

PRACTICE DIRECTION – DEFAULT JUDGMENT

THIS PRACTICE DIRECTION SUPPLEMENTS CPR PART 12

DEFAULT JUDGMENT

- 1.1 A default judgment is judgment without a trial where a defendant has failed to file either:

- (1) an acknowledgment of service, or
- (2) a defence.

For this purpose a defence includes any document purporting to be a defence.

(See Part 10 and the practice direction which supplements it for information about the acknowledgment of service, and Parts 15 and 16 and the practice directions which supplement them for information about the defence and what it should contain.)

- 1.2 A claimant may not obtain a default judgment under Part 12 (notwithstanding that no acknowledgment of service or defence has been filed) if:

- (1) the procedure set out in Part 8 (Alternative Procedure for Claims) is being used, or
- (2) the claim is for delivery of goods subject to an agreement regulated by the Consumer Credit Act 1974, or
- (3) the claim is one to which RSC Order 88 (Schedule 1 to the CPR) (mortgage claims) applies or if proceeding in a county court, is a claim for money secured by mortgage, unless, in either case, the claimant obtains the permission of the court, or
- (4) the claim is made in proceedings in respect of which, under CPR Part 49 and practice directions supplemental to that Part, either there is no requirement for an acknowledgement of service or a defence to be filed or special provision is made about the obtaining of a default judgment.

- 1.3 Examples of proceedings where default judgment under Part 12 cannot be obtained are:

- (1) admiralty proceedings;
- (2) arbitration proceedings;
- (3) contentious probate proceedings;
- (4) claims for provisional damages.

OBTAINING DEFAULT JUDGMENT

- 2.1 Rules 12.4(1) and 12.9(1) describe the claims in respect of which a default judgment may be obtained by filing a request in the appropriate practice form.
- 2.2 A default judgment on:
 - (1) the claims referred to in rules 12.9(1)(b) and 12.10, and
 - (2) claims other than those described in rule 12.4(1),
 can only be obtained if an application for default judgment is made and cannot be obtained by filing a request.
- 2.3 The following are some of the types of claim which require an application for a default judgment:
 - (1) against children and patients¹,
 - (2) for costs (other than fixed costs) only²,
 - (3) by one spouse against the other³ on a claim in tort⁴,
 - (4) for delivery up of goods where the defendant will not be allowed the alternative of paying their value,
 - (5) against the Crown, and
 - (6) against persons or organisations who enjoy immunity from civil jurisdiction under the provisions of the International Organisations Acts 1968 and 1981.

DEFAULT JUDGMENT BY REQUEST

- 3 Requests for default judgment;
 - (1) in respect of a claim for a specified amount of money or for the delivery of goods where the defendant will be given the alternative of paying a specified sum representing their value, or for fixed costs only, must be in Form N205A or N225, and
 - (2) in respect of a claim where an amount of money (including an amount representing the value of goods) is to be decided by the court, must be in Form N205B or N225.

EVIDENCE

- 4.1 Both on a request and on an application for default judgment the court must be satisfied that:

¹ See rule 12.10(a)(i).

² See rule 12.9(b).

³ See rule 12.10(a)(ii).

⁴ Tort may be defined as an act or a failure to do an act which causes harm or damage to another person and which gives the other person a right to claim compensation without having to rely on a contract with the person who caused the harm or damage.