



Presumption of Death Act 2013

2013 CHAPTER 13

Variation order

5 Varying and revoking declaration

- (1) On an application by any person, a declaration under this Act may be varied or revoked by an order of the High Court (a “variation order”).
- (2) The court must refuse to hear an application for a variation order if it considers that the applicant does not have a sufficient interest in the determination of the application.

6 Effect of variation order

- (1) A variation order does not affect an interest in property acquired as a result of a declaration under this Act (but see section 7).
- (2) A variation order does not revive a marriage or civil partnership that was brought to an end by virtue of a declaration under this Act.
- (3) Except as otherwise required by subsection (1) or (2)—
 - (a) where a variation order varies a declaration, subsections (1) and (2) of section 3 have effect in relation to the declaration as varied by the order, and
 - (b) where a variation order revokes a declaration, those subsections cease to have effect in relation to the declaration.
- (4) But subsection (3) applies only if—
 - (a) the variation order has not been appealed against and the period for bringing an appeal has ended, or
 - (b) the variation order has been appealed against and the appeal (and any further appeal) has been unsuccessful.
- (5) For the purposes of subsection (4), an appeal has been unsuccessful if—
 - (a) it has been dismissed or withdrawn, and
 - (b) any period for bringing a further appeal has ended.

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—
 - (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.

8 Principles

- (1) These are the principles referred to in section 7(4).

- (2) The first principle is relevant where property (“the relevant property”) is being or has been administered under a trust.
- (3) The first principle is that—
 - (a) a person who, but for section 6(1), would have an interest in the relevant property by virtue of a variation order, and
 - (b) a person who, but for section 6(1), would have acquired an interest in the relevant property from a person described in paragraph (a),should be entitled to have made over to him or her by the trustee in full satisfaction of that interest the things listed in subsection (4).
- (4) Those things are—
 - (a) the interest in the relevant property or an equivalent interest in property representing the relevant property, to the extent that such property is still in the hands of the trustee when the variation order is made, and
 - (b) the value of the interest in the relevant property, to the extent that such property has been distributed.
- (5) The second principle is relevant where an insurer has paid a capital sum as a result of a declaration varied or revoked by a variation order.
- (6) The second principle is that the capital sum, or any part of the capital sum, should be repaid to the insurer if the facts in respect of which the variation order was made justify such repayment.
- (7) The references in subsections (5) and (6) to a capital sum do not include a capital sum distributed by way of an annuity or other periodical payment.