

MISSING PEOPLE: PRESUMPTION OF DEATH

New laws have been introduced to allow loved ones of a missing person to obtain a declaration that the missing person is to be presumed dead. This allows them to deal with their estate.

Who can make an application for a declaration of presumed death?

An application can be made by the missing person's spouse, civil partner, parent, child, sibling or half sibling but other people can apply if they establish that they have a sufficient interest in the application.

How can I make an application for a declaration of presumed death?

A claim form with supporting evidence needs to be submitted to the High Court.

Notice of the application needs to be sent to the closest relatives of the missing person and any interested parties and an advertisement needs to be placed in the missing person's local newspaper within certain timeframes.

The applicants will also need to attend a court hearing - this will usually be within two months of making the claim.

Please note that this information sheet provides only a brief summary. For more detailed advice please contact our Specialist Missing Person's Team at

**Sentinel House, Peasholme Green, York YO1 7PP T: 01904 716000
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When can a court make a declaration of presumed death?

The circumstances in which a court can make a declaration of presumed death are either:

- The person that is missing is thought to have died; or
- The person that is missing has not been known to be alive for a period of at least seven years.

The court may only make such a declaration if the missing person (or their spouse/civil partner) had a sufficient connection with England and Wales at the time that the missing person was last known to be alive.

What is the effect of the declaration of presumed death?

On making a declaration, the court is required to make a finding as to the date and time of the missing person's death. Once the declaration has been made it is conclusive evidence of the missing person's presumed death and the date and time of their death.

The declaration will be entered in the Register of Presumed Deaths and a certified copy of that entry can be used in the same way as a death certificate. The missing person's estate can then be administered in accordance with any Will that they have made or, if there is no Will, the intestacy rules. The Act does provide some rules that apply to the administration of such estates.

Appeals, variations and revocation

Anyone with a sufficient interest in the declaration may apply to have it varied or revoked. This may apply if the missing person is found alive or the presumed date of death needs to be recalculated on production of further evidence.

An application can be made to appeal the making of a declaration.

Presumption of death or guardianship order?

It is for the individuals concerned to decide whether an application for presumption of death or a guardianship order should be made. This will depend on the circumstances of the missing person's disappearance and also reflect the family's preferences.

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