
STATUTORY INSTRUMENTS

2017 No. 1035

The Court of Protection Rules 2017

PART 10

APPLICATIONS WITHIN PROCEEDINGS

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Types of applications for which the Part 10 procedure may be used

- 10.1.**—(1) The Part 10 procedure is the procedure set out in this Part.
- (2) The Part 10 procedure may be used if the application is made by any person—
- (a) in the course of existing proceedings; or
 - (b) as provided for in a rule or practice direction.
- (3) The court may grant an interim remedy before an application form has been issued only if—
- (a) the matter is urgent; or
 - (b) it is otherwise necessary to do so in the interests of justice.
- (4) An application made during the course of existing proceedings includes an application made during appeal proceedings.
- (5) Where the application seeks solely to withdraw an existing application—
- (a) the applicant must file a written request for permission setting out succinctly the reasons for the request;
 - (b) the request must be in an application notice;

(c) the court may permit an application to be made orally at a hearing or in such alternative written form as it thinks fit.

(6) Where the court deals with a written request under paragraph (5) without a hearing, rule 13.4 applies to any order so made.

(Rule 13.2 requires the court's permission to withdraw proceedings.)

Application notice to be filed

10.2.—(1) Subject to paragraph (5), the applicant must file an application notice to make an application under this Part.

(2) The applicant must, when filing the application notice, file the evidence on which the applicant relies (unless such evidence has already been filed).

(3) The court must issue the application notice and, if there is to be a hearing, give notice of the date on which the matter is to be heard by the court.

(4) Notice under paragraph (3) must be given to—

- (a) the applicant;
- (b) anyone who is named as a respondent in the application notice (if not otherwise a party to the proceedings);
- (c) every party to the proceedings; and
- (d) any other person, as the court may direct.

(5) An applicant may make an application under this Part without filing an application notice if—

- (a) this is permitted by any rule or practice direction; or
- (b) the court dispenses with the requirement for an application notice.

(6) If the applicant makes an application without giving notice, the evidence in support of the application notice must state why notice has not been given.

What an application notice must include

10.3. An application notice must state—

- (a) what order or direction the applicant is seeking;
- (b) briefly, the grounds on which the applicant is seeking the order or direction; and
- (c) such other information as may be required by any rule or practice direction.

Service of an application notice

10.4.—(1) Subject to paragraphs (4) and (5), the applicant must serve a copy of the application notice on—

- (a) anyone who is named as a respondent in the application notice (if not otherwise a party to the proceedings);
- (b) every party to the proceedings; and
- (c) any other person, as the court may direct,

as soon as possible and in any event within 14 days of the date on which it was issued.

(2) The application notice must be accompanied by a copy of the evidence filed in support.

(3) The applicant must file a certificate of service within 7 days beginning with the date on which the documents were served.

(4) This rule does not require a copy of evidence to be served on a person on whom it has already been served, but the applicant must in such a case give to that person notice of the evidence on which the applicant intends to rely.

(5) An application may be made without serving a copy of the application notice if this is permitted by—

- (a) a rule;
- (b) a practice direction; or
- (c) the court.

Applications without notice

10.5.—(1) This rule applies where the court has dealt with an application which was made without notice having been given to any person.

(2) Where the court makes an order, whether granting or dismissing the application, the applicant must, as soon as practicable or within such period as the court may direct, serve the documents mentioned in paragraph (3) on—

- (a) anyone named as a respondent in the application notice (if not otherwise a party to the proceedings);
 - (b) every party to the proceedings; and
 - (c) any other person, as the court may direct.
- (3) The documents referred to in paragraph (2) are—
- (a) a copy of the application notice;
 - (b) the court’s order; and
 - (c) any evidence filed in support of the application.

(Rule 13.4 provides for reconsideration of orders made without a hearing or without notice to a person.)

Security for costs

10.6.—(1) A respondent to any application may apply for security for the respondent’s costs of the proceedings.

- (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—
 - (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.

Conditions to be satisfied

10.7.—(1) The court may make an order for security for costs under rule 10.6—

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

- (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 State bound by the Lugano Convention or a Regulation State, as defined in section 1(3) of the Civil Jurisdiction and Judgments Act 1982⁽¹⁾;
 - (b) the applicant 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 respondent's costs if ordered to do so;
 - (c) the applicant has changed address since proceedings were commenced with a view to avoiding the consequences of the litigation;
 - (d) the applicant failed to give an address, or gave an incorrect address, in the application form commencing the proceedings;
 - (e) the applicant is acting as a nominal applicant and there is reason to believe that the applicant will be unable to pay the respondent's costs if ordered to do so;
 - (f) 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.

Security for costs other than from the applicant

10.8.—(1) The respondent may seek an order against a person other than the applicant, 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 substantive matter to the applicant with a view to avoiding the possibility of a costs order being made against the person; or
 - (b) has contributed or agreed to contribute to the applicant's costs in return for a share of any money or property which the applicant may recover or be awarded in the proceedings; and

is a person against whom a costs order may be made.

(Rule 19.12 makes provision about costs orders against non-parties.)

Security for costs of an appeal

10.9.—(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 an applicant under rule 10.6.

⁽¹⁾ 1982 c. 27. Section 1(3) has been amended by S.I. 1990/2591, article 6, section 2(5) and (6) of the Civil Jurisdiction and Judgments Act 1991 (c. 12), S.I. 2007/1655, regulation 2(1), (3)(a), S.I. 2009/3131, regulations 2. 3(1), 4, S.I. 2011/1215, regulations 3 and 4, and S.I. 2012/1809, article 3(1), Schedule Part 1.

(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.

Interim remedies

Orders for interim remedies

10.10.—(1) The court may grant the following interim remedies—

- (a) an interim injunction;
- (b) an interim declaration; or
- (c) any other interim order it considers appropriate.

(2) Unless the court orders otherwise, a person on whom an application form is served under Part 9, or who is given notice of such an application, may not apply for an interim remedy before filing an acknowledgment of service or notification in accordance with Part 9.

(3) This rule does not limit any other power of the court to grant interim relief.