



Resolving a missing relative's practical affairs: The Presumption of Death Act 2013

*"The certificate of presumed death that we are introducing is a significant step forward for families who face the terrible situation of losing a loved one and creates a simpler legal framework to ensure bereaved people can better deal with the property and affairs of a loved one who has gone missing and is presumed dead."*¹

- Justice Minister Helen Grant, 27 March 2013

Overview

Every year approximately 250,000 people are reported missing to police forces and other agencies across the United Kingdom. Whilst most disappearances are resolved relatively quickly, others continue for weeks, months and even years, leaving family members to cope with the pain of not knowing where their loved one is or what has happened to them.

Yet in addition to the emotional trauma, families often encounter a range of practical, financial and legal difficulties as a result of a disappearance. In particular, those in England and Wales face a complex legal predicament when seeking to administer their missing relative's affairs when it is believed that their loved one has died because of deficiencies in the existing system.

However, following years of campaigning by UK charity Missing People, this will soon change. The Presumption of Death Act 2013, when it is brought into force, will address flaws in the present system by creating a new court procedure which can lead to the issue of a Certificate of Presumed Death. Missing People is delighted the Act has been passed, and with the Government support it received.

The charity campaigned on this issue as part of its Missing Rights campaign, where it called on the Government to reform the law in line with that already in place in Scotland and Northern Ireland² to ensure that all UK families have access to a clear and useable system. Both the Justice Select Committee³ and the All-Party Parliamentary Group for Runaway and Missing Children and Adults⁴ supported the call for a new procedure. In response, the Government announced in summer of 2012 that it would reform the law to introduce a system of Certificates of Presumed Death when Parliamentary time permitted.

Difficulties created by the present system

Over time, some families accept that their relative is 'missing, presumed dead'. Yet when they

¹ As stated on the Ministry of Justice website <http://www.justice.gov.uk/news/press-releases/moj/new-law-for-missing-persons-gets-royal-assent>

² Presumption of Death (Scotland) Act 1977, and Presumption of Death Act (Northern Ireland) 2009.

³ House of Commons Justice Committee (2012) Presumption of Death London: The Stationary Office Limited.

⁴ APPG for Runaway and Missing Children and Adults (2011) Inquiry into Support for Families of Missing People: Report with Recommendations London: Missing People



attempt to resolve their loved one's financial and legal affairs, families in England and Wales are currently faced with a confusing and fractured system:

*"No one seems to know the correct way to proceed with this or what paperwork they need from me to enable me to deal with my husband's affairs, not the insurance company, solicitors and even the courts... I feel very let down and frustrated."*⁵

- Wife of a missing man

Even when it seems clear that a missing person is most likely to be dead, in the absence of a body, it is very difficult to register that person's death, or to obtain a death certificate. Without a death certificate, families can presently struggle to prove that their relative has died in order to administer their estate, dissolve a marriage, claim benefits and life insurance, mortgage a house etc. They are often faced with pursuing separate legal processes in order to resolve different affairs (obtaining a grant of probate, for example, will not automatically dissolve a marriage), which can be very bureaucratic and lead to lengthy delays.

This can be costly, upsetting and cumbersome for families, and is particularly frustrating for those who are aware that a simplified and consolidated process is already successfully in place for families in Scotland and Northern Ireland. The current system is also problematic for institutions that require legal documentation before they are able to release a missing person's assets, and agencies that have a part to play within the system:

*"There is a real call for change and I would contend it is not just by the relatives directly affected by a missing person but by the professionals who are left having to advise families as to the law."*⁶

- Solicitor acting on behalf of a family

The Presumption of Death Act 2013 will ensure that these families – along with the professionals that work with them – will at last have access to a comprehensive yet straightforward system.

The Presumption of Death Act 2013

The Presumption of Death Act 2013, when it is brought into force, will introduce a presumption of death procedure in England and Wales, modelled on those in place in Scotland and Northern Ireland,⁷ so that families need to go to court just once to resolve their relative's affairs and to receive a Certificate of Presumed Death. The Act contains:

- A procedure for application by an interested party to the High Court for a declaration of presumed death, to include a right of intervention by an interested party.
- Criteria to be applied by the High Court in deciding whether to issue a declaration of presumed

⁵ House of Commons Justice Committee (2012) Presumption of Death HC 1663 London: The Stationery Office Limited. Ev 39

⁶ Ibid. Ev 45.

⁷ The Northern Ireland Act itself was influenced by the existing legislative provision in Scotland. The NIA's consultation document declares 'The Scottish legislation has worked well over the years and the Department (of Finance and Personnel) is confident that it provides a sound template on which to base a new piece of legislation for Northern Ireland'. 'Missing Persons' a consultation by the Department of Finance and Personnel on the Draft Presumption of Death Bill (Northern Ireland) 2008 p10.



- death (e.g. domicile, length of time missing, etc.).
- Procedure for appeal against a declaration of presumed death.
 - Power for the court to make a determination regarding the disposition of property of the missing person.
 - Provisions as to the effect of declaration, particularly on marriage and civil partnerships.
 - Provisions allowing for variation of the disposition.
 - Requirements on insurance.
 - Procedure for registration of presumed death at the Register of Births, Marriages and Deaths, on the basis of the court declaration, and the issue of a Certificate of Presumed Death.
 - Power for the Secretary of State to amend periods of time referred to in the Bill, e.g. the 7 year period.
 - Provisions relating to the effect of a Certificate of Presumed Death.
 - Repeal of relevant statutory and common law.

Frequently asked questions

Who can apply?

You can apply for a declaration of presumed death if you are a close relative of the missing person, i.e., a spouse, civil partner, parent, child or sibling (including half-brothers and sisters). If you are not a close relative you may still be able to apply if you have a sufficient interest. The court will not hear an application if it decides you do not have a sufficient interest.

In addition, there must be a connection with England and Wales. You will be able to seek a declaration if **either** the missing person was domiciled in England and Wales on the date he or she was last known to be alive, or habitually resident in England and Wales for the preceding year, **or** if you are the spouse or civil partner of the missing person and you were domiciled in England and Wales on the date of the application, or habitually resident in England and Wales for the preceding year.

When will the court make a declaration of presumed death?

The court will make a declaration of presumed death if it is satisfied either that the missing person has died, or that the missing person has not been known to be alive for the past seven years. There is no need to wait for seven years, therefore, where there is reason to believe the missing person has died – more information can be found in Missing People's factsheet 'When can a missing person be presumed dead: The seven year rule?' at www.missingpeople.org.uk/legalandfinancial.

What effect will the declaration have?

A declaration is conclusive proof of the missing person's presumed death, and the time and date of the presumed death. It is effective for all purposes and against all persons. It will dissolve the missing person's marriage or civil partnership, and will have the same effect as regards property



ownership as death. The declaration becomes conclusive when it is final and no longer subject to appeal. The Government has not yet published the rules of court that will set out the time limit for an appeal to be made against the declaration, but the standard period for making an appeal is 21 days.

After the time for appeal has expired (and no appeal has been made), the court will send a copy of the declaration to the Registrar General, who will make an entry in the Register of Presumed Deaths. You will be able to get a certified copy of the entry from the Registrar General, usually on payment of a fee. The Government will be publishing regulations relating to the fees to be paid in due course.

What if the missing person is not dead?

If it later becomes clear that the declaration is incorrect, for example because the missing person is alive, or was alive at the time he or she was declared dead, any person with a sufficient interest may apply to the High Court for an order to vary or revoke (i.e. change or cancel) the declaration of presumed death. This is known as a variation order.

The variation order does not itself affect interests in property which someone has acquired as a result of the declaration of presumed death, and does not revive a marriage or civil partnership that was brought to an end by a declaration. However, the court has the power, when making a variation order, to make an order relating to property interests, within certain limits.

The court cannot make a variation order where more than five years have passed since the date of the original declaration, unless the court considers there are exceptional circumstances which make it appropriate to do so.

What if someone else makes an application another person does not agree with?

Where someone else has applied for a declaration of presumed death, or for a variation order, you may intervene in the proceedings if you are the missing person's spouse, civil partner, parent, child or sibling. If you are not the missing person's spouse, civil partner, parent, child or sibling, you must ask the court for permission to intervene.

When will the Act come into force?

Although the Presumption of Death Act 2013 has been enacted, it has not yet been brought into force. The Government said in March 2013 that the Ministry of Justice and the General Register Office were starting work on creating the necessary rules and regulations to bring the scheme into force. It cannot be brought into force until these rules and regulations are ready. Missing People does not know, therefore, when it will come into force but is hopeful this will be soon.

For more information on Missing People's Missing Rights campaign, visit



www.missingpeople.org.uk/missingrights. If you are a family looking for guidance on presumption of death provisions, you can find information at www.missingpeople.org.uk/legalandfinancial.

For more information on Missing People's campaign for presumption of death law reform, please contact Holly Towell (Policy and Campaigns Manager) at holly.towell@missingpeople.org.uk or on 020 8392 4566.

Missing People is additionally campaigning for guardianship provisions to be introduced to enable families of missing people to apply for the legal right to maintain and safeguard their relative's practical and legal affairs in their absence. For information on this work, please see www.missingpeople.org.uk/missingrights.

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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.