

STATUTORY INSTRUMENTS

**1998 No. 3132**

The Civil Procedure Rules 1998

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

**[<sup>F1</sup>PROBATE, INHERITANCE, PRESUMPTION OF  
DEATH AND GUARDIANSHIP OF MISSING PERSONS]**

*[<sup>F1</sup><sup>F2</sup>SECTION VI*

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

**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 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;
- (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.

#### **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 [F319.12] 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.]]

#### **Textual Amendments**

- F3** Word in [rule 57.33\(1\)](#) substituted (6.4.2023) by [The Civil Procedure \(Amendment\) Rules 2023 \(S.I. 2023/105\)](#), [rules 1\(1\)](#), [30](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Civil Procedure Rules 1998, Cross  
Heading: SECTIONVI.