

# **PRESUMPTION OF DEATH ACT 2013**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Section 2: Making declaration***

16. **Section 2** provides that the court must make the declaration sought if it is satisfied that the ground for the making of the application has been made out (*subsection (1)*): see also section 1(1)). The two bases for the declaration are distinct: the missing person does not have to have been missing for 7 years if the court is satisfied that the person has died.
17. Every declaration must state when the missing person is to be deemed to have died (*subsection (2)*): this is important because, property interests, for example may be differently affected according to when a person is determined to have died. If the court is satisfied that the missing person has died but is uncertain as to when, it must deem the person to have died at the end of the period in which the court thinks he or she may have died (*subsection (3)*). If on the other hand the court is satisfied that the missing person has not been known to be alive for a period of at least seven years, but is not satisfied that the person has died, the time and date of the deemed death will be the end of the period of seven years beginning with the day after the day on which he or she was last known to be alive (*subsection (4)*). The working of the provisions is illustrated by the following examples.
18. Example A – subsection (3): if the court finds that a person must have died between 1 January and 31 March but is uncertain as to when during that period the missing person is to be presumed to have died, the declaration will state that he or she died on 31 March.
19. Example B – subsection (4): if the court is not satisfied that a person is dead but is satisfied that he or she was last known to be alive on 1 May 2004, the declaration will state that the person died on 1 May 2011, being the last day of the seventh year from and including 2 May 2004.