

Presumption of Death and Provisions Relating to Missing Persons Bill [HL]

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Make provision for the declaration of presumed death of missing persons; for the administration of the affairs of missing persons; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

DECLARATIONS OF PRESUMED DEATH

Declarations of presumed death

1 Declarations of presumed death

- (1) Where a person who is missing— 5
 (a) is thought to have died; or
 (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 (the “missing person”) is presumed to be dead.
- (2) The High Court has jurisdiction to entertain proceedings for a declaration 10
under subsection (1) only if—
 (a) the missing person was domiciled in England or Wales 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;
 or 15
 (b) the applicant—
 (i) is the spouse or civil partner of the missing person; and
 (ii) is domiciled in England or Wales on the date when the
 proceedings are begun, or has been habitually resident in 20
 England or Wales throughout the period of one year ending
 with that date.

- (3) Where an application under subsection (1) is made by a person other than the spouse, civil partner or 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 the application. 5
- (4) In subsection (3), “close relative”, in relation to a missing person, means a parent, child or sibling of that person.

2 Making of declaration of presumed death

- (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; or 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) No declaration which may be applied for under section 1 may be made otherwise than under section 1 by any court or tribunal.
- (3) 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). 25

3 Effect of declaration of presumed death

- Subject to sections 5 and 6, where – 30
- (a) no appeal is brought against a declaration under section 1 within the time allowed for appeal; or
- (b) an appeal against such a declaration is brought and is dismissed or withdrawn;
- the declaration shall be conclusive and shall 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. 35

4 Declarations by the High Court

- (1) The High Court, when making a declaration under section 1, may – 40
- (a) determine any question relating to the interest of any person in the property of the missing person;
- (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 45

- (c) determine the domicile of the missing person at the time of his or her presumed death.
 - (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). 5
- 5 Variation orders**
- (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. 10
 - (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). 15
 - (5) Notice of the making of a variation order shall be served by the Court on—
 - (a) the Registrar General; and
 - (b) any person who applied for the declaration under section 1 to which the application under subsection (1) relates. 20
- 6 Effects on property rights of variation order**
- (1) Subject to the 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, on making the order, the High Court 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. 25
 - (3) An order made under subsection (2) shall not affect any income accrued between the date of a declaration under section 1 and the date of the variation order. 30
 - (4) In considering what order to make under subsection (2), the High Court must, so far as practicable in the circumstances, have regard to the following considerations—
 - (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— 35
 - (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 40
 - (ii) the value, as at the date of distribution, of the said rights to or in any such property which has been distributed; and 45

- (b) that any capital sum paid by an insurer as a result of the declaration 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. 5
- (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. 10
- (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. 15
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- 7 Insurance against claims**
- (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). 25
- (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 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. 30
- 8 Supplementary provisions as to declarations etc.**
- (1) A declaration made under section 1, and any application for such a declaration, must be in the form prescribed by rules of court. 35
- (2) Any application for a variation order must be in the form prescribed by rules of court.
- (3) Rules of court must make provision –
- (a) as to the information required to be given to the High Court by – 40
- (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; 45

-
- (iii) any information required to be given to the High Court in accordance with subsection (3)(a);
to be served by the applicant on the Registrar General and on such other persons as may be prescribed;
- (c) requiring – 5
- (i) an application for a declaration under section 1;
- (ii) an application for a variation order;
to be advertised in such circumstances and in such manner as may be prescribed; and
- (d) as to the persons who are to be parties to the proceedings in relation to – 10
- (i) an application for a declaration under section 1; and
- (ii) an application for a variation order.
- (4) No proceedings under section 1 or 5 shall affect any final judgment or order already pronounced or made by any court or tribunal. 15
- (5) The High Court may direct that the whole or any part of any proceedings under this Act must be heard in private.
- (6) An application for a direction under subsection (5) must be heard in private unless the Court otherwise directs.
- 9 Provisions relating to the Attorney General** 20
- (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); 25
- 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. 30
- (3) The Attorney General may –
- (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. 35
- 10 Right to intervene**
- (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. 40
- (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.

- (3) Without prejudice to the generality of subsection (1) or (2), a person intervening under this section may – 5
- (a) argue before the Court any question in relation to the application which the Court considers it necessary to have fully argued;
 - (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; or 10
 - (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).
- (4) In subsection (2)(b), “close relative”, in relation to a missing person, means a parent, child or sibling of that person. 15

11 Reference to Chief Coroner

- (1) Where, as a result of an application for a declaration under section 1 or an application for a variation order the High Court has reason to believe that –
- (a) the missing person is likely to be dead;
 - (b) the circumstances are such that there should be an investigation into the likely death; and 20
 - (c) no such investigation has been carried out, or is being carried out; the Court may refer the matter to the Chief Coroner.
- (2) On receiving a reference under subsection (1) the Chief Coroner may direct a senior coroner to conduct an investigation into the likely death as soon as practicable, in accordance with Part 1 of the Coroners and Justice Act 2009. 25

12 Costs

- (1) Where any costs are incurred by any person in connection with –
- (a) an application for a declaration under section 1; or
 - (b) an application for a variation order; 30
- 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
 - (ii) any person intervening in the proceedings where that person is not a party to the proceedings. 35
- (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.
- (3) Where an application for a declaration under section 1 or an application for a variation order is successful, the costs of such application shall, unless the High Court directs otherwise, 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. 40

13 Power to amend certain time periods

The Secretary of State 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); 5
- (b) section 2(1)(b); or
- (c) section 6(5).

14 Repeal of certain statutory provisions relating to presumption of death

- (1) Subject to subsections (2) and (3), the following statutory provisions cease to have effect – 10
 - (a) section 19 of the Matrimonial Causes Act 1973 (c. 18) (presumption of death and dissolution of marriage); and
 - (b) sections 178 and 196(2) of the Civil Partnership Act 2004 (c. 33) (presumption of death orders).
- (2) Section 19 of the Matrimonial Causes Act 1973 continues to have effect in relation to any petition presented to the High Court under subsection (1) of that section before the date on which subsection (1) of this section comes into operation. 15
- (3) Sections 178 and 196(2) of the Civil Partnership Act 2004 continue to have effect in relation to any application made under section 178(1) before the date on which subsection (1) of this section comes into operation. 20

Register of Presumed Deaths

15 Register of Presumed Deaths

- (1) The Registrar General must maintain, in the General Register Office, a register to be called the Register of Presumed Deaths. 25
- (2) The form in which the Register of Presumed Deaths is maintained is to be determined by the Registrar General.
- (3) Schedule 1 (further provisions about registration) has effect.

PART 2

ADMINISTRATIVE GUARDIANSHIP ORDERS 30

16 Application for an Administrative Guardianship Order in respect of the estate of a missing person

- (1) Any person may apply to the Court of Protection for an order appointing an Administrative Guardian in respect of the estate of a missing person.
- (2) In addition to any other parties, the person proposed as Administrative Guardian is a party to a proceeding on an application under subsection (1). 35

17 Entitlement to give notice of an application

- (1) Each of the following is entitled to notice of the making of an application for an order appointing an Administrative Guardian, notice of the hearing of the application and notice of any order made by the court in respect of the application – 5
- (a) the spouse, civil partner and close relatives of the person in respect of whom the application is made;
 - (b) the primary carer (if any) of the person in respect of whom the application is made;
 - (c) the Attorney General; 10
 - (d) any guardian of the person in respect of whom the application is made; and
 - (e) any person who has advised the court of an interest in the person in respect of whom the application is made or in his or her estate.
- (2) In subsection (1) and in this Part, “close relative” in relation to a person means a parent, child or sibling of that person. 15

18 Date for hearing

The court must commence to hear an application under section 16 within 30 days after the day on which the application is received by the court.

19 Appointment of an Administrative Guardian in respect of the estate of a missing person 20

- (1) If the court is satisfied that –
- (a) the person in respect of whose estate an application has been made under section 16 – 25
 - (i) is a missing person; and
 - (ii) usually resides in England and Wales;
 - (b) while the person is missing there is, or is likely to be, a need for a decision in relation to the person’s financial affairs or property; and
 - (c) it is in the best interests of the missing person for a person to be appointed to administer their estate while they are missing; 30
- the court may make an order appointing an Administrative Guardian.
- (2) An order made under subsection (1) is referred to in this Act as an “Administrative Guardianship Order”.
- (3) A person is a missing person for the purpose of making an order under subsection (1) if the court is satisfied that – 35
- (a) it is not known whether the person is alive;
 - (b) reasonable efforts have been made to find the person; and
 - (c) for at least 90 days, the person has not contacted – 40
 - (i) anyone who lives at the person’s last-known home address; or
 - (ii) any relative or friend of the person with whom the person is likely to communicate.
- (4) An order may be made under this section in respect of a person who is a missing person whether the person became missing before or after the commencement of these provisions.

- (5) An Administrative Guardian may be appointed under subsection (1) to administer all or a specified part of the estate of the missing person.

20 Persons eligible as Administrative Guardians

- (1) The court may appoint as an Administrative Guardian of the estate of a proposed represented person any person who consents to act as Administrative Guardian if the court is satisfied that – 5
- (a) the person will act in the best interests of the proposed represented person;
 - (b) the person is not in a position where the person’s interests conflict or may conflict with the interests of the proposed represented person; 10
 - (c) the person is a suitable person to act as the Administrative Guardian of the estate of the proposed represented person; and
 - (d) the person has sufficient expertise to administer the estate or there is a special relationship or other special reason why that person should be appointed as Administrative Guardian. 15
- (2) In determining whether a person is suitable to act as the Administrative Guardian of the estate of a proposed represented person, the court must take into account the wishes of the proposed represented person, so far as they can be ascertained.
- (3) Where a spouse, civil partner or close relative of the missing person is proposed as the Administrative Guardian, that person is not by virtue only of that person’s relationship with the missing person to be taken to be in a position where the person’s interests conflict or may conflict with those of the missing person. 20

21 Remuneration of professional Administrative Guardian 25

- (1) An Administrative Guardian other than an Administrative Guardian who carries on a business of, or including, the administration of estates is not entitled to receive any fee, remuneration or other reward from the estate of a represented person for acting as Administrative Guardian under this Act unless the court otherwise specifies in the Administrative Guardianship Order. 30
- (2) The remuneration to which an Administrative Guardian who carries on a business of, or including, the administration of estates is entitled is to be approved by the court.

22 Payment of costs and expenses to Administrative Guardian or former Administrative Guardian from estate 35

- (1) If, in any proceeding, a court orders that an Administrative Guardian pay any costs of the proceeding, the court may order that the Administrative Guardian pay, or be reimbursed for, all or part of those costs from the estate administered by the Administrative Guardian.
- (2) In any proceeding, a court may order that an Administrative Guardian be reimbursed for all or part of the Administrative Guardian’s costs of the proceeding from the estate administered by the Administrative Guardian. 40
- (3) The court may order that the costs incurred in administering an estate by a person appointed as an Administrative Guardian (including the costs of any

proceeding) may be paid out of, or reimbursed from, the estate, whether or not the appointment has been revoked or quashed.

- (4) An order referred to in subsection (3) may be made on an application under section 34 or otherwise, and for that purpose, a reference in section 34 to an Administrative Guardian is taken to include a reference to a person whose appointment as an Administrative Guardian has been revoked or quashed. 5

23 Administrative Guardian to notify court

An Administrative Guardian must notify the court in writing without delay when the Administrative Guardian becomes aware that –

- (a) the represented person is alive (either in England and Wales or elsewhere); 10
 (b) the represented person has died; or
 (c) a declaration has been made under section 1.

24 Order to remove an Administrative Guardian

- (1) The court may, by order, remove an Administrative Guardian – 15
 (a) on application by the person who is the subject of the Administrative Guardianship Order; or
 (b) if satisfied, on application by the Administrative Guardian or any other person, that –
 (i) the represented person is alive; or 20
 (ii) the represented person is dead.
- (2) The court must, by order, remove an Administrative Guardian where –
 (a) a superior court, on being satisfied of the death of the represented person, whether by direct evidence or on presumption of death, has made a grant of probate of the will or administration of the estate of the represented person under the law of probate; 25
 (b) the Probate Registrar, on being satisfied of the death of the represented person, whether by direct evidence or on presumption of death, has made a grant of probate of the will or administration of the estate of the represented person under the law of probate; 30
 (c) any part of the estate of the represented person becomes subject to an order under the law of probate; or
 (d) a declaration of presumed death under section 1 has been made.

25 Duration of order

- (1) Subject to section 24, an order under section 19 continues in effect for a period not exceeding 2 years as may be specified in the order. 35
- (2) An order under section 19 may on the application of the Administrative Guardian be renewed once for a further period not exceeding 2 years as is specified in the order if the court is satisfied that the matters specified in section 19 continue to apply. 40
- (3) Nothing in this section shall prevent a person applying for a new order in accordance with section 16 if the previous order has expired.

26 Application for a temporary Administrative Guardianship Order

- (1) Any person may apply to the Court of Protection for a temporary Administrative Guardianship Order appointing an Administrative Guardian in respect of the estate of a missing person.
- (2) An application may be made under subsection (1) whether or not an application has been made to the court under section 16. 5
- (3) Each person who would be entitled to notice under section 17 of an application under section 16 is entitled to notice of the making of an application under this section, notice of the hearing of the application and notice of any order made by the court in respect of the application. 10

27 Temporary Administrative Guardianship Order

- (1) If the court is satisfied that –
 - (a) the person in respect of whose estate an application has been made under section 26 –
 - (i) is a missing person; and 15
 - (ii) usually resides in England or Wales;
 - (b) while the person is missing there is, or is likely to be, a need for a decision in relation to the person’s financial matters or property; and
 - (c) it is in the best interests of the missing person for a person to be appointed to administer their estate while they are missing; 20the court may make a temporary order appointing any person who may be appointed under section 20 as an Administrative Guardian.
- (2) A person is a missing person for the purpose of making a temporary Administrative Guardianship Order under subsection (1) if the court is satisfied that –
 - (a) it is not known whether the person is alive;
 - (b) reasonable efforts have been made to find the person; and
 - (c) for at least 90 days, the person has not contacted –
 - (i) anyone who lives at the person’s last-known home address; or
 - (ii) any relative or friend of the person with whom the person is likely to communicate. 30
- (3) An order may be made under this section in respect of a person who is a missing person where the person became missing before or after the commencement of these provisions.
- (4) Subject to subsection (5), an Administrative Guardian may be appointed under subsection (1) to administer all or a specified part of the estate of the missing person. 35
- (5) A temporary Administrative Guardianship Order –
 - (a) remains in effect for such period not exceeding 21 days as is specified in the order; and 40
 - (b) may be renewed once for a further period not exceeding 21 days.
- (6) The court must hold a hearing to determine whether an Administrative Guardian should be appointed under section 19 as soon as practicable after the making of a temporary Administrative Guardianship Order and within 42 days of making that order. 45

- 28 Power of the Administrative Guardian**
- (1) An Administrative Guardian has the powers and duties conferred by this Act.
- (2) Where a decision is made, action is taken, consent is given or thing is done by an Administrative Guardian under an order made by the court the decision, action, consent or thing has effect as if it had been made, taken, given or done by the represented person and the represented person had the legal capacity to do so. 5
- 29 Exercise of power by Administrative Guardian**
- (1) An Administrative Guardian must act in the best interests of the represented person. 10
- (2) For the purposes of subsection (1), an Administrative Guardian acts in the best interests of the represented person if the Administrative Guardian only takes any actions that the Administrative Guardian considers are necessary or desirable for –
- (a) the payment of the debts and engagements of, and otherwise for the benefit of, the represented person; 15
- (b) the maintenance and benefit of dependants of the represented person; or
- (c) the care and management of the estate of the represented person.
- 30 Ancillary powers of Administrative Guardian** 20
- (1) An Administrative Guardian may on behalf of a represented person sign and do all such things as are necessary to give effect to any power or duty vested in the Administrative Guardian.
- (2) Nothing in this Part confers on an Administrative Guardian the power to execute a will in the name of a represented person. 25
- 31 Powers of investment**
- Except as provided in section 36 or any order of the court, an Administrative Guardian, in respect of any part of the estate of the represented person of which the Administrative Guardian is the Administrative Guardian –
- (a) may for such period as the Administrative Guardian thinks fit allow any part of the estate to remain invested in the manner in which it has been invested by the represented person; 30
- (b) may in the case of money deposited in an authorised deposit-taking institution re-deposit it after it becomes payable; and
- (c) has and may exercise in relation to any part of the estate the same powers as the Administrative Guardian would have if the Administrative Guardian were a trustee of that part of the estate. 35
- 32 Interest of represented person in property not to be altered by sale or other disposition of property**
- (1) A represented person and his or her heirs, executors, administrators, next of kin, devisees, legatees and assigns have the same interest in any money or other property arising from or received in respect of any sale, mortgage, exchange, partition or other disposition under the powers given to an
- 40

Administrative Guardian by an order of the court which have not been applied under those powers as such person would have had in the property which was the subject of the sale, mortgage, exchange, partition or disposition if no sale, mortgage, exchange, partition or disposition had been made.

- (2) For the purposes of this section, money arising from the compulsory acquisition or purchase under any Act of property of a represented person is deemed to be money arising from the sale of that property under the powers given to an Administrative Guardian by an order of the court. 5
- (3) An Administrative Guardian who receives money or other property under this section must keep a separate account and record of the money or other property. 10
- (4) Money received by an Administrative Guardian under this section may be invested in any manner currently allowed for the investment of trust funds under the law of England and Wales.
- (5) In this section and section 35, “next of kin” in relation to a represented person means any person who would be entitled to the property of the represented person or to any share thereof under any law for the distribution of the property of intestates if the represented person had died intestate. 15

33 Court power to open will

The court may either before or after the death of a represented person open and read any paper or writing which is purported or alleged to be the will of the represented person. 20

34 Administrative Guardian may seek advice

- (1) An Administrative Guardian may apply for the advice of the court upon any matter relating to the scope of the Administrative Guardianship Order or the exercise of any power by the Administrative Guardian under the Administrative Guardianship Order. 25
- (2) The court may –
 - (a) approve or disapprove of any act proposed to be done by the Administrative Guardian; 30
 - (b) give such advice as it considers appropriate; and
 - (c) make any order it considers necessary.
- (3) The court may on its own initiative direct, or give an advisory opinion to, an Administrative Guardian concerning any matter.
- (4) An action does not lie against an Administrative Guardian on account of an act or thing done or omitted by the Administrative Guardian under any order or on the advice of the court made or given under this section unless in representing the facts to the court the Administrative Guardian has been guilty of fraud, wilful concealment or misrepresentation. 35

35 Application to the court by a creditor etc.

- (1) Any person interested as a creditor, beneficiary, next of kin, guardian, close relative, primary carer or otherwise in any estate administered by an 40

Administrative Guardian may apply to the court upon any matter arising out of the administration of the estate by the Administrative Guardian.

- (2) The court may make such order in relation to the application as the circumstances of the case may require.

36 Power to Administrative Guardian to act until notice of discharge etc. received 5

- (1) Where the court knows that a person has ceased to be a represented person, the court must without delay give notice of that fact to the Administrative Guardian.

- (2) Until the Administrative Guardian learns that a person has ceased to be a represented person, an Administrative Guardian may exercise all or any of the powers given to the Administrative Guardian by order of the court with respect to the estate of the represented person. 10

- (3) Upon notice being given under subsection (1), the represented person or the represented person's legal personal representative (as the case may be) is bound by and may take advantage of any act done on behalf of the represented person by the Administrative Guardian within the powers conferred on the Administrative Guardian by the court as if it had been done by the represented person and the represented person had the legal capacity to do so. 15

37 Accounts 20

- (1) The court may, at the time that it appoints an Administrative Guardian under section 16 or such later time as the court determines, appoint a person to examine or audit the accounts of the estate of a represented person for a fee approved by the court and paid from that estate.

- (2) Unless the court otherwise directs, an Administrative Guardian must lodge – 25
- (a) if the court has appointed a person under subsection (1) to examine or audit accounts, with that person; or
 - (b) in any other case, with the court;

on, or as soon as practicable after, the anniversary of the appointment of the Administrative Guardian in each year, accounts of the administration of the estate of a represented person providing a full and true account of the assets and liabilities of that estate and all receipts and disbursements in respect of that estate. 30

- (3) The court may require an Administrative Guardian to lodge accounts at a time other than a time specified in subsection (2). 35

- (4) A person appointed under subsection (1) to examine or audit accounts must lodge with the court a report in relation to the accounts examined or audited.

- (5) A report under subsection (4) may recommend the disallowance of any item in the accounts.

- (6) Where the court receives a report under subsection (4), the court cannot make an order disallowing an item if the court is satisfied that the Administrative Guardian acted in good faith and with reasonable care in the exercise of powers conferred on the Administrative Guardian. 40

- (7) Where any item is disallowed by the court, the Administrative Guardian is liable for the amount of the item disallowed.
- (8) An Administrative Guardian must, in respect of each estate administered by the Administrative Guardian, pay to a person appointed under subsection (1) to examine or audit accounts an amount certified by that person as being the reasonable cost of examining or auditing the accounts. 5
- (9) The court may upon an application by the Administrative Guardian and with the consent of the person appointed under subsection (1) to examine or audit accounts waive payment of the whole or part of the amount required to be paid under subsection (8). 10

38 Powers and duties in relation to represented persons

- (1) Subject to and in accordance with this Part and the Administrative Guardianship Order appointing an Administrative Guardian in each case –
 - (a) the Administrative Guardian has the general care and management of the estate of the represented person; 15
 - (b) it is the duty of the Administrative Guardian to take possession and care of, recover, collect, preserve and administer the property and estate of the represented person and generally to manage the affairs of the represented person and to exercise all rights statutory or otherwise which the represented person might exercise if the represented person were not missing; and 20
 - (c) the Administrative Guardian in the name and on behalf of the represented person may generally do all acts and exercise all powers with respect to the estate as effectually and in the same manner as the represented person could have done if the represented person were not missing. 25
- (2) Without limiting subsection (1), an Administrative Guardian may in the name and on behalf of a represented person –
 - (a) collect, receive and recover income of and money due or which becomes due to and any compensation or damages for injury to the estate or person of the represented person; 30
 - (b) invest any money in any security in which trustees may by law invest;
 - (c) demise land at a rent and on conditions as the Administrative Guardian thinks fit for any term not exceeding 5 years or, with the consent of the court, for any longer term; 35
 - (d) exercise to the extent and in the manner the Administrative Guardian thinks proper any power of leasing vested in the represented person;
 - (e) surrender any lease, accept any lease, accept the surrender of any lease or renew any lease;
 - (f) with the approval of the court sell, exchange, partition or convert into money any property; 40
 - (g) mortgage or charge any property;
 - (h) pay any debts and settle, adjust or compromise any demand made by or against the estate and discharge any encumbrance on the estate;
 - (i) carry on so far as appears desirable any trade, profession or business which the represented person carried on; 45
 - (j) agree to any alteration of the conditions of any partnership into which any represented person has entered or to a dissolution and distribution of the assets of the partnership;

<ul style="list-style-type: none"> (k) bring and defend actions and other legal proceedings in the name of the represented person; (l) execute and sign deeds, instruments and other documents; (m) complete any contract for the performance of which the represented person was liable, or enter into any agreement terminating liability; (n) pay any sum for the maintenance of the spouse or civil partner of the represented person or any child, parent or other person dependent on the represented person and for the maintenance and education of the children of the represented person the Administrative Guardian deems expedient and reasonable; and (o) carry out all matters necessary or incidental to the performance of any of the above-mentioned matters and apply any money from the estate which it is necessary to apply for the purposes of this Part. 	<p>5</p> <p>10</p>
39 Action upon a person ceasing to be a represented person	
<ul style="list-style-type: none"> (1) If an Administrative Guardian has received notice from the court that a represented person has ceased to be a represented person or has died, the Administrative Guardian must – <ul style="list-style-type: none"> (a) pay or cause to be paid to that person or to that person’s personal representative (as the case requires) all money standing to his or her credit with the Administrative Guardian; and (b) deliver to that person or to that person’s personal representative (as the case requires) all property forming part of his or her estate and any documents relating to that estate. (2) Any payment made under subsection (1) is subject to the satisfaction of any amount due to the Administrative Guardian and all costs, expenses and liabilities incurred by the Administrative Guardian in respect of the administration of that person’s estate. (3) The receipt of a person who has ceased to be a represented person or of that person’s personal representative is an absolute discharge to an Administrative Guardian despite any informality in the discharge or certification. 	<p>15</p> <p>20</p> <p>25</p> <p>30</p>
40 Represented person entitled to inspection of accounts	
<p>Any person who has ceased to be a represented person or the personal representative of any represented person is entitled, before or after obtaining the restoration of all or any part of the estate from an Administrative Guardian –</p> <ul style="list-style-type: none"> (a) to examine and inspect or cause to be examined and inspected by a legal or other authorised agent all books, accounts, notices and other documents in the custody of the Administrative Guardian relating to the estate and to make or cause to be made copies or extracts; (b) to have supplied to him or her or his or her legal practitioner or other authorised agent copies of or extracts from any book, account, notice or document; and (c) to have given to him or her or his or her legal practitioner or other authorised agent information respecting the estate as is reasonably requested and can be given by the Administrative Guardian. 	<p>35</p> <p>40</p> <p>45</p>

41 Effect of this Part on other legislation

- (1) This Part is not intended to exclude or limit the operation of the law of probate.
- (2) A person who is a represented person only because of the operation of this Part is only a represented person for the purposes of this Part to the extent that it is necessary in order to give effect to this Part. 5
- (3) A reference in any Act or regulation to a represented person is taken not to include a person who is a represented person only because of the operation of this Part.

PART 3

SUPPLEMENTARY

10

42 Orders and regulations

- (1) Subject to subsection (2) and paragraph 7(2) of Schedule 1, orders and regulations made under this Act (other than orders to be made by a court under this Act) (except an order made under section 46(2)) shall be made by a statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament. 15
- (2) No statutory instrument made –
 - (a) under section 44(1) or (3) which amends, repeals, revokes or modifies any statutory provision; or
 - (b) under section 13; 20shall be made unless a draft has been laid before and approved by a resolution of each House of Parliament.

43 Interpretation

- (1) In this Act –
 - “prescribed”, except in section 8 and paragraph 7(1) and (3) of Schedule 1, means prescribed by regulations made by the Secretary of State; 25
 - “the Registrar General” means the Registrar General for England and Wales;
 - “the Register of Presumed Deaths” means the register maintained under section 14(1); 30
 - “statutory provision” means any provision of an Act or instrument made under an Act;
 - “trust” means any trust which arises –
 - (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; 35
 - “trustee” means a trustee, executor, administrator or any other person administering trust property; and
 - “variation order” has the meaning assigned to it by section 5(3).
- (2) In sections 6 and 7, “insurer” means – 40
 - (a) a person who has permission under Part IV of the Financial Services and Markets Act 2000 (c. 8) to effect or carry out contracts of insurance;

-
- (b) a European Economic Area firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act, which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of insurance; or 5
- (c) any other person who provides for the payment of benefits on the death of any person.
- (3) The definition of “insurer” in subsection (2) must be read with—
- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and 10
- (c) Schedule 2 to that Act.
- 44 Supplementary provision**
- (1) The Secretary of State may by order make such transitional or transitory provisions and savings as he or she considers appropriate in connection with the coming into operation of any provision of this Act. 15
- (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 Secretary of State may by order make such supplementary, incidental or consequential provision as he or she considers appropriate for the purposes of, in consequence of, or for giving full effect to, any provision of this Act. 20
- (4) An order under subsection (1) or (3) may amend, repeal, revoke or otherwise modify any statutory provision.
- 45 Amendments and repeals**
- (1) Schedule 2 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. 25
- 46 Short title, commencement and extent**
- (1) This Act may be cited as the Presumption of Death and Provisions Relating to Missing Persons Act 2012.
- (2) The following provisions of this Act come into operation one month after the day on which this Act receives Royal Assent— 30
- (a) section 8;
- (b) section 9(1);
- (c) section 13;
- (d) section 42; 35
- (e) section 43; and
- (f) section 44.
- (3) The other provisions of this Act come into force on such day or days as the Secretary of State may by order made by statutory instrument appoint.
- (4) This Act extends to England and Wales. 40

SCHEDULES

SCHEDULE 1

Section 15

FURTHER PROVISION ABOUT REGISTRATION

PART 1

REGISTER OF PRESUMED DEATHS

5

Entries in Register of Presumed Deaths

- 1 (1) Where a declaration under section 1 has been made by the High Court, the applicant must –
- (a) where no appeal has been brought against the declaration during the time within which such an appeal may be brought; or 10
 - (b) where an appeal has been brought against the declaration, on the conclusion of any appellate proceedings;
- 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 – 15
- (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; 20
 - (b) secure that each entry made in the Register of Presumed Deaths is included in the index of the Register of Deaths; and
 - (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

25

- 2 (1) Where a variation order has been made by the High Court, the person who made the application for the variation order must –
- (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 30
 - (b) where an unsuccessful 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.
- (2) On receipt of a copy of a variation order in accordance with sub-paragraph (1), the Registrar General must – 35

-
- (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
 - (ii) amend any entry relating to that person made in the index of the Register of Deaths by virtue of paragraph 1(2)(b); or
 - (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; and
 - (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). 15
- (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. 20

Correction etc. of Register

- 4 (1) Where it appears to the Registrar General that there is any clerical 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. 25
- (2) 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. 30
- (2) Any re-registration under sub-paragraph (1) must be effected in the prescribed manner.

Proof of death 35

- 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 – 40
 - (a) examination of a particular entry in the Register of Presumed Deaths;

- (b) certified copies of an entry in the Register of Presumed Deaths;
 - (c) furnishing information for the purposes of any enactment requiring proof of death;
- fees of such amounts as may be prescribed by order made by the Secretary of State. 5
- (2) No order shall be made under sub-paragraph (1) unless a draft of the order has been laid before Parliament and approved by a resolution of each House of Parliament.
- (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 Register of Deaths” means the Register of Deaths kept in the General Register Office. 20

SCHEDULE 2

Section 45

CONSEQUENTIAL AMENDMENTS

Supreme Court Act 1981

- 1 In section 18, in paragraph (fa), for “dissolution order, nullity order or presumption of death order” substitute “dissolution order or nullity order”. 25

Matrimonial Causes Act 1973

- 2 (1) In section 5, subsection (1)(b) and subsection (4) are omitted.
(2) Section 19 is omitted.

Civil Partnership Act 2004

- 3 (1) In section 37 – 30
- (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”.
- (2) In section 39, in subsection (1) for “dissolution, nullity or presumption of death order” substitute “dissolution order or nullity order”. 35
- (3) In section 210, in subsection (5) omit “222(c),”.
- (4) In section 211, in subsection (4) omit “222(c),”.

(5) Section 222 is omitted.

SCHEDULE 3

Section 45

REPEALS

<i>Short title and chapter</i>	<i>Extent of repeal</i>	
Matrimonial Causes Act 1973 (c. 18)	Section 19.	5
Domicile and Matrimonial Proceedings Act 1973 (c. 45)	In section 5, subsection (1)(b) and subsection (4).	
Civil Partnership Act 2004 (c. 33)	In section 37, subsection (1)(c). Section 55. In section 72, subsection (2). Section 222.	10

Presumption of Death and Provisions Relating to Missing Persons Bill [HL]

A

B I L L

To make provision for the declaration of presumed death of missing persons; for the administration of the affairs of missing persons; and for connected purposes.

Baroness Kramer

Ordered to be Printed, 14th May 2012

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