



# Presumption of Death Act 2013

## 2013 CHAPTER 13

### *Variation order*

#### **7 Other functions of court making variation order**

- (1) When making a variation order, the court may—
  - (a) determine any question which relates to an interest in property and arises as a result of the variation order, and
  - (b) determine the domicile of the missing person at the time of his or her presumed death.
- (2) When making a variation order, the court must make such further order (if any) as it considers reasonable in relation to any interest in property acquired as a result of the declaration varied or revoked by the order (“the original declaration”) (but see subsections (3), (5) and (6)).
- (3) The court must not make an order under subsection (2) if the application for the variation order was made after the end of the period of 5 years beginning with the day on which the original declaration was made, unless it considers that there are exceptional circumstances which make it appropriate to do so.
- (4) In considering what order to make under subsection (2), the court must, as far as practicable, have regard to the principles in section 8.
- (5) An order under subsection (2) does not affect income that accrued in the period—
  - (a) beginning with the day on which the original declaration was made, and
  - (b) ending with the day on which the variation order was made.
- (6) An order under subsection (2) does not affect or provide grounds to challenge—
  - (a) a related good faith transaction, or
  - (b) an interest in property acquired under such a transaction.
- (7) A “related good faith transaction” is a transaction under which a person acquires an interest in the property that is the subject of the order (or any part of it) in good faith and for value from—

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*Status: This is the original version (as it was originally enacted).*

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- (a) a person who acquired an interest in the property (or any part of it) as a result of the original declaration, or
  - (b) a person who acquired an interest in the property (or any part of it) from a person described in paragraph (a), whether directly or indirectly.
- (8) Where a person has entitlement under a trust by virtue of an order under subsection (2), the trustee is liable to that person for any loss suffered by that person on account of any breach of trust by the trustee in the administration or distribution of all or part of the property that is the subject of the order.
- (9) Subsection (8) does not apply to the extent that the trustee's liability is restricted under any enactment or by any provision in a deed regulating the administration of the trust.
- (10) In subsection (9) "enactment" includes an enactment contained in—
- (a) an instrument made under an Act, or
  - (b) an Act or Measure of the National Assembly for Wales or an instrument made under such an Act or Measure.