**Proposed Amendments to Part 25**

**And Proposed Revocation of PD25A and PD25B**

**For Public Consultation**

1. **PART 25 - INTERIM REMEDIES**

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1.
2. **I INTERIM REMEDIES IN GENERAL**
3.
4. **Court’s powers**

**25.1**

(1) Interim remedies include –

(a) an interim injunction;

(b) an interim declaration;

(c) an order for the –

(i) detention, custody or preservation of relevant property;

(ii) inspection of relevant property;

(iii) taking of a sample of relevant property;

(iv) carrying out of an experiment on or with relevant property;

(v) sale of relevant property of a perishable nature, or where sale is urgent for any other reason; and

(vi) 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 1977 to deliver up goods;

(f) an order (‘freezing injunction’) –

(i) restraining a party from removing assets from the jurisdiction; 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 relevant property or assets, including their location, which are or may be the subject of an application for a freezing injunction;

(h) an order (‘search order’) under section 7 of the Civil Procedure Act 1997 (order requiring a party to admit another party to premises for the purpose of preserving evidence etc.);

(i) an order ('imaging order') under section V of this Part (for an independent specialist to be given access to any electronic data storage devices or online accounts for the purpose of copying the contents);

(j) an order under section 33 of the Senior Courts Act 1981 or section 52 of the County Courts Act 1984 (order for disclosure of documents or inspection of property before a claim has been made);

(k) an order under section 34 of the Senior Courts Act 1981 or section 53 of the County Courts Act 1984 (order in certain proceedings for disclosure of documents or inspection of property against a non-party);

(l) an order (‘order for interim payment’) under section VI of this Part (for payment by a defendant on account of any sum (except costs) which the court may hold the defendant liable to pay);

(m) 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;

(n) 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 they do so, the property shall be given up to them;

(o) an order directing a party to prepare and file accounts relating to the dispute;

(p) an order directing any account to be taken or inquiry to be made by the court; and

(q) an order for security for costs.

(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 an interim remedy is not listed in paragraph (1) does not affect any power 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.

1. **Timing**

**25.2**

(1) An order for an interim remedy may be made at any time, including before proceedings are started or after judgment has been given, subject to any rule, practice direction or enactment which provides otherwise.

(2) The court may grant an interim remedy before a claim has been made only if the matter is urgent, or it is otherwise desirable to do so in the interests of justice.

(3) A defendant may not apply for an interim remedy before filing either an acknowledgment of service or a defence, unless the court directs otherwise.

(4) Where the court grants an interim remedy before a claim has been commenced, it must give directions requiring a claim to be commenced, unless the application is made under section 33 of the Senior Courts Act 1981 or section 52 of the County Courts Act 1984.

1. **Applications and evidence**

**25.3**

(1) An application for an interim remedy must be supported by evidence, unless the court directs otherwise.

(2) 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.

1. (3) Evidence in support of an application made without notice must state the reasons why notice has not been given.
2. (Part 23 contains general rules about making an application.)
3. **Application for an interim remedy where there is no related claim**

**25.4**

(1) Where a party wishes to apply for an interim remedy –

(a) in relation to actual or intended proceedings outside the jurisdiction; or

(b) under section 33 of the Senior Courts Act 1981 or section 52 of the County Courts Act 1984 (order for disclosure, inspection etc. before commencement) before a claim has been commenced,

the application must be made in accordance with the general rules about applications contained in Part 23.

(2) Paragraphs (3) and (4) apply where a person makes an application under –

(a) section 33(1) of the Senior Courts Act 1981 or section 52(1) of the County Courts Act 1984 (inspection etc. of property before commencement); or

(b) section 34(3) of the Senior Courts Act 1981 or section 53(3) of the County Courts Act 1984 (inspection etc. of property against a non-party).

(3) The evidence supporting such an application must show that the property

(a) is or may become the subject matter of such actual or anticipated proceedings; or

(b) is relevant to the issues that will arise in such proceedings.

(4) A copy of the application notice and of the supporting evidence must be served on the person against whom the order is sought, and in relation to an application under section 34(3) of the Senior Courts Act 1981 or section 53(3) of the County Courts Act 1984, on every party to the proceedings other than the applicant.

**II INTERIM INJUNCTIONS**

1. **Court’s powers**

**25.5**

(1) In the High Court, Masters and District Judges may grant interim injunctions by consent, or in connection with charging orders and appointments of receivers, or in aid of execution of judgments.

(2) In any other case, any judge who has jurisdiction to conduct the trial of the action may grant an interim injunction in that action.

(3) Masters or District Judges have the power to vary or discharge an interim injunction granted by any judge, if all the parties consent.

(4) High Court Judges or any other judges duly authorised may grant search orders and freezing injunctions.

**Applications**

**25.6**

(1) The application notice must state the order sought and the date, time and place of the hearing.

(2) The application notice and evidence in support must be served as soon as possible after issue and in any event not less than 3 days before the hearing date for the application.

(3) Where an application is made on paper, sufficient copies of the application notice and evidence in support for the court and for each respondent must be filed for issue and service.

(4) Whenever possible, the applicant must file a draft of the order sought with the application notice. The applicant must also provide an electronic version of the draft order to the court, in a format compatible with enabling the draft to be amended by the court.

1. **Evidence**

**25.7**

(1)Applications must be supported by evidence in the following form unless the court, a rule, a practice direction or an enactment requires an affidavit or affirmation –

(a) a witness statement;

(b) a statement of case; or

(c) the application.

(2) The evidence must set out all relevant facts.

1. **Urgent applications and applications without notice**

**25.8**

(1) Where the application is to be dealt with at a court hearing –

(a) the application notice, supporting evidence and a draft order must be filed with the court at least two hours before the hearing wherever possible;

(b) if an application is made before the application notice has been issued, a draft order must be provided at the hearing, and the application notice and evidence in support must be filed with the court on the same or next working day or as ordered by the court; and

(c) except in cases where secrecy is essential, the applicant must take steps to notify the respondent of the application.

(d) the applicant must take or arrange to be taken a note of the hearing and serve this on the respondent.

(2) Where the application is to be dealt with at a court hearing before the issue of a claim form –

(a) in addition to the requirements of paragraph (1), unless the court orders otherwise, either the applicant must undertake to the court to issue a claim form immediately or the court must give directions for the commencement of the claim;

(b) where possible the claim form must be served with the order for the injunction; and

(c) the order must state in the title after the names of the applicant and respondent ‘the Claimant and Defendant in an Intended Action’.

(3) Where the application is to be dealt with remotely –

(a) the applicant must be prepared to send the judge a draft order in electronic format; and

(b) the application notice and evidence in support must be filed with the court on the same or next working day or as ordered, together with two copies of the order for sealing where the application is made on paper.

(Further information about the procedure for urgent applications may be found in the relevant court guide, on the HMCTS website, or by contacting the court directly.)

1. **Form of order**

**25.9**

(1) An order for an injunction must set out clearly what the respondent must do or not do.

(2) An order for an injunction made in the presence of all parties to be bound by it or made at a hearing of which they have had notice, may state that it is effective until trial or further order.

(3) Unless the court orders otherwise, an order for an injunction must contain –

(a) subject to paragraph (6), an undertaking by the applicant to the court to pay any damages which the respondent sustains which the court considers the applicant should pay;

(b) if made without notice to any other party, an undertaking by the applicant to the court to serve on the respondent the application notice, evidence in support and any order made as soon as practicable;

(c) if made without notice to any other party, a return date for a further hearing at which the other party can be present;

(d) if made before filing the application notice, an undertaking to file and pay the appropriate fee on the same or next working day; and

(e) if made before issue of a claim form, an undertaking to issue and pay the appropriate fee on the same or next working day, or directions for the commencement of the claim.

(4) When the court makes an order for delivery up or preservation of evidence or property which is likely to be executed at the premises of the respondent or a third party, it shall consider whether to include provisions for the benefit or protection of those parties of the kind specified below in relation to freezing injunctions and search orders.

(5) Subject to paragraph (6), when the court makes an order for an injunction, it must consider whether to require an undertaking by the applicant to pay any damages sustained by a person other than the respondent, including another party to the proceedings or any other person who may suffer loss as a consequence of the order.

(6) In an Aarhus Convention claim to which rules 46.24 to 46.28 apply, if the court is satisfied that an injunction is necessary to prevent significant environmental damage and to preserve the factual basis of the proceedings, the court must, in considering whether to require an undertaking by the applicant, and the terms of any such undertaking –

(a) have regard to the need for the terms of the order not to make continuing with the claim prohibitively expensive for the applicant; and

(b) give such directions as are necessary to ensure that the case is heard promptly.

(7) In this section –

(a) ‘Aarhus Convention claim’ has the same meaning as in rule 46.24(2)(a); and

(b) ‘member of the public’ is to be construed in accordance with rule 46.24(2)(b).

(8) Proceedings are ‘prohibitively expensive’ if their likely costs, including any court fees payable by the applicant and the amount of any cross-undertaking in damages, and having regard to any limit under Part 46 on a party’s maximum costs liability, either exceed the financial resources of the applicant, or are objectively unreasonable having regard to the factors set out in rule 46.27(3)(b).

(9) When a court considers the financial resources of the applicant, it must have regard to any financial support which any person has provided or is likely to provide to the applicant.

1. **Interim injunction to cease if claim is stayed or automatically struck out**

**25.10**

(1) If the court has granted an interim injunction other than a freezing injunction, and the claim is stayed other than by agreement between the parties, or the claim is automatically struck out for non-payment of fees or other reason, the interim injunction shall cease to have effect 14 days after the date on which the claim is stayed or struck out, unless the court orders otherwise or paragraph (2) applies.

(2) If the party concerned applies to reinstate the claim before the injunction ceases to have effect under paragraph (1), the injunction shall continue until the hearing of the application, unless the court orders otherwise.

1. **Injunctions against third parties**

**25.11**

(1) The following provisions apply to orders which will affect a person, other than the applicant or respondent, who is served with the order but did not attend the hearing at which the order was made.

(2) Where such a person requests –

(a) a copy of any material read by the judge, including material prepared after the hearing at the direction of the judge or in compliance with the order; or

(b) a note of the hearing,

the applicant or their legal representative must comply with the request forthwith, unless the court orders otherwise.

**III FREEZING INJUNCTIONS**

**Evidence**

**25.12**

An application for a freezing injunction must be supported by evidence on affidavit or affirmation.

**Form of order**

**25.13**

1. (1) The applicant must use the wording of the model order in the approved form, modified as appropriate.
2. (2) Any modifications to the model order must be drawn to the judge's attention at the application hearing.
3. (3) The court may, if it considers it appropriate, require the applicant’s solicitors, as well as the applicant, to give undertakings.

**IV SEARCH ORDERS**

**Evidence**

1. **25.14**
2. (1) An application for a search order must be supported by evidence on affidavit or affirmation.

(2) The affidavit or affirmation must –

(a) state the address of the premises and whether it is a private or business address; and

(c) fully disclose the reason the order is sought, including the probability that relevant material would disappear if the order were not made.

**Form of order**

**25.15**

(1) The applicant must use the wording of the model search order in the approved form, modified as appropriate.

1. (2) If it is envisaged that data will be copied from any electronic data storage device or online account, the applicant must use the wording of the model imaging order in the approved form, modified as appropriate.
2. (3) Any modifications to the model orders must be drawn to the judge's attention at the application hearing.
3. (4) If the court orders that service by the Supervising Solicitor is not required, the reasons must be set out in the order.

**Supervising Solicitor**

**25.16**

1. (1) Unless the court otherwise orders, a search order must be served personally by a solicitor experienced in the operation of search orders, who is not an employee or member of the applicant’s firm of solicitors (a “Supervising Solicitor”).
2. (2) If the court orders that service by the Supervising Solicitor is not required, the reasons must be set out in the order.
3. (3) The evidence accompanying the application must state the name, firm and its address, and experience of the Supervising Solicitor.

(4) The Supervising Solicitor may be accompanied only by the persons named in the order. These must not be people who could gain personally or commercially from anything they might read or see on the premises, unless their presence is essential.

(5) The Supervising Solicitor must explain the terms and effect of the order to the respondent in everyday language and advise them –

(a) of their right to take legal advice and to apply to vary or discharge the order; and

(b) that they may be entitled to legal professional privilege and the privilege against self-incrimination.

(6) Where the respondent or another person at the premises is likely to be an unaccompanied vulnerable person, the court must consider whether to direct that some other appropriate person accompany the Supervising Solicitor at all times during the search.

1. **Service and timing**

**25.17**

(1) The order must be accompanied by the evidence in support and any documents capable of being copied.

(2) Confidential exhibits need not be served but must be made available for inspection by the respondent in the presence of the applicant’s solicitors while the order is carried out. Such exhibits may afterwards be retained by the respondent’s solicitors on their undertaking not to permit the respondent to –

(a) see them or copies of them except in their presence; nor to

(b) make or take away any note or record of them.

(3) The order must only be served between 9.30 a.m. and 5.30 p.m. Monday to Friday, unless the court orders otherwise.

(4) The search order must not be carried out at the same time as a police search warrant.

1. **Search and custody of materials**

**25.18**

(1) No material shall be removed unless clearly covered by the terms of the order.

(2) The premises must not be searched, and no items shall be removed from them, expect in the presence of the respondent or a person who appears to the Supervising Solicitor to have authority to observe the search or removal of items on behalf of the respondent.

(3) Where copies of documents are sought, the documents must be retained for no more than 2 days before return to the owner.

(4) Where material in dispute is removed pending trial, the applicant’s solicitors must place it in the custody of the respondent’s solicitors on their undertaking to keep it safe and to produce it to the court when required.

(5) In appropriate cases where the court so directs the applicant must take insurance on the material retained in the respondent’s solicitors’ custody.

(6) The Supervising Solicitor must make a list of all material removed from the premises and supply a copy of the list to the respondent.

(7) No material shall be removed from the premises until the respondent has had reasonable time to check the list.

(8) If any of the listed items exists only in computer readable form, the respondent must immediately give the applicant’s solicitors effective access to the computers, with all necessary passwords, to enable them to be searched, and cause the listed items to be printed.

(9) The applicant must take all reasonable steps to ensure that no damage is done to any computer or data.

(10) The applicant and their representatives may not search the respondent’s computers unless they have sufficient expertise to do so without causing damage.

(11) The Supervising Solicitor shall provide a report on the carrying out of the order to the applicant’s solicitors.

(12) As soon as the report is received, the applicant’s solicitors shall serve a copy of it on the respondent, and file a copy of it with the court.

(13) Where the Supervising Solicitor is satisfied that full compliance with paragraphs (7) and (8) above is impracticable, they may permit the search to proceed and items to be removed without compliance with the impracticable requirements.

**V IMAGING ORDERS**

**Evidence**

**25.19**

An application for an imaging order must be supported by evidence on affidavit or affirmation.

**Form of order**

**25.20**

(1) The applicant must use the wording of the model order in the approved form, modified as appropriate.

(2) Any modifications to the model order must be drawn to the judge’s attention at the application hearing.

**VI INTERIM PAYMENT ORDERS**

1. **Court’s powers**

**25.21**

(1) The court must not order an interim payment of more than a reasonable proportion of the likely amount of the final judgment.

(2) The court must take into account contributory negligence alleged and any relevant set-off or counterclaim.

1. (3) The court may order an interim payment in instalments.If so, the order must set out –

(a) the total amount of the payment;

(b) the amount of each instalment;

(c) the number of instalments and the date on which each is to be paid; and

(d) to whom payment should be made.

(4) Where a party seeks an interim payment and the court has ordered an account to be taken, if on the evidence the account is bound to result in a payment to the applicant, the court must, before making an order for interim payment, order that the liable party pay to the applicant the amount shown by the account to be due.

(5)The permission of the court must be obtained before making a voluntary interim payment in respect of a claim by a child or protected party.

(6) The court may adjust any interim payment whether or not any payment has yet been made (voluntarily or under a previously made order). 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.

(7) The court may make an order under paragraph (6)(c) only if –

(a) the defendant to be reimbursed has claimed against the other defendant for a contribution, indemnity or other remedy; and

(b) where the claim to which the interim payment relates has not been discontinued or disposed of, the circumstances are such that the court could make an interim payment order under Section VI.

1. (8) Where a defendant has made an interim payment, and the amount of the payment is more than their total liability under the final judgment or order, the court may award them interest on the overpaid amount from the date when they made the interim payment.

1. **Applications**

**25.22**

(1) The claimant may not apply for an interim payment order 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.)

(2) The claimant may make more than one application for an interim payment order.

(3) A copy of the application notice must be served at least 14 days before the hearing of the application and must be supported by evidence.

(4) If the respondent wishes to rely on written evidence at the hearing, they must file the written evidence and serve copies on every other party to the application at least 7 days before the hearing.

(5) If the applicant wishes to rely on written evidence in reply, they must file the written evidence and serve a copy on the respondent at least 3 days before the hearing.

(6) This rule does not require written evidence to be filed if it has already been filed, or to be served on a party on whom it has already been served.

(7) 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.

1. **Evidence**

**25.23**

(1) An application for an interim payment order must be supported by evidence dealing with ­–

(a) the sum of money sought by way of an interim payment;

(b) the items or matters in respect of which the interim payment is sought;

(c) the sum of money for which final judgment is likely to be given;

(d) the reasons for believing that the conditions set out in rule 25.24 are satisfied;

(e) any other relevant matters;

(f) in claims for personal injuries, details of special damages and past and future loss; and

(g) in a claim under the Fatal Accidents Act 1976, details of the person(s) on whose behalf the claim is made and the nature of the claim.

(2) Any documents in support of the application must be exhibited, including, in personal injuries claims, any medical report.

**Conditions to be satisfied**

**25.24**

The court may only make an interim payment order where any of the following conditions are satisfied –

(a) the defendant against whom the order is sought has admitted liability to pay damages or another sum of money to the claimant;

(b) the claimant has obtained judgment against that defendant for damages to be assessed, or for another 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 they are seeking an interim payment, whether or not that defendant is the only defendant or one of several;

(d) the claimant is seeking an order for possession of land (whether or not any other order is also sought), and 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) there are two or more defendants and the order is sought against any one or more of them,

(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 public bodies; or insured in respect of the claim; or are defendants 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.

1. **Compensation recovery payments**

**25.25**

(1) Where in a claim for personal injuries there is a contested application for interim payment of damages, the defendant must obtain a certificate from the Secretary of State (as defined in rule 36.22(1)(e)) where the claim –

(a) falls under the heads of damage set out in column 1 of Schedule 2 to the Social Security (Recovery of Benefits) Act 1997 (‘the 1997 Act’) in respect of recoverable benefits received by the claimant set out in column 2 of that Schedule, or includes damages in respect of a disease for which a lump sum payment within the definition in section 1A(2) of the 1997 Act has been, or is likely to be made; and

(b) the defendant is liable to pay a recoverable amount (as defined in rule 36.22(1)(c)) to the Secretary of State.

(2) A copy of the certificate must be filed at the hearing of the application.

(3) The order must set out the deductible amount (as defined in rule 36.22(1)(d)).

(4) The payment made to the claimant must be the net amount but the interim payment must be the gross amount.

**Adjustment of final judgment figure**

**25.26**

(1) In this paragraph ‘judgment’ means any order to pay a sum of money, a final award of damages, or an assessment of damages.

(2) In a final judgment where an interim payment has previously been made which is less than the total amount awarded by the judge, the order must set out in a preamble the total amount awarded by the judge, and the amounts and dates of the interim payment or payments.

(3) The total amount awarded by the judge must then be reduced by the total amount of any interim payments, and an order made for entry of judgment and payment of the balance.

(4) In a final judgment where an interim payment has previously been made which is more than the total amount awarded by the judge, the order must set out in a preamble the total amount awarded by the judge, and the amounts and dates of the interim payment or payments.

(5) An order must be made for repayment, reimbursement, variation or discharge under rule 25.21(6) and for interest on an overpayment under rule 25.21(8).

1. **Restriction on disclosure**

**25.27**

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 that defendant agrees.

1. **VI SECURITY FOR COSTS**
2.
3. **Applications**

**25.28**

(1) A defendant to any claim may apply for security for their 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 counterclaims or other additional 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 must determine the amount of security, and direct the manner and time within which the security must be given.

1. **Conditions to be satisfied**

**25.29**

The court may make an order for security for costs if it is satisfied, having regard to all the circumstances of the case, that it is just to make such an order, and either an enactment permits the court to require security for costs, or one or more of the following conditions apply –

####  [provision to reflect HM Government's intention to join Hague Judgments Convention];

(b) the claimant is a company or other body (whether incorporated inside or outside England and Wales) and there is reason to believe that it will be unable to pay the defendant’s costs if ordered to do so;

(c) the claimant has changed their address since the claim was commenced with a view to evading the consequences of the litigation;

(d) the claimant failed to give their address in the claim form, or gave an incorrect address;

(e) the claimant is acting as a nominal claimant, other than as a representative claimant under Part 19, and there is reason to believe that they will be unable to pay the defendant’s costs if ordered to do so;

(f) the claimant has taken steps in relation to their assets that would make it difficult to enforce an order for costs against them.

1. **Security for costs other than from the claimant**

**25.30**

The defendant may seek a security for costs order against a person other than the claimant, and the court may make such an order, if –

(a) the court is satisfied, having regard to all the circumstances of the case, that it is just to make such an order; and

(b) the person has assigned the right to the claim to the claimant with a view to avoiding the possibility of a costs order being made against them, or has contributed or agreed to contribute to the claimant’s costs in return for a share of any recovery in the proceedings; and

(c) the person is someone against whom a costs order may be made.

1. **Security for costs of an appeal**

**25.31**

(1) The court may order security for costs of an appeal against an appellant, or a respondent who also appeals, on the same grounds as it may order security for costs against a claimant.

(2) The court may also make such an order 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.