

SCHEDULE

Rule 10(e)

“SECTION V

*Proceedings under the Presumption of Death Act 2013*

**Scope and interpretation**

**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**

**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(1) 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**

**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;
- (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

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(1) [S.I. 2010/2955](#).

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- (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**

- 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**

- 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**

**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**

**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.”