



# Presumption of Death (Scotland) Act 1977

## 1977 CHAPTER 27

### 1 Action of declarator.

- (1) Where a person who is missing is thought to have died or has not been known to be alive for a period of at least seven years, any person having an interest may raise an action of declarator of the death of that person (hereafter in this Act referred to as the “missing person”) in the Court of Session or the sheriff court in accordance with the provisions of this section.
- (2) An action such as is mentioned in subsection (1) above is, in this Act referred to as an “action of declarator”.
- (3) The Court of Session shall have jurisdiction to entertain an action of declarator if and only if—
  - (a) the missing person was domiciled in Scotland on the date on which he was last known to be alive or had been habitually resident there throughout the period of one year ending with that date; or
  - (b) the pursuer in the action—
    - (i) is the spouse<sup>F1</sup> or civil partner] of the missing person, and
    - (ii) is domiciled in Scotland at the date of raising the action or was habitually resident there throughout the period of one year ending with that date.
- (4) The sheriff court shall have jurisdiction to entertain an action of declarator if and only if—
  - (a) the provisions of subsection (3)(a) above are satisfied and the missing person’s last known place of residence in Scotland was in the sheriffdom; or
  - (b) the provisions of subsection 3(b) above are satisfied and the pursuer was resident in the sheriffdom for a period of not less than forty days ending with the date of raising the action<sup>F2</sup>; or
  - (c) in a case where the pursuer in the action is the civil partner of the missing person, the following conditions are met—
    - (i) the two people concerned registered as civil partners of each other in Scotland; and

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*Status: Point in time view as at 16/12/2014.*

*Changes to legislation: There are currently no known outstanding effects for the Presumption of Death (Scotland) Act 1977, Section 1. (See end of Document for details)*

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(ii) it appears to the court to be in the interests of justice to assume jurisdiction in the case.]

[<sup>F3</sup>(4A) Despite subsection (4), the sheriff court of the sheriffdom of Lothian and Borders at Edinburgh also has jurisdiction to entertain an action of declarator if—

- (a) the pursuer in the action and the missing person are married to each other and are of the same sex,
- (b) they married each other in Scotland, and
- (c) it appears to the court to be in the interests of justice to assume jurisdiction in the case.]

(5) Any person having an interest may, in an action of declarator, lodge a minute seeking the making by the court under section 2 of this Act of any determination or appointment not sought by the pursuer.

(6) At any stage of the proceedings the sheriff may, of his own accord or on the application of any party to the action, and shall, if so directed by the Court of Session (which direction may be given on the application of any party to the action), remit to the Court of Session an action of declarator raised in the sheriff court where he or, as the case may be, the Court of Session considers such remit desirable because of the importance or complexity of the matters at issue.

#### Textual Amendments

- F1** Words in s. 1(3)(b)(i) inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 45\(2\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F2** S. 1(3)(c) and preceding word inserted (5.12.2005) by [Civil Partnership Act 2004 \(c. 33\)](#), s. 263(10)(c), [Sch. 28 para. 45\(3\)](#); S.S.I. 2005/604, arts. 2(c), 4
- F3** S. 1(4A) inserted (16.12.2014) by [Marriage and Civil Partnership \(Scotland\) Act 2014 \(asp 5\)](#), s. 36, [Sch. 1 para. 2](#); S.S.I. 2014/287, art. 3, Sch.

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