

An Introduction to Presumption of Death Measures in England and Wales

This leaflet is intended as an introduction to administering a missing relative's affairs when it is believed that the missing person may have died. It has been written as a guide for families in England and Wales, and should not be taken as legal advice. Separate information will be available for families in Scotland and Northern Ireland on our website soon.

Background

Only a small fraction of people who go missing never return. Yet those that are not found often leave behind family members that may eventually need, or want, to administer their missing relative's affairs.

In England and Wales there is no single process for having a missing person declared 'presumed dead' which enables relatives to administer their all of their affairs at once.

How are a missing person's affairs administered?

To administer a missing person's affairs, relatives must apply to the courts. Depending on the missing person's circumstances, and which area of the person's affairs the family is looking to deal with (e.g. their property, financial assets or marriage), separate court proceedings may be required.

For example, a relative may wish to apply to a court for the legal right to deal with a missing person's estate. In this situation, if the missing person has left a will, this is known as a *grant of probate*. If they did not, it is called *letters of administration*. In both cases, if the application is successful, it recognises the right of the family member to collect and distribute the belongings of the missing person, i.e. money and property, and can be presented to organisations such as banks as proof of that right. A family will normally have to apply for 'Leave to Swear Death' to support their application.

Another example is if the spouse of a missing person wants to remarry. To do so, the spouse would have to apply to a court to have the marriage dissolved.

Following each application, the court will consider the likelihood that the missing person has died, taking into consideration the details of the case and how long the person has been missing for. When this is complete, the court will declare whether or not it will allow the relevant aspect of the missing person's affairs to be resolved.

When can a missing person's affairs be administered?

Many people are familiar with a so-called 'seven year rule' when dealing with a missing person's affairs. Whilst this time period has importance, there are cases in which a person's affairs may be resolved much sooner – or indeed later – than seven years.

The significance of the seven years stems from the way in which courts in England and Wales assess the likelihood that the missing person has died. It therefore plays a part in whether or not a court allows a family to administer their affairs but does not determine it.

For up to seven years after a person has last been seen, the court presumes that they are still alive. After seven years, a court may allow for a missing person's affairs to be dealt with, provided that: there are persons who would be likely to have heard of the missing person during that period; those persons have not heard of the missing person; and reasonable attempts have been made to find them. If there have been indications that the person has been alive within the seven years however, the passing of time, in itself, will not be enough for the court to assume that the missing person is dead.

There are exceptions to this seven year time period. Relatives of people who disappear in circumstances which present an immediate threat to their life may apply to a court to administer their affairs much sooner than seven years. This may be appropriate, for example, if a person goes missing at sea or if there is other evidence to indicate the person has died, such as through suicide.

How can I identify which court process is best for my circumstances?

For more information and to identify the court process best suited to your circumstances, Missing People suggests you or your solicitor consult the Ministry of Justice's recent submission to the All Party Parliamentary Group for Runaway and Missing Children and Adults' inquiry into support for families of missing people. This can be found at <http://bit.ly/wKoFYh> and provides an overview of all available processes.

Why is there not a single 'presumption of death' court process?

In Scotland and Northern Ireland there is legislation that enables families to have a relative presumed dead through one single court process. This covers all the scenarios which in England and Wales require separate processes. Missing People is lobbying for a change in the law to make this the case across the UK. Information about this work can be found at: www.missingpeople.org.uk/missingrights.

Who can support me through this time?

Missing People recognises that administering a missing relative's affairs can be both daunting and upsetting. Our team is available around the clock if you would like to talk about how you are feeling throughout this process, and can be reached on **116 000** or by email at 116000@missingpeople.org.uk

Where can I find more detailed information?

More comprehensive guidance on administering a missing person's affairs in England and Wales will soon be available on Missing People's website at <http://bit.ly/As5UL2> For professional advice, or advice tailored to your circumstances, you may wish to contact a solicitor or legal advice service.

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For further information and guidance on the issues addressed in this guidance sheet, or for support relating to any aspect of someone going missing, call Missing People's free and confidential 24 hour helpline on **116 000** or email 116000@missingpeople.org.uk

For more in depth information on Presumption of Death contact Holly Towell (Policy and Campaigns Manager) at holly.towell@missingpeople.org.uk or on **020 8392 4566**

Whilst this information has been provided in good faith, it should not be taken as legal advice. For information tailored to your circumstances, please contact your police force, solicitor or an advisory organisation as appropriate to your query.

Please let us know whether this guidance has been useful, either by answering a few short questions at <https://www.surveymonkey.com/s/MissingPeopleGuidance> or by emailing your comments to policyandresearch@missingpeople.org.uk