



Health And Social Services And Social Security Adjudications Act 1983

1983 CHAPTER 41

PART VII

CHARGES FOR LOCAL AUTHORITY SERVICES

23 Arrears of contributions secured over interest in land in Scotland.

- (1) Subject to subsection (2) below, where a person (hereinafter referred to as the debtor) who avails himself of Part III accommodation provided by a local authority in Scotland, England or Wales—
- (a) fails to pay any sum (hereinafter referred to as the debt) assessed as due to be paid by him for the accommodation; and
 - (b) has an interest in land in Scotland ([^{F1}“an interest in land” meaning land or,] as defined in section 9(8) of the ^{M1}Conveyancing and Feudal Reform (Scotland) Act 1970[^{F2}, a real right in land]),

the local authority may make in their favour and record in the General Register of Sasines or, as appropriate, register in accordance with the [^{F3}Land Registration etc. (Scotland) Act 2012] an order (hereinafter referred to as a charging order) over that interest in land in respect of the amount of that debt.

- (2) In the case of a debtor who has more than one interest in land a charging order shall be over such one of those interests as the local authority may determine.

[^{F4}(2A) In determining whether to exercise their power under subsection (1) above and in making any determination under subsection (2) above, the local authority shall comply with any directions given to them by the Secretary of State as to the exercise of those functions.]

[^{F5}(2B) A local authority in England may not make, or be required by directions under subsection (2A) to make, a charging order on or after the day on which section 1 of the Care Act 2014 came into force.]

Changes to legislation: *Health And Social Services And Social Security Adjudications Act 1983, Section 23 is up to date with all changes known to be in force on or before 16 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (3) On being so recorded or, as the case may be, registered, a charging order over an interest in land shall create a right which shall be deemed to have been granted by the debtor in favour of the local authority over that interest for the purpose [^{F6}mentioned in subsection (3A) or (as the case may be) (3B) below.]
- [^{F7}(3A) Where the charging order is made by a local authority in Scotland or Wales, the purpose referred to in subsection (3) above is the purpose of securing any debt due or to become due by the debtor to the local authority in respect of the provision of the Part III accommodation referred to in subsection (1) above, with interest on that amount as specified in section 24.
- (3B) Where the charging order is made by a local authority in England, the purpose referred to in subsection (3) above is the purpose of securing any debt due or to become due by the debtor to the local authority—
- (a) in respect of the provision of the Part III accommodation referred to in subsection (1) above, or
 - (b) under Part 1 of the Care Act 2014 in respect of meeting needs for care and support by the provision of accommodation for the person, including anything provided in connection with that accommodation,
- in either case, with interest on that amount as specified in section 24.
- (3C) A local authority that records or registers a charging order as mentioned in subsection (1) above shall—
- (a) intimate to the debtor in writing that they have made and recorded or registered the order, and
 - (b) inform the debtor of the order's effect.]

[^{F8}(4) Where an interest in land (as defined in subsection (1)(b) above) over which a charging order is made is an interest to which the debtor does not have a completed title, the order shall be as valid as if the debtor had such title.]

(5) Charging orders and the discharge thereof shall be in such form or forms as the Secretary of State may by order prescribe and he may also by order make provision for ascertaining the amount due under the charging order at any time.

(6) The provisions of Part II of the said Act of 1970 shall apply to a charging order under this section as if it were a standard security in a form prescribed in Schedule 2 to that Act to such extent and with such modifications as the Secretary of State may by order prescribe.

(7) The power to make an order under subsections (5) and (6) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

- F1** Words in s. 23(1)(b) inserted (S.) (28.11.2004) by [Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#), ss. 122(1), 129(2), [Sch. 14 para. 9\(a\)\(i\)](#) (with ss. 119, 121) (see S.S.I. 2003/456, art. 2)
- F2** Words in s. 23(1)(b) inserted (S.) (28.11.2004) by [Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#), ss. 122(1), 129(2), [Sch. 14 para. 9\(a\)\(ii\)](#) (with ss. 119, 121) (see S.S.I. 2003/456, art. 2)
- F3** Words in s. 23(1) substituted (S.) (8.12.2014) by [Land Registration etc. \(Scotland\) Act 2012 \(asp 5\)](#), ss. 122, 123, [Sch. 5 para. 25](#) (with s. 121, [Sch. 4 paras. 13, 16](#)); S.S.I. 2014/127, art. 2

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- F4** S. 23(2A) inserted (12.4.1993) by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), **s. 45(2)**; S.I. 1992/2975, **art. 2(3)(a)**
- F5** S. 23(2B) inserted (1.4.2015) by The Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (S.I. 2015/914), art. 1(2), **Sch. para. 33(2)** (with arts. 1(3), 3)
- F6** Words in s. 23(3) substituted (1.4.2015) by The Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (S.I. 2015/914), art. 1(2), **Sch. para. 33(3)** (with arts. 1(3), 3)
- F7** S. 23(3A)-(3C) inserted (1.4.2015) by The Care Act 2014 and Children and Families Act 2014 (Consequential Amendments) Order 2015 (S.I. 2015/914), art. 1(2), **Sch. para. 33(3)** (with arts. 1(3), 3)
- F8** S. 23(4) substituted (S.) (28.11.2004) by Title Conditions (Scotland) Act 2003 (asp 9), ss. 122(1), 129(2), **Sch. 14 para. 9(b)** (with ss. 119, 121) (see S.S.I. 2003/456, art. 2)

Commencement Information

- I1** S. 23 wholly in force at 12.4.1993 see s. 32(2) and S.I. 1992/2974, art. 2, **Sch.**

Marginal Citations

- M1** 1970 c. 35.

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Commencement Orders yet to be applied to the Health And Social Services And Social Security Adjudications Act 1983

Commencement Orders bringing legislation that affects this Act into force:

- [S.I. 2004/288 art. 2-6](#) commences (2003 c. 43)
- [S.I. 2004/480 art. 2-5](#) commences (2003 c. 43)
- [S.I. 2004/1009 art. 2](#) commences (2003 c. 43)
- [S.I. 2004/1019 art. 2](#) commences (2003 c. 43)
- [S.I. 2005/2897 art. 2](#) commences (2002 c. 38)
- [S.I. 2005/2925 art. 24-11](#) commences (2003 c. 43)
- [S.I. 2006/345 art. 2-7](#) commences (2003 c. 43)
- [S.I. 2009/3074 art. 23](#) commences (2008 c. 4)
- [S.I. 2011/849 art. 2](#) commences (2010 nawm 2)
- [S.S.I. 2009/267 art. 2](#) commences (2007 asp 4)