

## 108<sup>th</sup> UPDATE – NEW PRACTICE DIRECTION

The new practice direction supplementing the Civil Procedure Rules 1998 is made by the Master of the Rolls under the powers delegated to him by the Lord Chief Justice under Schedule 2, Part 1, paragraph 2(2) of the Constitutional Reform Act 2005, and is approved by Paul Maynard MP, Parliamentary Under-Secretary of State for Justice, by the authority of the Lord Chancellor.

The new practice direction comes into force on the following date—	
Practice Direction 57C – Proceedings under the Guardianship (Missing Persons) Act 2017	31 July 2019

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The Right Honourable Sir Terence Etherton  
Master of the Rolls and Head of Civil Justice  
Date:

Signed by authority of the Lord Chancellor:

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Paul Maynard MP  
Parliamentary Under-Secretary of State for Justice  
Ministry of Justice  
Date: 26<sup>th</sup> June 2019

**PRACTICE DIRECTION 57C – PROCEEDINGS UNDER THE GUARDIANSHIP (MISSING PERSONS) ACT 2017**

- 1) After Practice Direction 57B (Proceedings under the Presumption of Death Act 2013), insert Practice Direction 57C – Proceedings under the Guardianship (Missing Persons) Act 2017, as set out in the Schedule to this Update.

## SCHEDULE

### “PRACTICE DIRECTION 57C – PROCEEDINGS UNDER THE GUARDIANSHIP (MISSING PERSONS) ACT 2017

This practice direction supplements Part 57

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#### Procedure for claims – rules 57.25 – 57.33

##### Claim for guardianship order – rule 57.27

1.1 The claim form for a claim for a guardianship order must include the following—

- (1) information about the claimant—
  - (a) the claimant’s name and address, and, if different, their address for service;
  - (b) the relationship of the claimant to the missing person; and
  - (c) if the claimant is not the missing person’s spouse, civil partner, parent, child or sibling, or other person within section 19(3) (requirement for

applicants to have sufficient interest) of the 2017 Act, details of the claimant's interest in relation to the missing person's property or financial affairs;

- (2) the name and last known address of the missing person (who must be named as a defendant), and when and for how long they have been missing;
- (3) details of the terms of the guardianship order sought including the name of the proposed guardian;
- (4) if applicable, that the claimant seeks a guardianship order on the basis that the urgency condition applies (section 3(3) of the 2017 Act).

1.2 The claimant must also provide the following information, in a witness statement accompanying the claim form, and attaching any relevant evidence—

- (1) as far as the claimant knows—
  - (a) the missing person's name and surname, and any other names by which the missing person is or have formerly been known;
  - (b) the missing person's gender;
  - (c) the missing person's maiden surname (if any);
  - (d) the missing person's date and place of birth;
  - (e) the occupation of the missing person;
  - (f) the existence, name and surname, and the current residential or electronic address and any nominated address for service of—
    - (i) the missing person's spouse or civil partner,
    - (ii) the missing person's parents;
    - (iii) the missing person's siblings;
    - (iv) the missing person's children;
  - (g) the missing person's National Insurance number;
  - (h) the missing person's usual place of residence, and when they became absent from it;
  - (i) the missing person's usual day-to-day activities and when they became absent from them;
  - (j) whether it is asserted that the missing person is in prison or has been detained, and if so where and from what date;

- (k) the date and circumstances in which the missing person is thought to have become missing; and whether there has been any police investigation, and, if so, whether any such report has been or could be obtained;
  - (l) the missing person's whereabouts, and any evidence or contentions with regard to the matters set out in section 1(2) of the 2017 Act (the missing person's whereabouts – first condition);
  - (m) any evidence or contentions with regard to the matters set out in section 1(3) of the 2017 Act (the missing person's ability to make relevant decisions – the second condition);
  - (n) reasons for supposing that the missing person is still alive; and
  - (o) what, if any, steps are proposed with regard to service of the claim upon or other notification of the claim to be given to the missing person, with reasons for such steps being considered appropriate;
- (2) reasons why the claimant considers the court has jurisdiction to hear and determine the claim under section 2(2) (applying for a guardianship order) of the 2017 Act;
  - (3) reasons why the claimant asserts that they satisfy the requirement to have a sufficient interest in relation to the missing person's property or financial affairs, having regard to section 19 (requirement for applicants to have sufficient interest) of the 2017 Act;
  - (4) if not the claimant, the name and address of the proposed guardian together with evidence that the person consents to acting as guardian;
  - (5) details of the missing person's property and financial affairs as are known to the claimant and relevant to the claim for a guardianship order;
  - (6) reasons why, in all the circumstances, the appointment of a guardian in respect of property or financial affairs of the missing person is in the missing person's best interests (sections 3(2)(c) and 18 of the 2017 Act);
  - (7) an explanation as to why the proposed guardian meets the requirements to act as guardian set out in section 4 (choice of guardian) of the 2017 Act;
  - (8) details of any persons referred to in rule 57.29(1)(a) to whom the claimant cannot send notice of the claim and reasons for this;

- (9) details of the public news media in which the claimant proposes to advertise the claim (rule 57.29(1)(b)) and reasons why it is appropriate;
  - (10) details of any registered Lasting Power of Attorney or registered Enduring Power of Attorney, or confirmation that no Lasting Power of Attorney or Enduring Power of Attorney has been registered, by or in relation to the missing person; and
  - (11) details of any Deputy appointed or confirmation that no Deputy has been appointed on behalf of the missing person under the Mental Capacity Act 2005.
- 1.3 Where the absence condition is not or may not be met, the witness statement must provide reasons why the claimant considers the urgency condition (section 3(3) of the 2017 Act) is met, and attach any evidence which supports this.

## **Applications**

- 2.1 Any application must be made in accordance with CPR Part 23 as modified by rule 57.28 and the following paragraphs.
- 2.2 An application and the evidence in support must set out in detail—
- (1) the applicant's name and address;
  - (2) the applicant's relationship with the missing person;
  - (3) why the applicant asserts that they satisfy the requirement to have a sufficient interest in relation to the missing person's property or financial affairs, having regard to section 19(3) (requirement for applicants to have sufficient interest) of the 2017 Act;
  - (4) the reasons for the application and the details of the determination, order or directions sought; and
  - (5) the persons to or upon whom the applicant proposes to send or serve the application.
- 2.3 In addition to the matters referred to in paragraph 2.2 above, an application for a revocation/variation order and an application relating to a guardianship order must be supported by a witness statement stating—
- (1) as far as the applicant knows, the existence, name, surname and current residential and electronic address, and any nominated address for service, of—

- (a) the missing person's spouse or civil partner;
  - (b) the missing person's parents;
  - (c) the missing person's siblings;
  - (d) the missing person's children;
  - (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;
- (2) what, if anything, is known of the location of the missing person; and
- (3) in the case of an application for a revocation/variation of a guardianship order, details of:
- (a) any persons referred to in rule 57.29(1)(a) to whom the applicant cannot send notice of the application and reasons for this; and
  - (b) the public news media in which the applicant proposes to advertise the application (see rule 57.29(1)(b)) and reasons why it is appropriate.

**Giving of Notice – rule 57.29(1)(a) and rule 57.30**

3.1 The material required to be sent as notice by rules 57.29 or 57.30 must include (subject to any redactions ordered by the court) a copy of the claim form or application notice, a copy of the evidence in support, and a letter stating the date of the first hearing of the claim or application and that—

“Any spouse, civil partner, parent, child or sibling of the missing person is entitled to intervene in the matter. Any other person having an interest may apply to the court for permission to intervene in the matter.

If you wish to give notice of intention to intervene or to apply to the court for permission to intervene, you should do so at [COURT ADDRESS] as soon as possible, and no later than 14 days before the date of the first hearing, and serve a copy of that notice or application on the [CLAIMANT/APPLICANT] at the address given below. Delay may harm your prospects of obtaining

permission to intervene if you are not entitled to intervene, and in any event, may be taken into account on any question relating to costs.”

**Advertisement of claim for guardianship order or an application for a revocation/variation order – rule 57.29(1)(b)**

4.1 The advertisement of the claim for a guardianship order or an application for a revocation/variation order required by section 20(1) (giving notice of applications) of the 2017 Act and rule 57.29(1)(b) must be in the appropriate form set out below, or contain the equivalent information about the claim or application and the possibility of applying, and where and by when to apply, to the court—

**IN THE HIGH COURT OF JUSTICE**

**IN THE [CHANCERY] [FAMILY] DIVISION**

Case Number .....

IN THE MATTER OF AN APPLICATION MADE UNDER THE GUARDIANSHIP (MISSING PERSONS) ACT 2017 [ FOR A GUARDIANSHIP ORDER ] [ TO REVOKE OR VARY A GUARDIANSHIP ORDER ] IN RESPECT OF [INSERT MISSING PERSON NAME]

[ A claim has been issued in the High Court of Justice, [ ] Division, Claim No. [ ], by [INSERT NAME OF CLAIMANT] for an order that [INSERT NAME OF PROPOSED GUARDIAN] be appointed guardian in respect of [INSERT NAME OF MISSING PERSON (“the missing person”)], whose [last usual place of residence ] was [INSERT ADDRESS]. ]

[ An application has been issued in the High Court of Justice, [ ] Division, Claim No. [ ], by [INSERT NAME OF APPLICANT] for an order that the Guardianship Order dated [ ] made in respect of [INSERT NAME OF MISSING PERSON (“the missing person”)], whose [ last usual place of residence ] was [INSERT ADDRESS] should be [ revoked ] [varied ]. ]

The date and venue for the first hearing of the [Claim] [Application] is [ ] at [address].

Any spouse, civil partner, parent, child or sibling of the missing person is entitled to intervene in the matter. Any other person having an interest may apply to the Court for permission to intervene in the matter.



If you wish to give notice of intention to intervene or to apply to the Court for permission to intervene, you should do so at [COURT ADDRESS] as soon as possible, and no later than 14 days before the date of the first hearing, and serve a copy of that notice or application on the [CLAIMANT/APPLICANT] at the address given below. Delay may harm your prospects of obtaining permission to intervene if you are not entitled to intervene, and, in any event, may be taken into account on any question relating to costs.

Claimant/Applicant's name

[If the claimant/applicant is legally represented]

Name of Claimant/Applicant's Legal Representative and their address for service

[If the claimant/applicant is not legally represented]

Claimant/Applicant's address for service

### **Interveners – rule 57.31**

5.1 A person who is entitled and wishes to intervene in a claim for a guardianship order or an application for a revocation/variation order or an application relating to a guardianship order by virtue of section 21(1) (right to intervene) of the 2017 Act (the missing person's spouse, civil partner, parent, child or sibling) should notify their intention to intervene as early as possible, and not later than 14 days before the date of the first hearing, by filing with the court, and serving on the claimant or applicant, notice in writing, specifying—

- (1) the intervener's name and address;
- (2) the intervener's relationship to the missing person;
- (3) the reasons for intervening; and
- (4) particulars of any determination, order or directions sought.

5.2 An application under rule 57.31(4) for permission to intervene in the proceedings must be filed with the court and served on the claimant or applicant as early as possible and, in any event, no later than 14 days before the date of first hearing of the claim or application, and must specify—

- (1) the applicant's name and address;
- (2) why the applicant asserts that they satisfy the requirement to have a sufficient interest in relation to the missing person's property or financial affairs, having

regard to sections 19 and 21(3) (requirement for applicants to have sufficient interest) of the 2017 Act;

- (3) the applicant's relationship to the missing person or other interest in the proceedings;
- (4) the reasons for applying for permission to intervene; and
- (5) particulars of any determination, order or directions sought.

### **Case management of a claim for guardianship order and applications**

- 6.1 The court may make case management directions in respect of a claim for a guardianship order, an application for the revocation/variation of a guardianship order, or relating to a guardianship order, with or without a hearing as it considers appropriate.
- 6.2 Applications which are not specifically provided for within Section VI of Part 57 should be made in accordance with Part 23.

### **Practice Direction 8A (alternative procedure for claims)**

- 7.1 Practice Direction 8A (alternative procedure for claims) does not apply to a claim for a guardianship order except for paragraph 5.1 (no defence or reply) and paragraph 8.1 (what court may do on a hearing date).

### **Practice Direction 23A (applications)**

- 8.1 Practice Direction 23A (applications) does not apply to applications for the revocation/variation of a guardianship order or relating to a guardianship order except for paragraphs 1 and 2 (subject to the express provisions of Section VI of Part 57 and this Practice Direction).

### **Public Guardian to be supplied with court documents relevant to supervision of guardians**

- 9.1 Subject to paragraphs 9.2 and 9.5, where the court makes a guardianship order, a revocation/variation order or any order relating to a guardianship order, the Public Guardian is entitled to be supplied by the court with a copy of qualifying documents if the Public Guardian reasonably considers that it is necessary to

have regard to them in connection with the discharge of the Public Guardian's functions under section 17 of the 2017 Act in relation to supervision of guardians.

9.2 "Qualifying documents" means the following documents which are filed in court in connection with the proceedings referred to in sub-paragraph 9.1 if not already provided to the Public Guardian—

- (a) claim form seeking a guardianship order and any accompanying witness statement;
- (b) any application notice seeking a revocation/variation order or an order relating to a guardianship order and any accompanying witness statement;
- (c) any notice of intention to intervene or application for permission to intervene.

9.3 The court may direct that the right to be supplied with documents under paragraph 9.1 does not apply in relation to one or more such documents, or descriptions of documents, as the court may specify.

9.4 The court may direct that any document is to be provided to the Public Guardian on a redacted basis.

9.5 A direction under paragraph 9.3 or 9.4 may be given—

- (a) either on the court's own initiative or on an application made to it; and
- (b) either—
  - (i) at the same time as the court makes the order which appoints the guardian, or which varies it; or
  - (ii) subsequently.

### **Security Bonds – guardianship order requiring a guardian to give security for discharge of functions**

10.1 Where the court makes a guardianship order which requires the guardian to give security for the discharge of his functions as guardian, the guardian must give the security before discharging any functions under the guardianship order, unless the court permits the security to be given subsequently.

- 10.2 Paragraphs 10.3 to 10.5 apply where the security is required to be given before the guardian discharges any functions under the guardianship order.
- 10.3 Subject to paragraph 10.4, the security must be given in accordance with the requirements of regulation 33(2)(a) of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 (which makes provision about the giving of security by means of a bond that is endorsed by an authorised insurance company or an authorised deposit-taker).
- 10.4 The court may impose other requirements in relation to the giving of the security as it considers appropriate (whether in addition to, or instead of, those specified in paragraph 10.3).
- 10.5 In specifying the date from which the guardianship order referred to in paragraph 10.1 is to take effect, the court will consider the need to postpone that date for such reasonable period as would enable the Public Guardian to be satisfied that—
- (1) if paragraph 10.3 applies, the requirements of regulation 34 of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations 2007 have been met in relation to the security; and
  - (2) any other requirements imposed by the court under paragraph 10.4 have been met.

### **Code of Practice**

- 11.1 Under section 22 of the 2017 Act it is provided that the Lord Chancellor shall issue a Code(s) of Practice and which shall include guidance to persons making applications under the 2017 Act. Attention is drawn to section 22(3) which provides that a court must take into account the relevant provisions of such a Code(s) and any failure to comply with such a Code(s) when deciding any question arising in legal proceedings. Accordingly, claimants, applicants and others should consult the Code(s) at all stages of 2017 Act proceedings, and draw the court's attention to their provisions where and when relevant."