

Presumption of Death Bill

[AS PASSED]

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TO

Make provision in relation to the presumed deaths of missing persons; and for connected purposes.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

Declarations of presumed death

Declarations of presumed death

1.—(1) Where a person who is missing—

(a) is thought to have died; or

5 (b) has not been known to be alive for a period of at least 7 years,

any person may apply to the High Court for a declaration that the person (in this Act referred to as the “missing person”) is presumed to be dead.

(2) The High Court has jurisdiction to entertain proceedings for a declaration under subsection (1) if (and only if)—

10 (a) the missing person was domiciled in Northern Ireland on the date on which he or she was last known to be alive or had been habitually resident there throughout the period of one year ending with that date;

(b) the applicant—

(i) is the spouse or civil partner of the missing person; and

15 (ii) is domiciled in Northern Ireland on the date when the proceedings are begun or has been habitually resident in Northern Ireland throughout the period of one year ending with that date; or

(c) the applicant is a close relative of the missing person where the missing person is a victim of violence (within the meaning of section 1(4) of the Northern Ireland (Location of Victims’ Remains) Act 1999 (c. 7)).

20

(3) Where an application under subsection (1) is made by a person other than—

(a) the spouse or civil partner of; or

(b) a close relative of,
the missing person to whom the application relates, the High Court must refuse to hear the application if it considers that the applicant does not have a sufficient interest in the determination of that application.

(4) In subsections (2)(c) and (3)(b), “close relative”, in relation to a missing person, means— 5

- (a) the parent or child of that person; or
- (b) the sibling (whether of the full blood or the half blood) of that person.

Making of declaration of presumed death

2.—(1) Where on an application for a declaration under section 1 the truth of the proposition to be declared is proved to its satisfaction, the High Court must make that declaration and— 10

(a) where the Court is satisfied that the missing person has died, the Court must include in the declaration a finding as to the date and time of death and, where it is uncertain when, within any period of time, the missing person died, the Court must find that he or she died at the end of that period; 15

(b) where the Court is satisfied that the missing person has not been known to be alive for a period of at least 7 years, the Court must include in the declaration a finding that the missing person died at the end of the day occurring 7 years after the date on which he or she was last known to be alive. 20

(2) The High Court, on the dismissal of an application for a declaration under section 1, may not make any declaration for which an application has not been made. 25

(3) No declaration which may be applied for under section 1 may be made otherwise than under section 1 by any court or tribunal.

(4) Where, for the purpose of deciding any issue before it, a court or tribunal has to determine any incidental question relating to the death of a person, the court or tribunal may determine that question (but only for the purpose of deciding that issue), and in the determination of that question, the court or tribunal must apply the criteria set out in subsection (1). 30

Effect of declaration of presumed death

3. Subject to sections 5 and 6 where—

(a) no appeal is brought against a declaration under section 1 within the time allowed for appeal; or 35

(b) an appeal against such a declaration is brought and the appeal is dismissed or withdrawn,

the declaration shall be conclusive of the matters contained in it and shall, without any special form of words, be effective against any person and for all purposes including the ending of a marriage or civil partnership to which the missing person is a party and the acquisition of rights to or in property belonging to any person. 40

Powers of the High Court

- 4.—(1) The High Court, when making a declaration under section 1, may—
- (a) determine any question relating to the interest of any person in the property of the missing person;
 - 5 (b) make such order in relation to any rights to or in any property acquired as a result of the making of the declaration as it considers reasonable in the circumstances of the case; or
 - (c) determine the domicile of the missing person at the time of his or her presumed death.
- 10 (2) An order under subsection (1)(b) may, subject to any conditions specified therein, direct that the value of any rights to or in any property acquired as a result of the declaration shall not be recoverable by virtue of an order made under section 6(2).

Variation orders

- 15 5.—(1) A declaration under section 1 may, on an application made at any time by any person, be varied or revoked by an order of the High Court.
- (2) The Court must refuse to hear an application under subsection (1) if it considers that the applicant does not have a sufficient interest in the determination of that application.
- 20 (3) An order made under subsection (1) is referred to in this Act as a “variation order”.
- (4) A variation order may make any determination referred to in section 4(1)(a) or (c).
- (5) Notice of the making of a variation order shall be served by the Court on—
- 25 (a) the Registrar General;
 - (b) any person who applied for the declaration under section 1 to which the application under subsection (1) relates.

Effect on property rights of variation order

- 30 6.—(1) Subject to the following provisions of this section, a variation order shall have no effect on rights to or in any property acquired as a result of a declaration under section 1.
- (2) Where a declaration under section 1 has been varied or revoked by a variation order, the High Court, on making the order, must make such further order, if any, in relation to any rights to or in any property acquired as a result of that declaration as it considers reasonable in all the circumstances of the case.
- 35 (3) An order made under subsection (2) shall not affect any income accruing between the date of a declaration under section 1 and the date of the variation order.
- (4) In considering what order to make under subsection (2), the High Court
- 40 must, so far as practicable in the circumstances, have regard to the following considerations, namely—

- (a) that, in the case of any property which is being or has been administered under a trust, any person who on account of the variation order would, apart from subsection (1), have been entitled to rights to or in any such property, or any person deriving right from that person, shall be entitled to have made over to him or her by the trustee in full satisfaction of those rights only—
 - (i) the said rights to or in any such property or other property for the time being representing it which is still in the hands of the trustee at the date of the variation order, and
 - (ii) the value, as at the date of distribution, of the said rights to or in any such property which has been distributed;
- (b) that any capital sum paid by an insurer as a result of the declaration (other than a capital sum which has been distributed by way of an annuity or other periodical payment) or any part of such sum should be repaid to the insurer if the facts in respect of which the variation order was made justify such repayment.

(5) The High Court must not, except where it considers that there are exceptional circumstances, make an order under subsection (2) unless the application for the variation order has been made to the Court within the period of 5 years beginning with the date on which the declaration under section 1 was made.

(6) Where any person who has acquired rights to or in any property as a result of a declaration under section 1, or any person deriving right from him or her, enters into a transaction with another person whereby that other person acquires in good faith and for value any right to or in that property or any part of it, the transaction and any title acquired under it by that other person shall not be challengeable on the ground that an order under subsection (2) has been made in relation to that property.

(7) A trustee shall be liable to any person having entitlement by virtue of an order under subsection (2) for any loss suffered by that person on account of any breach of trust by the trustee in the administration or distribution of the whole or any part of the property, except in so far as the liability of the trustee may be restricted under any statutory provision or by any provision in any deed regulating the administration of the trust.

Insurance against claims

7.—(1) Where a declaration has been made under section 1 then, unless the High Court otherwise directs, the trustee, if any, must as soon as may be effect a policy of insurance in respect of any claim which may arise by virtue of an order under section 6(2).

(2) Any premium payable by the trustee in respect of a policy of insurance effected under subsection (1) shall be a proper charge on the estate being administered by the trustee.

(3) Where a declaration has been made under section 1, an insurer may, before making payment of any capital sum (other than in respect of an annuity or other periodical payment) to any person as a result of that declaration, require that person to effect in his or her own name for the benefit of that insurer a policy of

insurance to satisfy any claim which that insurer may establish in the event of a variation order being made.

Supplementary provisions as to declarations, etc.

5 **8.**—(1) A declaration made under section 1, and any application for such a declaration, must be in the prescribed form.

(2) Any application for a variation order must be in the prescribed form.

(3) Rules of court must make provision—

(a) as to the information required to be given to the High Court by—

10 (i) any applicant for a declaration under section 1;

(ii) any applicant for a variation order;

(b) requiring—

(i) notice of an application under section 1;

(ii) notice of an application for a variation order;

15 (iii) any information required to be given to the High Court in accordance with paragraph (a),

to be served by the applicant on the Registrar General and on such other persons as may be prescribed;

(c) requiring—

(i) an application for a declaration under section 1;

20 (ii) an application for a variation order,

to be advertised in such circumstances and in such manner as may be prescribed;

(d) as to the persons who are to be parties to the proceedings in relation to—

(i) an application for a declaration under section 1;

25 (ii) an application for a variation order.

(4) No proceedings under section 1 or section 5 shall affect any final judgment or order already pronounced or made by any court or tribunal.

(5) The High Court may direct that the whole or any part of any proceedings under this Act must be heard in private.

30 (6) An application for a direction under subsection (5) must be heard in private unless the Court otherwise directs.

(7) In this section, “prescribed” means prescribed by rules of court.

Provisions relating to the Attorney General

35 **9.**—(1) Rules of court must make provision requiring—

(a) notice of an application under section 1;

(b) notice of an application for a variation order;

(c) any information required to be given to the High Court in accordance with section 8(3)(a),

to be served by the applicant on the Attorney General.

(2) On an application for a declaration under section 1 or an application for a variation order the High Court may at any stage in the proceedings, of its own motion or on the application of any party to the proceedings, direct that all necessary papers in the matter be sent to the Attorney General.

- (3) The Attorney General may— 5
- (a) intervene in the proceedings on any application referred to in subsection (1) in such manner as the Attorney General thinks necessary or expedient, and
 - (b) argue before the Court any question in relation to the application which the Court considers it necessary to have fully argued. 10

Right to intervene

10.—(1) Subject to subsection (2), any person may intervene in any proceedings on—

- (a) an application for a declaration under section 1; or
- (b) an application for a variation order. 15

(2) A person referred to in subsection (1) who is not—

- (a) the spouse or civil partner of; or
- (b) a close relative of,

the missing person whose presumed death is the subject of the application in question may only intervene in the proceedings on that application with the leave of the High Court. 20

(3) Without prejudice to the generality of subsection (1) or (2), a person intervening under this section may—

- (a) argue before the Court any question in relation to the application which the Court considers it necessary to have fully argued; 25
- (b) where the person is intervening in proceedings on an application for a declaration under section 1, seek the making by the Court under section 4 of any determination or order not sought by the applicant;
- (c) where the person is intervening in proceedings on an application for a variation order, seek the making by the Court of a determination under section 5(4) or an order under section 6(2). 30

(4) In subsection (2)(b), “close relative”, in relation to a missing person, means—

- (a) the parent or child of that person; or
- (b) the sibling (whether of the full blood or the half blood) of that person. 35

Disclosure of information

11.—(1) Where the High Court is of the opinion that it is necessary for the purpose of disposing of proceedings under section 1 or section 5, the Court may, of its own motion or on the application of a party to the proceedings, make an order requiring any person who is not a party to the proceedings to disclose to the Court such information as the Court considers relevant to the determination of the question of whether a missing person is alive or dead as may be specified in the order. 40

(2) Nothing in subsection (1) shall impose a duty to disclose information—

(a) which is permitted or required by any rule of law to be withheld on grounds of public interest immunity;

5 (b) which any person would be entitled to refuse to provide on grounds of legal professional privilege;

(c) if the disclosure of that information might incriminate the person disclosing the information, or his or her spouse or civil partner, of an offence.

10 (3) Before making an order under subsection (1), the High Court must serve notice of its intention to make the order on any person who, in the opinion of the Court, is likely to be affected by the order.

(4) The High Court may discharge or vary an order made by it under this section on an application made to the Court by any person affected by the order.

15 (5) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to orders under this section.

(6) This section binds the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

Costs

12.—(1) Where any costs are incurred by any person in connection with—

20 (a) an application for a declaration under section 1; or

(b) an application for a variation order,

the High Court may make such order as it considers just as to the payment of those costs by—

(i) any party to the proceedings; or

25 (ii) any person intervening in the proceedings where that person is not a party to the proceedings.

(2) The High Court may order any costs payable in accordance with an order made under subsection (1) to be raised and paid out of the property of the missing person whose presumed death is the subject of the application to which the costs relate.

Power to amend certain time periods

13. The Department may by order amend any time period (either by increasing or reducing that period) referred to in any of the following provisions—

(a) section 1(1)(b);

35 (b) section 2(1)(b); or

(c) section 6(5).

Repeal of certain statutory provisions relating to presumption of death

14.—(1) Subject to subsections (2) and (3), the following statutory provisions cease to have effect—

40 (a) Article 21 of the Matrimonial Causes (Northern Ireland) Order 1978 (NI 15) (presumption of death and dissolution of marriage);

(b) section 178 and section 196(2) of the Civil Partnership Act 2004 (c. 33) (presumption of death orders).

(2) Article 21 of the Matrimonial Causes (Northern Ireland) Order 1978 continues to have effect in relation to any petition presented to the High Court under paragraph (1) of that Article before the date on which subsection (1) comes into operation. 5

(3) Section 178 and section 196(2) of the Civil Partnership Act 2004 continue to have effect in relation to any application made under subsection (1) of section 178 before the date on which subsection (1) of this section comes into operation.

Register of presumed deaths 10

Register of Presumed Deaths

15.—(1) The Registrar General must maintain, in the General Register Office, a register to be called the Register of Presumed Deaths.

(2) The form in which the Register of Presumed Deaths is maintained is to be determined by the Registrar General. 15

(3) Schedule 1 (further provisions about registration) has effect.

Supplementary

Orders and regulations

16.—(1) Subject to subsection (2) and paragraph 7(2) of Schedule 1, orders and regulations made under this Act (except an order made under section 20(2)) shall be subject to negative resolution. 20

(2) Any order made—

(a) under section 18(1) or (3) which amends, repeals, revokes or modifies any statutory provision; or

(b) under section 13, 25

shall be subject to affirmative resolution.

Interpretation

17. In this Act—

“the Department” means the Department of Finance and Personnel;

“insurer” means any person who provides for the payment of benefits on the death of any person. 30

“missing person” has the meaning assigned by section 1(1);

“prescribed”, except in section 8 and paragraph 7(1) and (3) of Schedule 1, means prescribed by regulations made by the Department;

“the Registrar General” means the Registrar General for Northern Ireland; 35

“the Register of Presumed Deaths” means the register maintained under section 15(1);

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33);

“trust” means any trust which arises— 40

(a) as a result of a declaration under section 1; or

(b) in relation to the administration or devolution of the property of a missing person as a result of a declaration under section 1;

“trustee” means a trustee, executor, administrator or any other person administering trust property;

“variation order” has the meaning assigned to it by section 5(3).

Supplementary provision

18.—(1) The Department may by order make such transitional or transitory provisions and savings as it considers appropriate in connection with the coming into operation of any provision of this Act.

(2) Nothing in section 14(2) or (3) restricts the power under subsection (1) to make other transitional or transitory provisions and savings.

(3) The Department may by order make such supplementary, incidental or consequential provision as it considers appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(4) An order under subsection (1) or (3) may amend, repeal, revoke or otherwise modify any statutory provision.

Amendments and repeals

19.—(1) Schedule 2 (which contains consequential amendments) has effect.

(2) The statutory provisions mentioned in the first column of Schedule 3 are repealed to the extent set out in the second column.

Commencement

20.—(1) The following provisions of this Act come into operation one month after the day on which this Act receives Royal Assent—

(a) section 8;

(b) section 9(1);

(c) section 11(5);

(d) section 13;

(e) section 16;

(f) section 17;

(g) section 18;

(h) this section; and

(i) section 21.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

Short title

21. This Act may be cited as the Presumption of Death Act (Northern Ireland) 2009.

SCHEDULES

Section 15(3).

SCHEDULE 1

REGISTER OF PRESUMED DEATHS

Entries in Register of Presumed Deaths

1.—(1) Where a declaration under section 1 has been made by the High Court, the Court must— 5

(a) where no appeal has been brought against the declaration, on the expiration of the time within which such an appeal may be brought; or

(b) where an appeal has been brought against the declaration, on the conclusion of any appellate proceedings, 10

send a copy of the declaration and such particulars as may be prescribed to the Registrar General.

(2) On receipt of a copy of a declaration in accordance with sub-paragraph (1), the Registrar General must—

(a) make an entry in the Register of Presumed Deaths containing the name of the missing person to whom the declaration relates and such other particulars as may be prescribed in relation to that person's presumed death; 15

(b) secure that each entry made in the Register of Presumed Deaths is included in the index of the register of deaths; and 20

(c) make traceable the connection between the entry in the Register of Presumed Deaths and the index of the register of deaths.

Amendment and cancellation of entries in Register

2.—(1) Where a variation order has been made by the High Court, the Court must— 25

(a) where no appeal has been brought against the order, on the expiration of the time within which such an appeal may be brought; or

(b) where an appeal has been brought against the order, on the conclusion of any appellate proceedings,

send a copy of the order and such particulars as may be prescribed to the Registrar General. 30

(2) On receipt of a copy of a variation order in accordance with sub-paragraph (1), the Registrar General must—

(a) where the variation order amends a declaration made under section 1—

(i) amend the entry in the Register of Presumed Deaths in relation to the person to whom the declaration relates; and 35

(ii) amend any entry relating to that person made in the index of the register of deaths by virtue of paragraph 1(2)(b);

- (b) where the variation order revokes a declaration made under section 1—
- (i) cancel the entry in the Register of Presumed Deaths relating to the person to whom the declaration relates;
 - (ii) cancel any entry relating to that person made in the index of the register of deaths by virtue of paragraph 1(2)(b).

Searches of indexes and examination of entries

3.—(1) Any right to search the index of the register of deaths includes the right to search entries included in it by virtue of paragraph 1(2)(b).

(2) Any person may examine any entry in the Register of Presumed Deaths.

(3) Any person may require the Registrar General to provide him or her with a certified copy of an entry in the Register of Presumed Deaths.

(4) A certified copy of an entry in the Register of Presumed Deaths must be stamped with the seal of the General Register Office, of which judicial notice shall be taken.

Correction, etc. of Register

4.—(1) Where it appears to the Registrar General that there is any clerical error or any error of fact or substance in the Register of Presumed Deaths, the Registrar General may authorise any person to correct the error in the Register.

(2) Where it appears to the Registrar General that the death of a missing person, being a person to whom an entry in the Register of Presumed Deaths relates, has been registered in the register of deaths or recorded in any register kept or maintained under the law of a country or territory outside Northern Ireland corresponding in nature to the register of deaths, the Registrar General must mark or annotate the relevant entry in the Register of Presumed Deaths accordingly.

(3) The Registrar General may mark or annotate, or cancel the marking or annotation of, any entry in the Register of Presumed Deaths.

Re-registration

5.—(1) Where the Registrar General is of the opinion that it is desirable that any entry in the Register of Presumed Deaths should be re-registered on the ground that there is or has been an error in the entry, the Registrar General may authorise the re-registration of the entry.

(2) Any re-registration under sub-paragraph (1) must be effected in the prescribed manner.

Proof of death

6. A certified copy of an entry in the Register of Presumed Deaths in relation to a person is to be received, without further or other proof, as evidence of the person's death.

Fees

7.—(1) There shall be payable for or in respect of—

- (a) examination of a particular entry in the Register of Presumed Deaths;

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(b) certified copies of an entry in the Register of Presumed Deaths;
(c) furnishing information for the purposes of any statutory provision specified in Schedule 1 to the 1976 Order,
fees of such amounts as may be prescribed by order made by the Department.

(2) No order shall be made under sub-paragraph (1) unless a draft of the order has been laid before and approved by resolution of the Assembly. 5

(3) Where any fee is prescribed under sub-paragraph (1), then it shall not be lawful for any person to demand or receive, in respect of any transaction to which that fee relates, any sum in excess of the prescribed fee other than a sum equal to the amount of any expenditure properly incurred in the carrying out of that transaction. 10

(4) Except as may be prescribed, the Registrar General may refuse to comply with any application made to the Registrar General under this Act until the fee prescribed under sub-paragraph (1) is paid; and any such fee shall be a debt recoverable summarily by the Registrar General. 15

Interpretation

8. In this Schedule—

“the 1976 Order” means the Births and Deaths Registration (Northern Ireland) Order 1976 (NI 14);

“the register of deaths” means the register of deaths kept in the General Register Office. 20

Section 19(1).

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS

The Judicature (Northern Ireland) Act 1978 (c. 23)

In section 35(2), in paragraph (ea), for “dissolution order, nullity order or presumption of death order” substitute “dissolution order or nullity order”. 25

The Matrimonial Causes (Northern Ireland) Order 1978 (NI 15)

In Article 49, paragraph (1)(b) and paragraph (4) are omitted.

In Article 51, paragraph (3) is omitted.

The Civil Partnership Act 2004 (c. 33) 30

In section 161—

(a) in subsection (1), paragraph (c) is omitted;

(b) in subsection (2) for “dissolution, nullity or presumption of death order” substitute “dissolution order or nullity order”.

In section 163, in subsection (1) for “dissolution, nullity or presumption of death order” substitute “dissolution order or nullity order”. 35

In section 210, in subsection (5) for “, 230(c) and 232(b)” substitute “and section 232(b)”.

In section 211, in subsection (4) for “, 230(c) and 232(b)” substitute “and section 232(b)”.

Section 230 is omitted.

SCHEDULE 3

Section 19(2).

5

REPEALS

Short Title	Extent of repeal
10 The Matrimonial Causes (Northern Ireland) Order 1978 (NI 15).	Article 21. In Article 49, paragraph (1)(b) and paragraph (4). In Article 51, paragraph (3).
15 The Civil Partnership Act 2004 (c. 33).	In section 161, subsection (1)(c). Section 178. In section 196, subsection (2). Section 230.