

Enforcement of Foreign Judgments

Interim and Precautionary Measures [Northern Ireland]

2020



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I. APPLYING FOR INTERIM AND PRECAUTIONARY MEASURES

1. **Is it possible to apply for an interim measure in order to ensure the effective enforcement of a court decision?**

Answer: It is possible to obtain a freezing order (mareva injunction) to prevent a defendant from removing or disposing of his assets to make a judgment for damages unenforceable against him. There must be evidence of a risk of/intention to dissipate or remove assets. It restrains a defendant from dealing with assets anywhere in the world. It is possible to obtain a freezing order at any time, *ex parte* before the writ is issued, pending trial or judgment, or after a judgment is granted until it is enforced.

General provisions for applications for court orders are found in Order 8 of The Rules of the Court of Judicature (Northern Ireland) 1980. The rules on interlocutory matters are found in Orders 21-32 of The Rules of the Court of Judicature (Northern Ireland) 1980.

www.justice-ni.gov.uk/sites/default/files/publications/justice/COJ_Rules.pdf

2. **Is it mandatory to pay court fees for this type of application?**

Answer: Yes. The fees vary.

3. **What is the ordinary/average length of time for this kind of procedure?**

Answer: This varies. It is possible to seek interim relief very quickly without notice to the other party if necessary (*ex parte*). Where an application is contested, the proceedings can last for several months.

II. TYPES OF INTERIM AND PRECAUTIONARY MEASURES

1. **For which types of interim measures are the parties allowed to apply? (e.g. injunction, freezing orders, caveat, restraining order, etc.)**

Answer:

- a. Freezing injunctions
- b. Other interim injunctions to prevent the defendant from putting assets out of the reach of creditors
- c. Security for costs orders
- d. Summary judgment

- e. Disclosure orders
- f. Search and seize orders
- g. Appointment of a receiver
- h. Default judgment
- i. Strike out

III. PROCEDURE

1. Competent court

- a) Which court has jurisdiction to grant these interim and precautionary measures?

Answer: The High Court of Northern Ireland.

2. When can the application for interim and precautionary measures be submitted?

- Is it possible to apply for it at the time the underlying lawsuit is filed? If YES: Are there any special requirements when so doing?

Answer: Usually at the same time that proceedings are issued. Particular requirements will depend on the type of interim relief being sought and the specific court rules. The court may insist on the applicant giving certain undertakings.

3. Is it possible to apply for interim precautionary measures before filing the underlying lawsuit? If YES: Are there any special requirements when so doing? (e.g. deadline to submit the lawsuit)

Answer: Yes, in exceptional circumstances where an urgent need can be shown to protect the applicant's position. An injunction application could be made before the proceedings are issued on the condition that the proceedings be commenced and the third party be made aware of the same forthwith. These orders cannot be granted in isolation and it must be incidental to and dependent on an enforceable legal right or cause of action as per Section 91 Judicature (Northern Ireland) Act 1978. If the applicant is applying for a freezing (mareva) injunction, it must show that there is a real risk that the respondent will dissipate its assets if the court does not make the order, and be prepared to give undertaking as to costs and damages.

4. Is it possible to apply for interim precautionary measures after filing the main claim? If YES: Are there any special requirements when so doing?

Answer: Yes. An application can be made at any time during proceedings as long as there are circumstances justifying the application.

5. Criteria used by the court for granting these measures

What requirements must be fulfilled in order to apply for an interim measure? (e.g. *periculum in mora*, *fumus boni iuris*, security, etc.)

Answer: There must be a valid cause of action and damages must not be an adequate remedy. The applicant must have *locus standi*.

It must be demonstrated that unless the court makes the requested order, the respondent could take steps to undermine the effectiveness of the foreign judgment that the applicant is seeking to enforce. For example, in the case of a freezing (mareva) injunction, there must be a real risk that the respondent will dispose of his assets.

If the plaintiff/applicant has delayed the application inordinately, the court may refuse the injunction. If the application is being made *ex parte*, then the applicant is under a strict duty of full and fair disclosure of relevant facts known to him. The applicant must disclose all material facts to the court, even those which are in the respondent's favor. The applicant must be prepared to give an undertaking as to costs and any losses incurred in the event they are not ultimately successful.

6. Procedure

a) Which are the main steps of the procedure after filing the interim measure application? (e.g. holding a hearing, presenting evidence, etc.)

Answer: If the application is made on notice to the respondent/defendant, it is brought by summons or by notice of motion on at least two clear days' notice. The grounding affidavit and exhibits should be served with it. Court papers should also be served on all parties likely to be impacted by the outcome so they can apply to be represented at any hearing. The respondent may file an affidavit in response. A court hearing will usually take place at which the master/judge may grant or dismiss the application or make any appropriate interlocutory order or direction. The sealed order made by the court will be served upon the defendant/respondent.

An *ex parte* injunction application (without notice) requires a hearing before a judge.

b) Is it possible for the court to order an interim measure without hearing the other party? (*in audita parte debitoris*). If YES, under what circumstances can the parties apply for it?

Answer: Yes. An interlocutory order can be made on *ex parte* application where the application is of an urgent nature or where giving prior notice of the application to the respondent would defeat its purpose. Again, the court will ask the applicant to agree undertakings as to costs and losses.

c) What are the main steps of the procedure in this case?

Answer: Filing an *ex parte* application with supporting affidavit and appropriate fee with the court. An *ex parte* injunction application requires a hearing before the judge. If the order is made, it will be stamped by the court and promptly served upon the defendant/respondent and any notice party. There may be a return hearing attended by the respondent, at which the court will decide whether to continue the interim measure.

7. Opposition of the defendant

a) Is it possible for the defendant to oppose interim and precautionary measures?

Answer: Yes. Either at the time of the application being made, if it is made on notice, or otherwise at the return hearing.

b) Is it possible for the defendant to ask the court for the substitution of the interim measure for a guarantee?

Answer: Yes. The plaintiff / applicant may accept an undertaking in lieu by the defendant, which is enforceable like a court order.

8. Appeal

a) Are appeals allowed from the court decision ordering the measures or rejecting the defendant's opposition to them?

Answer: Yes.

b) Is it possible to enforce the interim measure once an appeal is filed?

Answer: Yes. For example, if a freezing injunction has been granted, it will remain in place pending the outcome of any appeal as directed by the court.

IV. EFFECTS AND VALIDITY OF INTERIM AND PRECAUTIONARY MEASURES.

- 1. Is it possible to enforce the interim measure when the other party obstructs it?**

Answer: Yes.

If a defendant / respondent disobeys an injunction then they will be held in contempt of court and may be summoned to court and punished for disobedience.

- 2. Is it possible to modify a previous interim measure?**

Answer: Yes. A further application will need to be made to the court or can be varied by the parties, subject to the consent of the court.

- 3. When is it possible to raise an interim measure?**

Answer: Similar to England and Wales:

At any time. Particularly as circumstances or evidence change.

Upon a judgment being handed down in favour of the defendant.

Upon the claim being stayed (i.e. paused, frozen).

Upon both parties consenting to the lifting of the order (which may be as part of the settlement of the wider proceedings) and the court approving the same.

If the plaintiff's / applicant's claim is struck out (in which case an interim injunction will cease to have effect 14 days thereafter).

- 4. Are there any rules concerning the costs (e.g. lawyers' fees, etc.) related to the application?**

Answer: As per England and Wales. The unsuccessful party will generally pay the successful party's costs. For example, if the defendant / respondent successfully opposes the application then the plaintiff / applicant will be ordered to pay the defendant's costs in doing so.

V. ARBITRATION

1. **Is it possible to apply for an interim measure in order to ensure the effective enforcement of an arbitration award in your country? If YES: what is the enforcement procedure?**

Answer: Yes, as per response for England and Wales:

Under the Arbitration Act 1996 – either through the arbitrator or through the court in arbitration proceedings.

Under section 44 of the Arbitration Act 1996, the court can order protective measures for example, the preservation of evidence, the granting of interim injunctions and the appointment of a receiver. The court will only act to the extent that the arbitrator does not have the power to do so. If the arbitrator has the power to act then the court will not intervene, unless the matter is urgent and the arbitrator is for the time being unable to act effectively.

Once the arbitration award is registered, it becomes enforceable as a judgment in the usual way.

A New York Convention arbitration award may, with the leave of the court, be enforced in the same manner as a judgment.

2. **Are the arbitrators entitled to order an interim measure?**

Answer: As per response for England and Wales. The extent of the arbitrator's power, if any, to order interim measures, will depend on the extent of the powers given to the arbitrator by the arbitration agreement or the particular institutional arbitration rules that apply.

VI. FOREIGN PROCEDURE & ARBITRATION

1. **Is it possible to apply for an interim measure before your country's courts in order to ensure the effective enforcement of a foreign court decision or arbitration award? If YES: how is this procedure executed?**

Answer: Yes. Procedure as above.

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