

PRESUMPTION OF DEATH ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1: Applying for declaration

13. **Section 1** sets out when the High Court can make a declaration that a missing person is to be presumed to be dead. The term “the missing person” is defined in section 20(1) as the person who is or would be subject to the declaration.
14. The ground for making a declaration is that the missing person is thought to have died or has not been known to be alive for at least seven years (*subsection (1)*). Anyone can apply to the court for a declaration of presumed death, but if the applicant is someone other than the spouse, civil partner, parent, child or sibling of the missing person, the court must refuse to hear the application unless it considers that the applicant has a sufficient interest in the determination of the application (*subsections (2) and (5)*). It is for the court to decide whether any interest is sufficient for the purposes of this section. Sibling is defined in section 20(1) to include siblings of the full or half blood. The period of seven years may be altered by regulations under section 17. *Subsection (6)* refers to section 21(2) which provides that a declaration may not be sought in respect of the person of the Monarch.
15. The court can only hear and determine the application if one of the conditions specified in *subsections (3) and (4)* is satisfied. These conditions require a certain connection with England and Wales - either that the missing person was domiciled in England and Wales at the date on which he or she was last known to be alive or had been habitually resident there for the whole of the year ending with that date; or, if the application was made by the spouse or civil partner of the missing person, the spouse or civil partner was domiciled in England and Wales when the application was made or had been habitually resident there for the whole of the year ending with that date. Domicile is the legal concept used to connect a person to a legal jurisdiction, such as England and Wales. It defines where a person is deemed to have his or her permanent home.