

# Dissolving a marriage or civil partnership to a missing person

*This leaflet is intended as an introduction to administering a missing relative's affairs when it is believed that they may have died. It has been written as a guide for families in England and Wales, and should not be taken as legal advice.*

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.

If your spouse or civil partner has gone missing you may, for a number of reasons, wish to dissolve your marriage or civil partnership, for example, to enable you to make the same commitment to a new partner. If you believe your missing spouse or civil partner has died, there are specific measures in place that allow you to apply to dissolve your marriage or civil partnership on this basis.

This leaflet aims to help you by explaining: how you can apply to dissolve your marriage or civil partnership; the practical effect of a dissolution, if granted, and; the consequences of the dissolution, should the missing person return or be found.

## **Can I apply to dissolve my marriage or civil partnership if my spouse / civil partner is missing?**

If your spouse or civil partner is missing and you have reason to believe that they have died, you can apply to the court to dissolve your marriage or civil partnership.

If you are married, your application will be for a 'decree of presumption of death and dissolution of marriage'. If you are in a civil partnership you will make an application for a 'presumption of death order'.

In both instances, the court will grant the order to dissolve the civil partnership or marriage ("the Order") if it is satisfied there are reasonable grounds that the missing person is dead. The court will assess this on the basis of the facts presented to it, and will consider any relevant evidence it is given (e.g. duration of disappearance, the efforts that have been made to find the missing person) in deciding whether to grant the Order.

## **If granted, what impact will the Order have?**

The Order will dissolve the marriage or civil partnership, and you will be able to re-marry, or form a new civil partnership.

If you entered a religious marriage, you should contact the relevant religious authority to see whether you need to take additional steps to end the religious marriage.

The Order is not, however, proof, that the missing person has died and, unfortunately, will probably not enable you to resolve other legal or financial matters. If you are looking to resolve a missing person's financial affairs on the basis they have died, see 'An Introduction to Presumption of Death in England and Wales' for more information.

Ancillary relief (the financial settlement and division of assets following the dissolution of a marriage or civil partnership) can only take place if the missing person is found or returns. An Order also will affect your ability to inherit from your former spouse / civil partner's will or the intestacy rules (where there is no will).

### **When can I apply to dissolve my marriage or civil partnership?**

You can apply to dissolve your marriage or civil partnership any time after your spouse or civil partner goes missing. Although there is no time restriction, the court will need to be convinced that there are reasonable grounds that the missing person is dead.

Whilst it is not always relevant, if the missing person has been missing for a relatively short period, the reasonable grounds requirement may not be met.

By law,<sup>1</sup> the fact that a person has been missing for seven years or more is evidence that the other party is dead, unless there is evidence to suggest that they are alive. This does not mean that you have to wait for seven years before you apply for an Order, but it does mean that it should be easier to obtain an Order after seven years have passed.

### **How do I make an application?**

To make an application, you will need to fill out court form 'D8D', which can be found online at <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/d008d-eng.pdf>.

This requires you to set out some details about your marriage or civil partnership and any children you may have. The form also asks you to provide details and relevant facts to demonstrate why there is reason to believe that your spouse or civil partner has died, and you should complete this section with as much detail as possible. The Ministry of Justice has published useful guidance notes on how to complete the application form which can be found at <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/d008d-notes-eng.pdf>.

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<sup>1</sup>The Matrimonial Causes Act 1973, section 19 and the Civil Partnership Act 2004, section 222

Filing an application for the Order generally costs £340 (correct at time of writing, and, if relevant, not including solicitor costs). However, if you are unable to afford the fee you may be eligible to be exempted from all or part of the court fee. The guidance notes, mentioned above, provide further information on this.

### **Do I need a lawyer to help me?**

You do not have to instruct a solicitor to make the application and if the court knows you are making the application yourself, they should make you aware of how the process works. If you would like help with filling in the application, some organisations may be able to offer this service, such as the Citizen Advice Bureaux – to find your local Bureau see <http://www.citizensadvice.org.uk/>.

If you are making the application yourself however, you should still seek legal advice from your solicitor or a legal advisory organisation regarding other legal and financial matters which may need to be managed if the missing person does not return. For information on how to find a solicitor and free legal advice services, see '[Other Sources of Help – Legal and Financial Support](#)'.

### **What happens if the missing person is found to be alive after the Order is granted?**

If the missing person is found to be alive after the Order is granted, they will need to be informed that their marriage or civil partnership has been dissolved by court order and the Order should be presented to them as proof. If the missing person resumes contact, you will be able to come to a financial settlement and divide your assets, if this is what you wish to do.

If you have re-married or entered into a new civil partnership following the Order being granted, the missing person's living status will not affect the legitimacy or legality of your new marriage or civil partnership in any way.

### **What if there is evidence to suggest that my missing spouse or civil partner is alive, but I am not in contact with them?**

If you are looking to end a marriage or civil partnership to a person missing but there is evidence to suggest that they are alive, you can still fill out the D8D form as mentioned above if you wish to, indicating in the relevant section that you are seeking 'divorce decree / dissolution order'. You will then also need to attach a completed 'D8' Divorce / dissolution petition form as appropriate to your circumstances.

Alternatively, depending on your situation, you can seek to end your marriage or civil partnership on the grounds of desertion if your circumstances meet certain criteria. For more information on this, and more generally on ending a marriage or civil partnership, see the Government's DirectGov website at

<http://www.direct.gov.uk/en/Governmentcitizensandrights/Divorceandrelationshipbreakdown/Endingamarriageorcivilpartnership/index.htm>.

### 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 by calling or texting **116 000** or by emailing [116000@missingpeople.org.uk](mailto:116000@missingpeople.org.uk).

For a copy of this guidance via post, please call **116 000**.

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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](mailto:116000@missingpeople.org.uk)

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](mailto:policyandresearch@missingpeople.org.uk)