

Supporting notes for guidance on completing a petition for a presumption of death decree/order and dissolution of the marriage/civil partnership

Important

Effect of a presumption of death and dissolution decree/order on inheritance

If the decree/order is granted it will dissolve (end) your marriage/civil partnership in the same way a divorce/dissolution decree/order would do. This will affect your right to inherit from your former spouse/civil partner's will or intestacy (where there is no will). Where your spouse/civil partner left a will, and appointment of you as executor or trustee and any gift made to you shall be revoked (cancelled) unless contrary intention appear in the will. If your former spouse/civil partner did not leave a will the intestacy procedures will apply. In these cases you will not be entitled to the entitlements of a spouse/civil partner.

This decree/order on its own will not be sufficient for anyone to obtain probate or letters of administration in relation to your spouse/civil partner's estate. Further steps will be required before an application for probate or letters of administration can be made; the nature of these steps will depend upon the circumstances surrounding the presumed death.

If you need to find out more details on the consequences of obtaining this decree/order or any other options available to you, please seek legal advice.

Please note, while court staff will help on procedural matters, they cannot offer any legal advice.

Applications for financial orders

Due to the presumed death of your spouse/civil partner you will not be able to apply for any financial orders against them, unless they are later found to be alive. If they are found to be alive after the decree/order is granted you can apply for a financial order against them in the same way as you can in divorce/dissolution proceedings. For more details please see leaflet **D190 – I want to apply for a Financial Order**.

Before completing the form

You should complete this form if you wish to apply to the court to dissolve the marriage or civil partnership between you and your spouse or civil partner due to their presumed death. You can apply for a presumption of death and dissolution of your marriage/civil partnership if your spouse/civil partner has gone missing and you believe that reasonable grounds exist for presuming their death. An application may be made at any time after your spouse/civil partner went missing providing you have sufficient evidence to signify that death has actually taken place. A solicitor will be able to advise you on the evidence you will need to provide. If you do not have sufficient evidence, you may have to wait for a period of seven years after your spouse/civil partner went missing to make an application.

If you are attaching any order of the High Court, county court or the family court to your petition, it must be a sealed copy of the order (that is, a copy that has been stamped with the seal of the court). If you are attaching an order made by a Family Proceedings Court/magistrates' court, it must be a certified copy (a copy certified by a court officer to be a true copy of the original order), or a copy that has been stamped with the seal of the originating court. If you are in any doubt about what is needed, please contact the court where you are applying for assistance.

Take or send the completed petition to the court together with the court fee and any documents you are attaching in support of your application. If you are not sure about the court fee payable for your application, or you think that you may be exempt from paying all or part of the fee, you can go to www.justice.gov.uk or contact the court for more information.

Complete the form as fully as you are able. If the form is not fully completed the court may be unable to issue your application and this may delay your case.

If you entered into a religious marriage as well as a civil marriage, these presumption of death and dissolution proceedings may not end the religious part of your marriage. It is important that you contact the relevant religious authority which authorised the marriage to see whether or not you should take steps to end that marriage. If you do not end the religious marriage, this could have consequences for you and your children.

Marriage/Civil Partnership certificate

In this form any reference to a marriage certificate or civil partnership certificate means a certified copy of the entry in the Register of Marriages or Register of Civil Partnerships. If you do not have the original marriage/civil partnership certificate, you can apply for a certified copy from the General Register Office or from the relevant Register Office. For further details please contact the General Register Office, PO Box 2, Southport, Merseyside, PR8 2JD (0845 603 7788).

If you married or entered into a civil partnership outside of England and Wales you should contact the relevant authorities in the appropriate country to obtain a certificate.

In cases of emergency applications it may be possible for you to provide an undertaking to the court to deliver the original or a certified copy of the marriage/civil partnership certificate to the court at a later date.

Assistance in completing the form

The notes below will help you to complete the petition. However if you are unsure about any of the questions or how to answer them you may wish to seek legal advice.

Page 1: Insert the full name by which you are currently known, and then confirm what you are applying for by ticking the appropriate box.

Part 1: About you (the Petitioner) and the Respondent

You are known as the Petitioner. Your spouse or civil partner is known as the Respondent. You should enter your current details and the Respondent's last known details as fully as you know them.

Occupation

Please give your occupation and the last one of the Respondent. If you are not in current employment, please state 'Unemployed/retired/carers' or some other description of your situation.

Part 2: Details of marriage/civil partnership

It is important that the details are entered exactly as they are shown on your marriage or civil partnership certificate.

You should attach a certified copy of the marriage/civil partnership certificate together with any other supporting documents regarding any change of name (such as a certified copy of a change of name deed). Photocopies cannot be accepted. If you married or entered into a civil partnership in a foreign country and your marriage/civil partnership certificate is in the language of that country, you must

provide a translation of the certificate into English, or Welsh in a court in Wales, from an authorised person (a person authorised for translations). The translation should be signed by a notary public or be authenticated by a statement of truth.

When giving the place at which the marriage/civil partnership was formed you should write the exact words contained in the marriage/civil partnership certificate, including both the printed and written words, which come after the phrase 'Marriage solemnised at' or 'Civil Partnership formed at'.

For example:

- For a marriage in a Register Office: 'The Register Office, in the District of
in the County of
- For a marriage which took place in a church: '..... Church,
in the Parish of in the County of
- For a civil partnership: '..... in the Registration Authority of

Part 3: Jurisdiction

It is important to be sure that the court has jurisdiction (is able as a matter of law) to deal with your application. Jurisdiction depends on you and/or the Respondent having a specific connection to England and Wales. It is possible for you to have a connection under more than one option.

The relevant connections are set out on the form. The principal connections depend on where you have your 'habitual residence' or your 'domicile'.

Habitual Residence – This is the country where you live voluntarily and for settled purposes (such as work, training, family life), apart from temporary or occasional absences. You must spend a substantial amount of time in a place to be habitually resident there.

Domicile – This is the country which you consider to be your permanent home.

The court has jurisdiction to deal with your application if either:

- you are domiciled in England and Wales on the date when the petition is issued; or
- you were habitually resident in England and Wales throughout the period of one year ending with the date when the petition is issued.

Alternative ground – civil partnership only

If neither of the above connections applies to you and the application relates to a civil partnership, the court has jurisdiction to deal with your application if:

- you and the Respondent registered as civil partners of each other in England and Wales; and
- it appears to the court to be in the interests of justice to assume jurisdiction.

If you wish to rely on this ground you should briefly state your reasons for asking the court to assume jurisdiction.

If none of the connections described above matches your situation, the court will not have jurisdiction to deal with your application.

If you are completing this form and need help in deciding which connection applies, you should seek legal advice particularly in international cases.

Part 4: Other proceedings or arrangements

You should indicate, if there have been other proceedings in England and Wales, or elsewhere, concerning:

- your marriage/civil partnership
- any child of the family
- any property belonging to either you or to the Respondent.

This includes any proceedings relating to the marriage/civil partnership, or to any child of the family even if the proceedings have now finished or were abandoned without a final decision being made.

You should give details of the name of the court in which the proceedings took place, details of the order(s) which were made, details of any future hearings and, if proceedings were about your marriage/civil partnership, say whether you and the Respondent resumed living together as spouses/civil partners after the order was made.

If there have been proceedings in a court outside England and Wales which have affected the marriage/civil partnership, or may affect it, please give the name of the country and the court in which they are taking/have taken place, the date the proceedings were begun and the names of the parties, details of the order(s) made and if no order has yet been made, the date of any future hearing(s).

Part 5: The fact(s)

If you are applying for a presumption of death and dissolution decree/order answer the questions in relation to the presumed death of your spouse/civil partner. If you wish to apply for an alternative divorce/dissolution decree/order, if the Respondent is still alive, please tick the box stating this & attach a completed D8 Divorce/dissolution/separation petition. This should provide evidence that you have lived apart for a continuous period of at least 5 years immediately preceding this application including the date of separation and brief details of how the separation came about. Please note you will only need to pay one fee to issue the application.

Part 6: Statement of case

This space is provided for you to give any further evidence which you are using to prove the presumption given in Part 5.

Part 7: Details of the children

This part asks for details of children of the family. 'Children of the family' includes:

- (a) Children born to both you and the Respondent or adopted by both of you;
- (b) Other children treated by both of you as children of the family: for example your own or the Respondent's children, or children adopted by one of you;

Any children in these categories should be included on your petition.

For each child you should state:

- their full names, including surname
- their gender
- their date of birth, or you must if applicable state that they are over 18
- whether they fall under (a) or (b) above.

If you cannot agree arrangements for your children, you can make an application under the Children Act 1989. Please see leaflets CB1 Children and the family courts and CB7 Guidance for separated parents: Children and the family courts.

Part 8: Special assistance or facilities if you attend Court

If you need special assistance and/or special facilities due to a disability or impairment, please set out your requirements in full. The court staff will need to know, for example, if you want documents to be supplied in an alternative format, such as Braille or large print. They will also need to know about any specific requirements you may have on the day of the hearing, such as wheelchair access, a hearing loop, or a sign language interpreter. If you require a foreign language interpreter and are unable to provide your own, you may request that one is booked by the court.

The court staff will get in touch with you about your requirements. It is important that you make the court aware of all your needs. If you do not, any hearing may have to be delayed or adjourned to another date.

Part 9: Service details

Throughout the presumption of death process, the court will be required to send documents to you. This is known as service of the documents.

Please complete the boxes in this section as follows:

Box 1 – If you have a solicitor acting for you, you must insert their details here.

Box 2 – This is the address to which the court will send all documentation for the Petitioner. If you have solicitors acting for you then enter 'as above'.

Please note that if you indicate that you have a solicitor acting for you the Court will only correspond with them. Any questions that you may have about your case should be directed to your solicitor.

The court may at any stage give directions about the service of the petition and whether any other person should be made a party to, or given notice of, the proceedings.

Part 10: Prayer

The prayer of the petition is your request to the court confirming what you are applying for.

What must I send to the court?

- Your completed petition for presumption of death decree/order and dissolution – one for the court records. You should keep a copy for your records.
- One original or certified marriage/civil partnership certificate – photocopies will not be accepted. (In cases of urgent applications it may be possible for you to provide an undertaking to the court to deliver the original or a certified copy of the marriage/civil partnership certificate to the court at a later date.)
- The appropriate issue fee. Please see leaflet **EX50 – Civil and Family Court fees** for details on the fees payable and whether or not you have to pay them.

