



Presumption of Death Bill: Committee Stage Report

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This is a report on the House of Commons Committee Stage of the [Presumption of Death Bill](#) (the Bill). It complements Library standard note, [Missing persons and the presumption of death](#) (SN/HA/4890).

The Bill is a Private Member's Bill. It was presented to Parliament by John Glen, through the ballot procedure, on 20 June 2012 as Bill 21 of 2012-13, and had its Second Reading on 2 November 2012. The Bill had a single sitting in a Public Bill Committee on 21 November 2012. No amendments had been tabled and there was no disagreement to any of the clauses. The Bill was reported without amendment. The Bill is due to have its Report stage and Third Reading on 30 November 2012.

The Bill would enable an application to be made to court for a declaration that a missing person is deemed to have died. It would also make provision for varying and revoking the declaration and for the Registrar General to maintain a new Register of Presumed Deaths. The Government supports the Bill.

The Bill would extend to England and Wales.

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1 Introduction and background

There is currently no one piece of legislation in England and Wales which deals with the presumption of death. This can lead to uncertainty, difficulties and delays in dealing with a missing person's affairs. In February 2012, the House of Commons Justice Committee published its report, [Presumption of death](#) and referred to "a legislative patchwork of bewildering complexity".¹ The Committee recommended, among other things, the introduction of a Presumption of Death Act to clarify the legal position. In July 2012, the Government announced that legislation to provide for a certificate of presumption of death would be introduced "when Parliamentary time permits".

The [Presumption of Death Bill](#) (the Bill) is a Private Member's Bill. It was presented to Parliament by John Glen, through the ballot procedure, on 20 June 2012 as Bill 21 of 2012-13 and had its Second Reading on 2 November 2012.² The Bill had a single sitting in a Public Bill Committee on 21 November 2012,³ and is due to have its Report stage and Third Reading on 30 November 2012.

The Bill would enable an application to be made to court for a declaration that a missing person is deemed to have died. It would also make provision for varying and revoking the declaration and for the Registrar General to maintain a new Register of Presumed Deaths. [Explanatory Notes](#) to the Bill, prepared by the Ministry of Justice with the consent of John Glen, have also been published.⁴ 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".⁵ The Government supports the Bill.

The Bill would extend to England and Wales.

Further background and information about the Bill's provisions is included in Library standard note, [Missing persons and the presumption of death](#).⁶

2 Second Reading debate

At Second Reading, John Glen said that he had had a great amount of cross-party support, particularly from Members associated with the All Party Parliamentary Group for Runaway and Missing Children and Adults, and from the charity, Missing People. He set out what the Bill would do:

It will introduce a new court-based procedure that will enable those left behind to obtain a declaration from the High Court that the missing person is deemed to have died. The High Court will be able to make that decision if it is satisfied that the missing person has died or has not been known to have been alive for a period of at least seven years. When the declaration has been made, a copy will be sent to the Registrar General for

¹ House of Commons Justice Committee, [Presumption of Death](#), 22 February 2012, HC 1663 2010-12

² [HC Deb 2 November 2012 cc542-558](#)

³ [PBC Deb 21 November 2012 cc3-6](#)

⁴ Bill 21-EN

⁵ *Ibid* paragraph 10. See also [Recommendation CM/REC\(2009\)12 of the Committee of Ministers to Member States on Principles concerning Missing Persons and the Presumption of Death and its Explanatory Memorandum \(as adopted by the Committee of Ministers on 9 December 2009 at the 1073rd Meeting of the Ministers' Deputies](#), [accessed 27 November 2012] and European Committee on Legal Co-operation, [Principles concerning missing persons and the presumption of death](#) [accessed 27 November 2012]

⁶ SN/HA/4890, 30 October 2012

England and Wales and the details will be registered in a new register of presumed deaths, which will be linked for research purposes to the register of deaths maintained under the Births and Deaths Registration Act 1953. The certificate will be conclusive as to the presumed death and effective for all purposes and against all persons.

Following this, property can then pass in the usual way, as if the missing person had been certified dead in the normal way. His or her marriage or civil partnership will end, just as a marriage or civil partnership ends on death.

There will be, in effect, a certificate of presumed death that can be used by those left behind to deal with the property affairs of the missing person as if he or she had actually died and a death certificate had been issued. There is provision to allow the declaration to be revoked should emerging facts require it, and of course the register would then be amended. Based on the Scottish experience, it is anticipated that we would expect, on average, 30 to 40 declarations per year.⁷

John Glen then commented on the situation faced by families when someone goes missing and how the Bill would help:

The situation can obviously be incredibly traumatic for many of these families. Families who have worked with the charity Missing People highlight the constant mental anguish and uncertainty as to what has happened to their missing person. On top of this, dealing with various financial affairs—changing mortgages, selling equities or other investments, drawing on pensions, or selling or disposing of property—can be particularly difficult. Many have pointed out that engaging a solicitor to deal with these affairs can be prohibitively expensive. I realise that the Bill will not be able to address the trauma and constant anxiety and concern that is inevitable when somebody goes missing, but it can simplify the complexity of dealing with an individual's affairs and bypass the need for expensive legal advice and services.⁸

John Glen went on to address the subject of guardianship which would not be covered by the Bill:

I know that the Justice Committee has recommended that laws should be put in place to address [the issue of guardianship], and many people I have spoken to would like a provision to appear in the Bill. ... Guardianship would give a suitable person certain powers over the property and affairs of the missing person, but without having to satisfy the standards for a full presumption of death certificate. It would, in effect, be an interim measure that could then be superseded at a later point by a presumption of death certificate, if appropriate.

Such a system exists in Australia, where a court can make an order only if there is a need for decisions to be made about the missing person's property, if the decisions are made in their best interests, and if all people with a relevant interest are notified.⁹

He said that, although he firmly believed that there should be legislation to address the issue of guardianship as soon as possible, after consulting widely and taking advice he had not included measures in the Bill:

I was concerned that including guardianship would have caused problems for the passage of the Bill, because the structures of guardianship are very complex and require far more work than it is possible to undertake during the time frame available

⁷ [HC Deb 2 November 2012 cc545](#)

⁸ [HC Deb 2 November 2012 cc546](#)

⁹ [HC Deb 2 November 2012 cc547](#)

for this Bill. Ideally, there would need to be a consultation about the exact form that guardianship orders should take and the criteria that should be applied in making them. That would make this a more contentious Bill, so I took the view that it is more important to work towards getting presumption of death legislation on to the statute book for England and Wales, so that they can be on level ground with Scotland and Northern Ireland. I did not want the debate and concerns about guardianship to prevent that from happening.¹⁰

John Glen felt that it was appropriate that the High Court should hear applications for declarations of presumed death, despite the costs involved, because “the presumption of death is a decision of great seriousness and requires the careful weighing of evidence, as it has enormous, life-changing implications for those involved”.¹¹

Jeremy Corbyn (Labour) expressed the Justice Committee’s full support for and welcome to the Bill and said, “We hope that it passes rapidly into law”.¹²

Helen Grant, Parliamentary Under-Secretary of State for Justice, said that the Bill would make “a real difference” and would provide “a means to clarify the uncertainties caused by the disappearance”. She said that the retention of some existing legal procedures would preserve flexibility, and would ensure that not everyone seeking to establish a presumed death would be required to go to the High Court if there was a suitable alternative procedure.¹³

Helen Grant acknowledged the points made about guardianship, and said that she would take those concerns into account in reaching a decision on whether—and, if so, how—to develop legislation on the issue.¹⁴

The Minister quoted from the Government’s response to the Justice Committee’s report which stated their intention to introduce “legislation to create a certificate of presumed death... when Parliamentary time permits.” She said that, if enacted, the Bill would achieve the same result as the Government’s intended Bill. Helen Grant confirmed the Government’s support for the Bill and said that she wished it “a swift and successful passage through the House”.¹⁵

3 Public Bill Committee debate

The Public Bill Committee met for a single sitting on 21 November 2012. No amendments had been tabled and there was no disagreement to any of the clauses.

Robert Ffello, Shadow Minister for Justice, congratulated John Glen and said that, in introducing the Bill, “he has done a service not just to the House but to the wider country, especially the 30 to 40 families affected each year”. He considered the Bill to be “much needed” and hoped that the Government would consider separately the issue of guardianship:

I urge the Government to look quickly and properly at the guardianship provisions. As has been mentioned, they are a key element of what should be in the Bill. I do not want

¹⁰ [HC Deb 2 November 2012 cc547](#)

¹¹ [HC Deb 2 November 2012 cc548](#)

¹² [HC Deb 2 November 2012 cc549](#)

¹³ [HC Deb 2 November 2012 cc553-7](#)

¹⁴ [HC Deb 2 November 2012 cc557](#)

¹⁵ [HC Deb 2 November 2012 cc558](#)

to delay the Bill's progress in any way, because it is so important, but equally, I urge the Government to take that action.¹⁶

Robert Ffello wished the Bill a speedy enactment.

James Duddridge (Conservative) raised again an issue on which he had spoken at Second Reading, of people who go missing abroad. He said that, having spoken to John Glen, most of the cases he was considering would be covered by clauses 1 to 3, and covering the few cases that might not be covered would add too much complexity to the Bill. He looked forward to "the speedy progress of the Bill as it stands".¹⁷

Helen Grant confirmed again the Government's support for the Bill and hoped it would have "a speedy and successful passage through this House and the other place". She indicated what was being done on the issue of guardianship:

On guardianship, we have opened discussions with the Law Commission and these will certainly continue. There needs to be a more detailed examination, and the matter should be subject to public consultation. I am instructed that primary legislation would ultimately be needed to introduce a guardianship provision.

(...)

I hope to have another discussion with the Law Commission before Christmas.¹⁸

The Bill was reported without amendment.

4 Members of the Public Bill Committee

Chair: Dr William McCrea

Members:

Beith, Sir Alan (Berwick-upon-Tweed) (LD)
Bruce, Fiona (Congleton) (Con)
Coffey, Ann (Stockport) (Lab)
Corbyn, Jeremy (Islington North) (Lab)
Donaldson, Mr Jeffrey M. (Lagan Valley) (DUP)
Duddridge, James (Rochford and Southend East) (Con)
Evans, Chris (Islwyn) (Lab/Co-op)
Ffello, Robert (Stoke-on-Trent South) (Lab)
Glen, John (Salisbury) (Con)
Goldsmith, Zac (Richmond Park) (Con)
Grant, Mrs Helen (Parliamentary Under-Secretary of State for Justice)
Havard, Mr Dai (Merthyr Tydfil and Rhymney) (Lab)
Lefroy, Jeremy (Stafford) (Con)
Phillips, Stephen (Sleaford and North Hykeham) (Con)
Sturdy, Julian (York Outer) (Con)
Tami, Mark (Alyn and Deeside) (Lab)

Committee Clerks: Kate Emms

¹⁶ [PBC Deb 21 November 2012 c5](#)

¹⁷ [PBC Deb 21 November 2012 c5](#)

¹⁸ [PBC Deb 21 November 2012 c6](#)