



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 can encounter a range of practical, financial and legal difficulties as a result of a disappearance. In particular, those in England and Wales previously faced a complex legal predicament when seeking to administer their missing relative's affairs when it was believed that their loved one had died because of deficiencies in the former system.

The Presumption of Death Act 2013, fully in force from 1 October 2014, has changed this following years of campaigning by UK charity Missing People. The legislation has addressed flaws in the previous 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 previous 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



attempted to resolve their loved one's financial and legal affairs, families in England and Wales were previously 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 seemed clear that a missing person was most likely to have died, in the absence of a body, it was very difficult to register that person's death, or to obtain a death certificate. Without a death certificate, families struggled to prove that their relative had died in order to administer their estate, dissolve a marriage, claim benefits and life insurance, mortgage a house etc. They were 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 could be very bureaucratic and lead to lengthy delays.

This could be costly, upsetting and cumbersome for families, and was particularly frustrating for those who were aware that a simplified and consolidated process was already successfully in place for families in Scotland and Northern Ireland. The previous system was 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 has ensured that families of missing people – along with the professionals that work with them – at last have access to a comprehensive yet straightforward system.

The Presumption of Death Act 2013

The Presumption of Death Act 2013, now fully in force, has introduced 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.

If you are a family looking for guidance on presumption of death, including on the new system in England and Wales, you can find this at www.missingpeople.org.uk/pod. For more information on Missing People's Missing Rights campaign, visit www.missingpeople.org.uk/missingrights.

For more information on Missing People's campaign for presumption of death law reform, please contact the charity's policy and research team at policyandresearch@missingpeople.org.uk.

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/guardianship.

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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.