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**An Bille um an Dlí Sibhialta (Daoine atá ar Iarraidh), 2016**  
**Civil Law (Missing Persons) Bill 2016**

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*Mar a tionscnaíodh*

*As initiated*

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ACTS REFERRED TO

Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No. 24)

Civil Registration Act 2004 (No. 3)

Coroners Act 1962 (No. 9)

Criminal Justice (Location of Victims' Remains) Act 1999 (No. 9)

Family Law (Divorce) Act 1996 (No. 33)



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AN BILLE UM AN DLÍ SIBHIALTA (DAOINE ATÁ AR IARRAIDH), 2016  
CIVIL LAW (MISSING PERSONS) BILL 2016

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# Bill

*entitled*

An Act to provide for the effects in civil law of persons who are missing, including arrangements for interim management of the missing person's property, and to provide for the civil status of the missing person where the circumstances of their absence leads to a presumption of death; and to provide for related matters. 5

**Be it enacted by the Oireachtas as follows:**

## **Interpretation**

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1. In this Act, unless the context otherwise requires—

“applicant” has the meaning given in *section 2*;

“EC Convention” means the Convention Abolishing the Legalisation of Documents in the Member States of the European Communities of 25 May 1987;

“Hague Convention” means the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents done at the Hague on 5 October 1961; 15

“Minister” means the Minister for Justice and Equality;

“missing person” means a person who is observed to be missing from his or her normal patterns of life, that those who are likely to have heard from the person are unaware of the person's whereabouts and that the circumstances of the person being missing raises concerns for his or her safety and well-being. 20

## **Persons who may apply for orders under this Act**

2. The following, in this Act referred to as the applicant, may apply for an order provided for in *section 3* and *section 4* of this Act—

(a) the spouse or civil partner of the missing person, 25

(b) the cohabitant of the missing person,

(c) any other family member of the missing person, including a child, grandchild, parent, grandparent, brother, sister, uncle, aunt, nephew or niece of the missing person,

(d) a person who is acting in loco parentis to the missing person, 30

- (e) a dependant of the missing person,
- (f) a creditor, or
- (g) any other person with a sufficient interest including, where relevant, the Attorney General or other person acting on behalf of the State.

**Order for interim management of property of missing person**

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3. (1) An applicant may, subject to the conditions in this section, apply to the Circuit Court for an order to be appointed as the interim manager of the property of a missing person.
- (2) A County Registrar may, subject to appeal by way of re-hearing to the Circuit Court, make an order appointing a person as interim manager of the property of a missing person where the appointment does not involve empowering the interim manager, on behalf of the missing person, to initiate or defend proceedings, or to enter into a conveyance of an interest or estate in land. 10
- (3) An order may be made under this section only where it is established by the applicant, grounded on an affidavit, that— 15
  - (a) it is not known whether the missing person is alive,
  - (b) reasonable efforts have been made to find the missing person, and
  - (c) for at least 90 days, the missing person has not contacted—
    - (i) any person who lives at the missing person’s last-known home address, or
    - (ii) any relative or friend of the missing person with whom he or she is likely to communicate. 20
- (4) Prior to making an order under this section, the Court may serve notice on any person who may be affected by the appointment, including where the interim manager is given a power of sale.
- (5) The appointment of a person as interim manager of the property of the missing person shall be— 25
  - (a) subject to the duty of the interim manager to act in the best interests of the missing person at all times,
  - (b) subject to such limited and specified powers and actions of the interim manager as are laid down in the order of appointment, and 30
  - (c) for a period of up to 2 years, which term may be extended for a further 2 years.
- (6) The interim manager shall file annual accounts with the Court in such form as shall be prescribed by the Court in the order of appointment.
- (7) Where the interim manager becomes aware that the missing person is alive, he or she shall apply to the court for an order discharging his or her appointment. 35

**Presumption of death order in respect of missing person**

4. (1) An applicant may, subject to the conditions in this section, apply for a presumption of

- death order in respect of a missing person.
- (2) An application for a presumption of death order shall be grounded on an affidavit by the applicant and shall contain the following:
- (a) specific evidence tending to indicate that the missing person is dead, including:
    - (i) the circumstances surrounding the disappearance of the missing person; 5
    - (ii) absence of communication with people who would be likely to hear from the missing person, including last known correspondence or communication; and
    - (iii) the length of time since the disappearance;
  - (b) the date when the missing person was last heard from;
  - (c) evidence of advertising for information concerning the whereabouts of the missing person, including where relevant by using the internet and social media (unless there are exceptional reasons for not doing so, explained by the applicant); 10
  - (d) where relevant and practicable, evidence from a searching organisation that confirms that attempts were made to locate the missing person but were fruitless (whether by affidavit, statutory declaration or, in the case of searches outside the State, in accordance with the EC Convention or the Hague Convention); 15
  - (e) the full background relating to the disappearance of the missing person, including the missing person's age and health (including mental health);
  - (f) where relevant and practicable, evidence of corroboration from a family member of the missing person (if the applicant is not a family member); 20
  - (g) where relevant, the next-of-kin entitled to distribution of the assets of the missing person on his or her death; and
  - (h) a declaration by the applicant of his or her belief that the missing person is dead.
- (3) A presumption of death order may be made by a coroner following an inquest held under the Coroners Act 1962 where the coroner is satisfied that, in respect of the missing person, the circumstances of the person having gone missing indicate that his or her death is virtually certain. 25
- (4) A presumption of death order may be made by the Circuit Court where the Court is satisfied that, in respect of the missing person, the circumstances of the person having gone missing indicate that his or her death is highly probable. 30
- (5) Prior to making an order under this section, the coroner or, as the case may be, the Court may serve notice on any person who may be affected by the making of the order.
- (6) In determining whether a presumption of death order is to be made under this section, the coroner or, as the case may be, the Court shall take into account all the circumstances surrounding the disappearance and absence of the missing person, including the following: 35
- (a) the time, location, and circumstances of the disappearance;
  - (b) where relevant, the abandonment of valuable property; 40

- (c) where relevant and practicable, the extent and nature of post-disappearance searches;
  - (d) the presence or absence of a motive for the missing person to remain alive but disappear;
  - (e) where relevant, evidence suggesting that the disappearance was a consequence of foul play; 5
  - (f) where relevant, the time between a life assurance policy being obtained on the life of the missing person and his or her disappearance; and
  - (g) where relevant, any prior history of fraud involving the missing person.
- (7) (a) Without prejudice to the rebuttable presumption in *paragraph (b)*, and subject to the requirements of this section, an application for a presumption of death order may be made at any time after a person has gone missing and is not subject to a minimum waiting period. 10
- (b) Where, by reason of absence from the State or otherwise, it remains uncertain for a period of at least 7 years as to whether a missing person is alive, it shall continue to be presumed that the person is dead. 15
- (8) (a) Where the coroner or, as the case may be, the Circuit Court, makes a presumption of death order and is satisfied that the missing person has died on a specific date, the order shall include 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 order shall provide that he or she died at the end of that period. 20
- (b) Where the coroner or, as the case may be, the Circuit Court, makes a presumption of death order and is satisfied that the missing person has not been known to be alive for a period of at least 7 years, the order shall include 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. 25

### **General effects of presumption of death order**

5. (1) Subject to the provisions of this Act, a presumption of death order made by a coroner under *section 4* has the same effect in law as a declaration of death made under the Coroners Act 1962. 30
- (2) Subject to the provisions of this Act, a presumption of death order made by a coroner under *section 4* authorises the applicant to apply to register the death of the missing person in the Register of Deaths provided for in Part 5 of the Civil Registration Act 2004, and the appropriate registrar shall register the death in the Register of Deaths in such manner as an tArd-Chlaraitheoir may direct. 35
- (3) Subject to the provisions of this Act, a presumption of death order made by the Circuit Court under *section 4* has the same effect in law that arises from issuing a death certificate in accordance with the Civil Registration Act 2004.
- (4) An tArd-Chlaraitheoir shall establish a Register of Presumed Deaths.
- (5) Subject to the provisions of this Act, a presumption of death order made by the Circuit Court under *section 4* authorises the applicant to apply to register the death of the 40

missing person in the Register of Presumed Deaths, and the appropriate registrar shall register the death in the Register of Presumed Deaths in such manner as an tArd-Chlaraitheoir may direct.

- (6) (a) A presumption of death order made by a coroner or by the Circuit Court under *section 4* has the effect, subject to *section 7(5)(a)*, that a marriage with the missing person has come to an end. 5
- (b) A presumption of death order made by a coroner or by the Circuit Court under *section 4* has the effect, subject to *section 7(5)(b)*, that a civil partnership with the missing person has come to an end.

### **Insurance against claims**

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6. (1) Where an order has been made under *section 3* or *section 4*, the interim manager appointed under *section 3* or, as the case may be, the person who applied under *section 4* shall, unless the court otherwise directs, 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 8(2)*. 15
- (2) Any premium payable by the interim manager or, as the case may be, the person who applied under *section 4* in respect of a policy of insurance effected under *subsection (1)* shall be a proper charge on, as the case may be, the property of the missing person being managed by the interim manager or the estate of the missing person being administered by the person who applied under *section 5*. 20
- (3) Where an order has been made under *section 3* or *section 4*, an insurer may, before making payment of any capital sum (other than in respect of an annuity or other periodical payment) to any person as a result of such order, 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 an order under *section 7(2)* being made. 25

### **Dissolution and Variation Order and consequences of return of missing person**

7. (1) A missing person in respect of whom an order has been made under *section 3* or *section 4*, and who subsequently returns to the State, may apply to the Circuit Court for an order, in this Act referred to as a variation order, dissolving or varying the terms of any such order made under *section 3* or *section 4*. 30
- (2) Subject to the provisions of this section, a variation order shall not have any effect on rights to, or in, any property acquired as a result of an order made under *section 3* or *section 4*.
- (3) The Court shall, when making a variation order, make such further order, if any, in relation to any rights to or in any property acquired as a result of an order made under *section 3* or *section 4* as it considers reasonable in all the circumstances. 35
- (4) Without prejudice to the generality of *subsection (3)*—
- (a) a variation order shall have no effect on any income accrued between the time of the making of an order under *section 3* or *section 4* and the variation order, and 40
- (b) where a third party acquires rights to or in the property of the missing person, in

good faith and for value, the missing person who has returned may not bring a claim for the property against the third party.

- (5) (a) Notwithstanding the generality of *section 5(6)(a)*, a missing person in respect of whom an order has been made under *section 4* and who returns to the State may apply to the Circuit Court for a declaration that a marriage that subsisted at the time the order was made continues to have effect, and in determining that application the Court may, in its discretion, make such order as, in the Court's view, appears just. 5
- (b) Notwithstanding the generality of *section 5(6)(b)*, a missing person in respect of whom an order has been made under *section 4* and who returns to the State may apply to the Circuit Court for a declaration that a civil partnership that subsisted at the time the order was made continues to have effect, and in determining that application the Court may, in its discretion, make such order as, in the Court's view, appears just. 10

### **International aspects of missing persons**

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8. (1) Where a citizen of Ireland goes missing while outside the State, the Circuit Court may make, in accordance with the provisions of this section—
- (a) an order for the interim management of the property of the missing person in the form provided for under *section 3*, and
- (b) a presumption of death order in the form provided for under *section 4*, and the provisions of *sections 1 to 7* related to the application for, the making of and the effects of such orders shall apply with such necessary modifications and adjustments as are necessary for the purpose of this section. 20
- (2) Where a person who is ordinarily resident or habitually resident in Northern Ireland for 12 months or who has been habitually resident or ordinarily resident in the State for 12 months and who goes missing while in the State, or is believed to have gone missing in the State, the Circuit Court may, on the application of an applicant who has been habitually resident in the State for 12 months, make, in accordance with the provisions of this section—
- (a) an order for the interim management of the property of the missing person in the form provided for under *section 3*, and 30
- (b) a presumption of death order in the form provided for under *section 4*, and the provisions of *sections 1 to 7* related to the application for, the making of and the effects of such orders shall apply with such necessary modifications and adjustments as are necessary for the purpose of this section. 35
- (3) An application may be made under *subsection (3)* by a spouse or family member of a missing person where that missing person is a victim of violence within the meaning of the Criminal Justice (Location of Victims' Remains) Act 1999.
- (4) In any application under *subsections (1) or (2)*, the Circuit Court may, where relevant, recognise any orders made in any other State in connection with the disappearance of the missing person, subject to relevant rules concerning proof of foreign documents, including those in the EC Convention and the Hague Convention. 40

## Jurisdiction of Circuit Court

9. (1) The jurisdiction of the Circuit Court conferred by this Act shall be concurrent with the High Court.
- (2) Where the rateable valuation of any land to which an application for an order provided for in *section 3* and *section 4* relates exceeds €254, the Circuit Court shall, on the application of an applicant, transfer the proceedings to the High Court, but any declaration or decision made in the course of such proceedings before the transfer shall be valid unless discharged or varied by the High Court. 5
- (3) The jurisdiction conferred on the Circuit Court may be exercised by the judge of the Circuit in which the missing person was ordinarily resident or carried on any business, profession or occupation before he or she went missing. 10

## Consequential amendments

10. (1) The Family Law (Divorce) Act 1996 is amended by the insertion of the following section after section 10—

### “Presumption of death and ending of marriage 15

10A. (1) Without prejudice to *section 5(6)* of the *Civil Law (Missing Persons) Act 2016*, and subject to *section 7(5)(a)* of that *Act of 2016*, any married person who alleges that reasonable grounds exist for supposing that the other party to the marriage is dead may apply to the court to have it presumed that the other party is dead and that the marriage has ended, and provided the requirements of *section 4(2), (4), (5), (6) and (7)* of that *Act of 2016* are complied with, the court may, if satisfied that such reasonable grounds exist, grant a declaration of presumption of death and make a declaration that the marriage has ended. 20 25

(2) In any proceedings under this section the fact that for a period of 7 years or more the other party to the marriage has been continually absent from the applicant and the applicant has no reason to believe that the other party has been living within that time shall be evidence that the other party is dead until the contrary is proved.”. 30

- (2) The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 is amended by the insertion of the following section after section 113—

### “Presumption of death and ending of civil partnership

113A.(1) Without prejudice to *section 5(6)* of the *Civil Law (Missing Persons) Act 2016*, and subject to *section 7(5)(a)* of that *Act of 2016*, a civil partner who alleges that reasonable grounds exist for supposing that the other party to the civil partnership is dead may apply to the court to have it presumed that the other party is dead and that the civil partnership has ended, and provided the requirements of *section 4(2), (4), (5), (6) and (7)* of that *Act of 2016* are complied with, the court may, if satisfied that such reasonable grounds exist, grant a declaration of presumption of death and make a decree that the civil partnership has ended. 35 40

- (2) In any proceedings under this section the fact that for a period of 7 years or more the other party to the civil partnership has been continually absent from the applicant and the applicant has no reason to believe that the other party has been living within that time shall be evidence that the other party is dead until the contrary is proved.” 5

**Short title and commencement**

- 11.** (1) This Act may be cited as the Civil Law (Missing Persons) Act 2016.
- (2) This Act comes into operation on such day or days as the Minister for Justice and Equality may appoint by order or orders either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or provisions. 10



An Bille um an Dlí Sibhialta (Daoine atá ar Iarraidh), 2016

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# BILLE

*(mar a tionscnaíodh)*

*dá ngairtear*

Acht do dhéanamh socrú, sa dlí sibhialta, maidir le hearraí daoine atá ar iarraidh, lena n-áirítear socrúithe chun bainistiú eatramhach a dhéanamh ar mhaoin an duine atá ar iarraidh, agus do dhéanamh socrú maidir le stádas sibhialta an duine atá ar iarraidh i gcás go mbeidh toimhde báis ann de dheasca imthosca a n-asláithreachta; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

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*Na Seanadóirí Colm De Búrca, Marie-Louise Ní Dhomhnaill agus Lynn Ruane a thug isteach,*

*19 Iúil, 2016*

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Civil Law (Missing Persons) Bill 2016

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# BILL

*(as initiated)*

*entitled*

An Act to provide for the effects in civil law of persons who are missing, including arrangements for interim management of the missing person's property, and to provide for the civil status of the missing person where the circumstances of their absence leads to a presumption of death; and to provide for related matters.

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*Introduced by Senators Colm Burke, Marie-Louise O'Donnell and Lynn Ruane,*

*19th July, 2016*

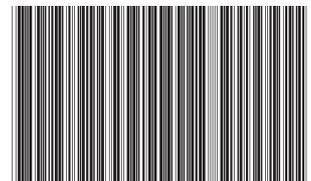
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