

Judgment in default - new time limits every practitioner needs to know under SI 490/2021

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From 13 November 2021 the courts will be enforcing new time lines in relation to default judgments. These rules have been introduced as a means “to improve the procedures in applications to the High Court for orders in default of defence, statement of claim and appearance and to standardise time limits for delivery of certain documents.”

Unusually these timelines will be applied retrospectively so it is important for practitioners to remember that they must be adhered to in all matters. However for Motions issued prior to the 13 November the old rules will still apply as set out in Section 2(3) of the S.I.

The key provisions to note are as follows:

1. Order 13: Default of Appearance

- A Plaintiff must issue a 28 day warning letter requesting an Appearance after which they may proceed to issue a Motion for Judgment in Default of Appearance. This motion must include an Affidavit as to service of the Summons or “or notice in lieu of service” if applicable.
- If a Plaintiff’s Motion for Judgment in Default of Appearance is successful, a copy of the Court Order must, within 28 days from the passing and perfection of the Order, be served on the Defendants.

2. Order 20: Statement of Claim

- A Defendant must serve a notice calling on the Plaintiff to deliver a Statement of Claim within 8 days of entering its Appearance. The Plaintiff will then have 8 weeks to serve its Statement of Claim.
- If a Defendant does not serve such a notice, the defendant loses the right to do so.

3. Order 21: Defence and Counterclaim

- A Defendant must deliver a Defence and Counterclaim (if any) within 8 weeks of the date of service of the Statement of Claim (if required) or within 8 weeks of the date in which they entered an Appearance (whichever is the later).

4. Order 27: Default of Pleadings

- The Courts will now make Unless Orders going forward (in other words if a Statement of Claim or Defence is not delivered and filed in the Central Office within a certain period of time, the matter will be dismissed. Importantly, the Court can also grant the Plaintiff whatever alternative judgment it considers the Plaintiff is entitled to having regard to the reliefs sought in the Statement of Claim.
- It is important to remember that there is no longer an option to adjourn matters, even on consent.
- Prior to issuing a motion for Judgment in Default of a Statement of Claim or Defence, you must send a 28 day warning letter and at the same time a letter consenting to the late delivery of Statement of Claim/Defence within 28 days.
- Any such motions must be served within 10 days of being issued.
- If a Plaintiff delivers Statement of Claim (or a Defendant delivers a defence) within 21 days after a Motion is served and it is lodged in Central Office within 10 days of the return date, the Motion will go to Judges List but will stand as struck out and €750 costs will be awarded to Defendant. You must draw this to Plaintiff’s attention when serving the Motion papers.
- The party who brought the default motion must write to their opposition within 28 days from date the action stands as dismissed or judgment awarded (and serve a copy of relevant Order within 28 days of it being perfected).

As practitioners will be aware there was previously a considerable amount of latitude given to litigants who failed to comply with procedural timelines even if a default judgment was sought. This is clearly set to change going forward. On balance we believe that these Rules will be a very positive development. One of the main criticisms of litigating in Ireland is that it takes too long and the parties incur significant costs as a result of delays. We believe that time lines such as these which are enforced by the courts should definitely reduce delays. Our only concern is that in a rush to comply with these timelines parties may issue proceedings lacking sufficient particularity but hopefully this is something that will also be addressed in the

forthcoming reforms, promised following the Kelly Report.

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