

Summary: Analysis & Evidence

Policy Option 1

Description: Introduction of certificate of presumed death

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low:	High:	Best Estimate: NQ
COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Cost (Present Value)
Low					
High					
Best Estimate	NQ		NQ		NQ
Description and scale of key monetised costs by 'main affected groups'					
No quantified costs. Around 30-40 cases per year are likely to be affected, and given this low volume aggregate costs are expected to be negligible.					
Other key non-monetised costs by 'main affected groups'					
Minor implementation costs for the General Register Office. Businesses may need to adjust systems to accommodate the new form of certificate, generating transitional costs. There could be some transitional and ongoing costs to insurers from an increased speed of payouts. Reduction in the number of procedures may reduce business for legal advisers.					
BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)		Total Benefit (Present Value)
Low					
High					
Best Estimate	NQ		NQ		NQ
Description and scale of key monetised benefits by 'main affected groups'					
No quantified benefits. As above, given that only 30-40 cases are likely to be affected per year, aggregate benefits are expected to be negligible.					
Other key non-monetised benefits by 'main affected groups'					
Ongoing financial and emotional benefits to relatives of missing persons and others left behind. Ongoing benefits to businesses and other organisations, including charities, from a single easy to understand system. A single procedure could lead to greater standardisation of procedures and reduce fraud. Possibility of a small increase in business for insurers if the court requires more people to take out insurance against a disappeared person reappearing in future..					
Key assumptions/sensitivities/risks					Discount rate (%)
Assume no change in case outcomes and volumes of presumed death procedure accessed.					
Assume legal advisers find other types of work of a broadly equivalent value.					
Assume no net impact on HM Courts and Tribunal Service (HMCTS).					

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: NQ	Benefits: NQ	Net: NQ	Yes	Zero Net Cost

Evidence Base

Introduction

1. On 22 February 2012 the Justice Committee published the result of its Inquiry into Presumption of Death. The Committee 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. Certificates of this kind are already available in Scotland and Northern Ireland. The Committee's objective is to extend the benefit of the protections available in Scotland and Northern Ireland to families of missing people in England and Wales. The All Party Parliamentary Group on Runaway and Missing Children and Adults reached a similar conclusion in the report of its inquiry into support for families of Missing People published in July 2011.
2. The new certificate would replace or provide an alternative to the several limited separate procedures that exist under English law at present. As a result those left behind when a person disappears would be able to make a single application to a single court to obtain a single declaration of general effect, instead of having to use several procedures in different courts to achieve a range of orders as at present. The new procedure should therefore be cheaper and more efficient for its users and their advisers. This will reduce the burden caused by the complexity of the present law and make it easier for people caught up in the trauma of dealing with the disappearance of a person close to them to move on emotionally and practically. It should also be cheaper for the State to provide a more streamlined system.
3. In its report the Justice Committee considered whether non-legislative solutions such as guidance might alleviate the problems associated with missing persons. The Justice Committee concluded that guidance would alleviate at least some of the difficulties relatives currently face and recommended that the Ministry of Justice develop guidance for families on the law and process in this area.
4. The Ministry is preparing guidance on the use of section 15 of the Coroners Act 1988 and will prepare further guidance. However, the Justice Committee also concluded that non-legislative solutions to the problems of resolving the affairs of missing people were necessary but not sufficient. It considered that primary legislation was required. It is therefore this issue that is under examination.
5. There are two options under consideration. The first is to reject the arguments for reform and leave the law in its present state. The second is to accept the Justice Committee's recommendations and to legislate for the creation of a certificate of presumed death in terms similar to the Acts already in force in Scotland and Northern Ireland. In this impact assessment we assess the costs and benefits of these options and conclude that the second option is to be preferred.
6. The systems in Scotland and Northern Ireland are understood to have worked and be working satisfactorily and have not generated any significant problem.

Background

7. Missing persons are simply people whose whereabouts is unknown. They will include all sorts of people: young and old, men and women, people who are married with children as well as those who are single and childless, wealthy people and poor people. Most will return or be found – often within a short span of time – but there will always remain a number of missing persons who do not return for some reason.
8. Following a disappearance questions may arise that make it necessary to decide whether that person is still alive. For example, it may be important to determine if a missing person is dead in order to administer properly the estate of a deceased person, who has named the missing person as a beneficiary in his or her will or a trust, or to establish the ownership of property owned by the missing person jointly. Apart from ownership of property or access to benefits, issues of status may

also arise in relation to marriage and civil partnership where a spouse or civil partner has disappeared.

9. The law generally assumes that a person will live a normal length of time and be alive unless the contrary is shown. The disappearance of a person does not therefore of itself affect their legal status or the ownership or control of their affairs and property. This may place those left behind in difficulty as they may not be able to access money and assets that would have been made available to them or for their benefit by the missing person had he or she not disappeared. Similarly, the missing person's property may be vulnerable to depreciation and decay or to diminution (for example, buildings may not be repaired and bank balances may be reduced by automated payments from their account that cannot be stopped). Jointly owned property may in effect be frozen as the remaining co-owner may not be able to sell or mortgage the property without the active participation of the missing person.
10. At some stage the question will arise as to whether the missing person is dead. The problem is that most institutions and legal procedures rightly require the production of a death certificate or a grant of representation from the court before they will deal with the property and affairs of a person on the basis that he or she is dead. However, a death certificate cannot usually be obtained without a corpse and without a death certificate a grant of representation (probate or administration) of the person's estate is more difficult to obtain and proof of death is more difficult to establish. A death certificate will not be available merely because of a long absence.
11. Where the missing person is a trustee (as are all joint owners of land) the court may agree to appoint a new trustee in his or her place but this will not be straightforward and is likely to require expert legal advice.
12. The evidence obtained by the Justice Committee and by the All Party Parliamentary Group on Runaway and Missing Children and Adults, which also carried out an Inquiry in 2011, is that those left behind find it difficult to understand the procedures available for their use and to obtain sound advice and guidance.
13. The principal procedures available at present in England and Wales to deal with the situation created by the disappearance of a person are as follows:
 - Coroner's Inquest for a death where there is no body under section 15 of the Coroners Act 1988 (this is of limited application as the circumstances of the disappearance must warrant a Coroner's Inquest but it can lead to the issue of a death certificate);
 - Decree of Presumption of Death and Dissolution of Marriage and Presumption of Death Order under section 19 of the Matrimonial Causes Act 1973 and section 37 of the Civil Partnership Act 2004 respectively (this decree will only end the marriage or civil partnership);
 - Leave to swear death order under Rule 53 of the Non-Contentious Probate Rules 1987 (this will allow a grant of representation to be obtained);
 - Specific 'certificate of presumed death' procedures in legislation (these apply in limited circumstances, such as where a member of the armed forces has gone missing in action; if a merchant seaman goes down with his ship; where someone cannot be found after a tragedy on an offshore installation; or where someone working in a particular Government department cannot be found after an incident while he or she was on duty, for example, an embassy worker who goes missing in a bomb blast).
 - Determinations of entitlement to benefit by the Secretary of State under section 8 of the Social Security Act 1998; and
 - Consular Death Registration (which is applicable to 'deaths' abroad some of which will be presumed deaths).
14. In addition to forming the basis of these specific procedures, the question of whether a person is dead can arise in numerous different circumstances. The effect of the terms of a gift in a will or under a trust may, for example, turn on whether a missing person is dead or alive. In these cases there has long been a common law rule that a person may be presumed dead if there is no acceptable proof that the person was alive at some time during a continuous period of seven years or more up to the hearing. The court can accept evidence of absence over a shorter period if it

wishes. In other words, an interested party does not have to wait for seven years to make an application for an order relating to the presumed death. The rule is, however, of limited usefulness. Although the standard of proof is likely to be broadly the same in different types of proceedings, a finding of presumed death will only apply to the proceedings before the court and has no wider application. So a finding that a person may be presumed dead by a court in a dispute over ownership of a particular item of property will not in itself enable other property of the missing person to be distributed. Nor will it enable the missing person to be registered as dead.

15. Neither the limited statutory provisions nor the common law can assist in the issue most directly affecting a person's status - the registration of that person's death. Even though a court or official has made a finding that the missing person may be presumed to have died it will still not be possible to have the death registered.
16. This complex body of law contrasts with the situation in Scotland and Northern Ireland. In these jurisdictions those left behind can apply for a general purpose certificate of presumed death equivalent to a death certificate. In Scotland the certificate was introduced in 1979 under the Presumption of Death (Scotland) Act 1977, which implemented recommendations of the Scottish Law Commission. In Northern Ireland the certificate was introduced in 2009 under the Presumption of Death (Northern Ireland) Act 2009, which broadly followed the precedent of the Scottish legislation.
17. In evidence to the All Party Parliamentary Group on Runaway and Missing Children and Adults in 2011 the Scottish Government provided this assessment of the system in Scotland.

How the Act operates

The legislation is over 30 years old. Our general perception that it is operating effectively and this is confirmed by Registers of Scotland who register the deaths when a decree is intimated to the Registrar General under section 12 of the 1997 Act.

An assessment of the efficacy of principle and practice of the 1977 Act was undertaken to inform a consultation exercise which was undertaken relatively recently by the Northern Irish Assembly. Their consultation paper (which is available at www.dfpni.gov.uk/presumption_of_death_bill.pdf) was informed by research with those involved in the operation of the 1997 Act in Scotland.

That research identified that most applications seek a bare declaration, do not ask the court to make ancillary orders and are not contested. It also pointed out that there had only been one case where the missing person, having been presumed dead, was in fact alive and had to apply to the court to revoke the declaration of presumed death. Overall, the 1977 Act was assessed as generally appearing to have worked well.

Numbers of cases

In terms of the numbers of cases, the following data has been provided by the Registers of Scotland.

2000 - 4
2001 - 4
2002 - 2
2003 - 2
2004 - 2
2005 - 5
2006 - 6
2007 - 3
2008 - 3
2009 - 6
2010 - 3
2011 - 1 to end May 2011.

Problem under consideration

18. The issue is whether the difficulties faced by those left behind in dealing with the property and affairs of a missing person justify the creation of a certificate of presumed death procedure in England and Wales similar to those already operating in Scotland and Northern Ireland.
19. In the boxes on the following pages we quote two examples of the kind of problems that those left behind face. The examples are taken from the Missing People Missing Rights campaign website. This campaign stems from Missing People's report *Living in Limbo*, published in 2008. The material is produced with the kind permission of Missing People, as is the following paragraph (also taken from the Missing People website) that summarises some of the findings in the 2008 report of the **Financial, legal and other practical impacts of a person going missing**.
- The loss of the missing person's income can have a significant effect for families in which the missing person had financial responsibilities, such as paying bills or supporting other family members.
 - Dealing with financial and legal affairs can be costly to the families of missing people, particularly where expert advice is required, as well as being a cause of stress and worry.
 - Some family members find themselves in a position of paying the missing person's bills, or covering their debts, for reasons such as wishing to maintain the missing person's lifestyle for when they return or fearing the consequences of defaulting on payments.
 - A particular area of confusion is that around the length of time for which a person must remain missing before their estate may be administered, their marriage dissolved, or for an official presumption of death to be declared.
20. Not all these problems will be cured by the creation of the certificate of presumed death but where those left behind are willing to accept a person had died and the circumstances provide the evidence that he or she is likely to have done so, then the new procedure will provide a readily understood route to get into as near as may be the same position as if a person had actually died.

Julie, West Yorkshire

Julie's former husband, Peter (30s), has been missing for nearly ten years.

"The one thing that he did love was his kids and to not see them for ten years, I can't believe that. The sad thing is that you know he has missed a lifetime of them. I believe he has died somewhere and they just haven't found his body yet.

"I don't know how to tackle the pension thing for my boys because they have missed out on a lifetime with their dad. I feel that the only thing he can leave them is this money and I can't even get my hands on it, so this is why I am going down this road of declaring Peter deceased because that's the only way I can get some money out of his pension for them.

"To get a solicitor to help me has been horrendous. I've been to every solicitor in the city, but no solicitor knows how to handle it. Eventually I got a solicitor I know, who deals with domestic tasks and things, to do it in his free time as the cost to me would be horrendous.

"The solicitor's been on this for going on a year now and hasn't got much further. I'm going to have to really start pushing it now because my son is at university and he has loans and everything. We're helping him as much as we can and he even works part time but it's a real struggle. We've got money sitting there which is my endowment policy and insurance policies but I can't touch them because I need Peter's signature.

Julie, West Yorkshire (continued)

"When he first went missing he left me in the lurch because we were in the middle of sorting out the money side of our divorce. The judge was really sympathetic and she did say that I would be able to come back and sort out everything and all his estate if he was still missing after seven years. So that was always at the back of my mind that I had to wait seven years.

"Knowing my husband, he was too ill to survive that length of time and I always believed that he would be picked up by the police, but now we are talking ten years. The thing was that after seven years I kept putting it off and putting it off and it was just never the right time. So now it's ten years and I realise that my boys are growing up and really really need some money and it's about time I got my head round it and sorted it out.

"It gets very draining because once I start on this, I need to sit down for solid weeks at a time, 3 – 4 weeks at a time, that's how bad it is.

Scale of the issue

21. There are about 360,000 reports of missing people annually in the UK. 25,000 remain open for more than a week; 3,500 (about 2,000 people) for more than a year. The National Policing Improvement Agency estimated to the All-Party Parliamentary Group on Runaway and Missing Children and Adults in 2011 that there were about 5,000 unresolved cases on the Missing Persons Bureau database. In a number of these the absence of a body would prevent the issue of a death certificate. In early 2010 the charity Missing People had 346 cases on its UK database which had been open for seven years or more, and the Missing Persons Bureau had recorded 1451 unresolved missing person cases in England and Wales of similar duration; some details of missing persons may be held by both organisations. Although the families of these individuals would not all necessarily want – or need – to pursue a presumption of death declaration, these figures indicate that there is likely to be a number of families in England and Wales who need to deal with the assets and property of the missing person and who would benefit from modernising and clarifying presumption of death legislation. There are other cases where spouses or civil partners left behind want to enter a new marriage or civil partnership.
22. The cases where some form of formal legal action is necessary to establish that a person is deemed to have died form a very small proportion of the overall number of missing person cases. Information is incomplete but the following figures indicate usage of the present procedures.
 - Coroner's Inquest for a death where there is no body under section 15 of the Coroners Act 1988 (66 applications between 2008 and September 2011, some of which may have related to cremated bodies rather than missing persons);
 - Decree of Presumption of Death and Dissolution of Marriage and Presumption of Death Order under section 19 of the Matrimonial Causes Act 1973 and section 37 of the Civil Partnership Act 2004 respectively (no figures kept but numbers are thought to be very low as there are quicker alternative ways to end the relationship);
 - Leave to swear death order under Rule 53 of the Non-Contentious Probate Rules 1987 (47 applications from 2008/9 to 2010/11 or about 16 per annum);
 - Specific 'certificate of presumed death' procedures in legislation (no figures kept but we will not be affecting these procedures)
 - Determinations of entitlement to benefit by the Secretary of State under section 8 of the Social Security Act 1998 (no separate presumed death related figures are kept but we will not be amending this legislation); and
 - Consular Death Registration (511 (2009) and 498 (2010) registrations: some of these were presumed deaths, but we will not be affecting this legislation).
23. By way of comparison between England and Wales and Scotland, the Missing Persons: Data and analysis 2009/2010 report published by the National Policing Improvement Agency estimated that

there were 330,000 missing people incidents in England and Wales and 25,000 in Scotland. These encompass all sorts of missing incidents and produce rates per 1,000 population of 6.0 and 4.9 respectively. We do not have a breakdown for figures for longer term missing cases. However, in Scotland, which has a total population about ten times smaller than England and Wales, fewer than 40 certificates were granted between 2000 and 2010 under the Presumption of Death (Scotland) 1977 Act and in Northern Ireland up to 11 November 2011 one application has been made under the Presumption of Death Act (Northern Ireland) 2009.

24. The Department for Finance and Personnel in Northern Ireland estimated in the impact assessment accompanying its 2008 consultation paper that its new certificate of presumed death procedure would generally attract 1-2 applications per year. However, in view of the possible number of person who had disappeared as a consequence of the Troubles, estimated in the impact assessment forming part of the January 2008 consultation paper that there might be 5-20 applications in the first year. It will be seen that the envisaged surge did not materialise. No contrary views were expressed in the replies to the consultation.
25. In the Republic of Ireland between 7,000 and 8,000 people are reported missing every year, almost 20 every day. Most of these actually turn up within a very short time, and less than 1% remain missing for a long time. According to the recent figures from the Garda Missing Persons Bureau, between 2003 and 2010 there were 53,915 missing persons reports; of these, 381 people remain missing.¹
26. It is difficult to estimate how many cases may come to the court. On a pro rata population basis the comparison with Scotland would suggest that if a certificate of presumed death were available in England and Wales it would be used in about 40 certificates each year. However, the level of usage of the current leave to swear death procedure is much lower at an average of 16 orders annually. Taking into account that probate is only obtained in about half of all deaths, this may suggest that there would be about 30 cases a year. The range may therefore be around 30-40 certificates annually but even so the numbers are very small in the context of society as a whole – and indeed in the context of the public services and businesses affected.
27. We note that in Scotland of the 40 or so certificates issued in the last ten years only one of the missing people has reappeared. This suggests that the Scottish system is robust and there is no reason to suppose that the system in England and Wales should be any less robust as the legislation will be much the same.

Consultation

28. The Government has not carried out its own consultation. The nature and scale of the problem is clear from the evidence to the Justice Committee and the All Party Parliamentary Group. We have also drawn on the recent experience of Northern Ireland where a certificate of presumed death certificate was introduced in 2009 following a consultation “Missing Persons” by the Department of Finance and Personnel on The Draft Presumption of Death Bill (Northern Ireland) 2008 (published in January 2008). The response document to the consultation was published in May 2008. It concluded that the impact on business, charities, social economy enterprises and the voluntary sector would be negligible.
29. It is clear from the evidence that although the numbers of people directly affected are small the practical, financial and emotional problems that they encounter are difficult and frequently bewildering. It is also clear that expert advice on problems of these kinds that only occur infrequently is difficult and potentially expensive to obtain.

¹ Law Reform Commission Consultation Paper Civil Law Aspects of Missing Persons LRC CP 64 – 2011 para 4.

Proposed procedure for a presumption of death certificate

30. The proposed presumption of death certificate procedure is closely based on the legislation in Scotland and Northern Ireland.
31. The new procedure has two parts: first, obtaining a declaration from the court that the missing person should be presumed to be dead and, secondly, registering the presumed death with the General Register Office, which will issue certificates of presumed death that are equivalent to a death certificate. The effect of the declaration will be that the property and affairs of the missing person can be dealt with as if the missing person were actually dead.
32. Declaring a person to be dead affects the ownership of their property and terminates any marriage or civil partnership. The court will therefore have power to deal with issues relating to the missing person's property generally.
33. The declaration will be conclusive of the death unless and until the missing person is shown to be alive. If that occurs the court will have power to revoke or vary any of the declarations or orders it has made.
34. The application for the declaration may be made by any person with a sufficient interest (spouses, civil partners, siblings and parents will be assumed to have the relevant degree of interest). A court fee will be payable. It will have to be advertised and notice served on the Attorney General, the Registrar General and others in accordance with Rules of Court, which will also specify the forms to be used and evidence to be provided.
35. It will be immaterial where the person disappeared but the court will only have jurisdiction if there is a sufficient connection between the missing person or the applicant and England and Wales. Generally, this will be domicile of one year of habitual residence. The identity of the court to which the application can be made will be decided in accordance with Rules of Court. We expect that it will generally be the High Court. The court may if the circumstances require inform the Chief Coroner of the presumed death.
36. The court will be able to make the declaration if a person is thought to have died or if it has not been known whether the person is alive for a period of seven years or more. On making the declaration the court will notify the Registrar General, who will make the necessary entry in the register and issue certificates.
37. The legislation will therefore empower the Registrar General to create a new register of presumed deaths and to issue certificates from it. The details will be set out in secondary legislation but the new register is expected to be linked to the index of deaths so that they are searchable together.
38. As the missing person may return, the court will be able to require persons receiving the missing person's property to take out insurance cover against the event of a claim against them for the return of the property. Insurance companies paying out death benefits will also be able to require insurance cover from the recipient.

General effect of introducing of a certificate of presumed death

39. The new procedure will replace some of the existing procedures but others will remain in existence as they serve wider purposes.

Continuing procedures

- Coroner's Inquest for a death where there is no body under section 15 of the Coroners Act 1988;
- Specific presumption of death procedures.
- Determinations of entitlement to benefit by the Secretary of State under section 8 of the Social Security Act 1998; and
- Consular Death Registration.

Repealed and replaced procedures

- Decree of Presumption of Death and Dissolution of Marriage and Presumption of Death Order under section 19 of the Matrimonial Causes Act 1973 and section 37 of the Civil Partnership Act 2004;
 - Leave to swear death order under Rule 53 of the Non-Contentious Probate Rules 1987.
40. We do not expect the amount of work or the strength or quantity of evidence required to obtain the making of a declaration and the subsequent grant of a certificate of presumed death will be any less than under any one of the procedures to be replaced. The amount of work and advice required overall will be reduced: by the removal of duplicate procedures and the ability to use the new certificate both in the context of some of the continuing procedures and in the context of other legal proceedings (for example, relating to entitlement under a will or a trust) where the question of death arises and would otherwise have to be proved.
41. The scale of any effect will depend upon the numbers of cases that come to the court. We expect the numbers to be small. However people who currently used different procedures sequentially may save time under the new procedure by resolving particular aspects of the missing person's affairs more quickly as the certificate of presumed death will be of general application.
42. We do not expect that the numbers of missing incidents and the problems they cause to be changed by the introduction of the new certificate of presumed death. As the new certificate will only be granted after a thorough examination of the relevant evidence we do not expect people to undertake the procedure lightly. People who have to prove the death of a person in one circumstance only may not be motivated to get a general certificate under the new procedure, whereas if they are faced with more general problems they may consider it worthwhile to obtain a certificate they can use in connection with solving all of them. We do not know what proportion of the cases fall into each of these categories.

Main groups affected

43. Missing people are thought to come from all sections of society. Their families and other people reliant on them will be equally diverse. There are only a very small number of missing people whose cases are likely to result in a presumption of death certificate.
44. Those left behind are likely to seek advice under the existing and proposed law from lawyers and the voluntary sector, in particular the charity, Missing People.
45. Several parts of the public sector may be affected by the new procedure. The courts (including the Probate Registry) are a necessary participant in the existing and proposed systems. New rules of court to support the new procedure will be required. The Registrar General and the General Register Office also form a key part of the new procedure. The Attorney General will need to consider the public interest in cases coming to the court and where the presumed death occurred in suspicious circumstances the court may refer the case to the Chief Coroner for an inquest. Her Majesty's Customs and Excise are engaged following a presumed death if there are inheritance tax issues. The Department for Work and Pensions and other government departments may have to deal with cases involving a certificate of presumed death.
46. There will not be any general impact on business but the new procedure will be relevant to insurers because the court (generally) and insurers (paying out on policies as a result of the presumed death) may require insurance to be taken out against the possibility of the return of the missing person. Insurers may well wish to intervene in cases where the making of the declaration by the court would trigger a payment. More generally, where businesses come into contact with existing procedures that are to be replaced, they will have to adjust their procedures to recognise and deal with the new form of certificate.

Options relating to the introduction of a certificate of presumed death

47. Two options are being considered. The first is no change (Option 0). The second is the introduction in England and Wales of a new declaration and certificate of presumed death modelled on the legislation already in force in Scotland and Northern Ireland.

Economic rationale

48. The conventional economic approach to government intervention to resolve a problem is based on efficiency or equity arguments. The Government may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or if there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules). In both cases the proposed new intervention itself should avoid creating a further set of disproportionate costs and distortions. The Government may also intervene for equity (fairness) and redistribution reasons (e.g. to reallocate goods and services to the more needy groups in society).
49. Intervention in this case would primarily be justified on efficiency grounds. A single court process that can be used to prove a person's death so that their affairs can be resolved more efficiently, rather than going through multiple court processes. This will reduce duplication. The new certificate will also simplify other proceedings where death has to be established, for example in relation to entitlements under wills and trusts.. This would lead to a small increase in efficiency and overall economic welfare.
50. There may also be equity gains from the introduction of a single more transparent process for resolving a missing person's affairs. While these benefits will be significant for those affected, the number of people involved will be small.

Costs and benefits

51. This Impact Assessment identifies both monetised and non-monetised impacts on individuals and businesses in England and Wales, with the aim of understanding what the overall impact to society might be from implementing these options. The costs and benefits of option 1 are compared to the do nothing option. Impact Assessments place a strong emphasis on valuing the costs and benefits in monetary terms (including estimating the value of goods and services that are not traded). However, there are important aspects that cannot sensibly be monetised. These might include how the proposal impacts differently on particular groups of society or changes in equity and fairness, either positive or negative.
52. In this case a qualitative assessment is provided for the majority of the costs and benefits. A quantitative assessment would require specific data and estimates such as the savings to missing persons' relatives under the new system, familiarisation costs for legal service providers and other businesses, and the savings to charities from a single more transparent process. Further work would not be proportionate given the small number of affected cases (perhaps around 30-40 per year). Where possible, we have therefore provided some anecdotal evidence to give a broad indication of the likely magnitude of impacts.
53. The charity Missing People strongly support the introduction of a certificate of presumed death. In his evidence to the Justice Committee Martin Houghton-Brown, the Chief Executive of Missing People, gave evidence to the Justice Committee that he was convinced that primary legislation which allowed for a single process was not only required but was "the right, just and sensible thing to do". He added that "I have been working with missing persons and missing children for many years and I have sought many policy changes in the public domain. This is the first time I have come across an area where primary legislation is the right solution. In the vast majority of cases, secondary legislation, and in most cases good public policy, will fix the problem. In this case, I do not believe that that is true."

Costs and benefits of Option 0: do nothing (base case)

54. Under the do nothing option there would be no intervention and the problems we have described would continue.² Missing person's relatives would need to continue to go through more than one court process to resolve their missing relative's financial and marital affairs.
55. Because the do-nothing option is compared against itself, its costs and benefits are necessarily zero, as is its Net Present Value.

Costs and benefits of Option 1: Introduction of certificate of presumed death

Description

56. This proposal would introduce a certificate of presumed death that would be issued by a court. It would enable those left behind by missing persons to resolve the missing person's financial and marital affairs through a single court process rather than going through two or more court processes.
57. The legal test for when a person is presumed to be dead will remain unchanged; a certificate of presumed death would only be able to be issued where a court decides that, on the balance of probabilities, a person is dead.
58. Limited data is available on the number of persons currently accessing presumed death procedures in England. Around 16 persons have been granted "leave to swear death orders" each year between 2008/09 and 2010/11 enabling them to obtain a grant of probate.³ Probate is obtained in around half of all deaths. No information is available on the volumes of "decrees of presumptions of death to dissolve a marriage". Nor is any data available on the volumes of general court proceedings where a declaration that a person is dead is granted.
59. We expect that the demand for presumed death certificates in England would be between 30 to 40 cases annually. The lower estimate is based on the current demand for "leave to swear death orders" and the proportion of deaths where probate is not obtained. The upper estimate is based on the demand for presumed death certificates in Scotland.⁴ As explained we do not expect the underlying demand for presumed death procedures to increase as a result of this policy. Nor do we expect the new certificate to change case outcomes.⁵

Costs

General Register Office

60. The General Register Office (GRO) would incur costs to implement a new system of registering presumed death and issuing certificates of presumed death. This could either be done by expanding GRO's existing electronic system for registering deaths or creating a separate manual register for presumed deaths. The precise method adopted could itself depend on the nature of other development work being carried out by GRO to develop its systems. It is possible that a manual system might be set out as an interim measure. An electronic system would enable presumed deaths to be included more readily in measures to protect against identity fraud involving deceased persons and included in public indexes. It is possible that fees could be charged for registration as well as for the issue of certificates. This policy has yet to be decided. Registration of death within a year is free and copies of death certificates can be obtained at £9.25 per certificate.⁶
61. Estimates from Northern Ireland are that the cost to the General Register Office there of setting up a register was about £300 and that each application (there has only been one) is about £50. The Explanatory and Financial Memorandum to the Presumption of Death (Scotland) Act 1977 states that the Bill was unlikely to increase government expenditure, or the staff in the Scottish administration.

² See paras 18-20 above.

³ Average between 2008/09 and 2010/11.

⁴ See paragraph 17 above for a fuller explanation.

⁵ See para 42 and 83 – 84 above.

⁶ This is the current cost of issuing a death certificate.

Legal service providers

62. Legal service providers are not expected to incur significant additional familiarisation costs. As at present very few firms will actually encounter this work and will only familiarise themselves with the law in this area when a client seeks advice. No significant additional costs are expected to arise from them as the new system will be much easier to understand. One small legal firm has replied to our Small Firms Survey stating that the change will not affect it.
63. It is possible that the introduction of a single process for presumed death could result in reduced business for legal service providers as an application under a single procedure will remove the need for multiple applications under several procedures. However, any such impact is expected to be negligible in aggregate because of the small number of cases involved. We assume that legal service providers would respond to any reduction in business following these simplified procedures by finding other types of work of a broadly equivalent value.

Businesses and other organisations

64. Businesses and organisations that use court decisions on presumed death could incur some minor one-off costs associated with familiarisation with the new process and adjusting their systems to identify and deal with certificates of presumed death. These system costs are expected to be negligible and offset by the benefit from a single more transparent process discussed in paragraph 40 and 90.
65. The Justice Committee reported that the Association of British Insurers (ABI) had some concerns that a change in the law might make the process of making an insurance claim after a person goes missing easier, thereby possibly increasing the temptation to make fraudulent claims. The ABI did, however, make clear that it was sympathetic to the proposed change and its concerns would be alleviated by a "clear, robust process". On the basis such a process existed the ABI did not see significant cost implications for insurance companies.⁷ We consider that the proposed process will be as robust as the present system, which the ABI indicated did not cause any real difficulties for insurers, and we intend to engage with the ABI in developing the detail of any new system. We note that fraud in relation to presumed death does not seem to have been an issue in Scotland.
66. Some of those left behind by missing persons may currently access the existing multiple presumed death procedures sequentially rather than concurrently. In these cases introducing a single process may speed up the time taken to resolve particular aspects of the missing person's affairs. To the extent that processes are accessed more quickly, this may affect third parties, for example insurers may be required to pay out life insurance slightly earlier than they might otherwise have. This impact is expected to be negligible in aggregate because of the small number of cases involved.
67. The Land Registry does not think the cost of adapting systems to accept a certificate of presumed death would be significant. It estimates the cost of changes to its internal practice material would be no more than £1,000. Changes to the Land Registry's IT systems if necessary, for example to deal with electronic lodgement of certificates of presumed death via its portal, are not expected to exceed £5,000. All of these costs could be absorbed within Land Registry's existing resources. The Office of the Attorney General will need to consider whether to intervene in applications made. This is likely to result in a small administrative cost. Experience from Scotland suggests that actual intervention is infrequent.

HMCTS

68. Under the new system the courts will have to process a new application. A person will be able to make a single application to the court for a presumed death certificate that could then be used to resolve a person's financial and marital affairs. Some of these affairs may be resolved in the same proceedings but some may be dealt with separately. This could result in a small reduction in case volumes and therefore court fees for HMCTS. As HMCTS operates on a cost recovery basis, any reduction in fees would be matched by a reduction in costs. The overall financial impact on HMCTS of the very few cases involved is therefore expected to be neutral in general terms.

⁷ See transcript of evidence of Nick Kirwan, Assistant Director, ABI, to the Justice Committee 22 November 2011 Q32-34.

Benefits

Relatives of missing persons and others left behind

69. People left behind by a missing person would benefit from being able to access a single court process to obtain a presumed death certificate to help resolve a missing person's marital and financial affairs rather than having to go through duplicate court processes. Benefits would include direct financial savings from a reduction in court and legal costs, time savings and emotional benefits. The charity Missing People has commented: "The majority of costs associated with presumption of death correspond to solicitor fees, although obviously court fees will also apply. The time spent on unravelling the system and perhaps making multiple applications will increase the costs incurred by families". The charity spoke to a solicitor recently who explained she had reached £4-5,000 in fees in determining which procedures were most suitable and making initial inquiries.
70. The Justice Committee identified financial benefits for families in its 2012 report: 'Assimilating the current presumption of death processes into one system would have the benefit of clarity and cost saving'. The All Party Parliamentary Group (APPG) inquiry concluded that "one system for presumption of death through which family members would be able to obtain a certificate of presumed death for all purposes would result in cost savings, not least in relation to reduced court time."
71. As discussed⁸ persons that currently access the presumed death procedures sequentially may resolve particular aspects of their relatives' affairs slightly quicker than under the current processes. Depending on which processes are accessed more quickly, relatives could benefit emotionally and/or financially, including from quicker insurance payouts.

Businesses and organisations that use court decisions on presumed death

72. Businesses and organisations that use court decisions on presumed death are likely to benefit from only needing to familiarise themselves with a single more transparent process in cases of presumed death rather than multiple processes and from only engaging in one process.
73. The introduction of a new single procedure could lead to greater standardisation and transparency of internal processes within businesses and organisations and could reduce fraud.
74. The principal business affected is probably the insurance industry, particularly life insurance. Their task in assessing the presumed death will be simplified and they will have the opportunity to intervene in the application for a declaration.
75. Insurers may derive a little extra business as under the new system insurance may be required by the court to be taken out more frequently against the possibility of the missing person reappearing after the declaration is made. Such insurance is currently required by the court in some types of cases (for example in connection with 'Benjamin' orders in inheritance and trust cases that allow assets to be distributed on the basis that a person is dead).

Charities

76. Charities that provide support and assistance to the relatives of missing persons, such as Missing People, could benefit from reduced costs as they would only need to understand and provide advice on the single presumed death certificate process, rather than the duplicate court processes that exist at the moment. The Missing People charity has stated "A single presumption of death procedure resulting in a Certificate of Presumed Death would benefit all organisations that families of missing people currently approach for advice and support by clarifying what action families should take. As the system is currently configured, families need to work out which procedure(s) are best suited to what they are looking to achieve, which can be complicated and time consuming. A single procedure would overcome this, saving both families and organisations time in explaining how to use the system."
77. Missing People also state: "Further to reducing families' confusion and thus the time the charity spends in talking each family through the system, clearer provisions would additionally lighten the emotional toll presumption of death can create for them. The impact of reduced costs in no longer needing multiple court procedures or to pay for solicitors to carry out extensive research into

⁸ Para 41 above.

provisions would also improve their wellbeing. In turn these factors would be likely to lessen the number of the calls made to the charity's emotional support line stemming from the strain the present system causes."

HMCTS

78. As discussed⁹ the new system could result in reduced case volumes, and therefore reduced costs for HMCTS. As HMCTS operates on a cost recovery basis, any reduction in costs would be matched by a reduction in fee income. The overall financial impact on HMCTS is therefore expected to be neutral.

Assumptions and risks

79. No change in case outcomes is expected as a result of this policy. The legal test the court uses to decide whether to presume a person is dead will remain unchanged. The policy will just enable a person to resolve whether or not a person is to be deemed to be dead so as to deal with a missing person's property and affairs through one court process rather than duplicate court processes. This will not change the likelihood of fraud; there have not been any concerns in Scotland about increased fraud since the introduction of their presumed death certificate in 1979. The proposed system works on proof to the balance of probabilities and is robust.
80. No material impact on the volume of presumed death procedures accessed is expected as a result of this policy. Demand for presumed death procedures is assumed to be relatively unresponsive to changes in costs. In Northern Ireland the consultation paper issued by the Department for Finance and Personnel indicated that a spike in demand (about 15 cases) was expected immediately after introduction but this did not materialise. There has been only one case since 2009.
81. While we expect that there will be no material impact on the demand for presumed death procedures, there is a risk that making the process cheaper could increase demand. Any increase in demand would lead to financial and emotional benefits to those left behind from resolving a missing person's affairs. It would also impact on businesses, organisations and other individuals affected by the presumed death procedures, for example insurers may be required to pay out life insurance. It is possible that an increase in demand could also lead to a very small increase in business for lawyers.

Enforcement and Implementation

82. The use of the new procedure and certificates of presumed death will be voluntary. If it is used the applicable rules will have to be followed. In so far as other court orders are made in connection with the certificate they will be subject to the same rules of enforcement as any other court order in a civil law action. It will be for the person with the benefit of the order to decide whether or not to seek to enforce it.
83. The proposed certificate of presumed death will be implemented by primary and secondary legislation. There will be some cost in preparing and enacting the legislation by the Ministry of Justice, the General Register Office and the Civil Procedure Rules Committee. The legislation will be brought into effect on a date to be fixed by order.

⁹ See Para 40 above.

One-In One-Out Implications

84. Only 30-40 cases per year are expected to be affected by these reforms. As a result of this low volume all impacts are expected to be negligible in aggregate.
85. This proposal is a simplification of the current system of presumed death; it creates a single court process than can be used in place of the current system where two of more court processes are often required. Current procedures are used in only a very small number of cases. This is not expected to change. The majority of impacts will be on individuals rather than businesses. The impacts on businesses are set out below:
86. Insurers and other businesses that use court decisions on presumed death are expected to benefit from the increased certainty and simplicity flowing from the use of a general purpose proof of presumed death in place of the diverse forms of proof used at present. Having a single general certificate of proof could lead to standardisation of procedures so that handling presumed death situations would be simpler for insurers and could potentially reduce fraud. Insurers may derive a little extra business as insurance could be more likely to be required by the court to be taken out against the possibility of the missing person reappearing after the declaration is made.
87. There is a risk that there could be costs to businesses from relatives resolving their missing relatives' affairs more quickly (for example, insurers may be required to pay out life insurance slightly earlier than they might otherwise have). The impact of this is expected to be negligible in aggregate because of the small number of cases involved.
88. The removal of duplication from the current system may lead to a marginal decrease in business for a very small number of legal service providers. Providers are assumed to respond to any reduction in business by engaging in other work of a broadly equivalent value.
89. Charities that provide support and assistance to the relatives of missing persons could benefit from reduced costs as they would only need to understand and provide advice on a single court process.
90. In conclusion, taking into consideration that the aggregate impacts have not been quantified and are expected to be negligible given the low case numbers involved, the overall One-In One-Out impact has been assessed as ZERO NET COST.

Microbusiness exemption and sunseting

91. We intend to apply for a waiver of the micro-business exemption and an exemption from the sunseting policy. Exempting micro-business would leave a hole in the protection afforded to missing persons and those left behind by the new legislation. It would also deprive micro-businesses of the benefits of the increased certainty and simplicity flowing from the use of a general purpose proof of presumed death in place of the diverse forms of proof used at present.
92. The proposals impose a very small degree of regulation on business and civil sector organisations in that they will be obliged to recognise the certificate of presumed death and its effect. This will, however, be simpler than the present situation, where they have to give effect to the outcomes of the various current presumed death procedures.. We do not consider that any useful purpose would be served by providing for the legislation to expire and to do so would threaten the loss of the benefits brought by the legislation to missing persons and those they leave behind.

Post Implementation Review (PIR) Plan

Basis of the review:

We will undertake a review of the working of the new legislation five years after enactment to co-incide with the post-legislative scrutiny of the primary legislation.

Review objective:

To carry out a proportionate check that the legislation is working as intended. We will wish to know the numbers of presumed deaths and the numbers of revocations of presumed deaths.

Review approach and rationale:

The review will consider whether the legislation is working well. We will take note of Parliamentary and media coverage since introduction and will take soundings from the HMCTS, Probate Service, Chief Coroner, General Register Office, Land Registry, National Police Improvement Agency, Association of British Insurers and leading civil society organisations involved with missing person cases.

Baseline:

We have estimated the likely use of the proposed procedures. We will compare volumes of actual use with this and with the volumes in Scotland and Northern Ireland. We expect that a presumed death certificate should have the same usefulness as a death certificate.

Revocations of presumed death certificates would be expected to be in line with experience in Scotland and Northern Ireland.

Success criteria:

That the presumed death procedure has been implemented and is being used as a means to resolve the property and affairs of missing people. Volumes of usage are not critical. Levels of revocation should be low (comparable to Scotland and Northern Ireland).

Monitoring information arrangements:

The number of certificates of presumed death granted and revoked will be recorded. This is the most important indicator that the system is being used and that there are low levels of revocation. We do not propose to collect any other data routinely, but will take informal soundings from the judiciary every five years or so to determine whether there are any problems with the Court system.

Reasons for not planning a review:

Specific Impact Tests

Equality Impact Assessment

93. An equality impact assessment has been undertaken alongside this IA. The new procedure should be more efficient for its users and their advisers and will therefore have a positive impact on individuals. We therefore do not expect the reforms to have any adverse equalities impacts. The relevant senior analyst has advised that the analysis of equalities impacts provided is fair and reasonable given the limited data available.

Competition Assessment

94. We have carried out a competition assessment and do not anticipate that the introduction of a Presumption of Death Bill will have any competition impact. The acceptance of a certificate of presumed death will apply to all businesses irrespective of their size, in the way that an ordinary death certificate is currently accepted by all types of business.

Small Firms Impact Test

95. We have considered the impact of a Presumption of Death Bill on small firms. The Bill will impose a very small degree of regulation on small firms in that they will be obliged to recognise the certificate of presumed death and its effect. Small firms affected may therefore have to adjust their systems to accommodate the new certificate. The overall result will, however, be simpler than the present situation, where they have to give effect to the outcomes of the various current presumed death. Small firms are therefore expected to benefit from the increased certainty and simplicity flowing from the use of a general purpose proof of presumed death.

96. We do not consider that the Presumption of Death Bill will affect the operations or performance of small firms differently from other businesses. This is because the certificate of presumed death will be accepted by all businesses as proof of death in the same way that an ordinary death certificate and proofs of presumed death under existing procedures are accepted. This precludes any alternative approach or exemptions being applied in cases involving small firms.

97. We have carried out a small firms survey to which we received eight responses. All respondents replied that the introduction of a certificate of presumed death would not have an impact on their business.

Environmental Impacts

98. We do not anticipate any major environmental impacts from the introduction of a Presumption of Death Bill.

Health Impact Assessment

99. We do not anticipate any significant impact on human health or the demand for health and social care services in the UK as a consequence of the introduction of a Presumption of Death Bill. The result of our initial health screening test is that a full health impact assessment is unnecessary.

Human Rights

100. The introduction of a Presumption of Death Bill has been subjected to a Human Rights screening to ensure that it is compliant with the Human Rights Act 1988.

Justice Impact Test

101. Justice impacts have been considered in the main body of the Impact Assessment. The overall financial impact on HMCTS is expected to be neutral..

Rural Proofing

102. We have carried out a rural proofing assessment and do not anticipate that any rural impacts will be different from the rural impacts (if any) of the present systems in place for having a person declared as presumed dead.

Sustainable Development

103. We do not anticipate any major sustainable development impacts from the introduction of a Presumption of Death Bill.

Privacy Impact Assessment

104. We have considered the implications for privacy of the reforms and do not consider that a full privacy impact assessment is necessary.

