

Presumption of Death: When and how is a missing person legally presumed dead?

Each year around 250,000 people in the UK are reported missing. Thankfully, most missing people are found safe and well but, in some cases, they remain missing – which can cause ongoing distress and uncertainty for their loved ones.

The Presumption of Death Act 2013 provides a way for the relatives of a missing person to apply for a Declaration of Presumed Death. The main purpose of this is to allow the relatives to deal with the financial affairs of the missing person. It can also provide closure, especially if the person has been missing for a long time.

In short, the Declaration of Presumed Death will allow the family and loved ones of a missing person to deal with that person's money and property and distribute it in accordance with either their Will (if they left one), or the Intestacy Rules (if there is no Will).

Missing Persons Guardianship

Obtaining a Presumption of Death may sound like a big step, especially where you are hopeful that a missing person will return. A Presumption of Death will not be appropriate in every situation.

However, from July 2019, it has become possible for the loved ones of a missing person to apply to become a 'Guardian' of their property and financial affairs. This gives the ability for someone to manage the missing person's affairs in their absence. If you would like to know more about this, please read our [help guide: 'Missing Persons Guardianship'](#).

When can an application be made?

The Presumption of Death Act 2013 ('the Act') can be used to apply to the court for a Declaration of Presumed Death if the missing person has been missing for a period of at least 7 years.

It can also be used if the person has been missing for less than 7 years, provided there are specific facts which suggest that the person has died. Such circumstances might include information that the person's last known location was the site of a catastrophic event or natural disaster, or evidence suggesting that they might have taken their own life.

Who can make an application?

An application under the Act can be brought by the missing person's spouse, civil partner, parent, child, or sibling.

If the missing person does not have any of these relatives living, then 'a person of sufficient interest', such as a distant relative, may apply instead. Whether or not you have a sufficient interest will be a matter for the Court to decide, based on the facts before them.

An application can be brought in the High Court of England and Wales if:

- the missing person was 'domiciled' (permanently based) in England or Wales; or
- they were living in England or Wales for at least one year before they went missing; or
- if the applicant is the spouse or civil partner of the missing person and they have been domiciled or living in England or Wales for at least one year before making the application to the court.

What evidence do I need?

The evidence needed in each case will vary depending on the circumstances. It is therefore impossible to give a comprehensive list of evidence required.

Where a Declaration of Presumed Death is being sought because someone has simply been missing for a very long time (7 years or more), then the best, and most common evidence, will be Witness Statements from people close to the missing person, setting out when they were last known to be alive, where this was, and the circumstances around their disappearance.

Where the person has not yet been missing for 7 years, but there is clear evidence that they are likely to have died, then other evidence may be appropriate.

Examples of this evidence may be:

- A suicide note, or other evidence that they are likely to have taken their own life
- A witness or other evidence confirming that the person's last known location was site of catastrophic event or natural disaster
- A witness or other evidence confirming that the missing person's belongings were found near a cliff edge or body of water.

Evidence from independent sources – such as tracing agencies, the police, the Salvation Army Family Tracing Service etc – will also be useful in proving to the court that all

reasonable steps have been taken to try to find the person during the time they have been missing.

What is the application process?

Applications are made to the High Court, and if the court is satisfied the missing person has either died or has not been known to be alive for a period of at least 7 years, then they will make a Declaration of Presumed Death.

A successful application will result in the court granting a Declaration and notifying the Registrar General. The Registrar General will then issue a Certificate of Presumed Death, which can be used to apply for a Grant of Administration. The Grant can then, in turn, be used to identify and gather the missing person's money and property and distribute it according to their Will or the Intestacy Rules.

The Certificate from the court also allows the missing person's spouse or civil partner to dissolve the marriage or civil partnership. Once the application is made, there is a 21-day period in which the decision can be appealed. This begins from the date of the Declaration.

An Order to revoke a Presumption of Death can also be made by the court if the missing person is found, or if new evidence comes to light which suggests the missing person is still alive.

How much will a Presumption of Death cost?

There are legal fees payable to your solicitor as well as a fee payable the Court to lodge the application. When making an application, all fees will be payable by you in the first instance, as the applicant. However, it may be possible for you to recover this amount from the missing person's estate once the Declaration has been received.

Applications for 'leave to swear to death'

A possible alternative to a Presumption of Death application, is an application to the court for leave to swear to death. This latter application can be made when you believe your loved one has died and you are looking to deal with their estate, either according to their Will (if they made one and you are named as their Executor) or according to the [Intestacy Rules](#).

Additionally, there is no need for 7 years to have elapsed to make the application, unlike applications for a Presumption of Death. If your application to swear to death is successful, you will be issued with a Grant of Administration allowing you to gather in and distribute your missing loved one's estate.

However, this is much more limited than a Declaration of Presumed Death. It will only allow gathering and distributing the estate, it cannot be used as the legal basis for wider purposes, such as dissolving a marriage or establishing interests in property, for example.

If you would like to know more about applications for leave to swear to death, please get in touch.

How Roche Legal can help

Dealing with legal issues can be confusing and stressful. We understand this, and we're always on hand to untangle jargon and offer support.

If you need advice on any of the issues raised in this help guide, please don't hesitate to [get in touch](#). Roche Legal is an award-winning legal practice, offering practical and caring advice.

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