



SEANAD ÉIREANN

**AN BILLE UM AN DLÍ SIBHIALTA (DAOINE ATÁ AR
IARRAIDH), 2016**

CIVIL LAW (MISSING PERSONS) BILL 2016

**LEASUITHE TUARASCÁLA
REPORT AMENDMENTS**

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CIVIL LAW (MISSING PERSONS) BILL 2016 —REPORT

Leasuithe Amendments

**Government amendments are denoted by an asterisk*

- *1. In page 3, lines 5 to 7, to delete all words from and including “effects” in line 5 down to and including “the” where it firstly occurs in line 7.
- *2. In page 3, line 7, to delete “the” where it secondly occurs and substitute “a”.
- *3. In page 3, line 7, to delete “their” and substitute “his or her”.
- *4. In page 3, between lines 9 and 10, to insert the following:

“PART 1

PRELIMINARY AND GENERAL

Short title and commencement

- 1. (1) This Act may be cited as the Civil Law (Presumption of Death) Act 2018.
(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.”
- *5. In page 3, between lines 11 and 12, to insert the following:
“ “Act of 2010” means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;”.
- *6. In page 3, to delete lines 13 to 16 and substitute the following:
“ “civil partner” means a person in a civil partnership or legal relationship to which section 3 of the Act of 2010 applies;
“cohabitant” means a cohabitant within the meaning of section 172(1) of the Act of 2010;
“Court” shall be construed in accordance with *section 9*;”.

*7. In page 3, to delete lines 18 to 21 and substitute the following:

“ “missing person” means an individual whose existence has become uncertain, because he or she has disappeared without trace and there are no signs that he or she is alive.”.

*8. In page 3, between lines 21 and 22, to insert the following:

“Expenses

2. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.”.

*9. In page 3, line 24, to delete “*section 3* and”.

*10. In page 3, line 28, after “sister,” to insert “half-brother, half-sister,”.

*11. In page 4, line 1, after “person,” to insert “or”.

*12. In page 4, to delete line 2.

*13. In page 4, to delete lines 5 to 35.

*14. In page 5, lines 15 to 17, to delete “fruitless” in line 15 down to and including line 17 and substitute “fruitless;”.

*15. In page 5, line 23, to delete “and”.

*16. In page 5, line 24, to delete “dead.” and substitute the following:

“dead; and

(i) the required particulars contained in Part 5B of the First Schedule to the Civil Registration Act 2004 that are available to the applicant.”.

*17. In page 5, to delete lines 25 to 28.

*18. In page 5, line 29, to delete “Circuit”.

*19. In page 5, lines 31 to 34, to delete “is highly probable.” in line 31 down to and including line 34 and substitute the following:

“is:

(a) virtually certain, or

(b) highly probable.”.

*20. In page 5, line 36, to delete “the coroner or, as the case may be,”.

*21. In page 6, to delete lines 12 and 13 and substitute the following:

“may be made—

(i) where the application is to the effect that death is virtually certain, at any time after a person has gone missing, such application not to be subject to a minimum waiting period, and

(ii) where the application is to the effect that death is highly probable, no earlier

than 1 year after the person has gone missing.”.

*22. In page 6, line 17, to delete “coroner or, as the case may be, the Circuit Court,” and substitute “Court”.

*23. In page 6, line 22, to delete “coroner or, as the case may be, the Circuit Court,” and substitute “Court”.

*24. In page 6, between lines 26 and 27, to insert the following:

“(9) Where the Court makes a presumption of death order, that order shall include those required particulars contained in Part 5B of the First Schedule to the Civil Registration Act 2004 that are available to the Court.”.

*25. In page 6, to delete lines 28 to 41 and in page 7, lines 1 to 3 and substitute the following:

“5. (1) Subject to this Act, where—

(a) an appeal is not brought against the making of a presumption of death order within the time allowed for appeal, or

(b) an appeal against such an order is brought and the appeal (or any further appeal) is dismissed or withdrawn,

a presumption of death order made by the Court under *section 4* has the same effect in law as arises from the registration of a death under section 13(1)(d) of the Civil Registration Act 2004.”.

- *26. In page 7, line 4, to delete “coroner or by the Circuit”.
- *27. In page 7, line 5, to delete “, subject to *section 7(5)(a)*,”.
- *28. In page 7, line 7, to delete “coroner or by the Circuit”.
- *29. In page 7, line 8, to delete “, subject to *section 7(5)(b)*,”.
- *30. In page 7, line 11, to delete “*section 3* or”.
- *31. In page 7, lines 11 and 12, to delete “the interim manager appointed under *section 3* or, as the case may be,”.
- *32. In page 7, line 13, to delete “*section 4*” and substitute “that section”.
- *33. In page 7, line 13, to delete “court” and substitute “Court”.
- *34. In page 7, lines 14 and 15, to delete “*section 8(2)*” and substitute “*section 7*”.
- *35. In page 7, line 16, to delete “the interim manager or, as the case may be,”.
- *36. In page 7, lines 18 and 19, to delete “, as the case may be, the property of the missing person being managed by the interim manager or”.
- *37. In page 7, lines 19 and 20, to delete “being administered by the person who applied under *section 5*”.
- *38. In page 7, line 21, to delete “*section 3* or”.
- *39. In page 7, line 26, to delete “*section 7(2)*” and substitute “*section 7*”.
- *40. In page 7, to delete lines 28 to 31 and substitute the following:
 - “(1) The following persons may apply to the High Court for an order, in this Act referred to as a “variation order”, dissolving or varying the effects of any order made under *section 4*, that is to say—
 - (a) a missing person in respect of whom an order has been made under *section 4*, and
 - (b) an applicant.”.
- *41. In page 7, line 33, to delete “*section 3* or”.
- *42. In page 7, line 36, to delete “to or in” and substitute “to, or in,”.
- *43. In page 7, line 37, to delete “*section 3* or”.
- *44. In page 7, line 40, to delete “*section 3* or”.
- *45. In page 7, line 41, to delete “to or in” and substitute “to, or in,”.
- *46. In page 8, to delete lines 3 to 14 and substitute the following:
 - “(5) (a) Notwithstanding the generality of *section 5(6)*, where an order has been made under *section 4* in respect of a missing person who was in a marriage or civil partnership that was subsisting at the time that he or she went missing, that person or the person who was party to the marriage or civil partnership at the time that the missing person went missing may apply to the High Court for a declaration deeming them to be—

- (i) a spouse for the purposes of the Family Law (Divorce) Act 1996 in respect of whom a decree of divorce has been granted under section 5 of that Act, or
 - (ii) a civil partner for the purposes of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 in respect of whom a decree of dissolution has been granted under section 110 of that Act.
- (b) In making a declaration under *paragraph (a)*, the Court may modify or restrict its effect in any way as, in its view, accords with the interests of justice.
- (c) A declaration under *paragraph (a)*—
- (i) shall only apply from the date of any variation order granted under this section, and
 - (ii) shall not take effect until the time for making any appeal has lapsed or until such time as any appeal (or any further appeal) is dismissed or withdrawn.
- (d) Other than in exceptional circumstances, an application under *paragraph (a)* shall be brought at the same time as an application under *subsection (1)* for the dissolution of a variation order.
- (6) Other than in exceptional circumstances an application for a variation order within the meaning of *subsection (1)* cannot be made after the expiry of a period of 7 years from the making of an order under *section 4*.”

*47. In page 8, to delete lines 15 to 42 and substitute the following:

“Notice of application

8. (1) Prior to making an order under *section 4* or *7*, the Court shall require the applicant or the missing person, as the case may be, to provide evidence, whether by way of affidavit or otherwise, that notice of the relevant application has been served on any person who may be affected by the making of the order.
- (2) The Court shall not make an order under *section 4* or *7*, unless it is satisfied that the requirements of *subsection (1)* have been complied with.”

*48. In page 9, to delete lines 1 to 11 and substitute the following:

“Jurisdiction of courts and venue

9. (1) Subject to this section, the Circuit Court shall, concurrently with the High Court, have jurisdiction to hear and determine proceedings under *section 4*.
- (2) The High Court shall have exclusive jurisdiction to hear and determine proceedings under *section 7*.
- (3) Where the market value of any land to which an application for an order provided for in *section 4* relates exceeds €3,000,000, the Circuit Court shall, if an application is made to it in that behalf by any person having an interest in the proceedings, 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.

- (4) The jurisdiction conferred on the Circuit Court by this Act may be exercised by—
 - (a) the judge of the circuit in which the missing person ordinarily resided or carried on any business, profession or occupation before he or she went missing, or
 - (b) the judge of the circuit in which the applicant ordinarily resides or carries on any profession, business or occupation at the time an application is made under *section 4*.
- (5) Where the applicant is the Attorney General or other person acting on behalf of the State as set out in *section 2(g)*, jurisdiction under this section shall lie exclusively with the High Court.
- (6) Where the jurisdiction criteria set out in *subsection (4)* do not apply, the High Court shall have jurisdiction under this Act where—
 - (a) the missing person was domiciled in the State before he or she went missing,
 - (b) the applicant is domiciled in the State at the time an application is made under *section 4*, or
 - (c) the application relates to 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).”.

*49. In page 9, to delete lines 12 to 43, and in page 10, to delete lines 1 to 5.

*50. In page 10, to delete lines 6 to 11 and substitute the following:

“PART 3

AMENDMENTS TO CIVIL REGISTRATION ACT 2004

Interpretation

11. In this Part “Act of 2004” means the Civil Registration Act 2004.

Amendment of section 2 of Act of 2004

12. Section 2(1) of the Act of 2004 is amended—

(a) by the insertion of the following definitions:

“ ‘*Act of 2018*’ means the *Civil Law (Missing Persons) Act 2018*;

‘missing person’ has the same meaning as missing person in *section 1* of the *Act of 2018*;

‘presumed death’ means a presumed death where a presumption of death order has been made under *section 4* of the *Act of 2018*;”;

and

(b) by the insertion of the following in the definition of “the required particulars”:

“(f) in relation to a presumed death, the particulars specified in Part 5B of that Schedule;”.

Amendment of section 8 of Act of 2004

13. Section 8 of the Act of 2004 is amended by the insertion of the following paragraph after paragraph (eeee) of subsection (1):

“(eeeee) to establish and maintain a register and index for the purpose of the registration of presumed deaths,”.

Amendment of section 13 of Act of 2004

14. Section 13 of the Act of 2004 is amended in subsection (1) by the insertion of the following after paragraph (k):

“(l) a register of all presumed deaths where a presumption of death order has been made under *section 4* of the *Act of 2018* (which shall be known, and is referred to in this Act as the register of presumed deaths),”.

Part 5B of the Act of 2004

15. The Act of 2004 is amended by the insertion of the following Part after Part 5A:

“PART 5B

REGISTRATION OF PRESUMED DEATHS

Interpretation

44F. In this Part—

“Court” shall be construed in accordance with *section 9* of the *Act of 2018*;

“register” means the register of presumed deaths.

Application of Part

44G. (1) This Part applies to a presumed death where a presumption of death order has been made under *section 4* of the *Act of 2018*.

(2) Part 5 shall not apply to a presumed death to which this Part applies.

Furnishing of particulars of presumed death by a court to registrar

44H. (1) Where, in accordance with *section 4(4)* of the *Act of 2018*, a Court makes a presumption of death order, the Court concerned shall give the appropriate registrar a copy of the presumption of death order, together with the required particulars contained in Part 5B of the First Schedule that are available to the Court, and that registrar shall

register the presumed death in such manner as an tArd-Chláraitheoir may direct.

- (2) Where there is an error in an order furnished under subsection (1) the Court concerned may give to the registrar concerned a further order correcting the error, and the registrar shall correct the error in the register.
- (3) Where a variation order is made by a Court under *section 7(1)* of the *Act of 2018*, the Court concerned shall, in an appropriate case, give a copy of the variation order to the registrar concerned, and the registrar shall remove the original entry from the register or make such adjustment to that entry as may be required by the variation order.
- (4) Where a body has been recovered and—
 - (a) the body is that of a person for whom an entry has been made in the register, and
 - (b) an entry has been made in the register of deaths in respect of the recovered body or an entry has been made in the record of deaths abroad in respect of the recovered body,the registrar concerned shall remove the original entry from the register.
- (5) In this section “appropriate registrar” means a registrar in the functional area of the authority in which—
 - (a) the death was presumed to have occurred, or
 - (b) if a place of presumed death cannot be determined, the area in which the missing person was normally resident.”.

Amendment of First Schedule to Act of 2004

- 16.** The Act of 2004 is amended by the insertion of the following Part after Part 5A in the First Schedule:

“PART 5B

PARTICULARS OF PRESUMED DEATHS TO BE ENTERED IN THE REGISTER OF PRESUMED DEATHS

date and place of presumed death (or most accurate estimate of date and place of presumed death);

place of birth of missing person;

sex of missing person;

forename(s), surname, birth surname and address of missing person;

personal public service number of missing person;

civil status of missing person;

date of birth of missing person;

profession or occupation of missing person;

if missing person was married or in a civil partnership, the name and profession or occupation of spouse or civil partner;

if missing person was less than 18 years of age on presumed date of death, occupation(s) of his or her parent(s) or guardian(s);

forename(s) and birth surname of father of missing person;

forename(s) and birth surname of mother of missing person;

forename(s) and birth surname of parent of missing person;

forename(s), surname, qualification, address and signature of informant;

a copy of the presumption of death order made under *section 4* of the *Act of 2018*;

the forename, surname and place of business of the judge that made the presumption of death order;

date of registration;

signature of registrar.”.