

INTERIM REMEDIES AND SECURITY FOR COSTS

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I INTERIM REMEDIES

25.1 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 a claim 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;
- (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 1997² (order requiring a party to admit another party to premises for the purpose of preserving evidence etc.);
- (i) an order under section 33 of the Supreme Court Act 1981³ or section 52 of the County Courts Act 1984⁴ (order for disclosure of documents or inspection of property before a claim has been made);
- (j) an order under section 34 of the Supreme Court Act 1981⁵ or section 53 of the County Courts Act 1984⁶ (order in certain proceedings for disclosure of documents or inspection of property against a non-party);
- (k) an order (referred to as an order for interim payment) under rule 25.6 for payment by a defendant on account of any damages, debt or other sum (except costs) which the court may hold the defendant liable to pay;
- (l) 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;
- (m) 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 he does so, the property shall be given up to him;
- (n) an order directing a party to prepare and file accounts relating to the dispute;
- (o) an order directing any account to be taken or inquiry to be made by the court; and
- (p) an order under Article 9 of Council Directive (EC) 2004/48 on the enforcement of intellectual property rights (order in intellectual property proceedings making the continuation of an alleged infringement subject to the lodging of guarantees).

(Rule 34.2 provides for the court to issue a witness summons requiring a witness to produce documents to the court at the hearing or on such date as the court may direct)

- (2) In paragraph (1)(c) and (g), 'relevant property' means property (including land) which is the subject of a claim or as to which any question may arise on a claim.
- (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.
- (4) The court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.

25.2 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 –

¹ 1977 c.32; section 4 was amended by the Supreme Court Act 1981 (c.54), section 152(1), Schedule 5; by the County Courts Act 1984 (c.28), section 148(1), Schedule 2, Part V, paragraph 64 and by S.I. 1980/397 (NI3).

² 1997 c.12.

³ 1981 c.54. Section 33 was amended by S.I. 1998/2940.

⁴ 1984 c.28. Section 52 was amended by the Courts and Legal Services Act 1990 (c.41), Schedule 18, paragraph 43 and by S.I. 1998/2940.

⁵ 1981 c.54. Section 34 was amended by S.I. 1998/2940.

⁶ 1984 c.28. Section 53 was amended by the Courts and Legal Services Act 1990 (c.41), Schedule 18, paragraph 44 and by S.I. 1998/2940.

- (a) before proceedings are started; and
- (b) after judgment has been given.

(Rule 7.2 provides that proceedings are started when the court issues a claim form)

(2) However –

- (a) paragraph (1) is subject to any rule, practice direction or other enactment which provides otherwise;
- (b) the court may grant an interim remedy before a claim has been made only if –
 - (i) the matter is urgent; or
 - (ii) it is otherwise desirable to do so in the interests of justice; and
- (c) unless the court otherwise orders, a defendant may not apply for any of the orders listed in rule 25.1(1) before he has filed either an acknowledgment of service or a defence.

(Part 10 provides for filing an acknowledgment of service and Part 15 for filing a defence)

- (3) Where it grants an interim remedy before a claim has been commenced, the court should give directions requiring a claim to be commenced.
- (4) In particular, the court need not direct that a claim be commenced where the application is made under section 33 of the Supreme Court Act 1981 or section 52 of the County Courts Act 1984 (order for disclosure, inspection etc. before commencement of a claim).

25.3 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 3 lists general powers of the court)

(Part 23 contains general rules about making an application)

25.4 Application for an interim remedy where there is no related claim

- (1) This rule applies where a party wishes to apply for an interim remedy but –
 - (a) the remedy is sought in relation to proceedings which are taking place, or will take place, outside the jurisdiction; or
 - (b) the application is made under section 33 of the Supreme Court Act 1981 or section 52 of the County Courts Act 1984 (order for disclosure, inspection etc. before commencement) before a claim has been commenced.
- (2) An application under this rule must be made in accordance with the general rules about applications contained in Part 23.

(The following provisions are also relevant –

- Rule 25.5 (inspection of property before commencement or against a non-party)
- Rule 31.16 (orders for disclosure of documents before proceedings start)

- Rule 31.17 (orders for disclosure of documents against a person not a party))

25.5 Inspection of property before commencement or against a non-party

- (1)** This rule applies where a person makes an application under –
 - (a) section 33(1) of the Supreme Court Act 1981 or section 52(1) of the County Courts Act 1984 (inspection etc. of property before commencement);
 - (b) section 34(3) of the Supreme Court Act 1981 or section 53(3) of the County Courts Act 1984 (inspection etc. of property against a non-party).
- (2)** The evidence in support of such an application must show, if practicable by reference to any statement of case prepared in relation to the proceedings or anticipated proceedings, that the property –
 - (a) is or may become the subject matter of such proceedings; or
 - (b) is relevant to the issues that will arise in relation to such proceedings.
- (3)** A copy of the application notice and a copy of the evidence in support must be served on –
 - (a) the person against whom the order is sought; and
 - (b) in relation to an application under section 34(3) of the Supreme Court Act 1981 or section 53(3) of the County Courts Act 1984, every party to the proceedings other than the applicant.

25.6 Interim payments – general procedure

- (1)** The claimant may not apply for an order for an interim payment before the end of the period for filing an acknowledgment of service applicable to the defendant against whom the application is made.

(Rule 10.3 sets out the period for filing an acknowledgment of service)

(Rule 25.1(1)(k) defines an interim payment)
- (2)** The claimant may make more than one application for an order for an interim payment.
- (3)** A copy of an application notice for an order for an interim payment must –
 - (a) be served at least 14 days before the hearing of the application; and
 - (b) be supported by evidence.
- (4)** If the respondent to an application for an order for an interim payment wishes to rely on written evidence at the hearing, he must –
 - (a) file the written evidence; and
 - (b) serve copies on every other party to the application, at least 7 days before the hearing of the application.
- (5)** If the applicant wishes to rely on written evidence in reply, he must –
 - (a) file the written evidence; and
 - (b) serve a copy on the respondent, at least 3 days before the hearing of the application.
- (6)** This rule does not require written evidence –
 - (a) to be filed if it has already been filed; or
 - (b) to be served on a party on whom it has already been served.
- (7)** The court may order an interim payment in one sum or in instalments.

25.7 Interim payments – conditions to be satisfied and matters to be taken into account

- (1)** The court may only make an order for an interim payment where any of the following conditions are satisfied –
 - (a) the defendant against whom the order is sought has admitted liability to pay damages or some other sum of money to the claimant;
 - (b) the claimant has obtained judgment against that defendant for damages to be assessed or for a sum of money (other than costs) to be assessed;
 - (c) it is satisfied that, if the claim went to trial, the claimant would obtain judgment for a substantial amount of money (other than costs) against the defendant from whom he is seeking an order for an interim payment whether or not that defendant is the only defendant or one of a number of defendants to the claim;
 - (d) the following conditions are satisfied –
 - (i) the claimant is seeking an order for possession of land (whether or not any other order is also sought); and
 - (ii) the court is satisfied that, if the case went to trial, the defendant would be held liable (even if the claim for possession fails) to pay the claimant a sum of money for the defendant's occupation and use of the land while the claim for possession was pending; or
 - (e) in a claim in which there are two or more defendants and the order is sought against any one or more of those defendants, the following conditions are satisfied –
 - (i) the court is satisfied that, if the claim went to trial, the claimant would obtain judgment for a substantial amount of money (other than costs) against at least one of the defendants (but the court cannot determine which); and
 - (ii) all the defendants are either –
 - (a) a defendant that is insured in respect of the claim;
 - (b) a defendant whose liability will be met by an insurer under section 151 of the Road Traffic Act 1988 or an insurer acting under the Motor Insurers Bureau Agreement, or the Motor Insurers Bureau where it is acting itself; or
 - (c) a defendant that is a public body.
- (4)** The court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.
- (5)** The court must take into account –
 - (a) contributory negligence; and
 - (b) any relevant set-off or counterclaim.

25.8 Powers of court where it has made an order for interim payment

- (1)** Where a defendant has been ordered to make an interim payment, or has in fact made an interim payment (whether voluntarily or under an order), the court may make an order to adjust the interim payment.
- (2)** The court may in particular –
 - (a) order all or part of the interim payment to be repaid;
 - (b) vary or discharge the order for the interim payment;
 - (c) order a defendant to reimburse, either wholly or partly, another defendant who has made an interim payment.
- (3)** The court may make an order under paragraph (2)(c) only if –

- (a) the defendant to be reimbursed made the interim payment in relation to a claim in respect of which he has made a claim against the other defendant for a contribution^(GL), indemnity^(GL) or other remedy; and
 - (b) where the claim or part to which the interim payment relates has not been discontinued or disposed of, the circumstances are such that the court could make an order for interim payment under rule 25.7.
- (4) The court may make an order under this rule without an application by any party if it makes the order when it disposes of the claim or any part of it.
- (5) Where –
- (a) a defendant has made an interim payment; and
 - (b) the amount of the payment is more than his total liability under the final judgment or order, the court may award him interest on the overpaid amount from the date when he made the interim payment.

25.9 Restriction on disclosure of an interim payment

The fact that a defendant has made an interim payment, whether voluntarily or by court order, shall not be disclosed to the trial judge until all questions of liability and the amount of money to be awarded have been decided unless the defendant agrees.

25.10 Interim injunction to cease if claim is stayed

If –

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

25.11 Interim injunction to cease after 14 days if claim struck out

- (1) If–
 - (a) the court has granted an interim injunction^(GL); and
 - (b) the claim is struck out under rule 3.7 (sanctions for non-payment of certain fees), the interim injunction shall cease to have effect 14 days after the date that the claim is struck out unless paragraph (2) applies.
- (2) If the claimant applies to reinstate the claim before the interim injunction ceases to have effect under paragraph (1), the injunction shall continue until the hearing of the application unless the court orders otherwise.

II SECURITY FOR COSTS

25.12 Security for costs

- (1) A defendant to any claim may apply under this Section of this Part for security for his costs of the proceedings.

(Part 3 provides for the court to order payment of sums into court in other circumstances. Rule 20.3 provides for this Section of this Part to apply to Part 20 claims)
- (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.

25.13 Conditions to be satisfied

- (1) The court may make an order for security for costs under rule 25.12 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) (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 claimant is –
 - (i) resident out of the jurisdiction; but
 - (ii) not resident in a Brussels Contracting State, a State bound by the Lugano Convention or a Regulation State, as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982¹;
 - (c) the claimant is a company or other body (whether incorporated inside or outside Great Britain) and there is reason to believe that it will be unable to pay the defendant's costs if ordered to do so;
 - (d) the claimant has changed his address since the claim was commenced with a view to evading the consequences of the litigation;
 - (e) the claimant failed to give his address in the claim form, or gave an incorrect address in that form;
 - (f) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 19, and there is reason to believe that he will be unable to pay the defendant's costs if ordered to do so;
 - (g) the claimant has taken steps in relation to his assets that would make it difficult to enforce an order for costs against him.

(Rule 3.4 allows the court to strike out a statement of case and Part 24 for it to give summary judgment)

25.14 Security for costs other than from the claimant

- (1) The defendant may seek an order against someone other than the claimant, and the court may make an order for security for costs against that person 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) one or more of the conditions in paragraph (2) applies.
- (2) The conditions are that the person –
 - (a) has assigned the right to the claim to the claimant with a view to avoiding the possibility of a costs order being made against him; or

¹ 1982 c. 27, as amended by the Civil Jurisdiction and Judgments Act 1991 (c. 12) and by S.I.1989/1346, S.I. 1990/2591, S.I. 1993/603, S.I. 2000/1824 and S.I. 2001/3929.

- (b) has contributed or agreed to contribute to the claimant's costs in return for a share of any money or property which the claimant may recover in the proceedings; and is a person against whom a costs order may be made.

(Rule 48.2 makes provision for costs orders against non-parties)

25.15 Security for costs of an appeal

- (1) 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 a claimant under this Part.
- (2) The court may also make an order under paragraph (1) where the appellant, or the respondent who also appeals, is a limited company and there is reason to believe it will be unable to pay the costs of the other parties to the appeal should its appeal be unsuccessful.