



Ministry of
JUSTICE

**Government Response to the
Justice Committee's Twelfth
Report of Session 2010-12:
Presumption of Death (HC 1663)**

July 2012



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Presented to Parliament
by the Lord Chancellor and Secretary of State for Justice
by Command of Her Majesty

July 2012

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**Government Response to the Justice Committee's Twelfth Report of Session 2010-12:
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Ministerial Foreword

The Justice Committee's report and the earlier work of the All Party Parliamentary Group on Runaway and Missing Children and Adults have highlighted the problems faced by those left behind when a person goes missing. In my evidence to the Committee I agreed that the present processes that they have to go through to deal with the property and affairs of the missing person are convoluted and cumbersome.

I am pleased that we are accepting the Committee's recommendations for the production of better guidance to present procedures and the introduction of a certificate of presumed death. I hope these measures will go a long way to simplifying and demystifying what has to be done when a missing person is thought to have died.

I accept that the problems of those left behind are not confined to these cases. The improved guidance should also help those left behind in the earlier stages of a disappearance when the missing person may still be thought to be alive. The creation of a role of guardian as recommended by the Committee may offer a more complete solution to problems in those early stages but this is a complex matter that needs more detailed examination. I hope that the Law Commission will be able to take the subject on and make recommendations in due course as to how a workable and fair solution might be achieved.

A handwritten signature in black ink, reading "Jonathan Djanogly". The signature is written in a cursive, flowing style with a large initial 'J' and 'D'.

Jonathan Djanogly MP

Parliamentary Under-Secretary of State for Justice

Response to the Justice Committee's Conclusions and Recommendations

Part 1: Introduction

This document is the Ministry of Justice's response to the Justice Committee's Twelfth Report of the 2010-2012 Session on Presumption of Death.¹

The Government recognises the importance of this topic and is committed to ensuring that there are appropriate systems and practical guidance in place for families to deal with the legal and financial problems that they face when a person disappears. This commitment and details of the Government's general approach to Missing Children and Adults are set out in the cross-government strategy published on 5 December 2011.²

The Justice Committee's report was published in February 2012 following the completion of its inquiry into the law and processes relating to presumption of death in England and Wales.

The Committee's report strongly criticises the present law and makes three key recommendations intended to help those left behind by people who disappear:

- better guidance should be made available as to the current law;
- legislation should be introduced to create a single statutory process to obtain a certificate of presumed death broadly equivalent to a death certificate; and
- legislation should be introduced to create a new status of guardian of the affairs of a missing person.

The Ministry of Justice is grateful to the Justice Committee for its analysis of these issues and has given careful consideration to its findings and recommendations. The Ministry acknowledges that the current law is complex and that those left behind face practical and emotional difficulties in trying to deal with the situation created by the disappearance of a family member or friend.

¹ HC 1663

² **Missing children and adults** A cross government strategy
<http://webarchive.nationalarchives.gov.uk/20120412093704/http://www.homeoffice.gov.uk/publications/police/missing-persons-strategy?view=Binary>

Part 2: Commentary on Conclusions and Recommendations

In this part of this paper the Ministry of Justice replies in turn to each of the conclusions and recommendations made the Justice Committee in its report.³ The conclusions and recommendations appear in the same order as they appear in the Committee's report.

We cannot agree with the Minister that the system relating to resolving the affairs of missing people has worked "adequately" because of the evidence we have heard about the problems faced by the families trying to resolve those affairs. Many of these problems appear to be due to the piecemeal nature of the relevant law, and the fact it is to be found in many different statutes as well as the common law. This complexity, as well as the rarity of these cases, means that people find it difficult to obtain reliable information. They may also have to pursue multiple proceedings before everything is resolved. (Paragraph 17)

1. The Department acknowledges the emotional and practical difficulties faced by those left behind, particularly close family members, when a person disappears. The Department accepts that the current range of legal procedures intended to secure specific ends with which those left behind have to engage are complicated and do not appear to be widely understood. However, whilst the present system and the quality of readily accessible guidance about it can clearly be improved, the Department does not accept that the present system is inadequate to deal with the potentially difficult and sensitive problems created by a person's disappearance. With the help of the Committee's report, we intend to make it better.

We note that the Minister made the important point that any system or law in this area must safeguard the financial and legal interests of the missing person. Some people do go missing for an extensive period for reasons of their own, returning after months or even years. We have kept this in mind in all our deliberations on this issue. (Paragraph 18)

2. The Department welcomes the Committee's acknowledgement of this important point.

Industry guidance alone cannot solve all the problems families face when trying to resolve a missing person's affairs, and it will not protect companies and public institutions from legal action should the missing person reappear. However, guidance on the best way to resolve a missing person's affairs, and, in particular, how to communicate with the family, would alleviate at least some of the difficulties relatives currently

³ HC 1663

face. We would therefore encourage organisations to develop such guidance, which will benefit the institutions concerned as well as families by making communication in cases of missing people more efficient and effective. (Paragraph 32)

3. The Department endorses the Committee's encouragement to organisations to prepare clear guidance on how to deal with the affairs of a missing person for their staff and the people who contact them. The Department will write to the principal organisations representing the businesses, charities and other bodies and associations that are likely to be contacted by the families of missing persons to draw their attention to the benefits that could flow from improved guidance.

The problems families encounter when a relative goes missing are in part due to the system, or lack of one. However, the primary reason why the system is so convoluted and obscure is because the law relating to it is neither clear nor comprehensive. Easily available guidance from the Government, however, would help families to begin navigating the system. We therefore recommend the Ministry of Justice develop guidance for families on the law and processes in this area. (Paragraph 34)

4. The Department accepts the Committee's recommendation. Straightforward, short and accessible guidance on procedures available under the present law will be published on the new single government website www.gov.uk later this year.

We welcome the Government's commitment to provide guidance on the operation of section 15 of the Coroners Act 1988. However, the restrictions on holding inquests under section 15, evidence of a geographical link to the coroner's area and a direction from the Secretary of State that the inquest be held, make the application of this legislative provision limited. Guidance in this area will rarely solve the problems experienced by the families of missing people. (Paragraph 37)

5. The Department acknowledges the limitations identified by the Committee but considers that where section 15 of the Coroners Act 1988 (or its successor provisions under section 1 of the Coroners Act 2009 when they are brought into force) applies it can provide a useful means to deal with the affairs of the missing person. The Department is working with the Missing Persons Bureau to finalise the guidance on section 15 and hopes that it will be published this summer.

We welcome the Government's commitment to reconsider its position on bringing forward presumption of death legislation in the light of the recommendations in this report. (Paragraph 40)

6. The Department is grateful to the Committee for its investigation into the problems faced by those left behind when a person has disappeared and is thought to be dead. The Department has reconsidered the priority to be accorded to legislation to create a certificate of presumed death and will bring forward a Bill when Parliamentary time permits.

Non-legislative solutions to the problems of resolving the affairs of missing people are necessary but not sufficient. Primary legislation is required. We understand the concerns of the insurance industry that more people may be tempted to stage a disappearance. However, the fact that, in 34 years, only one person who was the subject of an order under the Scottish Presumption of Death Act 1977 has reappeared is a compelling argument that the legislation provides a clear, robust court process to resolve the question of whether a missing person is alive or dead. We therefore recommend that the Ministry of Justice introduce legislation based on the Scottish Act. (Paragraph 47)

7. The Department appreciates the need to ensure that presumption of death procedures are not used for fraudulent purposes. This applies to the procedures existing under the present law and to any future procedures that may be created in due course. The Department agrees with the Committee that the experience of the Presumption of Death (Scotland) Act 1977 since it came into force in 1979 shows the importance and benefit of a clear and robust court process to establish whether a person is to be deemed to be dead. The Department will carefully consider the terms of that Act and the Presumption of Death Act (Northern Ireland) Act 2009 in preparing legislation for England and Wales.

In recommending the introduction of legislation on this issue we expect the Ministry of Justice to return to the bill introduced by Tim Boswell MP (Lord Boswell of Aynho) as a Private Member's Bill. We understand that bill to have had widespread support, a view bolstered by the recommendations of the All-Party Parliamentary Group on Runaway and Missing Children and Adults that legislation on this issue is necessary. (Paragraph 48)

8. The Department notes the Committee's recommendation and confirms that in preparing legislation to introduce a certificate of presumed death in England and Wales it will also carefully consider the terms of the draft Bill introduced by Tim Boswell MP (as he then was) in 2009.

The law relating to the affairs of missing people will only affect a limited number of people. It will, however, allow families placed in extremely difficult emotional circumstances at least to resolve the financial and legal affairs of their missing relatives. We believe the time is long overdue to extend to English and Welsh families the protection that is available to Scottish and Northern Irish families. (Paragraph 49)

9. On the basis of experience in Scotland and Northern Ireland with presumption of death certificates and the usage of existing presumed death procedures in England and Wales, the Department estimates that if a certificate of presumed death were to be introduced in England and Wales there would be about 30-40 such certificates issued annually. This is a relatively small number but the numbers of those left behind affected by the disappearance will be greater.
10. Introducing a single procedure to obtain a general purpose certificate of presumed death equivalent to a death certificate in England and Wales will bring the law of England and Wales into line with the law in Scotland and Northern Ireland. The new procedure will replace the existing range of procedures providing specific limited outcomes, which taken together currently provide the equivalent protection to that available in Scotland and Northern Ireland. This simplification should make it easier for those left behind to deal with the affairs of a missing person, who is thought to be dead, notwithstanding the very difficult circumstances in which they have been placed.

We recommend that the Government take steps to introduce provision for 'guardianship' orders modelled on the approach adopted by states in Australia, either via the introduction of the presumption of death legislation we have recommended, or some alternative legislative mechanism. This will protect the financial position of the missing person and his or her dependents. (Paragraph 55)

11. The Department agrees that the problems faced by those left behind on the disappearance of a person on whom they were reliant are not restricted to circumstances in which they think that the missing person is dead. Situations can quickly arise after a disappearance in which funds are needed to meet the everyday expenses of those left behind and, in time, assets may need to be sold or re-mortgaged to take account of the new circumstances in which the family finds itself. A disappearance may also adversely affect the financial interests of the missing person as automated payments continue to be made and necessary expenditure on assets cannot be authorised.
12. The present position in England and Wales is essentially that a person is presumed to be alive until the contrary is shown. The disappearance of a person does not therefore of itself affect the ownership or control of his or her property and affairs.

13. The Department notes the Committee's finding that in some States in Australia legislation has been introduced to create a status of guardian for the affairs of a missing person, irrespective of whether that person is thought to be dead. The Department is aware from a consultation paper on the civil law aspects of missing persons issued in December 2011 by the Law Reform Commission in the Republic of Ireland that there is similar legislation in other parts of the world, including some Canadian Provinces. Legislation of the type proposed by the Committee is therefore not unprecedented but it has not been enacted in any part of the United Kingdom, although Baroness Kramer has recently introduced a Presumption of Death and Provisions Relating to Missing Persons Bill into the House of Lords that would, if enacted, introduce a form of administrative guardianship under the supervision of the Court of Protection. The relevant provisions of the Bill run to 25 clauses.
14. The Department acknowledges that an ability to gain control of and access to the property of a missing person could be a powerful means both to overcome the problems faced by those left behind and to protect the interests of the missing person. There are however significant and difficult issues to consider. The guardian would be acting for the missing person but his or her actions could also be for the benefit of those left behind. Questions that need to be addressed include: How is that tension to be resolved? What authority should the guardian have and for how long? Who should appoint the guardian and to whom (and how) should the guardian be accountable? How is the system of supervision (if any) to be funded?
15. No doubt many of these problems have been considered in other jurisdictions but they have not been considered in detail in the context of the law of England and Wales. The Department considers that before any final decision is reached on the need for legislation to create a status of guardian for the affairs of a missing person within England and Wales there needs to be a detailed examination of the issues involved.
16. In the light of this preliminary decision, the Department will discuss with the Law Commission whether it would be willing to take on an investigation of this topic and make recommendations in the light of its findings. If the Law Commission is able and willing to take on this work, it will examine the issues carefully, consult widely, make recommendations and prepare such draft legislation (if any) as may be required. The Department will inform the Committee of the outcome of these discussions with the Law Commission.



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