

INTERIM REMEDIES AND SECURITY FOR COSTS

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I INTERIM REMEDIES

20.1 Scope of this Part

The rules in this Part do not apply to proceedings in a magistrates' court.

20.2 Orders for interim remedies

- (1) The court may grant the following interim remedies –
- (a) an interim injunction^(GL);
 - (b) an interim declaration;
 - (c) an order –
 - (i) for the detention, custody or preservation of relevant property;
 - (ii) for the inspection of relevant property;
 - (iii) for the taking of a sample of relevant property;
 - (iv) for the carrying out of an experiment on or with relevant property;
 - (v) for the sale of relevant property which is of a perishable nature or which for any other good reason it is desirable to sell quickly; and
 - (vi) for the payment of income from relevant property until an application is decided;
 - (d) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under sub-paragraph (c);
 - (e) an order under section 4 of the Torts (Interference with Goods) Act 1977¹ to deliver up goods;
 - (f) an order (referred to as a 'freezing injunction^(GL)') –
 - (i) restraining a party from removing from the jurisdiction assets located there; or
 - (ii) restraining a party from dealing with any assets whether located within the jurisdiction or not;

¹ 1977 c. 32.

- (g) an order directing a party to provide information about the location of relevant property or assets or to provide information about relevant property or assets which are or may be the subject of an application for a freezing injunction^(GL);
 - (h) an order (referred to as a 'search order') under section 7 of the Civil Procedure Act 1997¹ (order requiring a party to admit another party to premises for the purpose of preserving evidence etc.);
 - (i) an order under section 34 of the Senior Courts Act 1981² or section 53 of the County Courts Act 1984³ (order in certain proceedings for disclosure of documents or inspection of property against a non-party);
 - (j) an order for a specified fund to be paid into court or otherwise secured, where there is a dispute over a party's right to the fund;
 - (k) an order permitting a party seeking to recover personal property to pay money into court pending the outcome of the proceedings and directing that, if money is paid into court, the property must be given up to that party;
 - (l) an order directing a party to prepare and file accounts relating to the dispute;
 - (m) an order directing any account to be taken or inquiry to be made by the court.
- (2) In paragraph (1)(c) and (g), 'relevant property' means property (including land) which is the subject of an application or as to which any question may arise on an application.
- (3) The fact that a particular kind of interim remedy is not listed in paragraph (1) does not affect any power that the court may have to grant that remedy.

20.3 Time when an order for an interim remedy may be made

- (1) An order for an interim remedy may be made at any time, including –
- (a) before proceedings are started; and
 - (b) after judgment has been given.

(Rule 5.3 provides that proceedings are started when the court issues an application form.)

- (2) However –
- (a) paragraph (1) is subject to any rule, practice direction or other enactment which provides otherwise; and
 - (b) the court may grant an interim remedy before an application has been started only if –
 - (i) the matter is urgent; or
 - (ii) it is otherwise desirable to do so in the interests of justice.
- (3) Where the court grants an interim remedy before an application has been started, it will give directions requiring an application to be started.
- (4) The court need not direct that an application be started where the application is made under section 33 of the Senior Courts Act 1981 or section 52 of the County Courts Act 1984⁴ (order for disclosure, inspection etc. before starting an application).

1 Section 7 of the Civil Procedure Act 1997 (c.12) was amended by section 261(1) of and paragraph 154 of Schedule 27 to the Civil Partnership Act 2004.

2 1981 c.54. Section 34 was amended by section 148(3) of and Schedule 4 to the County Courts Act 1984 and article 5(b) of the Civil Procedure (Modification of Enactments) Order 1998 (S.I. 1998/2940).

3 Section 53 was amended by article 6(c)(i) of the Civil Procedure (Modification of Enactments) Order 1998 and section 10 of and paragraph 2(2) of Schedule 2 to the Civil Procedure Act 1997 (c.12) and by section 125(3) of and paragraph 44 of Schedule 18 to the Courts and Legal Services Act 1990.

4 Section 52 was amended by section 10 of and paragraph 2(2) of Schedule 2 to the Civil Procedure Act 1997 and by article 6(b) of the Civil Procedure (Modification of Enactments) Order 1998 and by section 125(3) of and paragraph 43 of Schedule 18 to the Courts and Legal Services Act 1990.

20.4 How to apply for an interim remedy

- (1) The court may grant an interim remedy on an application made without notice if it appears to the court that there are good reasons for not giving notice.
- (2) An application for an interim remedy must be supported by evidence, unless the court orders otherwise.
- (3) If the applicant makes an application without giving notice, the evidence in support of the application must state the reasons why notice has not been given.

(Part 4 lists general case-management powers of the court.)

(Part 18 contains general rules about making an application.)

20.5 Interim injunction to cease if application is stayed

If –

- (a) the court has granted an interim injunction^(GL) other than a freezing injunction^(GL); and
- (b) the application is stayed^(GL) other than by agreement between the parties, the interim injunction^(GL) will be set aside^(GL) unless the court orders that it should continue to have effect even though the application is stayed^(GL).

II SECURITY FOR COSTS

20.6 Security for costs

- (1) A respondent to any application may apply under this Chapter of this Part for security for costs of the proceedings.

(Part 4 provides for the court to order payment of sums into court in other circumstances.)

- (2) An application for security for costs must be supported by written evidence.
- (3) Where the court makes an order for security for costs, it will –
 - (a) determine the amount of security; and
 - (b) direct –
 - (i) the manner in which; and
 - (ii) the time within which, the security must be given.

20.7 Conditions to be satisfied

- (1) The court may make an order for security for costs under rule 20.6 if –
 - (a) it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and
 - (b) either –
 - (i) one or more of the conditions in paragraph (2) applies; or
 - (ii) an enactment permits the court to require security for costs.
- (2) The conditions are –
 - (a) the applicant is –
 - (i) resident out of the jurisdiction; but

- (ii) not resident in a Brussels Contracting State, a Lugano Contracting State or a Regulation State, as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or a Member State bound by the Council Regulation;
 - (b) the applicant has changed address since the application was started with a view to evading the consequences of the litigation;
 - (c) the applicant failed to give an address in the application form, or gave an incorrect address in that form;
 - (d) the applicant has taken steps in relation to the applicant's assets that would make it difficult to enforce an order for costs against the applicant.
- (3)** The court may not make an order for security for costs under rule 20.6 in relation to the costs of proceedings under the 1980 Hague Convention.

(Rule 4.4 allows the court to strike out^(GL) a statement of case.)

20.8 Security for costs of an appeal

The court may order security for costs of an appeal against –

- (a) an appellant;
 - (b) a respondent who also appeals,
- on the same grounds as it may order security for costs against an applicant under this Part.