

1978 No. 161 (S. 20)
COURT OF SESSION, SCOTLAND
**Act of Sederunt (Rules of Court Amendment No. 3)
(Presumption of Death) 1978**

Made - - - - - 1st February 1978

Coming into Operation 1st March 1978

The Lords of Council and Session under and by virtue of the powers conferred upon them by section 16 of the Administration of Justice (Scotland) Act 1933(a) and by section 15 of the Presumption of Death (Scotland) Act 1977(b) and of all other powers competent to them in that behalf, do hereby enact and declare:—

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Rules of Court Amendment No. 3) (Presumption of Death) 1978 and shall come into operation on 1st March 1978.

(2) The Interpretation Act 1889(c) shall apply to this Act of Sederunt as it applies to an Act of Parliament.

Actions and applications under the Presumption of Death (Scotland) Act 1977

2. In the Rules of Court(d), as amended, after rule 188A (Procedure under Defamation Act 1952), there is inserted the following rule—

“Section 8—Actions and applications under the Presumption of Death (Scotland) Act 1977.

188B(1) In this rule—

- (a) “the Act” means the above Act;
- (b) “action” means an action of declarator under section 1(1) of the Act;
- (c) “application” means an application under section 4(1) of the Act;
- (d) “remitted action” means an action of declarator raised in the Sheriff Court and remitted to the Court of Session under section 1(6) of the Act;
- (e) “remitted application” means an application made in the Sheriff Court and remitted to the Court of Session under section 4(4) of the Act.

(2) An application shall be made by way of minute in the original process.

(a) 1933 c. 41.
(c) 1889 c. 63.

(b) 1977 c. 27.
(d) S.I. 1965/321.

(3) The pursuer in an action and the minuter in an application shall, subject to the provisions of this rule, intimate the summons or minute, as the case may be, to the following persons—

(a) the missing person's—

(i) husband or wife, as the case may be, and

(ii) children, including illegitimate or adopted children; or, if he has no children, his nearest known relative;

(b) any person, including any insurance company, who as far as the pursuer is aware, has any interest in the action;

(c) the Lord Advocate,

and any such person may lodge defences to an action or answers to a minute, as the case may be, within such period as the Court may allow.

(4) Any summons intimated to any person under paragraph (3) shall contain a warrant in the following terms:—

“Warrant to intimate to (name and address) as (husband *or* wife *or* child *or* nearest known relative) *or* (a person having an interest in the presumed death) of (name and last known address of the missing persons) and to the Lord Advocate”;

and rule 76 shall apply to the execution of a warrant under this rule as it applies to the execution of a warrant under that rule with the substitution for the reference to Form 5 of a reference to Form 5B.

(5) Intimation of a minute to any person under paragraph (3) shall be made in accordance with an order of the Court, being such order for intimation as the Court thinks proper to make on the motion of the minuter having regard to the provisions of that paragraph.

(6) The Court may, on the motion of the pursuer in any action or the minute in an application, dispense with intimation under sub-paragraphs 3(a) or (b);

(7) The solicitor for the pursuer in an action or for the minuter in an application (not being an application brought on the basis that the missing person's present whereabouts are known) shall, on the expiry of the period within which defences or answers require to be lodged and without any defences or answers having been lodged indicating knowledge of the present whereabouts of the missing person, enrol a motion for advertisement of the facts relating to the missing person which are set out in the summons or minute in such specified newspapers or other publications as appear to be appropriate in all the circumstances, and the Court shall order such advertisement, in terms of the motion or otherwise, as it thinks fit.

(8) Any remitted action shall, notwithstanding that it has been remitted from the Sheriff Court, be proceeded with in the Outer House as if it were an action raised in the Court of Session.

(9) Any remitted application shall, notwithstanding that it has been remitted from the Sheriff Court, be proceeded with in the Outer House as if it were an application made in the Court of Session.”

SI 1978/161
ISBN 0-11-083161-6



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