a) nor paragraph (b) above applies and the judgment or order to be enforced is a judgment or order of the High Court for a sum exceeding £2,000, the High Court; and
  - (d) in any other case, a county court.

In this section " maintenance order " has the same meaning as in section 2(a) of the Attachment of Earnings Act 1971.

- (3) An order under subsection (1) above is referred to in this Act as a " charging order ".
- (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.

## **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 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 Land Charges Act 1972 and the Land Registration Act 1925 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) In section 49 of the Land Registration Act 1925 (protection of certain interests by notice) there is inserted at the end of subsection (1) the following paragraph—
  - “(g) charging orders (within the meaning of the Charging Orders Act 1979) which in the case of unregistered land may be protected by registration under the Land Charges Act 1972 and which, notwithstanding section 59 of this Act, it may be deemed expedient to protect by notice instead of by caution.”
- (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.
- (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 Land Registration Act 1925, an order under subsection (5) above discharging the charging order may direct that the entry be cancelled.
- (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.

### **4 Completion of execution**

In section 40 of the Bankruptcy Act 1914 and in section 325 of the Companies Act 1948 (which restrict the rights of creditors under execution or attachment) there is substituted, in each case for subsection (2), the following subsection: —

- “(2) For the purposes of this Act—
- (a) an execution against goods is completed by seizure and sale or by the making of a charging order under section 1 of the Charging Orders Act 1979 ;
  - (b) an attachment of a debt is completed by the receipt of the debt; and
  - (c) an execution against land is completed by seizure, by the appointment of a receiver, or by the making of a charging order under the said section 1.”

### *Stop orders and notices*

## **5 Stop orders and notices**

(1) In this section—

" stop order " means an order of the court prohibiting the taking, in respect of any of the securities specified in the order, of any of the steps mentioned in subsection (5) below;

" stop notice " means a notice requiring any person or body on whom it is duly served to refrain from taking, in respect of any of the securities specified in the notice, any of those steps without first notifying the person by whom, or on whose behalf, the notice was served; and

" prescribed securities " means securities (including funds in court) of a kind prescribed by rules of court made under this section.

(2) The power to make rules of court under section 99 of the Supreme Court of Judicature (Consolidation) Act 1925 shall include power by any such rules to make provision—

- (a) for the court to make a stop order on the application of any person claiming to be entitled to an interest in prescribed securities;
- (b) for the service of a stop notice by any person claiming to be entitled to an interest in prescribed securities.

(3) The power to make rules of court under section 102 of the County Courts Act 1959 shall include power by any such rules to make provision for the service of a stop notice by any person entitled to an interest in any securities by virtue of a charging order made by a county court.

(4) Rules of court made by virtue of subsection (2) or (3) above shall prescribe the person or body on whom a copy of any stop order or a stop notice is to be served.

(5) The steps mentioned in subsection (1) above are—

- (a) the registration of any transfer of the securities;
- (b) in the case of funds in court, the transfer, sale, delivery out, payment or other dealing with the funds, or of the income thereon;
- (c) the making of any payment by way of dividend, interest or otherwise in respect of the securities; and
- (d) in the case of units of a unit trust, any acquisition of or other dealing with the units by any person or body exercising functions under the trust.

(6) Any rules of court made by virtue of this section may include such incidental, supplemental and consequential provisions as the authority making them consider necessary or expedient, and may make different provision in relation to different cases or classes of case.

### *Supplemental*

## **6 Interpretation**

(1) In this Act—

" building society " has the same meaning as in the Building Societies Act 1962;

" charging order " means an order made under section 1(1) of this Act;

"debtor" and "creditor" have the meanings given by section 1(1) of this Act;

"dividend" includes any distribution in respect of any unit of a unit trust;

"government stock" means any stock issued by Her Majesty's government in the United Kingdom or any funds of, or annuity granted by, that government;

"stock" includes shares, debentures and any securities of the body concerned, whether or not constituting a charge on the assets of that body;

"unit trust" means any trust established for the purpose, or having the effect, of providing, for persons having funds available for investment, facilities for the participation by them, as beneficiaries under the trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever.

- (2) For the purposes of section 1 of this Act references to a judgment or order of the High Court or a county court shall be taken to include references to a judgment, order, decree or award (however called) of any court or arbitrator (including any foreign court or arbitrator) which is or has become enforceable (whether wholly or to a limited extent) as if it were a judgment or order of the High Court or a county court.
- (3) References in section 2 of this Act to any securities include references to any such securities standing in the name of the Accountant General.

## **7 Consequential amendment, repeals and transitional provisions**

- (1) In section 192 of the County Courts Act 1959 (power to raise limits of jurisdiction) subsection (2) (as substituted by section 10 of the Administration of Justice Act 1969) is amended by inserting, at the end, the following paragraph—

“(e) section 1(2)(c) of the Charging Orders Act 1979”.
- (2) Section 35 of the Administration of Justice Act 1956 and section 141 of the County Courts Act 1959 (which relate to the powers of courts to make charging orders) are hereby repealed; and in section 36(2) and (3) of the Act of 1956 and section 142(2) and (3) of the Act of 1959 for the words "the last preceding section" (in section 36) and "the last foregoing section" (in section 142) there are substituted, in each case, the words "section 1 of the Charging Orders Act 1979".
- (3) Any order made or notice given under any enactment repealed by this Act or under any rules of court revoked by rules of court made under this Act (the "new rules") shall, if still in force when the provisions of this Act or, as the case may be, the new rules come into force, continue to have effect as if made under this Act or, as the case may be, under the new rules.
- (4) Any notice of such an order registered in the register maintained under the Land Registration Act 1925 which would have been registrable by virtue of the paragraph inserted in section 49(1) of that Act by section 3(3) of this Act, if section 3(3) had been in force when the notice was registered, shall have effect as if registered by virtue of that paragraph.

## **8 Short title, commencement and extent**

- (1) This Act may be cited as the Charging Orders Act 1979.

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

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- (2) This Act comes into force on such day as the Lord Chancellor may appoint by order made by statutory instrument.
- (3) This Act does not extend to Scotland or Northern Ireland.