



## BRIEFING PAPER

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# Missing persons, guardianship and the presumption of death

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## Summary

When a person goes missing, depending on the circumstances, someone else may need to look for the missing person; deal with their property and financial affairs while they are missing; and/or apply for a declaration of presumed death.

### Looking for a missing person

A missing person may be reported to the police. In addition, a number of organisations offer assistance in searching for a missing person.

### Guardianship

A person going missing may give rise to a range of difficult financial consequences, as well as emotional and personal problems.

Following calls for reform, the Coalition Government consulted on the introduction of a new legal mechanism by which a person (“a guardian”) could be appointed to act on behalf of, and in the best interests of, a missing person. In March 2015, the Ministry of Justice published its response to the consultation and confirmed the Coalition Government’s intention to create the new legal status of guardian of the property and affairs of a missing person. The response document stated that there had been strong support for the provisional proposals.

The [Guardianship \(Missing Persons\) Act 2017](#) (the Act) began as a Private Member’s Bill introduced by Kevin Hollinrake under the Ten Minute Rule. The Bill was based on the Coalition Government’s consultation proposals and was supported by the Government and the Opposition. The Act has been referred to as “Claudia’s law” – referring to Claudia Lawrence who is missing. It extends to England and Wales only.

The Act enables the appointment of a guardian to act in relation to the property and financial affairs of a missing person. It also provides for the supervision and regulation of the way that guardians exercise their powers.

The Act is not yet in force. The Government has stated that it intends to bring the Act into force in July 2019. On 19 December 2018, the Ministry of Justice published a consultation paper, seeking views on the department’s proposals for implementation. The consultation period will end on 12 February 2019.

### Presumption of death

The [Presumption of Death Act 2013](#) came fully into force on 1 October 2014. It started as a Private Member’s Bill, introduced by John Glen, which had Government support, and it followed calls for reform in this area.

The Act enables an application to be made to the High Court for a declaration that a missing person, who is thought to have died or who has not been known to be alive for at least seven years, is presumed dead. Once it can no longer be the subject of an appeal, a declaration is conclusive as to the presumed death and effective for all purposes and against all persons. The missing person’s property passes to others and his or her marriage or civil partnership is ended.

Both [Scotland](#) and [Northern Ireland](#) have separate legislation governing the presumption of death.

This briefing paper deals with the law in England and Wales, unless otherwise stated.

# 1. Looking for a missing person

## 1.1 How to search for a missing person

Gov.UK, [Report or find a missing person](#), provides information about:

- reporting a person as missing to the police;
- knowing when someone is found;
- organisations that help find missing people;
- people missing abroad; and
- reporting a sighting of a missing person.<sup>1</sup>

## 1.2 Missing People charity

The charity [Missing People](#) helps and supports missing young people and adults and their families and friends. The [Missing People website](#) includes information about how they can assist.<sup>2</sup>

## 1.3 The Missing Persons Bureau

The National Crime Agency UK Missing Persons Bureau (MPB) is the UK national and international point of contact for all missing person and unidentified body investigations.<sup>3</sup> It provides support and advice to police forces in order to resolve missing person cases, and acts as a hub for the exchange of information and expertise in this area. The MPB also maintains a national database of missing and unidentified records.

The MPB website provides further information about the range of services provided to police forces, which include:

- National and international cross-matching of outstanding missing individuals with unidentified people, bodies and remains
- Co-ordination of enquiries with our network of partners
- Procedural assistance around effective retrieval and retention of forensic material
- Tactical advice and support to suspicious cases, such as suspected homicide and no-body murders, and cold case reviews
- Access to specialist advice from experts in a range of fields
- Collation and dissemination of good practice in missing person enquiries
- Provision of training to forces on missing and unidentified case investigations.<sup>4</sup>

The [Resources](#) section of the MPB website provides links and downloads including:

- links to other websites which offer support and advice;
- a series of factsheets on 'Missing';

The UK Missing Persons Bureau supports and advises police forces in missing person cases

<sup>1</sup> Gov.UK, [Report or find a missing person](#) [accessed 8 January 2019]

<sup>2</sup> [Missing People website](#) [accessed 8 January 2019]

<sup>3</sup> [UK Missing Persons Bureau website](#) [accessed 8 January 2019]

<sup>4</sup> UK Missing Persons Bureau, [What we do](#) [accessed 8 January 2019]

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- answers to Frequently Asked Questions.<sup>5</sup>

### 1.4 Missing Children and Adults A Cross Government Strategy

In July 2011, following its inquiry into support for families of missing people, the All Party Parliamentary Group (APPG) for Runaway and Missing Children and Adults published a [report with recommendations](#).<sup>6</sup> The report recommended that there should be a cross-departmental policy framework setting out the Government's outcomes in relation to missing people, and that progress towards achieving these outcomes should be reported annually. The report also made a number of further recommendations.

On 5 December 2011, having accepted the APPG recommendation that there should be a cross-Government outcomes policy framework for missing persons, the Home Office published [Missing Children and Adults A Cross Government Strategy](#). This sets out three objectives:

- Prevention – reducing the number of people who go missing – through prevention strategies, education work and early intervention in cases where children, young people and adults repeatedly go missing.
- Protection – reducing the risk of harm to those who go missing – by ensuring local agencies provide a tailored, risk based response to cases of missing children, young people and adults and that they work together to find the person and to close cases as quickly as possible at a local and national level.
- Provision – providing missing people and their families with support and guidance – by referring promptly and ensuring that missing people and their families understand how and where to access help and support.<sup>7</sup>

A cross Government Strategy for missing persons has objectives of prevention, protection and provision of support

The Coalition Government also accepted the principles behind the inquiry recommendations, including that there should be better support for families.

Announcing publication of the Strategy in a Written Ministerial Statement, James Brokenshire, then a junior Home Office Minister, said that safeguarding vulnerable members of society was a key priority for the Government.<sup>8</sup> He also said that the Strategy would help to ensure that vulnerable missing children and adults and their families were provided with the help, protection and support they need.

In March 2016, Dominic Raab, who was then a junior Justice Minister, indicated that the Government was reviewing the Missing Children and Adults strategy.<sup>9</sup>

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<sup>5</sup> Accessed 8 January 2019

<sup>6</sup> All-Party Parliamentary Group for Runaway and Missing Children and Adults, [Inquiry: Support for Families of Missing People Report with recommendations](#), July 2011, produced by Missing People, Secretariat to the APPG

<sup>7</sup> [Missing Children and Adults A Cross Government Strategy](#), December 2011, p5

<sup>8</sup> [HC Deb 5 December 2011 cc7-8WS](#)

<sup>9</sup> [PQ 29212 \[on Missing Persons\], 9 March 2016](#)

In September 2017, the Government stated that it was committed to updating the 2011 Missing Children and Adults Strategy and that it would be published “in the coming months”.<sup>10</sup>

## 1.5 National Register of Missing Persons

In December 2018, in answer to a written Parliamentary question, junior Home Office Minister, Victoria Atkins, said that the Government was working on delivering a National Register of Missing Persons:

We are working with the National Police Chiefs’ Council (NPCC) to deliver a National Register of Missing Persons (NRMP) which will enable us to have a snapshot of live missing incidents across police forces in England and Wales. This will assist officers when they encounter a missing person particularly if that missing person is outside their home force area.

We are currently working towards the NRMP to be in use operationally in 2020/2021.<sup>11</sup>

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<sup>10</sup> [PQ 7781 \[on Missing Persons\], 12 September 2017](#)

<sup>11</sup> [PQ 198180 \[on Missing Persons\], 11 December 2018](#)

## 2. Guardianship of the property and affairs of missing persons

### 2.1 Background

Until the enactment of the [Guardianship \(Missing Persons\) Act 2017](#), there was no mechanism in England and Wales intended specifically to protect the property and affairs of a missing person.

#### What is the issue?

The Ministerial foreword to a 2014 consultation paper highlighted the practical problems which might arise when a person goes missing:

The sudden disappearance of a loved one, perhaps without any obvious explanation as to the cause of the disappearance or any certain knowledge as to whether the missing person is alive, is a traumatic event for even the most resilient individual, particularly when the disappearance lasts for several months or even years. The emotional and personal problems caused by absences of this length are all too obvious, but they can be compounded by the practical consequences of the disappearance.

Faced with a disappearance the law assumes that the missing person is alive until the contrary is proved. The main consequence of this is that no one has legal authority to deal with the missing person's property. This can lead to:

- family members left without the financial support they need and were expecting to receive;
- creditors being unpaid and having to turn to insolvency or, in the case of mortgages, repossession, procedures;
- banks and other financial institutions not being able to release the missing person's assets or even information about them to those left behind; and
- the missing person's money being wasted by automated payments that cannot be stopped and his or her assets decaying for want of repair.<sup>12</sup>

A person going missing may give rise to a range of difficult financial consequences, as well as emotional and personal problems

#### Calls for reform

For some time, there were calls for a guardianship mechanism to enable families to manage and maintain a missing person's practical affairs in case of a return, or until the missing person was presumed dead. These calls were made, for example, by:

- the charity Missing People;<sup>13</sup>
- the APPG for Runaway and Missing Children and Adults in their inquiry into support for families of missing people;<sup>14</sup>
- the House of Commons Justice Committee;<sup>15</sup>

<sup>12</sup> Ministry of Justice, [Guardianship of the Property and Affairs of Missing Persons](#), 27 August 2014, p3

<sup>13</sup> Missing People, [Missing Rights Overview](#) [accessed 8 January 2019]

<sup>14</sup> All-Party Parliamentary Group for Runaway and Missing Children and Adults, [Inquiry: Support for Families of Missing People Report with recommendations](#), July 2011, Produced by Missing People, Secretariat to the APPG, pp12-15

<sup>15</sup> House of Commons Justice Committee, [Presumption of Death](#), 22 February 2012, HC 1663 2010-12, pp21-3



- EDMs, tabled by Ann Coffey (Labour), on 6 June 2016<sup>16</sup> and 18 November 2015.<sup>17</sup>

Several Members of Parliament expressed their support in debates on the Bill that became the Presumption of Death Act 2013 during the 2012-13 session.<sup>18</sup>

## Coalition Government consultation and response

On 27 August 2014, the Ministry of Justice published a consultation paper, [Guardianship of the Property and Affairs of Missing Persons](#).<sup>19</sup> The consultation closed on 18 November 2014.

The consultation paper sought views on whether there ought to be a new legal mechanism by which a person (“a guardian”) could be appointed to act on behalf of, and in the best interests of, a missing person.

The Government anticipated that there might be between 50 and 300 appointments annually.

On 23 March 2015, the Ministry of Justice published its [response](#) to the consultation,<sup>20</sup> and confirmed the Coalition Government’s intention to create the new legal status of guardian of the property and affairs of a missing person. The response stated that there had been strong support for the provisional proposals.

The Coalition Government consulted on the introduction of a guardianship mechanism

## 2.2 Guardianship (Missing Persons) Act 2017

### The Bill which preceded the Act

On 11 January 2017, Kevin Hollinrake (Conservative) introduced a Private Member’s Bill under the Ten Minute Rule, the [Guardianship \(Missing Persons\) Bill 2016-17](#) (the Bill). The Bill was published on 27 January 2017 as [Bill 120 of 2016-17](#). Information about the Bill is available on the Bill page on the [Parliament website](#).

[Explanatory Notes](#) to the Bill, prepared by the Ministry of Justice with the consent of Kevin Hollinrake, were published separately as Bill 120-EN. The Explanatory Notes state that the proposals for guardianship were the subject of the 2014 Ministry of Justice consultation.<sup>21</sup>

When introducing the Bill, Kevin Hollinrake gave an overview of how it would operate:

The core of the proposal is that the court will have power to appoint a guardian on the application of a person with sufficient interest in the property and affairs of someone who is missing. The Bill provides that the person will generally have to have been

The Private Member’s Bill was based on the Coalition Government’s consultation proposals

<sup>16</sup> [EDM 140 of 2016-17](#)

<sup>17</sup> [EDM 733 of 2015-16](#)

<sup>18</sup> Ministry of Justice, [Guardianship of the Property and Affairs of Missing Persons](#), 27 August 2014, p4

<sup>19</sup> Ministry of Justice, [Guardianship of the Property and Affairs of Missing Persons](#), 27 August 2014

<sup>20</sup> Ministry of Justice, [Guardianship of the Property and Affairs of Missing Persons A response to consultation](#), 23 March 2015

<sup>21</sup> [Bill 120-EN, paragraph 5](#)



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missing for at least 90 days and that the guardian will take control of the property and financial affairs of the missing person and will have authority to act on behalf of the missing person. The guardian will be able to use the property of the missing person to help those left behind, will be accountable for his or her actions and will be supervised by the Office of the Public Guardian. The terms of the appointment will be for a period of up to four years but will be renewable by application to the court. The small fee involved will be payable by the missing person's estate, so there will be little or no cost to the taxpayer. Crucially, the guardian will be required to act in the best interests of the missing person.<sup>22</sup>

The guardian would be required to act in the best interests of the missing person and would be able to help those left behind

Kevin Hollinrake said that the proposals drew on existing precedents and were intended to fill a gap in the law:

The proposals draw on the precedents of systems used in other countries, particularly certain states in Australia, and for deputies appointed under the Mental Capacity Act 2005. Many of us have benefited from similar powers in other difficult circumstances, such as when someone passes away or when someone close to us is no longer able to manage their own affairs due to dementia or other mental capacity issues. Quite simply, this Bill fills a gap in the law that few people know exists.

The policy background set out in the Explanatory Notes referred to the problems which might arise when a person goes missing and how the Bill would address them:

The Bill enables the court to appoint a guardian to “stand in the shoes” of the missing person in relation to his or her property and financial affairs (“guardian” is defined in clause 24 as “a person appointed as a guardian under this Act”). The appointment may be general or limited but will only be made if the court considers it is in the best interests of the missing person. The guardian may, depending on the terms on which the court makes the appointment, be able to access bank accounts, authorise mortgage and insurance payments, sell or rent a property or manage investments. The guardian may also be able to make payments to dependants of the missing person to meet ongoing expenses and other needs. The guardian must, however, exercise the powers conferred in the best interests of the missing person.

Baroness Hamwee (Liberal Democrat) sponsored the Bill in the House of Lords.

The Government and the Opposition supported the Bill.

The Bill was not amended by either House and received Royal Assent on 27 April 2017.

The Act has been referred to as “Claudia’s law” – referring to Claudia Lawrence who is missing.

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<sup>22</sup> [HC Deb 11 January 2017 cc332-4](#)

## The Act

The [Guardianship \(Missing Persons\) Act 2017](#) (the Act) has 25 sections and a Schedule and extends to England and Wales only. The Explanatory Notes published with the Bill provide this overview:

The Bill enables the appointment by the court of a person (“the guardian”) to act for a missing person, who, by reason of being missing, is not able to act in relation to his or her property and financial affairs. The Bill also provides for the ongoing supervision and regulation of the exercise by the guardian of his or her powers.<sup>23</sup>

Among other things, the Act deals with the following matters (more detail is provided in the Explanatory Notes published with the Bill):

- a definition of what it means for a person to be “missing” – a person would be “missing” if they are absent from their usual residence and activities (including being detained in prison or elsewhere) and:
  - their whereabouts are not known – the Explanatory Notes state that this is expected to apply “where a person has simply disappeared without explanation”; or
  - for reasons beyond the person’s control (other than physical or mental incapacity) the person is unable to make and/or to communicate decisions about their property and financial affairs – the Explanatory Notes state that this condition is likely to be of more limited application and give as examples, a hostage or kidnap situation.
- the basis of the court’s jurisdiction related to the domicile or habitual residence of the missing person or applicant;
- when the court might make a guardianship order – generally if the person has been missing for 90 days, unless an urgent decision about the person’s property or financial affairs is needed;
- who may be appointed as guardian, including the appointment of two or more guardians at the same or at different times;
- the guardian’s role, including rights, powers and duties, conditions and restrictions;
- the period of guardianship - a maximum of four years with the possibility of reappointment;
- the requirement for the guardian to act in the missing person’s best interests, and to consult anyone it would be reasonable to expect the missing person to consult before making a particular decision;
- the effect of the guardianship order;
- variation and revocation of guardianship orders;
- supervision of guardians by the Public Guardian in a similar manner to deputies appointed by the Court of Protection under section 16 of the Mental Capacity Act 2005 in relation to the property and affairs of a person lacking mental capacity;
- a requirement for applicants to have sufficient interest in relation to the missing person’s property or financial affairs;

The Act enables the appointment of a guardian to act in relation to the property and financial affairs of a missing person. It also provides for the supervision and regulation of the way that guardians exercise their powers

Person must generally have been missing for 90 days

Best interests requirement

Guardians to be supervised by Office of the Public Guardian

<sup>23</sup> [Bill 120-EN, paragraph 1](#)

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- a requirement for the Lord Chancellor to make and revise a code or codes of practice for guardians and persons making applications under the Bill.

A Code of Practice will be made

The Explanatory Notes state that no decision has been taken on the basis or level at which fees in relation to guardianship will be set but that it is expected they will be set on a basis that is no lower than full cost recovery.<sup>24</sup>

### Consultation on implementation

The Act is not yet in force. In September 2018, the Government said that it intends to bring the Act into force in July 2019.<sup>25</sup>

On 19 December 2018, the Ministry of Justice published a consultation paper, [Guardianship \(Missing Persons\) Act 2017 Implementing the Act](#). The paper seeks views on the department's proposals for bringing the Act into force. The consultation period will end on 12 February 2019.

[Gov.UK](#) provides the following summary of the scope of the consultation:

The Government is consulting on its proposals for implementing the Act with a view to bringing the Act into force in July 2019

This paper seeks views on the content of the department's proposals for:

- rules of court and related practice directions for guardianship proceedings;
- regulations relating to the registration and supervision of guardians by the Public Guardian;
- fees payable to the court and to the Public Guardian; and
- a code of practice providing guidance to guardians and persons making applications under the Act.

The consultation is stated to be aimed primarily at:

- individuals who have or have had a missing relative or friend and for whom guardianship may be relevant;
- professionals who advise in this field;
- charities who provide help and advice to people affected by a disappearance; and
- businesses, organisations and institutions that have to deal with individuals trying to cope with the property and finance related consequences of a disappearance.

However, the Ministry of Justice states that it welcomes views on its proposals from all individuals and organisations interested in this field.<sup>26</sup>

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<sup>24</sup> [Bill 120-EN, paragraph 65](#)

<sup>25</sup> [PO 166048 \[on Guardianship \(Missing Persons\) Act 2017\], 3 September 2018](#)

<sup>26</sup> Gov.UK from the Ministry of Justice, [Guardianship \(Missing Persons\) Act 2017: Implementing the Act](#) [accessed 8 January 2019]

## 3. Presumption of death: England and Wales

### 3.1 Background

Until the enactment of the [Presumption of Death Act 2013](#), there was no one piece of legislation in England and Wales which dealt with the presumption of death of a missing person who is thought to have died. Instead, a number of procedures dealt with different aspects of the missing person's property and affairs.<sup>27</sup>

The charity Missing People [campaigned](#) for the introduction of legislation;<sup>28</sup> and the House of Commons Justice Committee recommended that legislation should be introduced to clarify the legal position.<sup>29</sup> In July 2012, the Coalition Government announced that legislation to provide for a certificate of presumption of death would be introduced "when Parliamentary time permits".<sup>30</sup>

### 3.2 Presumption of Death Act 2013

On 20 June 2012, having come fourteenth in the Private Members' Bill ballot for 2012-13, John Glen (Conservative) introduced the [Presumption of Death Bill](#) (the Bill). The Bill was published on 25 October 2012 as Bill 21 of 2012-13. [Explanatory Notes](#) to the Bill, prepared by the Ministry of Justice with the consent of John Glen, were also published.<sup>31</sup>

The Explanatory Notes state that the Bill "broadly follows the form and content" of presumption of death legislation in Scotland and Northern Ireland, and "is considered to be consistent with the Council of Europe's 2009 Recommendation on principles concerning missing persons and the presumption of death".<sup>32</sup>

Baroness Kramer sponsored the Bill in the House of Lords.

The Government supported the Bill and it received Royal Assent on 26 March 2013. Information about the Bill, which is now the [Presumption of Death Act 2013](#) (the Act), and its progress through Parliament, is available on the bill page on the [Parliament website](#).

The Act was brought fully into force on 1 October 2014.

### 3.3 Declaration of presumed death

The Act enables an application to be made to the High Court for a declaration that a missing person, who is thought to have died or who

<sup>27</sup> The Ministry of Justice set out information about relevant procedures in written evidence to the Justice Select Committee: House of Commons Justice Committee, [Presumption of Death](#), 22 February 2012, HC1663 2010-12, Ev 21-24

<sup>28</sup> Missing People, [Campaigns](#) [accessed 8 January 2019]

<sup>29</sup> House of Commons Justice Committee, [Presumption of Death](#), 22 February 2012, HC 1663 2010-12

<sup>30</sup> [HC Deb 6 July 2012 c78WS](#)

<sup>31</sup> Bill 21-EN

<sup>32</sup> Ibid paragraph 10

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has not been known to be alive for at least seven years, is presumed to be dead.

The [Explanatory Notes](#) published with the Act include a more detailed explanation of the provisions in the Act.

Gov.UK, [Get a declaration of presumed death](#), provides information about making a claim.<sup>33</sup>

### Who can make a claim?

Anyone may apply to the court for a declaration of presumed death, but if the applicant is not the spouse, civil partner, parent, child or sibling of the missing person, the court must refuse to hear the application unless it considers that the applicant has a sufficient interest in the determination of the application.

The [Explanatory Notes](#) state that it is for the court to decide whether any interest is sufficient.<sup>34</sup>

### Domicile and residence requirements for claim

The court has jurisdiction to hear and determine an application if:

- the missing person was domiciled in England and Wales on the date when (s)he was last known to be alive, or habitually resident there for the preceding year; or
- the applicant is the spouse or civil partner of the missing person and is domiciled in England and Wales at the date the application is made or was habitually resident there for the preceding year.<sup>35</sup>

### Fee

There is a fee of £528 for making an application (unless the applicant qualifies for fee remission).<sup>36</sup>

### Declaration

If the court is satisfied that the missing person has died or has not been known to be alive for seven years, it may make a declaration of presumed death, stating when the missing person was deemed to have died, (which might have relevance for other matters such as property interests).

### Effect of declaration

Once it can no longer be the subject of an appeal, a declaration is conclusive as to the presumed death and effective for all purposes and against all persons. The missing person's property passes to others and his or her marriage or civil partnership is ended.

Certified copies of entries in the Registrar General's Register of Presumed Deaths issued by the Registrar General will be treated as evidence of the missing person's death without further proof.

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<sup>33</sup> Accessed 8 January 2019

<sup>34</sup> [Paragraph 14](#)

<sup>35</sup> "Domicile" is a complex legal concept based on the idea of a permanent home, which may not be the same as residence or nationality. Anyone seeking to establish the domicile of any particular individual would need specific legal advice.

<sup>36</sup> Gov.UK, [Get help paying court and tribunal fees](#) [accessed 8 January 2019] provides further information

### **Powers of court**

When making a declaration, the court may determine any question which relates to an interest in property and arises as a result of the declaration; and may determine the missing person's domicile at the time of his or her presumed death.

The court also has power to make any order it considers reasonable in relation to any interest in property acquired as a result of the declaration, and to direct that the value of any asset acquired as a result of the declaration may not be recovered under an order made by the court when varying or revoking a declaration.

### **Variation or revocation of order**

The Act also makes provision for varying and revoking a declaration of presumed death, the effect of a variation order, and other matters related to variation orders. The Explanatory Notes give as "an obvious example" of circumstances in which a variation or revocation would be appropriate being:

where the missing person returns, still alive; or where there is clear evidence of the missing person having been alive at a time later than that declared as the time of death in the original declaration.<sup>37</sup>

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<sup>37</sup> [Paragraph 24](#)

## 4. Presumption of death: Scotland and Northern Ireland

Both Scotland and Northern Ireland have legislation governing the presumption of death.

### 4.1 Scotland

The [Presumption of Death \(Scotland\) Act 1977](#) followed [a report on presumption of death](#) by the Scottish Law Commission.<sup>38</sup>

The Act provides that, where a person who is missing is thought to have died or has not been known to be alive for a period of at least seven years, any person having an interest may seek from the court a declaration of death of the missing person. If the missing person is thought to have died, an action can be brought immediately, without having to wait for seven years. However, if the ground for the declaration is that no one has heard of the missing person for seven years, it is necessary to wait for that period to elapse before bringing an action.

The missing person must have been domiciled in Scotland on the date when (s)he was last known to have been alive, or habitually resident there for the preceding year. Alternatively, the application may be made in Scotland if the applicant is the spouse or civil partner and is domiciled in Scotland at the date of the application or was habitually resident in Scotland for the preceding year.

The effect of a decree is conclusive for all purposes, including the dissolution of the missing person's marriage, and any question of rights to property. Where the missing person has committed any crime or offence, their responsibility for it is not excluded by reason of a decree, if the missing person was in fact alive at the date specified in the decree as the date of death.

If it transpires that the missing person is, in fact, alive, a variation order should be sought from the court. The variation order does not, by itself, affect property rights acquired as a result of the original presumption of death. However, where a court makes a variation order within five years of the presumption of death, it is required to make such further order about property rights as it considers fair and reasonable in all the circumstances of the case. There are further provisions relating to insurance to cover the risk of having to give effect to any such order.

### 4.2 Northern Ireland

The [Presumption of Death Act \(Northern Ireland\) 2009](#) came into force on 9 November 2009. The Act allows the High Court to issue a declaration that a person who is missing be presumed dead.

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<sup>38</sup> [Scottish Law Commission, Report on Presumption of Death, Report 34, 1974](#)



An [Explanatory Memorandum](#) to the Rules of Court of Judicature (Northern Ireland) (Amendment No.4) 2009 (which prescribe the practice and procedure for proceedings under the Act) sets out the context for the legislation being developed:

It was originally anticipated that the 2009 Act would provide a mechanism whereby the families of “the disappeared” (those people who are believed to have been killed during the Troubles in Northern Ireland, but whose bodies have never been found) could register the death in the absence of physical remains. In developing this issue, however, it became clear that the legislation should aim to address not only the needs of the families of the disappeared, but also to provide a procedure whereby the cases of other missing persons who are presumed to have died could be addressed.<sup>39</sup>

A Northern Ireland Executive news release which announced the implementation of the Act set out information about the legislation:

3. Under the Presumption of Death Act (Northern Ireland) 2009 a person will be able to apply to the High Court for a declaration that a person who is missing be “presumed dead”. Applications can be made –

- (a) if there is evidence that the person is likely to have died; or
- (b) where the missing person has not been known to be alive for a period of at least seven years prior to the date of the application.

4. The jurisdiction of the High Court to issue a declaration is not, however, open ended. The Court can only make a declaration where –

- (a) the missing person was domiciled or habitually resident in Northern Ireland;
- (b) the applicant is the spouse or civil partner of a missing person and the applicant is domiciled or habitually resident in Northern Ireland; or
- (c) the applicant is a “close relative” of a missing person who is one of “the disappeared” in Northern Ireland (defined in the legislation as “a victim of violence within the meaning of section 1(4) of the Northern Ireland (Location of Victims’ Remains) Act 1999).

5. Upon the making of a declaration of presumed death the Registrar General for Northern Ireland will make an entry in relation to the missing person in a new Register of Presumed Deaths established in accordance with section 15 of, and Schedule 1, to the Act. The making of a declaration of presumed death will have the same effect in law as if the person had died and his or her death had been registered in the normal way in the register of deaths by the Registrar General.

6. In the absence of a body to medically certify as dead, there will always remain the possibility that the missing person who is presumed dead is in fact alive. Should this be the case the High Court has jurisdiction to revoke the declaration of presumed

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<sup>39</sup> [Explanatory Memorandum to the Rules of the Court of Judicature \(Northern Ireland\) \(Amendment No.4\) 2009, 2009 No. 345](#)

## 17 Missing persons, guardianship and the presumption of death

death and, in such circumstances, the Registrar General will be obliged to cancel the entry in the Register of Presumed Deaths.<sup>40</sup>

Further information is set out in the [Explanatory Notes](#) published with the Act,<sup>41</sup> and in a Missing People guidance sheet, [Presumption of death in Northern Ireland](#).<sup>42</sup>

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<sup>40</sup> Northern Ireland Executive, Wilson announces new laws on presumption of death, 4 November 2009 [accessed 21 March 2016]

<sup>41</sup> [Presumption of Death Act \(Northern Ireland\) 2009 Explanatory Notes](#)

<sup>42</sup> March 2013

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