

Presumption of Death in Northern Ireland

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 Northern Ireland, and should not be taken as legal advice. Separate information is available for families in England and Wales, and Scotland at www.missingpeople.org.uk/legalandfinancial.

Background

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

In Northern Ireland there is a court process through which an application can be made for a missing person to be declared presumed dead. If successful, the High Court declaration enables any property, money and other possessions to be administered and, if relevant, dissolves any marriage or civil partnership at the same time.

Why is this process in place?

When a person dies in normal circumstances, the death is registered by the District Registrar at the relevant Registrar's Office, following the presentation of a medical certificate stating the cause of death. The Registrar then issues a certificate which allows burial or cremation to go ahead, a Social Security Agency form to deal with the person's pension or benefits and a Death Certificate.

The Death Certificate provides legal recognition that the person has died, and enables the named 'executor' in the deceased person's will to apply for a 'grant of probate' from the Probate Registry. The grant of probate is a legal document which allows the executors to deal with the deceased person's affairs, including collecting and distributing the person's assets. Where the person did not leave a will, a close relative may apply for a 'grant of letters of administration'¹.

When a missing person is thought to have died, there is not a body or medical certificate to show this, and therefore the system works differently. Instead, you will have to apply to the High Court for a declaration that the person is presumed dead. If this is successful the High Court will notify the Registrar General for Northern Ireland who will then enter the details in the Register of Presumed

¹ There is further information on how to apply for a grant of probate or letters of administration at <http://www.nidirect.gov.uk/index/information-and-services/government-citizens-and-rights/death-and-bereavement/probate-and-wills/applying-for-probate-in-northern-ireland.htm>

Deaths. The declaration has the same effect as if the person died under normal circumstances. It both ends the missing person's marriage or civil partnership, and allows the family to deal with the deceased person's affairs. A certified copy of the relevant entry in the Register of Presumed Deaths in relation to a person must be treated, without further or other proof, as evidence of the person's death².

Who can apply to a Northern Irish court?

You can apply to a Northern Irish court if the missing person was domiciled in Northern Ireland, or living in Northern Ireland for one year before they went missing. Even if the missing person was not domiciled or living in Northern Ireland at the relevant time, you can apply if you are the spouse or civil partner of the missing person, and you are domiciled in Northern Ireland on the date proceedings began, or you have been living in Northern Ireland for one year before you make the application.

If you are not a close relative (parent, child or sibling), you may still be able to apply, but you must be able to show that you have a sufficient interest.

Finally, where the missing person is thought to have been a victim of sectarian violence before 10th April 1998, you may be able to apply if you are a close relative.

When can I apply for a declaration of presumed death?

Under the law (the Presumption of Death Act (Northern Ireland) 2009), you may apply for a declaration of presumed death at any time after the person goes missing. The court will make a declaration of presumed death where it is satisfied either that the missing person has died, or that the missing person has not been known to be alive for at least seven years. Where you have no specific reason for believing the missing person to be dead, therefore, you may prefer to wait until the end of the seven year period. However, if there is reason to believe the person is likely to be dead, for example, the person went missing in a dangerous situation, you may prefer to apply sooner.

How do I make an application?

A declaration of presumed death can be applied for in the High Court under the Presumption of Death Act (Northern Ireland) 2009. The court will look at the evidence presented to it and will grant a declaration if it is satisfied that the missing person is more likely than not to have died (i.e. on the balance of probabilities), or if the missing person has not been known to be alive for at least seven years.

² Schedule 1, paragraph 6 of the Presumption of Death Act (Northern Ireland) 2009.

If you decide to apply for a declaration, you will need to provide evidence in support of the application, i.e. evidence suggesting that the missing person has died, and /or evidence that they have not been heard from for at least 7 years. This is likely to include evidence of any searches made for the missing person, statements from the police (e.g. missing person report and /or details of actions taken by the police to locate the missing person), details of inquiries you have made, statements from friends and family and details of newspaper advertisements or other campaigns to locate the missing person. You may wish to seek legal advice as to what evidence is relevant in your circumstances.

If the High Court grants a declaration, it will state the date and time of the presumed death. Where it is not certain when the missing person is likely to have died, the court will find that they died at the end of the period of time in which the missing person's fate was uncertain. This is also the case if you are applying on the basis that the person has not been known to have been alive for a period of seven years.

Do I need a legal advice or a solicitor to help with the application?

You will probably need the help of a solicitor to prepare an application, along with the evidence needed to support the application.

If possible, it might be helpful to try and find a solicitor who has experience of dealing with presumption of death, or similar, applications and has the expertise to deal with your case. If you would like help finding such a solicitor, the Law Society of Northern Ireland may be able to assist you. You can contact it via <http://www.lawsoc-ni.org/> or on 028 9023 1614.

It may also be useful to discuss with the solicitor how much the application is likely to cost in advance of starting the process, and to get this in writing along with the basis on which you will be charged – hourly, etc. This should help you to understand the likely cost of making an application.

When the High Court makes a declaration of presumed death, it may order that any costs in relation to the application are to be paid out of the property of the missing person who is presumed dead.

What if the missing person is later found to be alive?

The Presumption of Death Act (Northern Ireland) 2009 provides that a person with sufficient interest may apply for a variation order, which will have the effect of varying or revoking the declaration of presumed death. The most likely circumstances in which a variation order would be sought would be where the missing person was found to be alive. In itself, the variation order does not have any effect on any rights to the property of the missing person which were obtained as a result of the declaration of presumed death. However, the court may, when making the variation order, also make an order in relation to rights in property as it considers reasonable. A variation order will not have any effect on income from the missing person's property (e.g. rent from a

property, or interest from a bank account) that arose between the date of the declaration and the date of the variation, nor will it have any effect on the ownership of property that belonged to the missing person where the property was acquired by a third person in good faith and for value.

A variation order will not be made if it is more than five years after the date of the declaration of presumed death, unless there are exceptional circumstances.

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 at 116000@missingpeople.org.uk.

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

Missing People would like to thank the Big Lottery Fund for supporting the work of the charity.



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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

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