STATUTORY INSTRUMENTS

# 1998 No. 3132

# The Civil Procedure Rules 1998

## PART 13

## SETTING ASIDE OR VARYING DEFAULT JUDGMENT

**Contents of this Part**


| | |
|---|---|
| Scope of this Part | Rule 13.1 |
| Cases where the court must set aside judgment entered under Part 12 | Rule 13.2 |
| Cases where the court may set aside or vary judgment entered under Part 12 | Rule 13.3 |
| Application to set aside or vary judgment—procedure | Rule 13.4 |
| Claimant's duty to apply to set aside judgment | Rule 13.5 |
| Abandoned claim restored where default judgment set aside | Rule 13.6 |


### Scope of this Part

**13.1** The rules in this Part set out the procedure for setting aside or varying judgment entered under Part 12 (default judgment).

(CCR Order 22 r.10 sets out the procedure for varying the rate at which a judgment debt must be paid)

### Cases where the court must set aside judgment entered under Part 12

**13.2** The court must set aside(GL) a judgment entered under Part 12 if judgment was wrongly entered because—

(a) in the case of a judgment in default of an acknowledgment of service, any of the conditions in rule 12.3(1) and 12.3(3) was not satisfied;

(b) in the case of a judgment in default of a defence, any of the conditions in rule 12.3(2) and 12.3(3) was not satisfied; or

(c) the whole of the claim was satisfied before judgment was entered.

### Cases where the court may set aside or vary judgment entered under Part 12

**13.3.**—(1) In any other case, the court may set aside(GL) or vary a judgment entered under Part 12 if—

(a) the defendant has a real prospect of successfully defending the claim; or

(b) it appears to the court that there is some other good reason why—

(i) the judgment should be set aside or varied; or

(ii) the defendant should be allowed to defend the claim.

(2) In considering whether to set aside(GL) or vary a judgment entered under Part 12, the matters to which the court must have regard include whether the person seeking to set aside the judgment made an application to do so promptly.

(Rule 3.1(3) provides that the court may attach conditions when it makes an order)

**Application to set aside or vary judgment—procedure**

**13.4.**—(1) Where—

(a) the claim is for a specified amount of money;

(b) the judgment was obtained in a court which is not the defendant's home court;

(c) the claim has not been transferred to another defendant's home court under rule 14.12 (admission—determination of rate of payment by judge) or rule 26.2 (automatic transfer); and

(d) the defendant is an individual,

the court will transfer an application by a defendant under this Part to set aside(GL) or vary judgment to the defendant's home court.

(Rule 2.3 explains which court is a defendant's home court)

(2) Paragraph (1) does not apply where the claim was commenced in a specialist list.

(3) An application under rule 13.3 (cases where the court may set aside(GL) or vary judgment) must be supported by evidence.

**Claimant's duty to apply to set aside judgment**

**13.5.**—(1) This rule applies where—

(a) the claimant has purported to serve particulars of claim; and

(b) the claimant has entered judgment under Part 12 against the defendant to whom the particulars of claim were sent.

(2) If a claimant who has entered judgment subsequently has good reason to believe that the particulars of claim did not reach the defendant before the claimant entered judgment, he must—

(a) file a request for the judgment to be set aside(GL); or

(b) apply to the court for directions.

(3) The claimant may take no further step in the proceedings for the enforcement of the judgment until the judgment has been set aside(GL) or the court has disposed of the application for directions.

**Abandoned claim restored where default judgment set aside**

**13.6** Where—

(a) the claimant claimed a remedy in addition to one specified in rule 12.4(1) (claims in respect of which the claimant may obtain default judgment by filing a request);

(b) the claimant abandoned his claim for that remedy in order to obtain default judgment on request in accordance with rule 12.4(3); and

(c) that default judgment is set aside(GL) under this Part,

the abandoned claim is restored when the default judgment is set aside.