

CHAPTER 50

CAUSES UNDER THE PRESUMPTION OF DEATH (SCOTLAND) ACT 1977

Interpretation of this Chapter

50.1. In this Chapter-

- "the Act of 1977" means the Presumption of Death (Scotland) Act 1977(a);
- "action of declarator" means an action under section 1(1) of the Act of 1977;
- "missing person" has the meaning assigned in section 1(1) of the Act of 1977.

Parties to, and service and intimation of, actions for declarator

50.2.-(1) The missing person shall be called as the defender in an action of declarator and, service on that person shall be by advertisement in such newspaper or other publication as the court thinks fit of such of the facts relating to the missing person and set out in the summons as the court may specify.

(2) The period of notice where service is executed in accordance with paragraph (1) shall be 21 days from the date of publication of the advertisement unless the court otherwise orders.

(4) Subject to paragraph (6), in the summons in an action of declarator, the pursuer shall insert a warrant for intimation to-

- (a) the missing person's-
 - (i) spouse, and
 - (ii) children or, if he has no children, nearest relative known to the pursuer.
- (b) any person, including any insurance company, who so far as known to the pursuer, has any interest in the action, and
- (c) the Lord Advocate,

in the following terms:- "Warrant for intimation to (*name and address*) as [*husband or wife, child or nearest relative*] [*a person having an interest in the presumed death*] of (*name and last known address of the missing person*) and to the Lord Advocate."

(5) A notice of intimation in Form 50.2-B shall be attached to the copy of the summons where intimation is given on a warrant under paragraph (4).

(6) The court may, on the motion of the pursuer, dispense with intimation on a person mentioned in paragraph (4)(a) or (b).

(a) 1977 c.27.

(7) Notwithstanding the reference in subsection (5) of section 1 of the Act of 1977 (person interested in seeking determination or appointment not sought by pursuer) to lodging a minute, an application under that subsection shall be made by lodging defences containing a conclusion for the determination or appointment sought, averments in the answers to the condescence in support of that conclusion and an appropriate plea-in-law.

(8) On lodging defences under paragraph (7), the defender shall, as well as complying with rule 4.6 (intimation of steps of process)-

- (a) send a copy of the defences by registered post or the first class recorded delivery service to each person to whom intimation of the action has been made under paragraph (4); and
- (b) lodge in process a certificate of intimation of those defences by post in Form 16.4.

Further advertisement and procedure

50.3.-(1) At any time before the determination of the action, the court may, at its own instance or on the motion of a party, make such order for further advertisement as it thinks fit.

Applications for proof

50.4. In an action of declarator where no defences have been lodged, the pursuer shall, after such further advertisement as may be ordered under rule 50.3, apply by motion for an order for a proof.

Applications for variation or recall of decrees

50.5.-(1) An application under section 4(1) of the Act of 1977 (variation or recall of decree) shall be made by minute in the process of the action to which the application relates.

(2) On the lodging of such a minute, the minuter shall apply by motion for an order-

- (a) for service on the missing person, where his whereabouts have become known;
- (b) for intimation to those persons mentioned in rule 50.2(4) or to dispense with intimation to a person mentioned in rule 50.2(4)(a) or (b); and
- (c) for any answers to the minute to be lodged in process within such period as the court thinks fit.

(3) An application under section 4(3) of the Act of 1977(a) (person interested seeking determination or appointment not sought by applicant for variation order) shall be made by lodging answers containing a crave for the determination or appointment sought.

(4) A person lodging answers containing a crave under paragraph (3) shall, as well as sending a copy of the answers to the minuter-

(a) send a copy of the answers by registered post or the first class recorded delivery service to each person on whom service or intimation of the minute was ordered; and

(b) lodge in process a certificate of intimation of those answers by post in Form 16.4.

Applications for remit from sheriff court

50.6.-(1) An application by a person for a direction under section 1(6) or 4(4) of the Act of 1977 (remit of action or application to the court) shall be made by petition.

(2) An action of declarator or an application which is remitted to the court under section 1(6) or 4(4) of the Act of 1977 shall proceed in the Outer House as if it were an action brought or an application made, as the case may be, in that court.

Appointment of judicial factors

50.7.-(1) Rule 61.6 (documents relating to judicial factories for Accountant of Court) shall apply to an application for the appointment of a judicial factor under section 2(2)(c) or section 4(2) of the Act of 1977 as it applies to a petition for the appointment of a judicial factor.

(2) Where, in an action of declarator or an application under section 4(1) of the Act of 1977 (variation or recall of decree), a judicial factor on the estate of the missing person is appointed, the process shall forthwith be transmitted to, and retained by, the Petition Department; and the judicial factory shall proceed as if the judicial factor had been appointed in a petition for that purpose.

(3) In the application of rule 50.5 (applications for variation or recall of decrees) to an application under section 4(1) of the Act of 1977 in a cause transmitted to the Petition Department under paragraph (2), for references to a minute there shall be substituted references to a note.

(a) Section 4(3) of the Act of 1977 is amended by this Act of Sederunt, Schedule 3, paragraph 1.