



Companies House
— *for the record* —

Company Charges and Mortgages (Scotland)

August 2003

Company Charges (Scotland)

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This is a guide only and should be read with the relevant legislation.

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Introduction

Companies registered in Scotland sometimes create a charge that must be registered. If so, they must deliver details of it, together with any document creating or giving evidence of it, to the Registrar of Companies in Edinburgh.

The documents must be delivered within **21** days after the creation of the mortgage or charge to ensure its security in the event of liquidation. A court order may be required to enable Registration outside the 21-day limit.

This booklet is a guide to help companies or any interested parties to send their documents correctly first time.

Companies need not notify the Registrar when they pay off (or 'satisfy') a registered charge. But it is in their best interests to do so, and we enable companies to do this if they wish. This booklet explains how.

The registration of charges is covered by Part XII of the Companies Act 1985.

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CHAPTER 1

Registration of mortgages and charges

1. What are mortgages and charges?

A **charge** is security for the payment of a debt or other obligation that does not pass 'property' or any right to possession to the person to whom the charge is given.

2. What charges must be registered?

Section 410 of the Companies Act lists the charges that must be registered in Scotland. The box on the following page lists them and gives a brief explanation of each.

3. How much does each registration cost?

There is a fee of **£10** for registering each Form 410, 413, 416 and 466 delivered to Companies House. The fee also applies to Slavenburg charges (see [question 12](#)). There is no fee for registering a declaration of satisfaction (Form 419a).

There is a fee of **£25** for a copy of a certificate of registration. These are available from the [Postal Search Section](#) at [Companies House, Edinburgh](#).

The following require registration in Scotland:

- A charge to secure any issue of debentures. *A debenture is an instrument issued by a company as evidence of a debt or other obligation. It includes debenture stock, bonds and any other securities of a company, whether or not it forms a charge on the assets of the company.*
- A charge on uncalled share capital of the company. *Uncalled share capital is the balance owing for shares that are issued partly paid.*
- A charge on land (wherever situated), or any interest in it, but not a charge for any rent or other periodical sum arising from land. Technically, land includes property.
- A charge on book debts of the company. *Book debts are debts that in the ordinary course of a company's business are commonly entered in its books.*
- A floating charge on the company's undertaking or property. *A floating charge is a charge that does not affect the assets charged until some event crystallises the charge, fixing it to a certain point in time.*
- A charge on calls made but not paid. *Calls made are demands for payment of any part of the balance owing in respect of shares which are issued partly paid.*
- A charge on a ship or aircraft or any share in a ship.
- A charge on goodwill, on a patent or a licence under a patent, on a trademark or on a copyright or a licence under a copyright.

4. What do 'instrument' and 'evidence' mean in this chapter?

An 'instrument' is usually a document in legible form but it can also exist in electronic form.

To 'evidence' means to provide proof of the existence of something.

5. Which form should I use?

The form numbers in this table correspond to the relevant sections of the Companies Act 1985. Those for which a registration fee is charged are marked *.

Purpose	Form Number
Particulars of a mortgage or charge	410*
Particulars for the registration of a charge to secure a series of debentures	413*
Particulars of an issue of secured debentures in a series	413a
Particulars of a mortgage or charge subject to which property has been acquired	416*
Declaration of satisfaction in full or in part of a mortgage or charge	419a
Declaration that part of the property or undertaking charged: (a) has been released from the charge; (b) no longer forms part of the company's property or undertaking	419b
Particulars of an instrument of alteration to a floating charge	466*
Notice of appointment of a receiver by the Holder of the floating charge	Form 1 (Scot)
Notice of appointment of a receiver by the Court	Form 2 (Scot)
Notice of receiver ceasing to act	Form 3 (Scot)

6. How do I get it right first time?

- Select the **correct** form to send to the **correct** registration office - The Edinburgh office only - and follow any notes on the form itself. Act as quickly as possible: you have only 21 days from the date of creation of the charge to register the **correct** details.

Extensions of time to allow for postal delays apply only if a charge is created outside the UK over property outside the UK. In that case, the 21 days runs from the date when the instrument creating or evidencing the charge, or a copy of it, could have been received in the UK in the normal course of post, assuming it was despatched with due diligence.

- Send the certified copy of the instrument creating or evidencing the charge with the form, if there is an instrument, as there usually will be. An instrument does not have to be sealed. Unsealed, it will be valid if it is signed by a director and the company secretary, or by two directors.

The instrument must be a certified copy of the original instrument.

- Make sure the details on the form are correct and match the instrument. If we find errors, the presenter must authorise their correction and, if necessary, deliver new forms within the 21-day time limit. If necessary, we will return certificates, instruments and documents to the presenter named on the charge form itself. Please ensure this information is complete and accurate.
- Make sure the company name and number are correct. Remember that a company name is only changed on the day the change-of-name certificate is issued by Companies House.
- Make sure the creation date and description of the charge agree with the instrument, except in the case of charges over land when it is the date of presentation at the Land Registry or Register of Sasines.
- Make sure the amount secured accurately reflects what is stated in the instrument.
- Make sure the name of the chargee matches the instrument. ('Chargee' means the person to whom property is charged.)
- Make sure the short details of the property charged accurately reflect what is stated in the instrument.
- For registered land it is desirable that you give the title number of the property. Ensure that charging clauses are always inserted, including reference to fixed and floating charges.
- Sign and date the form.
- Complete the forms legibly using black ink or, preferably, type the form. Forms are reproduced electronically so that the public can inspect them. The Registrar may refuse documents that are not suitable for scanning and reproduction.

Please note If you omit or mis-state any detail in the documents registered, then you should apply to the court to correct it under section 420 of the Act: Rectification of register of charges.

7. What happens when the application for registration reaches Companies House?

If the document is acceptable, we take details from it to produce a certificate of registration and record an entry on the register of charges. We return the certificate and instrument to the presenter, and scan and record the form, copy certificate and register entry.

8. What if Companies House has cause to query the application?

We will contact the presenter with any queries. If the form needs to be corrected, it must be done within the 21-day time limit.

9. What if the charge is not registered in time?

If a registrable charge is not registered in time, then it is void against the [liquidator or administrator](#) and any creditor of the company. This means that the debt for which the charge was given will remain payable, but it will be unsecured.

If a company fails to deliver a registrable charge, and no interested party has registered it, then the company and every officer of the company who is in default are liable to a fine. If the default continues, they are liable to a daily default fine.

Can a charge be registered out of time?

Only the court can grant an extension of time for registration of a charge that was not received in time and correct. The normal time limit is 21 days from the date of creation of the charge.

10. What must I do if my company acquires property that is already charged?

If the charge is of a type which the company would have had to register if it had created the charge itself, then it must notify the fact that it has acquired this property. To do this the company must complete and send Form 416 to Companies House, with a certified copy of any instrument that created or evidenced the charge.

This must be done within 21 days after the company completed the acquisition of the property. If the charged property is outside the UK and the charge was created outside the UK, the 21 days runs from the date when the copy instrument could have been received in the UK in the normal course of post, assuming that it had been despatched with due diligence.

Late delivery of the details on [Form 416](#) is an offence. The company and every officer of it who is in default are liable to a fine. If the default continues, they are liable to a daily default fine.

11. What rights has the chargee?

If the company does not send us a charge for registration, then the chargee (the person to whom property is charged) - or some other interested person - can register the required documents. In certain circumstances a chargee can appoint [a receiver](#) or manager, or ask the court to appoint a receiver or manager, over the property charged - for example, if the company defaults in payment of the debt secured by the charge. The chargee must notify the appointment to Companies House within 7 days using Forms 1(Scot) or 2(Scot). We will then enter this in the register of charges.

On ceasing to act, a receiver or manager must notify us using [Form 3 \(Scot\)](#). We will then enter the fact in the register of charges. See our booklet, '[Liquidation and Insolvency \(Scotland\)](#)', for more information on receivers and managers.

12. What about overseas companies?

An overseas company is a company incorporated outside Great Britain. Channel Island and Isle of Man companies that send charges for registration are treated as [overseas companies](#).

If an overseas company has a branch or other place of business in Scotland and is [registered](#) at Companies House, it must register charges created by it. This includes:

- charges over property in Scotland; and
- property in Scotland acquired by the company that is already subject to a registrable charge.

All the other provisions mentioned in this chapter which apply to charges over property in Scotland in the also apply to overseas companies, including the [fee](#) for registration.

Slavenburg companies

Some overseas companies which have established a branch or place of business in Scotland fail to register here, as required by the Companies Act 1985. Despite this, the requirements mentioned above apply to such overseas companies as if they had in fact registered here. This was decided in the so-called 'Slavenburg' case.

In other words, a charge created by such a company and charging property in Scotland should be sent to Companies House. Likewise, property in Scotland acquired by such a company which is already subject to a registrable charge must also be registered.

On receipt of the documents, together with the [fee](#) for registration, Companies House enters brief details on the Slavenburg register in respect of the company by reference to the date of delivery of the particulars.

Forms [410](#), [413](#), [416](#) or [466](#), the certified copy deed and the statutory fee of £10 must reach Companies House within 21 days after the creation of the charge or the acquisition of the property, as the case may be. On receipt, details of the charge will be entered on the Slavenburg register in respect of the company by reference to the date of delivery. Companies House will then issue a letter to the presenter that should be retained as proof that the charge has been presented to the Registrar.

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CHAPTER 2

Satisfaction of charges

1. What should I do when the charge is paid off (or 'satisfied')?

The company need not inform Companies House that a charge has been fully or partly satisfied. However, it is obviously in the company's own interests that potential investors and lenders know that all or part of the debt has been paid off. A director or secretary of the company may therefore make a statutory declaration on [Form 419a](#) before a Commissioner for Oaths or equivalent, and send it to us.

2. What if charged property ceases to be charged or to belong to the company?

As with partly or fully paid-off charges, the company need not inform Companies House that its property has been released from a charge or that the property no longer belongs to the company. However, it is obviously in the company's interests that potential investors and lenders should know. A director or secretary of the company may therefore make a statutory declaration on [Form 419b](#) before a Commissioner for Oaths or equivalent, and send it to us.

3. Is there a fee for registering Forms 419a or 419b?

No.

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CHAPTER 3

Further information

1. What if I have a query about registration?

Our charges staff will willingly answer general queries but not legal points, which should be addressed in the first instance to a solicitor.

The usual telephone number of our charges staff is: 0131 535 5847

The contact point for oversea and Slavenburg companies is as above.

2. Where do I get forms and guidance booklets?

This is one of a series of Companies House booklets which provide a simple guide to the Companies Act.

[Statutory forms](#) and [guidance booklets](#) are available, free of charge from Companies House. The quickest way to get them is through this website or by telephoning 0870 3333636.

If you prefer you can write to our stationery sections in [Cardiff](#) or [Edinburgh](#).

Forms can also be obtained from legal stationers, accountants, solicitors and company formation agents - addresses in business phone books.

3. How do I send information to the Registrar?

You may deliver documents to the Registrar by post, by hand (personally or by courier) or by the Hays Document Exchange service.

The Registrar of Companies

Companies House

37 Castle Terrace

Edinburgh

EH1 2EB

DX ED235 Edinburgh 1

We will only acknowledge receipt of documents at Companies House if you provide a stamped addressed envelope.

Please note: Companies House does not accept accounts or any other statutory documents by fax.

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