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STATUTORY INSTRUMENTS

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**1998 No. 3132**

**The Civil Procedure Rules 1998**

**PART 39**

**MISCELLANEOUS PROVISIONS RELATING TO HEARINGS**

**Failure to attend the trial**

**39.3.**—(1) The court may proceed with a trial in the absence of a party but—

- (a) if no party attends the trial, it may strike out<sup>(GL)</sup> the whole of the proceedings;
- (b) if the claimant does not attend, it may strike out his claim and any defence to counterclaim;  
and
- (c) if a defendant does not attend, it may strike out his defence or counterclaim (or both).

(2) Where the court strikes out proceedings, or any part of them, under this rule, it may subsequently restore the proceedings, or that part.

(3) Where a party does not attend and the court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside<sup>(GL)</sup>.

(4) An application under paragraph (2) or paragraph (3) <sup>F1</sup>... must be supported by evidence.

(5) Where an application is made under paragraph (2) or (3) by a party who failed to attend the trial, the court may grant the application only if the applicant—

- (a) acted promptly when he found out that the court had exercised its power to strike out<sup>(GL)</sup> or to enter judgment or make an order against him;
- (b) had a good reason for not attending the trial; and
- (c) has a reasonable prospect of success at the trial.

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**Textual Amendments**

**F1** Words in rule 39.3(4) omitted (2.10.2000) by virtue of [The Civil Procedure \(Amendment No. 4\) Rules 2000 \(S.I. 2000/2092\)](#), rules 1, 18

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**Commencement Information**

**I1** [Rule 39.3](#) in force at 26.4.1999, see [Signature](#)

**Status:**

Point in time view as at 01/05/2004. This version of this provision has been superseded.

**Changes to legislation:**

There are currently no known outstanding effects for the The Civil Procedure Rules 1998, Section 39.3.