

## How to protect the assets of a missing person

On the 1 October 2014 the Presumption of Death Act 2013 came into force.

The Act establishes a simpler process which will enable the families of missing people to apply to the High Court for a single declaration that a missing person is presumed to have died at a particular date and time. For the High Court to have jurisdiction the missing person has to be domiciled in England and Wales on the day on which they were last known to be alive.

If a person is missing and a body cannot be found, a death certificate cannot be issued. For legal purposes the person is therefore assumed to be alive. Their assets will be frozen and this can lead to enormous logistical and practical difficulties for families and business associates at a time when there is clearly already enormous emotional turmoil.

The advantage of the simplified procedure is that the new declaration is effective against all persons and for all purposes. This new simpler system replaces the complicated and expensive system that existed prior to the commencement of the Act.

Under the old system there was a rebuttable presumption that a person was presumed dead if those who would have been likely to have heard from him, had not heard anything for 7 years. An application to the High Court would be necessary, supported by evidence of all attempts to find and contact the missing person. If such an application was successful however, only a declaration for a specific purpose could be obtained, say to allow someone to access the proceeds of a life insurance policy.

The new process allows an application by a person with sufficient interest to apply for a declaration that a missing person is presumed to be dead and that declaration is conclusive of the date and time of death and is effective for all purposes (although it can on application by those with sufficient interest, be revoked). Section 2 of the Act states that the Court must make a declaration if it satisfied that the missing person has died, or has "*not been known to be alive for a period of at least 7 years*".

The new Act therefore simplifies the process and brings England and Wales into line with the legislation that already exists in Northern Ireland and Scotland.

### **Guardianship**

It should be noted that the Presumption of Death Act does not deal with the "guardianship" (the authority to manage a person's assets when they lose capacity) provisions. While the 7 year period ticks on until a presumption of death declaration can be sought, there should be provision to allow authorised persons to manage the affairs of a missing person on an interim basis.

There is currently a consultation ongoing which proposes that an interested party can apply to the Court, for such guardianship provisions. There may well be limits imposed by the Court and it is proposed that any appointment will be for a period of up to 4 years with the possibility of an extension. Any guardian would be obliged to account for his or her actions to a supervisory body.

Both our Private Client team's Rita Bhargava (STEP Committee Member for Central London and England and Wales) and our Trust and Estate Dispute team's Alison Regan have been involved with assisting the charity Missing People in this respect.

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