



Number 23 of 2019

Civil Law (Presumption of Death) Act 2019



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CONTENTS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title, collective citation and commencement
2. Interpretation
3. Expenses

PART 2

PRESUMPTION OF DEATH ORDERS AND OTHER MATTERS

4. Persons who may apply for orders under this Act
5. Presumption of death order in respect of missing person
6. General effects of presumption of death order
7. Insurance against claims
8. Persons who may apply for a variation order and consequences of return of missing person
9. Notice of application
10. Jurisdiction of courts and venue

PART 3

AMENDMENTS TO CIVIL REGISTRATION ACT 2004

11. Definition
12. Amendment of section 2 of Act of 2004
13. Amendment of section 8 of Act of 2004
14. Amendment of section 13 of Act of 2004
15. Part 5B of Act of 2004
16. Amendment of First Schedule to Act of 2004

[No. 23.]

Civil Law (Presumption of Death) Act 2019.

[2019.]

ACTS REFERRED TO

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

Civil Registration Act 2004 (No. 3)

Civil Registration Acts 2004 to 2018

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

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



Number 23 of 2019

CIVIL LAW (PRESUMPTION OF DEATH) ACT 2019

An Act to provide for the civil status of a missing person where the circumstances of his or her absence leads to a presumption of death; and to provide for related matters.

[10th July, 2019]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title, collective citation and commencement

1. (1) This Act may be cited as the Civil Law (Presumption of Death) Act 2019.
- (2) The Civil Registration Acts 2004 to 2018 and *Part 3* may be cited together as the Civil Registration Acts 2004 to 2019.
- (3) This Act (other than *Part 3*) comes into operation on such day or days as the Minister 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.
- (4) *Part 3* comes into operation on such day or days that the Minister may, after consultation with the Minister for Employment Affairs and Social Protection, 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.

Interpretation

2. In this Act—

“Act of 2010” means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010;

“applicant” shall be construed in accordance with *section 4*;

“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 10*;

“Minister” means the Minister for Justice and Equality;

“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.

Expenses

3. 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.

PART 2

PRESUMPTION OF DEATH ORDERS AND OTHER MATTERS

Persons who may apply for orders under this Act

4. The following, in this Act referred to as the applicant, may apply for an order provided for in *section 5*—
 - (a) the spouse or civil partner of the missing person,
 - (b) the cohabitant of the missing person,
 - (c) any other family member of the missing person, including a child, grandchild, parent, grandparent, brother, sister, half-brother, half-sister, uncle, aunt, nephew or niece of the missing person,
 - (d) a person who is acting in *loco parentis* to the missing person,
 - (e) a dependant of the missing person, or
 - (f) any other person with a sufficient interest including, where relevant, the Attorney General or other person acting on behalf of the State.

Presumption of death order in respect of missing person

5. (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,
 - (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);
 - (d) where relevant and practicable, evidence from a searching organisation that confirms that attempts were made to locate the missing person but were fruitless;
 - (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);
 - (g) where relevant, the next-of-kin entitled to distribution of the assets of the missing person on his or her death;
 - (h) a declaration by the applicant of his or her belief that the missing person is dead;
 - (i) the required particulars contained in Part 5B of the First Schedule to the Civil Registration Act 2004 that are available to the applicant.
- (3) A presumption of death order may be made by the 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—
- (a) virtually certain, or
 - (b) highly probable.
- (4) In determining whether a presumption of death order is to be made under this section, the Court shall take into account all the circumstances surrounding the disappearance and absence of the missing person, including the following:
- (a) the time, location, and circumstances of the disappearance;
 - (b) where relevant, the abandonment of valuable property;
 - (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;
 - (f) where relevant, the time between a life assurance policy being obtained on the life of the missing person and his or her disappearance;
 - (g) where relevant, any prior history of fraud involving the missing person.
- (5) (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—

- (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.
- (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.
- (6) (a) Where the 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.
- (b) Where the 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.
- (7) 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.

General effects of presumption of death order

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

Insurance against claims

7. (1) Where an order has been made under *section 5*, the person who applied under that section 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) Any premium payable by the person who applied under *section 5* in respect of a policy of insurance effected under *subsection (1)* shall be a proper charge on the estate of the missing person.
- (3) Where an order has been made under *section 5*, 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 8* being made.

Persons who may apply for a variation order and consequences of return of missing person

8. (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 5*, that is to say—
- (a) a missing person in respect of whom an order has been made under *section 5*, and
 - (b) an applicant.
- (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 5*.
- (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 5* as it considers reasonable in all the circumstances.
- (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 5* and the variation order, and
 - (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 6(2)*, where an order has been made under *section 5* 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 5*.

Notice of application

- 9. (1) Prior to making an order under *section 5* or *8*, 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 5* or *8* unless it is satisfied that the requirements of *subsection (1)* have been complied with.

Jurisdiction of courts and venue

- 10. (1) Subject to this section, the Circuit Court shall, concurrently with the High Court, have jurisdiction to hear and determine proceedings under *section 5*.
- (2) The High Court shall have exclusive jurisdiction to hear and determine proceedings under *section 8*.
- (3) Where the market value of any land to which an application for an order provided for in *section 5* 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 5*.
- (5) Where the applicant is the Attorney General or other person acting on behalf of the State as set out in *section 4(f)*, 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 5*, 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).

PART 3

AMENDMENTS TO CIVIL REGISTRATION ACT 2004

Definition

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 2019*’ means the *Civil Law (Presumption of Death) Act 2019*;

‘missing person’ has the same meaning as missing person in *section 2* of the *Act of 2019*;

‘presumed death’ means a presumed death where a presumption of death order has been made under *section 5* of the *Act of 2019*.”;

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 5* of the *Act of 2019* (which shall be known, and is referred to in this Act as the register of presumed deaths),”.

Part 5B of 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 10* of the *Act of 2019*;

‘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 5* of the *Act of 2019*.

(2) Parts 5 and 5A 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 5(3)* of the *Act of 2019*, a Court makes a presumption of death order, the Court concerned shall give to an tArd-Chláraitheoir 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 he or she shall register the presumed death, or cause it to be registered.

(2) Where there is an error in an order furnished under subsection (1) the Court concerned may give to an tArd-Chláraitheoir a further order correcting the error, and he or she shall correct the error in the register, or cause it to be corrected.

(3) Where a variation order is made by a Court under *section 8(3)* of the *Act of 2019*, the Court concerned shall, in an appropriate case, give a copy of the variation order to an tArd-Chláraitheoir, and he or she shall remove the original entry from the register or make such adjustment to that entry as may be required by the variation order, or cause it to be so removed or adjusted.

(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,
- an tArd-Chláraitheoir shall remove the original entry from the register, or cause it to be removed.”.

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 5* of the *Act of 2019*;
- the forename, surname and place of business of the judge that made the presumption of death order;
- date of registration;

signature of registrar.”.