

# 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 patients<sup>1</sup>,
  - (2) for costs (other than fixed costs) only<sup>2</sup>,
  - (3) by one spouse against the other<sup>3</sup> on a claim in tort<sup>4</sup>,
  - (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:

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<sup>1</sup> See rule 12.10(a)(i).

<sup>2</sup> See rule 12.9(b).

<sup>3</sup> See rule 12.10(a)(ii).

<sup>4</sup> 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.

- (1) the particulars of claim have been served on the defendant (a certificate of service on the court file will be sufficient evidence),
- (2) either the defendant has not filed an acknowledgment of service or has not filed a defence and that in either case the relevant period for doing so has expired,
- (3) the defendant has not satisfied the claim, and
- (4) the defendant has not returned an admission to the claimant under rule 14.4 or filed an admission with the court under rule 14.6.

4.2 On an application against a child or patient<sup>5</sup>:

- (1) a litigation friend<sup>6</sup> to act on behalf of the child or patient must be appointed by the court before judgment can be obtained, and
- (2) the claimant must satisfy the court by evidence that he is entitled to the judgment claimed.

4.3 On an application where the defendant was served with the claim either:

- (1) outside the jurisdiction<sup>7</sup> without leave under the Civil Jurisdiction and Judgments Act 1982, or
- (2) within the jurisdiction but when domiciled<sup>8</sup> in Scotland or Northern Ireland or in any other Convention territory<sup>9</sup>,

and the defendant has not acknowledged service, the evidence must establish that:

- (1) the claim is one that the court has power to hear and decide,
- (2) no other court has exclusive jurisdiction under the Act to hear and decide the claim, and
- (3) the claim has been properly served in accordance with Article 20 of Schedule 1, 3C or 4 of the Act.

4.4 On an application against a State<sup>10</sup> the evidence must:

- (1) set out the grounds of the application,
- (2) establish the facts proving that the State is excepted from the immunity conferred by section 1 of the State Immunity Act 1978,
- (3) establish that the claim was sent through the Foreign and Commonwealth Office to the Ministry of Foreign Affairs of the State (unless the State agreed to a different form of service), and

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5 As defined in rule 21.1(2).

6 As defined in the practice direction which supplements Part 21.

7 As defined in rule 2.3.

8 As determined in accordance with the provisions of ss. 41 to 46 of the Civil Jurisdiction and Judgments Act 1982.

9 Means the territory of a Contracting State as defined in s.1(3) of the Civil Jurisdiction and Judgments Act 1982.

10 As defined in s.14 of the State Immunity Act 1978.

- (4) establish that the time for acknowledging service, which is extended to two months by section 12(2) of the Act, has expired.

(See rule 40.8 for when default judgment against a State takes effect.)

- 4.5 Evidence in support of an application referred to in paragraphs 4.3 and 4.4 above must be by affidavit.
- 4.6 On an application for judgment for delivery up of goods where the defendant will not be given the alternative of paying their value, the evidence must identify the goods and state where the claimant believes the goods to be situated and why their specific delivery up is sought.

## GENERAL

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- 5.1 On all applications to which this practice direction applies, other than those referred to in paragraphs 4.3 and 4.4 above<sup>11</sup>, notice should be given in accordance with Part 23.
- 5.2 Where default judgment is given on a claim for a sum of money expressed in a foreign currency, the judgment should be for the amount of the foreign currency with the addition of 'or the Sterling equivalent at the time of payment'.

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<sup>11</sup> See rule 12.11(4) and (5).