**Interim applications**

This element covers what an interim application is and the procedure for making an interim application with notice and without notice.

**Civil procedure rules**

The main CPR which support the content of this element are:

- CPR 23 (in relation to interim applications)

- 23A PD (in relation to interim applications)

- CPR 2.8 (in relation to counting time)

- 44 PD 9 (in relation to statements of cost)

**What is an interim application?**

Interim applications are applications for orders or directions made to the court, usually in the ‘interim’ period between the commencement of proceedings and trial, although some interim applications can be made before the commencement of proceedings.

Examples of interim applications are varied, but include:

- extending the time period for taking a particular step in the proceedings (like filing a defence)

- applying to amend a statement of case

- requiring the other party to provide further information

- requesting specific disclosure of a document

- seeking permission to rely on expert evidence.

Interim applications can be made by any party.

**When should an interim application be made?**

In accordance with the overriding objective, parties should take a reasonable approach to trying to agree matters to avoid the need for an application to court, or to make such an application less contentious.

However, as soon as it becomes apparent that it is necessary or desirable to make an application, the party should apply (23A PD 2.5).

Some applications could be dealt with at the same time as the case management conference or, if closer to trial, at the pre-trial review.

Parties are under a specific obligation to ‘bunch’ their interim applications (23A PD 2.6). If a hearing has been fixed for whatever reason, it is up to the parties to issue any necessary applications to ensure that outstanding matters get dealt with at a single hearing wherever possible.

**Procedure**

The party making the application, whether or not they are the claimant or defendant in the proceedings, is called the **applicant**. The other party is the **respondent**.

The process of making an application begins by the applicant filing an **application notice** (Form N244) at court. The application notice states (CPR 23.6):

**- Who** is making the application

**- What** order the applicant wants

**- Why** the applicant is asking for that order

**- What information** the applicant relies on in support of the application.

A **court fee** is payable to issue the application notice.

The application should be made to the court in which the main claim is presently being dealt with or, in the case of pre-action applications, is likely to be dealt with (CPR 23.2).

You can see an example of a blank application notice (N244) on the next page – this is to aid your understanding of this element, you are not expected to know this form.

[element displays Form N244 – application notice]

**Evidence, draft order and issue**

Sometimes the CPR provides that a particular type of application must be supported by particular **evidence**. However, even in cases where evidence is not strictly required, it is advisable to provide evidence (23A PD 7.1), in order to satisfy the court that the order sought should be granted.

Evidence can be given in one of three ways:

- In the application notice itself (Part C, in which case the statement of truth must also be completed (23A PD 7.5))

- By referring to the existing statements of case

- In a witness statement (or, if required, affidavit).

The applicant should also file a **draft order** at court setting out the terms it is seeking.

The applicant takes or sends to the court the application notice, evidence and draft order. The **court issues the application** and provides a notice indicating the date and time that the application will be heard by the court.

**Serving the application**

The application notice, note from the court indicating the date and time of the hearing, evidence and draft order must be served on the other party after the application has been issued by the court (CPR 23.7).

The court may serve the application notice and supporting documentation, but in practice, the applicant’s solicitor usually serves the application notice for certainty and to retain control.

Service must be effected **as soon as practicable after the application is filed and not less than three clear days before the application is to be heard** (CPR 23.7). This is the general rule and some applications have their own special time limits for filing evidence, for example summary judgment (CPR 24). The rules on how to calculate time apply to these deadlines (CPR 2.8).

**Further evidence**

The respondent may wish to file evidence in the form of a witness statement (or, if the CPR require it, an affidavit). This evidence must be filed and served as soon as possible (23A PD 7.2) and in accordance with any specific timings stated by the court when it issued the application notice.

If the applicant wishes to bring further evidence in reply to the respondent’s evidence, this must be filed and served as soon as possible (23A PD 7.3) and in accordance with any specific timings stated by the court.

A statement of costs in relation to the application should also be filed and exchanged not less than 24 hours before the hearing (44 PD 9.5).

**Hearing**

Most interim applications are dealt with at a hearing.

In accordance with the overriding objective, the court may order that a hearing should take place by telephone (23A PD 6), most commonly if the hearing is expected to last no more than on hour, or exceptionally by video conference.

It is, however, possible for matters to be dealt with in the absence of a hearing if (CPR 23.8):

- The parties have agreed the terms of the order (in which case they should send in a 'consent order' – a order in the agreed form, signed on behalf of each party);

- The parties agree there should be no hearing; or

- The court does not consider a hearing appropriate.

Once the court has considered the application, the court will make its decision and the order will be drawn up, sealed and served by the court.

**Summary of how to make an application**

Issue:

- Application notice (form N244)

- Supporting evidence

- Draft order

- Fee

Service (as soon as practicable but not less than 3 clear days before the hearing):

- Application notice (form N244)

- Supporting evidence

- Draft order

- Notice of hearing date

Further evidence:

- Respondent files at court and serves on the applicant evidence as soon as possible

- Applicant files at court and serves on the respondent evidence in reply as soon as possible

Both parties file and exchange statements of costs not less than 24 hours before hearing.

Hearing

**Without notice applications**

The procedure set out above is the normal procedure for interim applications. It is an 'on notice' or 'with notice' procedure because the respondent is served with the application before the hearing, and has opportunity to file evidence in response, and to attend a hearing.

An alternative procedure is to make an application 'without notice' – without serving the application notice on the respondent. This is permitted only if (23A PD 3):

there is exceptional urgency (for example, a remedy is needed immediately);

the overriding objective is best furthered by doing so;

all parties consent;

the court gives permission;

a court order, rule or practice direction permits; or

a date for a hearing has been fixed, a party wishes to make an application at that hearing, and the party does not have sufficient time to serve an application notice. In this case, the party should still inform the other party and the court (if possible in writing) as soon as he can of the nature of the application and the reason for it.

**Without notice hearings - procedural safeguards**

To mitigate the risks of unfairness in making an application without notice:

- The application must explain why no notice is given;

- The applicant must draw to the court's attention arguments and evidence in support of the (absent) respondent's position.

- The applicant must **serve the respondent as soon as possible after the hearing**, whether or not the court has granted the relief sought. The documents the applicant must serve on the respondent are:

a. The application notice

b. The evidence in support

c. The order (CPR 23.9).

- The court order must contain a statement of the respondent's **right to make an application to set aside or vary the order**. Any application to set aside must by made within 7 days of the order being served on the other party (CPR 23.10).

**Summary**

- Interim applications are made for orders or directions usually in the interim between commencement and trial, but sometimes pre-action.

- The procedure for making an interim application is in CPR 23.

- An interim application should be made as soon as it is apparent it is necessary.

- Interim applications are usually made 'with notice'.

- For the 'with notice' procedure, the applicant should file at court the application notice, supporting evidence (usually a witness statement) and a draft order and serve these on the respondent as soon as practicable but not less than three clear days before the hearing. There is also an opportunity for the respondent to file and serve evidence and the applicant to file and serve evidence in reply.

- The application notice must state what order the applicant is seeking and why.

- A 'without notice' application can be made where the matter is urgent, the object of the order would be defeated if notice was given or there is insufficient time to give notice, but safeguards exist to redress the potential unfairness.