

**EXPLANATORY MEMORANDUM TO
THE REGISTER OF PRESUMED DEATHS (FEES) REGULATIONS 2014**

2014 No. 2386

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 To set the fee for a certified copy (certificate) of an entry in the Register of Presumed Deaths.

2.2 The Presumption of Death Act 2013 will introduce into the law of England and Wales a court based procedure enabling any person subject to certain restrictions relating to jurisdiction of the court to obtain a declaration that a person is presumed to have died where the person has been missing and is thought to have died, or has been missing for 7 years and has not been known to be alive for a period of at least 7 years.

2.3 The court will send a copy of the declaration of presumed death to the Registrar General for England and Wales who will enter the details of the death of the missing person in the Register of Presumed Deaths. The Register of Presumed Deaths will be created and maintained by the Registrar General and a certificate issued by the Registrar General will be treated as evidence of the missing person's death without further proof.

2.4 The new certificate will replace or provide an alternative to the several limited separate procedures that exist under English law at present, enabling any person to make a single application to a court instead of having to use several procedures in different courts to achieve a range of orders as at present.

2.5 The new procedure should therefore be cheaper and more efficient for its users and their advisers. This streamlined service will reduce the burden caused by the complexity of the present law.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The Presumption of Death Act 2013 received Royal Assent on 26 March 2013. On 9 July 2014 the Justice Minister (Lord Faulks) announced that remaining provisions of the Presumption of Death Act 2013 would be commenced on 1 October 2014 to create a presumption of death certification scheme in England and Wales, bringing it in line with Scotland and Northern Ireland.

4.2 The fee (£9.25) for a certificate of an entry in the Register of Presumed Deaths issued by the Registrar General has been agreed with HM Treasury, and corresponds with the current fee for standard death certificates issued by the Registrar General.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 On 22 February 2012 the Justice Committee published the result of its Inquiry into Presumption of Death. It strongly criticised the current provision in the law of England and Wales for dealing with the property and affairs of a missing person as “inadequate and complex”. One of the Committee’s principal recommendations was the creation in England and Wales of a certificate of presumed death equivalent to a death certificate.

7.2 The certificate will be issued by the Registrar General after the time for appealing against a court declaration of presumed death has passed. The certificate is conclusive of the missing person’s presumed death, and the date of death, and effective against all persons and for all purposes including the purposes of the acquisition of an interest in any property and the ending of a marriage or civil partnership to which the missing person is a party.

7.3 The Select Committee’s report highlighted that there are up to 60 cases each year where the suffering of interested parties “is exacerbated by a legislative patchwork of bewildering complexity; the inability to administer the financial situation of their missing relatives; a lack of information about the actions they are able to take; and ignorance of the correct procedures to be followed by police, lawyers, banks, insurers and others”.

7.4 The proposed presumption of death certificate procedure is closely based on the legislation in Scotland and Northern Ireland.

7.5 The new procedure should therefore be cheaper and more efficient for its users and their advisers. This service will reduce the burden caused by the complexity of the present law.

8. Consultation outcome

8.1 No specific consultation has been undertaken on this. The nature and scale of the problem was clear from the evidence to the Justice Committee and the all party Parliamentary Group. The experience of Northern Ireland where a certificate of

presumed death was introduced in 2009 following a consultation “Missing Persons” by the Department of Finance and Personnel published in January 2008 has also been considered.

9. Guidance

9.1 Guidance setting out the new process will be published for local authorities, registration officers, citizens and organisations such as government departments, banks and building societies, etc. that are presented with standard death certificates.

10. Impact

10.1 An Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Government will undertake a review of the working of the new legislation five years after enactment to coincide with the post-legislative scrutiny of the primary legislation.

13. Contact

John Cunningham at Her Majesty’s Passport Office tel: 0151 471 4590 or email: john.cunningham@gro.gsi.gov.uk can answer any queries regarding the instrument.