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STATUTORY INSTRUMENTS

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**1998 No. 3132**

**The Civil Procedure Rules 1998**

**[<sup>F1</sup>PART 57 E+W**

**[<sup>F2</sup>PROBATE, INHERITANCE, PRESUMPTION OF  
DEATH AND GUARDIANSHIP OF MISSING PERSONS]**

**Textual Amendments**

- F1** Pt. 57 inserted (15.10.2001) by [The Civil Procedure \(Amendment No. 2\) Rules 2001 \(S.I. 2001/1388\)](#), rule 1(b), [Sch.](#) (with rule 19)
- F2** Pt. 57 heading substituted (31.7.2019) by [The Civil Procedure \(Amendment No. 2\) Rules 2019 \(S.I. 2019/1034\)](#), rules 1(1), 3

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The Civil Procedure Rules 1998, PART 57. (See end of Document for details)*

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## Scope of this Part and definitions **E+W**

**57.1.**—(1) This Part contains rules about—

- (a) probate claims;
- (b) claims for the rectification of wills; <sup>F6</sup>...
- (c) claims and applications to—
  - (i) substitute another person for a personal representative; or
  - (ii) remove a personal representative [<sup>F7</sup>; <sup>F8</sup>...
- (d) claims under the Inheritance (Provision for Family and Dependants) Act 1975][<sup>F9</sup>; <sup>F10</sup>...
- (e) proceedings under the Presumption of Death Act 2013][<sup>F11</sup>; and]  
[ proceedings under the Guardianship (Missing Persons) Act 2017.]
- <sup>F12</sup>(f)

(2) In this Part:

- (a) “probate claim” means a claim for—
  - (i) the grant of probate of the will, or letters of administration of the estate, of a deceased person;
  - (ii) the revocation of such a grant; or
  - (iii) a decree pronouncing for or against the validity of an alleged will;not being a claim which is non-contentious (or common form) probate business;

(Section 128 of the Supreme Court Act 1981(1) defines non-contentious (or common form) probate business.)

- (b) “relevant office” means—
  - (i) in the case of High Court proceedings in a Chancery district registry, that registry;
  - (ii) in the case of any other High Court proceedings, Chancery Chambers at the Royal Courts of Justice, Strand, London, WC2A 2LL; and
  - [<sup>F13</sup>(iii) in the case of County Court proceedings, the office of the County Court hearing centre in question;]
- (c) “testamentary document” means a will, a draft of a will, written instructions for a will made by or at the request of, or under the instructions of, the testator, and any document purporting to be evidence of the contents, or to be a copy, of a will which is alleged to have been lost or destroyed;
- (d) “will” includes a codicil.

### Textual Amendments

- F6** Word in rule 57.1(1)(b) omitted (2.12.2002) by virtue of [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **23(c)(i)**
- F7** Rule 57.1(1)(d) and word inserted (2.12.2002) by [The Civil Procedure \(Amendment\) Rules 2002 \(S.I. 2002/2058\)](#), rules 1(b), **23(c)(ii)**
- F8** Word in rule 57.1(1)(c) omitted (1.10.2014) by [The Civil Procedure \(Amendment No. 6\) Rules 2014 \(S.I. 2014/2044\)](#), rules 2, **10(c)(i)**
- F9** Rule 57.1(1)(e) and word substituted for full stop (1.10.2014) by [The Civil Procedure \(Amendment No. 6\) Rules 2014 \(S.I. 2014/2044\)](#), rules 2, **10(c)(ii)**

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The Civil Procedure Rules 1998, PART 57. (See end of Document for details)*

- F10** Word in rule 57.1(1)(d) omitted (31.7.2019) by virtue of [The Civil Procedure \(Amendment No. 2\) Rules 2019 \(S.I. 2019/1034\)](#), rules 1(1), **5(a)**
- F11** Word in rule 57.1(1)(e) substituted (31.7.2019) by [The Civil Procedure \(Amendment No. 2\) Rules 2019 \(S.I. 2019/1034\)](#), rules 1(1), **5(b)**
- F12** Rule 57.1(1)(f) inserted (31.7.2019) by [The Civil Procedure \(Amendment No. 2\) Rules 2019 \(S.I. 2019/1034\)](#), rules 1(1), **5(c)**
- F13** Rule 57.1(2)(b)(iii) substituted (22.4.2014) by [The Civil Procedure \(Amendment\) Rules 2014 \(S.I. 2014/407\)](#), rules 2(1), **24(a)**; S.I. 2014/954, art. 2(a)

## SECTION I—PROBATE CLAIMS

### General **E+W**

**57.2.**—(1) This Section contains rules about probate claims.

(2) Probate claims in the High Court are assigned to the Chancery Division.

[<sup>F14</sup>(3) Probate claims in the [<sup>F15</sup>County Court] must only be [<sup>F16</sup>started by sending the claim to, or making the claim at]—

(a) a [<sup>F17</sup>County Court hearing centre] where there is also a Chancery district registry; or

(b) the [<sup>F18</sup>County Court at Central London].]

(4) All probate claims are allocated to the multi-track.

### Textual Amendments

- F14** Rule 57.2(3) substituted (6.10.2003) by [The Civil Procedure \(Amendment No. 4\) Rules 2003 \(S.I. 2003/2113\)](#), rules 1(c), **15**
- F15** Words in [Rules](#) substituted (22.4.2014) by [The Civil Procedure \(Amendment\) Rules 2014 \(S.I. 2014/407\)](#), rules 2(1), **4(a)(ii)**; S.I. 2014/954, art. 2(a)
- F16** Words in rule 57.2(3) substituted (22.4.2014) by [The Civil Procedure \(Amendment\) Rules 2014 \(S.I. 2014/407\)](#), rules 2(1), **24(b)(i)**; S.I. 2014/954, art. 2(a)
- F17** Words in rule 57.2(3)(a) substituted (22.4.2014) by [The Civil Procedure \(Amendment\) Rules 2014 \(S.I. 2014/407\)](#), rules 2(1), **24(b)(ii)**; S.I. 2014/954, art. 2(a)
- F18** Words in rule 57.2(3)(b) substituted (22.4.2014) by [The Civil Procedure \(Amendment\) Rules 2014 \(S.I. 2014/407\)](#), rules 2(1), **24(b)(iii)**; S.I. 2014/954, art. 2(a)

### How to start a probate claim **E+W**

**57.3** A probate claim must be commenced—

(a) in the relevant office; and

(b) using the procedure in Part 7.

### Acknowledgment of service and defence **E+W**

**57.4.**—(1) A defendant who is served with a claim form must file an acknowledgment of service.

(2) Subject to paragraph (3), the period for filing an acknowledgment of service is—

(a) if the defendant is served with a claim form which states that particulars of claim are to follow, 28 days after service of the particulars of claim; and

(b) in any other case, 28 days after service of the claim form.

(3) If the claim form is served out of the jurisdiction under rule [F19]6.32 or 6.33], the period for filing an acknowledgment of service is 14 days longer than the relevant period specified in rule [F20]6.35] or [F21]Practice Direction 6B].

(4) Rule 15(4) (which provides the period for filing a defence) applies as if the words “under Part 10” were omitted from rule 15.4(1)(b).

#### Textual Amendments

- F19** Words in rule 57.4(3) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **30(a)(i)**
- F20** Word in rule 57.4(3) substituted (1.10.2008) by The Civil Procedure (Amendment) Rules 2008 (S.I. 2008/2178), rules 1(2), **30(a)(ii)**
- F21** Words in rule 57.4(3) substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), **32(a)**

### Lodging of testamentary documents and filing of evidence about testamentary documents **E** **+W**

**57.5.**—(1) Any testamentary document of the deceased person in the possession or control of any party must be lodged with the court.

(2) Unless the court directs otherwise, the testamentary documents must be lodged in the relevant office—

- (a) by the claimant when the claim form is issued; and
- (b) by a defendant when he acknowledges service.

(3) The claimant and every defendant who acknowledges service of the claim form must in written evidence—

- (a) describe any testamentary document of the deceased of which he has any knowledge or, if he does not know of any such testamentary document, state that fact, and
- (b) if any testamentary document of which he has knowledge is not in his possession or under his control, give the name and address of the person in whose possession or under whose control it is or, if he does not know the name or address of that person, state that fact.

(A specimen form for the written evidence about testamentary documents is annexed to [F22]Practice Direction 57[.]

(4) Unless the court directs otherwise, the written evidence required by paragraph (3) must be filed in the relevant office—

- (a) by the claimant, when the claim form is issued; and
- (b) by a defendant when he acknowledges service.

(5) Except with the permission of the court, a party shall not be allowed to inspect the testamentary documents or written evidence lodged or filed by any other party until he himself has lodged his testamentary documents and filed his evidence.

(6) The provisions of paragraphs (2) and (4) may be modified by a practice direction under this Part.

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The Civil Procedure Rules 1998, PART 57. (See end of Document for details)*

### Textual Amendments

**F22** Words in [rule 57.5](#) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **32(b)(i)**

### Revocation of existing grant **E+W**

**57.6.**—(1) In a probate claim which seeks the revocation of a grant of probate or letters of administration every person who is entitled, or claims to be entitled, to administer the estate under that grant must be made a party to the claim.

(2) If the claimant is the person to whom the grant was made, he must lodge the probate or letters of administration in the relevant office when the claim form is issued.

(3) If a defendant has the probate or letters of administration under his control, he must lodge it in the relevant office when he acknowledges service.

(4) Paragraphs (2) and (3) do not apply where the grant has already been lodged at the court, which in this paragraph includes the Principal Registry of the Family Division or a district probate registry.

### Contents of statements of case **E+W**

**57.7.**—(1) The claim form must contain a statement of the nature of the interest of the claimant and of each defendant in the estate.

(2) If a party disputes another party's interest in the estate he must state this in his statement of case and set out his reasons.

(3) Any party who contends that at the time when a will was executed the testator did not know of and approve its contents must give particulars of the facts and matters relied on.

(4) Any party who wishes to contend that—

- (a) a will was not duly executed;
- (b) at the time of the execution of a will the testator [<sup>F23</sup>lacked testamentary capacity]; or
- (c) the execution of a will was obtained by undue influence or fraud,

must set out the contention specifically and give particulars of the facts and matters relied on.

(5) (a) A defendant may give notice in his defence that he does not raise any positive case, but insists on the will being proved in solemn form and, for that purpose, will cross-examine the witnesses who attested the will.

(b) If a defendant gives such a notice, the court will not make an order for costs against him unless it considers that there was no reasonable ground for opposing the will.

### Textual Amendments

**F23** Words in [rule 57.7\(4\)\(b\)](#) substituted (6.4.2008) by [The Civil Procedure \(Amendment No.2\) Rules 2007 \(S.I. 2007/3543\)](#), rules 1(b), **8**

### Counterclaim **E+W**

**57.8.**—(1) A defendant who contends that he has any claim or is entitled to any remedy relating to the grant of probate of the will, or letters of administration of the estate, of the deceased person must serve a counterclaim making that contention.

(2) If the claimant fails to serve particulars of claim within the time allowed, the defendant may, with the permission of the court, serve a counterclaim and the probate claim shall then proceed as if the counterclaim were the particulars of claim.

### Probate counterclaim in other proceedings **E+W**

**57.9.**—(1) In this rule “probate counterclaim” means a counterclaim in any claim other than a probate claim by which the defendant claims any such remedy as is mentioned in rule 57.1(2)(a).

(2) Subject to the following paragraphs of this rule, this Part shall apply with the necessary modifications to a probate counterclaim as it applies to a probate claim.

(3) A probate counterclaim must contain a statement of the nature of the interest of each of the parties in the estate of the deceased to which the probate counterclaim relates.

(4) Unless an application notice is issued within 7 days after the service of a probate counterclaim for an order under rule 3.1(2)(e) or 3.4 for the probate counterclaim to be dealt with in separate proceedings or to be struck out, and the application is granted, the court [<sup>F24</sup>will] order the transfer of the proceedings to either—

(a) the Chancery Division (if it is not already assigned to that Division) and to either the Royal Courts of Justice or a Chancery district registry (if it is not already proceeding in one of those places); or

[<sup>F25</sup>(b) if the County Court has jurisdiction, to a County Court hearing centre where there is also a Chancery District Registry or the County Court at Central London.]

(5) If an order is made that a probate counterclaim be dealt with in separate proceedings, the order shall order the transfer of the probate counterclaim as required under paragraph (4).

#### Textual Amendments

**F24** Word in rule 57.9(4) substituted (22.4.2014) by The Civil Procedure (Amendment) Rules 2014 (S.I. 2014/407), rules 2(1), 24(c)(i); S.I. 2014/954, art. 2(a)

**F25** Rule 57.9(4)(b) substituted (22.4.2014) by The Civil Procedure (Amendment) Rules 2014 (S.I. 2014/407), rules 2(1), 24(c)(ii); S.I. 2014/954, art. 2(a)

### Failure to acknowledge service or to file a defence **E+W**

**57.10.**—(1) A default judgment cannot be obtained in a probate claim and rule 10.2 and Part 12 do not apply.

(2) If any of several defendants fails to acknowledge service the claimant may—

(a) after the time for acknowledging service has expired; and

(b) upon filing written evidence of service of the claim form and (if no particulars of claim were contained in or served with the claim form) the particulars of claim on that defendant;

proceed with the probate claim as if that defendant had acknowledged service.

(3) If no defendant acknowledges service or files a defence then, unless on the application of the claimant the court orders the claim to be discontinued, the claimant may, after the time for acknowledging service or for filing a defence (as the case may be) has expired, apply to the court for an order that the claim is to proceed to trial.

(4) When making an application under paragraph (3) the claimant must file written evidence of service of the claim form and (if no particulars of claim were contained in or served with the claim form) the particulars of claim on each of the defendants.

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The Civil Procedure Rules 1998, PART 57. (See end of Document for details)*

(5) Where the court makes an order under paragraph (3), it may direct that the claim be tried on written evidence.

### Discontinuance and dismissal **E+W**

**57.11.**—(1) Part 38 does not apply to probate claims.

(2) At any stage of a probate claim the court, on the application of the claimant or of any defendant who has acknowledged service, may order that—

- (a) the claim be discontinued or dismissed on such terms as to costs or otherwise as it thinks just; and
- (b) a grant of probate of the will, or letters of administration of the estate, of the deceased person be made to the person entitled to the grant.

## **SECTION II—RECTIFICATION OF WILLS**

**57.12.**—(1) This Section contains rules about claims for the rectification of a will.

(Section 20 of the Administration of Justice Act 1982(2) provides for rectification of a will. Additional provisions are contained in rule 55 of the Non-Contentious Probate Rules 1987(3).)

(2) Every personal representative of the estate shall be joined as a party.

(3) [<sup>F26</sup>Practice Direction 57] makes provision for lodging the grant of probate or letters of administration with the will annexed in a claim under this Section.

### **Textual Amendments**

**F26** Words in rule 57.12(3) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), 32(c)

## **SECTION III—SUBSTITUTION AND REMOVAL OF PERSONAL REPRESENTATIVES**

**57.13.**—(1) This Section contains rules about claims and applications for substitution or removal of a personal representative.

(2) Claims under this Section must be brought in the High Court and are assigned to the Chancery Division.

(Section 50 of the Administration of Justice Act 1985(4) gives the High Court power to appoint a substitute for, or to remove, a personal representative.)

(3) Every personal representative of the estate shall be joined as a party.

(4) [<sup>F27</sup>Practice Direction 57] makes provision for lodging the grant of probate or letters of administration in a claim under this Section.

(5) If substitution or removal of a personal representative is sought by application in existing proceedings, this rule shall apply with references to claims being read as if they referred to applications.

(2) 1974 c. 39.

(3) 1981 c. 54. Section 35A was inserted by the Administration of Justice Act 1982 (c. 53), section 15(1), Schedule 1, Part I.

(4) 1984 c. 28. Section 69 was amended by the Courts and Legal Services Act 1990 (c. 41), Schedule 18, paragraph 46.



#### Textual Amendments

**F27** Words in rule 57.13(4) substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), 32(c)

### **<sup>F28</sup>IV CLAIMS UNDER THE INHERITANCE (PROVISION FOR FAMILY AND DEPENDANTS) ACT 1975**

#### Textual Amendments

**F28** Pt. 57 Section 4 inserted (2.12.2002) by The Civil Procedure (Amendment) Rules 2002 (S.I. 2002/2058), rule 1(b), Sch. 4 Pt. 2

#### Scope of this Section **E+W**

**57.14** This Section contains rules about claims under the Inheritance (Provision for Family and Dependents) Act 1975(1) (“the Act”).

#### Proceedings in the High Court **E+W**

**57.15.**—(1) Proceedings in the High Court under the Act shall be issued in either—

- (a) the Chancery Division; or
- (b) the Family Division.

(2) The Civil Procedure Rules apply to proceedings under the Act which are brought in the Family Division, except that the provisions of the Family Proceedings Rules 1991(2) relating to the drawing up and service of orders apply instead of the provisions in Part 40 and [<sup>F29</sup>Practice Direction 40B].

#### Textual Amendments

**F29** Words in rule 57.15(2) substituted (6.4.2010) by The Civil Procedure (Amendment No.2) Rules 2009 (S.I. 2009/3390), rules 1(2), 32(d)

#### Procedure for claims under section 1 of the Act **E+W**

**57.16.**—(1) A claim under section 1 of the Act must be made by issuing a claim form in accordance with Part 8.

(2) Rule 8.3 (acknowledgment of service) and rule 8.5 (filing and serving written evidence) apply as modified by paragraphs (3) to (5) of this rule.

(3) The written evidence filed and served by the claimant with the claim form must [<sup>F30</sup>, except in the circumstances specified in paragraph (3A),] have exhibited to it an official copy of—

- (a) the grant of probate or letters of administration in respect of the deceased’s estate; and
- (b) every testamentary document in respect of which probate or letters of administration were granted.

[

(1) 1983 c. 20.  
(2) 1974 c. 39.

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*Changes to legislation: There are currently no known outstanding effects for the The Civil Procedure Rules 1998, PART 57. (See end of Document for details)*

<sup>F31</sup>(3A) Where no grant has been obtained, the claimant may make a claim without naming a defendant and may apply for directions as to the representation of the estate. The written evidence must—

- (a) explain the reasons why it has not been possible for a grant to be obtained;
- (b) be accompanied by the original or a copy (if either is available) of the will or other testamentary document in respect of which probate or letters of administration are to be granted; and
- (c) contain the following information, so far as known to the claimant—
  - (i) brief details of the property comprised in the estate, with an approximate estimate of its capital value and any income that is received from it;
  - (ii) brief details of the liabilities of the estate;
  - (iii) the names and addresses of the persons who are in possession of the documents relating to the estate; and
  - (iv) the names of the beneficiaries and their respective interests in the estate.

(3B) Where a claim is made in accordance with paragraph (3A), the court may give directions as to the parties to the claim and as to the representation of the estate either on the claimant's application or on its own initiative.

(Section 4 of the 1975 Act as amended confirms that nothing prevents the making of an application under the Act before representation with respect to the estate of the deceased person is taken out.)]

- (4) [<sup>F32</sup>Subject to paragraph (4A), the time] within which a defendant must file and serve—
  - (a) an acknowledgment of service; and
  - (b) any written evidence,

is not more than 21 days after service of the claim form on him.

[<sup>F33</sup>(4A) If the claim form is served out of the jurisdiction under rule [<sup>F34</sup>6.32 or 6.33], the period for filing an acknowledgment of service and any written evidence is 7 days longer than the relevant period specified in rule [<sup>F35</sup>6.35] or [<sup>F36</sup>Practice Direction 6B].]

(5) A defendant who is a personal representative of the deceased must file and serve written evidence, which must include the information required by [<sup>F37</sup>Practice Direction 57].]

#### Textual Amendments

- F30** Words in rule 57.16(3) inserted (1.10.2014) by [The Civil Procedure \(Amendment No. 6\) Rules 2014 \(S.I. 2014/2044\)](#), rules 2, **10(d)(i)**
- F31** Rule 57.16(3A)(3B) inserted (1.10.2014) by [The Civil Procedure \(Amendment No. 6\) Rules 2014 \(S.I. 2014/2044\)](#), rules 2, **10(d)(ii)**
- F32** Words in rule 57.16(4) substituted (30.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), rules 1(b), **17(a)**
- F33** Rule 57.16(4A) inserted (30.6.2004) by [The Civil Procedure \(Amendment\) Rules 2004 \(S.I. 2004/1306\)](#), rules 1(b), **17(b)**
- F34** Words in rule 57.16(4A) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **30(b)(i)**
- F35** Word in rule 57.16(4A) substituted (1.10.2008) by [The Civil Procedure \(Amendment\) Rules 2008 \(S.I. 2008/2178\)](#), rules 1(2), **30(b)(ii)**
- F36** Words in rule 57.16(4A) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **32(e)**

**F37** Words in rule 57.16(5) substituted (6.4.2010) by [The Civil Procedure \(Amendment No.2\) Rules 2009 \(S.I. 2009/3390\)](#), rules 1(2), **32(b)(ii)**

## <sup>F38</sup>SECTION V

### *Proceedings under the Presumption of Death Act 2013*

#### **Textual Amendments**

**F38** Pt. 57 Section 5 inserted (1.10.2014) by [The Civil Procedure \(Amendment No. 6\) Rules 2014 \(S.I. 2014/2044\)](#), rule 2, **Sch.**

#### **Scope and interpretation** **E+W**

**57.17.**—(1) This Section contains rules about proceedings under the Presumption of Death Act 2013.

(2) In this Section, terms used in the Presumption of Death Act 2013 Act have the meaning given by that Act, and—

- (a) “the 2013 Act” means the Presumption of Death Act 2013;
- (b) “a claim for a declaration of presumed death” means a claim under section 1 of the 2013 Act for a declaration that a missing person is presumed to be dead;
- (c) “a claim for a variation order” means a claim for an order under section 5 of the 2013 Act varying or revoking a declaration of presumed death.

#### **Proceedings to be in the High Court** **E+W**

**57.18.**—(1) Proceedings under the 2013 Act must be issued in the High Court in either—

- (a) the Chancery Division; or
- (b) the Family Division.

(2) The Civil Procedure Rules apply to proceedings under the 2013 Act which are brought in the Family Division, except that the provisions of the Family Procedure Rules 2010 relating to the drawing up and service of orders apply instead of the provisions in Part 40 and Practice Direction 40B.

#### **Procedure for claims for a declaration of presumed death or a variation order** **E+W**

**57.19.**—(1) A claim for a declaration of presumed death or for a variation order must be made by issuing a claim form in accordance with Part 8.

(2) In addition to the matters set out in rule 8.2 (contents of the claim form), the claim form must also include or be accompanied by the information required by Practice Direction 57B.

(3) Rules 8.2A, 8.3, 8.4 and 8.5 apply as modified by paragraphs (4) to (7) of this rule (and references elsewhere in these Rules to a defendant and to an acknowledgment of service are, where relevant, to be read as references to the substitute terms in rules 8.2A, 8.3, 8.4 and 8.5 as so modified).

(4) Rule 8.2A (issue of claim form without naming defendants) applies as if for “without naming a defendant” in paragraph (1) there were substituted “without serving notice on any person”.

(5) Rule 8.3 (acknowledgment of service) applies—

- (a) as if, instead of referring to a defendant, it referred to a person giving notice of intention to intervene or applying for permission to intervene, as the case may be;

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The Civil Procedure Rules 1998, PART 57. (See end of Document for details)*

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- (b) as if, instead of referring to an acknowledgment of service, it referred to a notice of intention to intervene or an application for permission to intervene, as the case may be; and
  - (c) subject to paragraph (7), with the substitution of 21 days for 14 days as the time within which the notice of intention to intervene or application for permission to intervene must be filed and served.
- (6) Rules 8.4 (consequence of not filing an acknowledgment of service) and 8.5 (filing and serving written evidence) apply—
- (a) as if, instead of referring to a defendant, they referred to a person giving notice of intention to intervene or applying for permission to intervene, as the case may be; and
  - (b) as if, instead of referring to an acknowledgment of service, they referred to a notice of intention to intervene or an application for permission to intervene, as the case may be.
- (7) If the claim form is served out of the jurisdiction under rule 6.32 or 6.33, the period for filing notice of intention to intervene or an application for permission to intervene, as the case may be, and any written evidence, is 7 days longer than the relevant period for serving an acknowledgement of service specified in rule 6.35 or Practice Direction 6B.

### **Giving notice of claim** E+W

**57.20.**—(1) Where the claim is for a declaration of presumed death, the claimant must give notice of the claim by serving a copy of it on the following persons (where not the claimant)—

- (a) the spouse or civil partner of the missing person;
- (b) any parent of the missing person;
- (c) any child of the missing person;
- (d) any sibling of the missing person;
- (e) if there are no persons within sub-paragraphs (a) to (d), the nearest relative of the missing person known to the claimant; and
- (f) any other person (including in particular any insurance company) appearing to the claimant to have an interest in the claim.

(2) Where the claim is for a variation order, the claimant must give notice of the claim by serving a copy of it on the following persons (where not the claimant)—

- (a) the person who was the claimant for the declaration of presumed death or (as the case may be) previous variation order which it is sought to have varied or revoked;
- (b) the spouse or civil partner of the missing person;
- (c) any parent of the missing person;
- (d) any child of the missing person;
- (e) any sibling of the missing person;
- (f) if there are no persons within sub-paragraphs (b) to (e), the nearest relative of the missing person known to the claimant; and
- (g) any other person (including in particular any insurance company) appearing to the claimant to have an interest in the claim.

(3) Notice under paragraph (1)(a) to (f) or paragraph (2)(a) to (g) must be given within 7 days after the claim is issued.

### Advertisement of claim **E+W**

**57.21.**—(1) The claimant (whether the claim is for a declaration of presumed death or for a variation order) must, within 7 days of issue of the claim, ensure that notice of the claim is published—

- (a) in a form which meets the requirements set out in Practice Direction 57B; and
- (b) in at least one newspaper circulating in the vicinity of the last known address of the missing person.

(2) The claimant must, at least 5 days before the hearing, file a copy of the page of the newspaper bearing the advertisement of notice of the claim required by paragraph (1) and the date on which it was published.

### Interveners **E+W**

**57.22.**—(1) The Attorney General, or a person who is entitled to intervene in proceedings under section 11(1), must first notify the court of the intention to intervene in accordance with the requirements of Practice Direction 57B.

(2) Any other person who wishes to intervene in such proceedings must submit an application for permission to intervene in accordance with the requirements of Practice Direction 57B.

(3) Where the court grants permission to intervene, it may do so on conditions and may give case management directions.

(4) The court may direct that a person who intervenes in proceedings, other than the Attorney General, be joined as a claimant or defendant.

### Requirement to provide information **E+W**

**57.23.**—(1) An application for an order under section 12(1) of the 2013 Act must be supported by evidence and must in particular—

- (a) specify or describe the information in respect of which the order is sought;
- (b) set out the reasons why the person making the application believes that the person against whom the order is sought is likely to have such information; and
- (c) include any further details, where known, of the missing person which are likely to assist in providing the information sought.

(2) The person making the application must serve a copy of the application notice on the person against whom the order is sought, and on every other party to the proceedings (within the meaning of section 20(2) of the 2013 Act), at least 14 days before the date fixed for the hearing of the application.

(3) An application for discharge or variation under section 12(6) of an order made under section 12(1) may be made without notice unless the court directs otherwise.]

### [<sup>F39</sup>Requirement to send copy of declaration to the Public Guardian **E+W**

**57.24.** Where a declaration of presumed death made under the 2013 Act satisfies section 3(3)(a) or (b) of that Act, the court must send a copy of the declaration to the Public Guardian.]

#### Textual Amendments

**F39** Rule 57.24 inserted (31.7.2019) by The Civil Procedure (Amendment No. 2) Rules 2019 (S.I. 2019/1034), rules 1(1), 6

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The Civil Procedure Rules 1998, PART 57. (See end of Document for details)*

## <sup>F40</sup>SECTION VI

### PROCEEDINGS UNDER THE GUARDIANSHIP (MISSING PERSONS) ACT 2017

#### Textual Amendments

**F40** Pt. 57 Section 6 inserted (31.7.2019) by [The Civil Procedure \(Amendment No. 2\) Rules 2019 \(S.I. 2019/1034\)](#), rule 1(1), [Sch.](#)

#### Scope and interpretation **E+W**

**57.25.**—(1) This Section contains rules about proceedings under the Guardianship (Missing Persons) Act 2017.

(2) In this Section, terms used in the Guardianship (Missing Persons) Act 2017 have the meaning given by that Act, and—

- (a) “the 2017 Act” means the Guardianship (Missing Persons) Act 2017;
- (b) “the missing person” means the person who is or has been asserted to be “missing” within the meaning of the 2017 Act;
- (c) “a claim for a guardianship order” means an application under section 2 (applying for a guardianship order) of the 2017 Act for a guardianship order;
- (d) “an application for a revocation/variation order” means—
  - (i) an application under section 12 (variation of a guardianship order) of the 2017 Act for an order varying a guardianship order; or
  - (ii) an application under section 13 (revocation of a guardianship order) of the 2017 Act for an order revoking a guardianship order;
- (e) “an application relating to a guardianship order” means any application which relates to the exercise of functions of a guardian but which is not a claim for a guardianship order or an application for a revocation/variation of a guardianship order;
- (f) “an intervener” means either a person who falls within section 21(1) of the 2017 Act and who has given notice of intention to intervene, or a person to whom the court has given permission to intervene.

#### Proceedings to be in the High Court **E+W**

**57.26.**—(1) Proceedings under the 2017 Act must be issued in the High Court in either—

- (a) the Chancery Division; or
- (b) the Family Division.

(2) The Civil Procedure Rules apply to proceedings under the 2017 Act which are brought in the Family Division, except that in the Family Division the provisions of Part 29 of the Family Procedure Rules 2010 relating to the drawing up and service of orders shall apply instead of the provisions in the Civil Procedure Rules Part 40 and Practice Direction 40B.

#### Procedure for making claims for a guardianship order **E+W**

**57.27.**—(1) A claim for a guardianship order must be made by issuing a claim form in accordance with Part 8.

(2) Following issue, the court shall fix a date for the first hearing of the claim and which shall, unless the court otherwise orders, be not less than 56 days from the date of issue; but any person may apply for the claim or an application to be heard at an earlier date.

(3) In addition to the matters set out in rule 8.2 (contents of the claim form), the claim form must also include the information required by paragraph 1.1 of Practice Direction 57C and be accompanied by a witness statement containing the information required by paragraph 1.2 and, where appropriate, paragraph 1.3 of Practice Direction 57C.

(4) The claim form must name the missing person as the defendant but—

- (a) the claimant need take no steps to serve the claim form upon the missing person unless the court orders otherwise;
- (b) the court shall consider at the first hearing what, if any, directions to make regarding service or dispensing with service of the claim form upon the missing person;
- (c) Rules 6.9, 6.15, 6.16 and 7.5 (rules as to service of the claim form) shall not apply.

(5) Rules 8.3, 8.4 and 8.5 (rules relating to part 8 claims) shall not apply.

(Rule 57.29 sets out further steps that a claimant must take.)

### **Procedure for making applications for revocation/variation of guardianship orders and applications relating to guardianship orders** **E+W**

**57.28.**—(1) An application for a revocation/variation order and an application relating to a guardianship order must be made in accordance with Part 23 as modified by this rule and by paragraph 2 of Practice Direction 57C.

(2) In addition to the matters set out in rule 23.6 (what an application notice must include), the application notice must also include, or be accompanied by, a witness statement which contains the information required by paragraph 2 of Practice Direction 57C in relation to that type of application.

(3) Following issue, the court shall fix a date for the first hearing of the application which shall, unless the court otherwise orders, be not less than 56 days from the date of issue; but any person may apply for the application to be heard at an earlier date.

(4) The applicant need take no steps to serve the application or any order upon the missing person unless the court orders otherwise.

(5) Rules 23.9 and 23.11 apply as modified by paragraphs (6) and (7).

(6) Rule 23.9(2) (service of application where application made without notice) applies as if it did not refer to the missing person as defendant, but did refer also to any interveners.

(7) Rule 23.11 (power of court to proceed in the absence of a party) applies as if the words “or any intervener” were inserted after both references to “any respondent”.

(Rules 57.29 and 57.30 set out further steps that applicants must take.)

### **Giving notice and advertisement of claim for a guardianship order or an application for a revocation/variation order** **E+W**

**57.29.**—(1) The claimant or applicant must, within 14 days of notification of the date of the first hearing of the claim for a guardianship order or of an application for a revocation/variation order—

- (a) send notice of the claim or application to those of the following persons whose identity and current residential or e-mail address or nominated address for service are known to the claimant or applicant—
  - (i) the spouse or civil partner of the missing person;
  - (ii) any parent of the missing person;
  - (iii) any child of the missing person;
  - (iv) any sibling of the missing person;

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- (v) if there are no persons within paragraphs (i) to (iv), the nearest relative of the missing person known to the claimant or applicant;
- (vi) any guardian or any former guardian of the missing person;
- (vii) any person who has previously intervened in and/or become a party to these or any proceedings in which a guardianship order was sought in relation to the missing person,

by sending (subject to any redaction ordered by the court, and subject to paragraph (2)) the material set out in paragraph 3.1 of Practice Direction 57C to the relevant addresses; and

- (b) advertise notice of the claim or application—
  - (i) in a form which meets the requirements set out in paragraph 4.1 of Practice Direction 57C;
  - (ii) in at least one public news media circulating in or relating to the vicinity of the last known usual place of residence of the missing person;
 being “Advertisement of the claim/application”.

(2) If the person has a nominated address for service known to the claimant or applicant, and provided that such address for service has been nominated expressly for the purpose of 2017 Act proceedings, the material need only be sent to that address; and, if the claimant or applicant has no access to any, or no, e-mail address of their own, they need not send the material to any e-mail address.

(3) The claimant or applicant must file at court no later than 7 days before the first hearing of the claim or application, a witness statement—

- (a) confirming compliance with paragraph (1)(a), and attaching Form N215 (Certificate of Service) completed to describe each method of sending to each person, as if references on that form to “service” were to “sending”; and
- (b) confirming compliance with paragraph (1)(b), and containing or attaching evidence of Advertisement of the claim/application, including details of how, where and when it was advertised.

### **Giving notice and advertisement of applications relating to guardianship orders or the potential exercise of powers under the 2017 Act E+W**

**57.30.**—(1) Unless the court dispenses with the need for notice, notice of an application relating to a guardianship order must be sent to those of the following persons whose identity and current residential or e-mail address or nominated address for service are known to the applicant—

- (a) the spouse or civil partner of the missing person;
- (b) any parent of the missing person;
- (c) any child of the missing person;
- (d) any sibling of the missing person;
- (e) if there are no persons within sub-paragraphs (a) to (d), the nearest relative of the missing person known to the applicant;
- (f) any guardian or any former guardian of the missing person;
- (g) any person who has previously intervened in and/or become a party to these or any proceedings in which a guardianship order was sought in relation to the missing person,

by sending (subject to any redaction ordered by the court, and subject to paragraph (2)) the material set out in paragraph 3.1 of Practice Direction 57C to the relevant addresses within 14 days after the court has notified the date for the hearing of the application.



(2) If the person has a nominated address for service known to the applicant, and provided that such address for service has been nominated expressly for the purpose of 2017 Act proceedings, the material need only be sent to that address; and, if the applicant has no access to any, or no, e-mail address of their own, they need not send the material to any e-mail address.

(3) The applicant must file at court no later than 7 days before the first hearing of the application, a witness statement confirming compliance with paragraph (1) above and attaching Form N215 (Certificate of Service) completed to describe each method of sending to each person as if references on that form to “service” were to “sending”.

(4) The court may make—

- (a) a direction for advertisement of the application; and
- (b) any further provision for notification or service of the application.

(5) If the court is considering whether to exercise a power under the 2017 Act without an application having been made, the court may require—

- (i) notice of the matter to be given (in such manner the court may direct) to any of the persons listed in paragraph (1), or to any other person; and
- (ii) the matter to be advertised in such manner as the court may direct.

## Interveners **E+W**

**57.31.**—(1) A person who is entitled under section 21(1) (right to intervene) of the 2017 Act to intervene in a claim for a guardianship order, an application for a revocation/variation order, or an application relating to a guardianship order should, not less than 14 days before the first hearing date of the claim or application, notify the court and the claimant/applicant of any intention to intervene in accordance with the requirements of paragraph 5.1 of Practice Direction 57C.

(2) On receipt of a notice under paragraph (1) the court may give case management directions.

(3) Failure to comply with paragraph (1) shall not prevent the person from intervening (if they are otherwise entitled to do so) but may be taken into account on any question relating to costs.

(4) Any other person who wishes to intervene in such proceedings must, not less than 14 days before the first hearing date of the claim or application, file with the court and serve on the claimant/applicant an application for permission to intervene in accordance with Part 23 and paragraph 5.2 of Practice Direction 57C.

(5) Within 7 days of receiving an application for permission to intervene—

- (a) from a person who has not been sent or served with the claim form or the application notice, the claimant/applicant must serve a copy of the claim form or application, the evidence in support and notice of the hearing date, upon the person seeking permission to intervene; and in any case
- (b) the claimant or applicant must file with the court and serve upon the person seeking permission to intervene, a statement of whether or not they object and any evidence in support of any objection.

(6) Where the court grants permission to intervene to a person who otherwise has no entitlement to intervene under section 21(1) (right to intervene) of the 2017 Act, it may do so on conditions and may give case management directions.

(7) The court may direct that a person who intervenes in proceedings be added as a claimant (provided that they consent in writing) or defendant to the claim.

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### **Requirement to send copy of all orders made to the Public Guardian** **E+W**

**57.32.** Where the court makes a guardianship order, a revocation/variation order, an order relating to the functions of a guardian, or an order granting or refusing permission to intervene, it shall send a copy of such order to the Public Guardian.

### **Death of the missing person** **E+W**

**57.33.**—(1) If the missing person has died before or dies after the issue of the claim then, subject to any order of the court, the claim shall not abate or be stayed, and rule 19.8 shall not apply.

(2) If the claimant considers that there is real doubt as to whether the missing person is still alive, the claim form may incorporate claims under both the Presumption of Death Act 2013 (“the 2013 Act”) and the 2017 Act.

(3) If the court determines at any point in the claim that the missing person has not been known to be alive for a period of seven years whether before or after the issue of the claim, the court may order that the claim should continue as if it had been brought under the 2013 Act.

(4) The court may make an order under or in relation to paragraphs (2) and (3) on such terms and conditions and with such consequential provisions as it considers appropriate.]]

**Status:**

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**Changes to legislation:**

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