

ROYAL COURT OF JERSEY

RC20/12

Freezing Order and Interim Injunctions

1. The granting of a freezing order or an interim injunction is a matter for the discretion of the Bailiff or Deputy Bailiff when considering an application. It is desirable, however, that a consistent approach should in general be adopted in relation to the form and carrying out of such orders, since they represent serious restrictions on the rights of those persons subjected to them. This is especially so since such orders are almost invariably granted after hearing only the applicant's case on an ex parte application. The purpose of this Practice Direction is to set out guidelines for the assistance of the Bailiff and Deputy Bailiff and those who apply for freezing orders or other interim injunctions.
2. Attached to this Practice Direction is a standard form of freezing order relating to assets within the jurisdiction. The form, by its language and layout, is intended to make it easier for persons served with an order of this type to understand what it means. The standard form should be used save to the extent that the Bailiff or Deputy Bailiff hearing a particular application considers there is a good reason for adopting a different form. If variations from the standard form are proposed, they should be clearly identified for consideration by the Bailiff or Deputy Bailiff when the application is made.
3. For other types of injunctions, the same undertakings as for a freezing order should be inserted as part of the relief asked for. The order applied for should otherwise specify the precise injunction required so that the defendant knows what conduct is prohibited or required, and any exceptions that may apply. Paragraphs 7 and 8 of the standard orders for freezing orders should also be included in any other application for an injunction. There should also be an express power to vary any such injunction by consent.

4. The following matters should be borne in mind in relation to an ex parte application for a freezing order or an interim injunction.
 - A.
 - (i) All papers including the Order of Justice, the supporting affidavit and all exhibits should be delivered to the Bailiff's Chambers at the earliest opportunity.
 - (ii) A skeleton argument or similar document summarising the application in particular any unusual or novel features should also be filed.
 - (iii) The Bailiff or Deputy Bailiff will consider the application as soon as it is possible to do so. The Order of Justice containing the freezing order applied for will then be signed or the applicant's Advocate will be required to attend to address any matters which arise.
 - (iv) The Advocate making the application should therefore make himself available to attend forthwith upon the Bailiff or Deputy Bailiff to discuss the application if so required.
 - (v) Any Advocate required to attend before the Bailiff or Deputy Bailiff shall immediately after the hearing prepare a full note of all that was said at the hearing. A copy of the note shall be provided immediately to any defendant who requests a copy.
 - B. An applicant should be prepared, in an appropriate case, to support his cross-undertaking in damages. The Bailiff or Deputy Bailiff may order a payment by way of such security to the applicant's Advocate to be held by him as an officer of the Court pending further order.
 - C. The standard form of freezing order attached contains an undertaking on the part of the applicant to serve the Order of Justice containing the freezing orders and the supporting affidavit on the defendant and parties cited as soon as practicable. This

obligation, especially that of service on the defendant, is fundamental to the granting of the freezing order. Any failure to comply with that undertaking will be viewed by the Court with considerable disfavour. This obligation applies equally to any other injunction granted by the Bailiff or Deputy Bailiff.

- D. Practitioners will note that when granting a freezing order or other injunction the Bailiff or Deputy Bailiff may at the same time order its service out of the jurisdiction. If such an order is sought then practitioners must ensure compliance with the requirements of the Service of Process (Jersey) Rules 2019 and Practice Direction RC15/01 (which specifies what must be contained in the affidavit sworn in support of a service out application) when making an application for such service.
 - E. Any application for the discharge or variation of any freezing order or other injunction granted will be dealt with as soon as the Court can entertain such an application. The parties should ensure their availability at short notice for such purpose.
5. With effect from the date this Practice Direction comes into force, practitioners should no longer refer to Mareva injunctions and should refer to such orders as freezing orders.
 6. This Practice Direction will come into force on Monday 19th October and in place of Practice Direction RC15/04, which is revoked on the same date.

3. Exceptions

- (1) Paragraph 1. Of this order does not prohibit the Defendant from spending £ a week towards his ordinary living expenses [and £ a week towards his ordinary and proper business expenses] and also £ a week [or a reasonable sum] on legal advice and representation. Before spending any money the Defendant must tell the Plaintiff's Advocate the amount concerned and where the money is to come from.
- [(2) This Order does not prohibit the Defendant from dealing with or disposing of any of his assets in the ordinary and proper course of business.]
- (3) The Defendant may agree with the Plaintiff's Advocate that the above spending limits should be increased or that this order should be varied in any other respect but any such agreement must be in writing.
- (4) The Defendant may cause this order to cease to have effect if the Defendant provides security by paying the sum of £ into Court or makes provision for security in that sum by some other method agreed with the Plaintiff's Advocate.

4. Dealing with Assets by the Party Cited

Service of this Order of Justice upon the Party Cited shall operate as an immediate interim order restraining it from removing from the Island of Jersey [or elsewhere] or in any way disposing of or dealing with or diminishing the value of any of the Defendant's assets which are held by it in the Island of Jersey [or elsewhere] whether in the Defendant's own name or not and whether solely or jointly owned up to the value of £ .

[This prohibition includes the following assets in particular:-

any money in accounts numbered at].

5. Disclosure of Information by the Party Cited

The Party Cited shall inform the Plaintiff's Advocate in writing/within hours/working days of service hereof upon it of all of the Defendant's assets in the Island of Jersey held by it whether in the Defendant's own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. The information must be confirmed in an Affidavit which must be furnished to the Plaintiff's Advocate within working days after service of this Order on the Party Cited. [If appropriate, wording may be inserted to provide for inspection and copying of documents].

6. Exceptions

- (1) Paragraph 4 of this order does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the Defendant before it was served with this Order.
- (2) No bank need enquire as to the application or proposed application of any money withdrawn by the Defendant if the withdrawal appears to be permitted by this Order.

7. Effect of any order

- (1) A Defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it though others acting on his behalf or on his instructions or with his encouragement.
- (2) A Defendant which is a corporation and which is ordered not to do something must not do it itself or by its directors, officers, employees, or agents or in any other way.

8. Interpretation

- (1) In these orders "he" "him" or "his" include "she" or "her" and "it" or "its";
- (2) Where there are two or more Defendants or two or more Parties Cited then (unless otherwise stated) a reference to "the Defendant" or "the Party Cited" mean both or all of them respectively;
- (3) An order requiring "the Defendant" or "the Party Cited" to do or not to do anything requires each Defendant or Party Cited respectively to do or not to do it.
- (4) A requirement relating to service of any order on "the Defendant" or "the Party Cited" means on each of them respectively.

[9. Service out of the Jurisdiction and Substituted Service

- (1) Leave is hereby given to the Plaintiff to serve this Order of Justice personally on the Defendant outside the jurisdiction at requiring his attendance before the Royal Court on
; OR

- (2) Leave is hereby given to the Plaintiff to effect substituted service on the Defendant by way of service of the Order of Justice on _____ (with a request that it be transmitted to the Defendant) requiring the Defendant's attendance before the Royal Court on _____].

10. Variation or Discharge

The Defendant (or anyone notified of this Order) may apply to the Court at any time to vary or discharge these orders (or so much of it as affects that person), but anyone wishing to do so must first inform the Plaintiff's Advocate.

AND IT IS HEREBY FURTHER ORDERED THAT:-

- (1) The Defendant and the Party Cited be convened before the Royal Court so that in their presence and after proof of the facts hereinbefore alleged the Court may:-
- (a) confirm the said interim orders.;
 - (b) etc.

SAVING ALL JUST EXCEPTIONS

Given at St. Helier this _____ day of _____ .

Bailiff/Deputy Bailiff

Address for Service

YOU MUST OBEY THE ORDERS CONTAINED IN THIS ORDER OF JUSTICE. IF YOU DO NOT YOU WILL BE GUILTY OF CONTEMPT OF COURT AND MAY BE SENT TO PRISON. YOU ARE ENTITLED TO APPLY TO THE COURT TO RECONSIDER THIS ORDER.