

*Research and Library Services*



Northern Ireland Assembly

**23 July 2008**

**Presumption of Death Bill**

*Research Paper prepared for the Committee for Finance & Personnel*

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Following consultation between January and April 2008, the Presumption of Death Bill was introduced to the Northern Ireland Assembly on 1 July 2008.

The Bill is designed to provide a legal framework addressing the needs of the families of people from Northern Ireland who go missing. It is intended to help address the immediate concerns of the families of the disappeared and also to be a useful piece of law reform.

The primary content of the proposed new legislation is the creation of a new right to apply to the High Court for a declaration that a person may be presumed dead on the basis that there is evidence that the missing person (a) died during a particular period of time as a result of a particular event or (b) has not been known to be alive for a period of more than 7 years.

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While the response to the consultation was disappointing, the Department does appear to have taken on board most of the points raised by those who did respond. However, it appears that there may still be at least two important issues that have not yet been fully addressed i.e. the disclosure of information by government bodies (to help the Court make a decision on a declaration of presumed death), and the cost of taking out insurance (particularly where the insurance is taken out to cover the possible repayment of annuities or other periodical payments made by insurers).

Apart from these issues, the Bill appears to provide a useful legal framework for addressing the needs of the families of people from Northern Ireland who go missing.

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# **Presumption of Death Bill**

## ***Introduction***

Following consultation between January and April 2008, the Presumption of Death Bill was introduced to the Northern Ireland Assembly on 1 July 2008<sup>i</sup> to provide a legal framework for meeting the needs of the families of people from Northern Ireland who go missing.

In taking forward this work the Department for Finance & Personnel has modelled its Bill on the Presumption of Death (Scotland) Act 1977, which provides a comprehensive procedure for declaring that a missing person from Scotland may be declared to have died.

## ***Background***

In recent years some of the families of “the disappeared” (those people abducted and killed by terrorist groups, during the course of the Troubles, whose bodies have never been found) have raised with Ministers their disappointment that their deaths cannot be registered in the absence of any physical remains. In response to calls for some change to the law to be made the Department began, in early 2007, an examination of the current legislative framework for death registration with a view to determining how best to provide a mechanism whereby the deaths of the disappeared in Northern Ireland could be registered and certificates of death provided for their families.<sup>ii</sup>

In examining this issue it became clear that any new piece of legislation should aim to address not only the needs of the families of the disappeared for a death certificate, but also aim to provide a procedure whereby the cases of other missing persons who are presumed to have died could be addressed. There is a large number of persons reported missing to the PSNI every year, although the majority are found within a few days. Some missing persons will, however, not be traced so easily. Towards the end of 2007 there were some 68 people registered as missing with PSNI.

## ***Consultation***

The Department conducted a public consultation on a draft Bill between 23 January and 15 April 2008.<sup>iii</sup> Over 500 copies of the paper were distributed to a wide range of organisations and individuals including political parties, MLAs and MPs, local councils, faith groups and churches and local and voluntary groups as well as interested individuals. The Victims’ Unit of OFMDFM also circulated copies of the Paper on the Department’s behalf to victims’ groups in Northern Ireland. A reminder letter was issued on 26 March 2008 to selected non-respondents encouraging responses by 15 April 2008.

Publication of the Paper was accompanied by the issue of a Press Release and the placing of public notices in the *Belfast Telegraph*, *Newsletter* and *Irish News*. The Paper was also placed on the Department's website.

During the course of the consultation period officials met with several of the families of the disappeared (on 20th March 2008) to discuss their concerns. While all the families were invited to participate in the meeting, some viewed the idea of discussing how to obtain death certificates too difficult and declined the invitation.

Only seven written responses were received during the consultation period (see list of respondents at Appendix A).

The consultation issues upon which the Department sought views concerned specific matters relating to the operation of the proposed new statutory High Court jurisdiction and issues surrounding human rights compliance and equality and regulatory impacts.

Since the Paper proceeded on the basis that the Executive was committed to introducing new legislation, the Department did not seek views on whether new legislation was necessary or desirable. Rather, the Paper set out to explain the key features of the proposed High Court jurisdiction and raised questions about specific elements of the process, in particular the jurisdictional rules, the powers of the court and the effect of a declaration.

All of those who responded considered that new legislation dealing with the problems associated with missing persons was to be welcomed or supported.<sup>iv</sup> In commenting generally on the draft Bill respondents acknowledged that legislative intervention can only go so far to ease the pain and anguish of the families and friends left behind when a person goes missing, whatever the circumstances of the disappearance. One respondent put the matter as follows:

“New legislation cannot cure or remove the psychological impact felt by the families but it can deal with the practical problems more effectively and sympathetically than the law does at present. In doing so, it may alleviate some of the pressures on the families.”  
(Church of Ireland)

The families of the disappeared have welcomed the Bill in so far as it will assist in general terms the families of those who go missing. They consider, however, that it “does not meet the particular needs of the families of the ‘Disappeared’”. Both orally and in writing they have indicated that given the unique and exceptional circumstances surrounding the disappearance of their loved ones the situation of the families of the disappeared is different from those of other families whose family member goes missing. The response from WAVE Trauma Centre has raised the question of what role might be played by the Independent Commission for the Location of Victims' Remains in verifying the deaths of the disappeared. They have also queried whether the deaths of the disappeared should be described as “presumed” given the admission of responsibility by certain organisations for their abduction and murder.

One issue not discussed in the Paper but raised with the Department on consultation was the availability of legal aid for proceedings under the new legislation. The response from WAVE also asked for consideration to be given to assisting the families with the cost of undertaking the necessary legal proceedings.

Paragraphs 65 to 68 of the Consultation Paper<sup>v</sup> discussed the desirability of including within the Bill some provision allowing disclosure of information from government departments which might assist the High Court in deciding whether or not to make the declaration of presumed death sought by the applicant. The purpose of such disclosure would be to ensure that government departments did not have information which might contradict the evidence presented to the Court by the applicant.

Section 9 of the Presumption of Death (Scotland) Act 1977 sets out a general duty on the world at large to disclose to the court any information relevant to the application for a declaration of presumed death.<sup>vi</sup> Colleagues in Scotland cannot recall the provision being complied with, presumably because those who may have relevant information are unaware of the proceedings.

The Presumption of Death Bill (Northern Ireland) 2008 does not contain any provision dealing with the disclosure of information by government bodies or agencies or other persons which might be relevant to the question of whether a missing person may be presumed to be dead.

While the Department could see merit in making some provision which would require the disclosure by government departments of information relevant to an application for a declaration or an application for a variation order it did not consider that the Scottish provision was a useful precedent to follow. The Department stated that if they were to consider further the question of disclosure of information they would wish to identify a more focused approach which deals only with information held by government departments or agencies which suggests that the missing person is in fact alive. The principal aim of a new provision would be to identify the government departments or agencies which might have relevant information and provide the legal authority for the disclosure of that information by them.

The purpose of obtaining such information is to build into the process a minimum safeguard to ensure that there is not information available which contradicts the application. The Department felt, however, that it would be very rare that the various government agencies would hold information which suggested that the missing person is still alive.

The Department asked: ‘Do consultees consider that it would be useful to include provision requiring specified government bodies to disclose information which may be relevant to the question of whether a missing person may be presumed dead? If such a duty is placed on government departments should the information be disclosed directly to the Court?’

Almost all the respondents who commented, including the judiciary, emphasised the need for some provision in the Bill which would enable all relevant information to be before the High Court to ensure the Court is fully informed when making an order for a declaration of death. A number agreed with the proposition that the information be disclosed directly to the Court by the holders of relevant information. The families of the disappeared have suggested a role for the Independent Commission for the Location of Victims' Remains in assisting the High Court.

### ***Purpose of the Bill***

The Bill is designed to provide a legal framework addressing the needs of the families of people from Northern Ireland who go missing. It is intended to help address the immediate concerns of the families of the disappeared and also to be a useful piece of law reform.

The Bill has two primary client groups:

#### ***(1) The disappeared***

At the time of the introduction of this Bill, there remain nine individuals who were abducted and murdered during the Troubles whose remains have still not been located, despite the ongoing efforts of the Independent Commission for the Location of Victims' Remains. The families of some of the disappeared had expressed concerns that there is no facility within Northern Ireland law to allow the deaths of their family member to be registered by the Registrar General and death certificates made available to the families.

#### ***(2) Other missing persons***

Several thousand persons are reported missing each year in Northern Ireland, the largest group of them young people absent from care. While the vast majority of all missing persons return home within 72 hours, there will always remain some people who are reported missing and who never return home and from whom nothing more is heard or known. From the circumstances of the disappearance it may often be inferred that the person has died at their own hand or in some freak accident – the personal belongings found near a cliff edge or onboard a ferry etc. For others it will likely be the passage of time itself which points to a conclusion that the missing person is dead.

### ***Overview of the Bill***

The primary content of the proposed new legislation is the creation of a new right to apply to the High Court for a declaration that a person may be presumed dead on the basis that there is evidence that the missing person (a) died during a particular period of time as a result of a particular event or (b) has not been known to be alive for a period of more than 7 years.

## **Content of the Bill**

The Bill contains 20 Clauses and three Schedules as follows (the descriptions below are taken from the *Explanatory and Financial Memorandum*<sup>vii</sup>, with references added where appropriate to the results of the consultation exercise):

### **Clause 1: Declarations of presumed death**

This Clause sets out the alternate grounds on which the High Court can make a declaration that a missing person may be presumed dead. The missing person must be thought to have died or have not been known to be alive for a period of at least 7 years. Under Clause 1 any person may make an application to the High Court, although the Court must refuse (under subsection (3)) to hear the application if it considers that the applicant (other than an applicant who is the spouse, civil partner or close relative of the missing person) does not have a sufficient interest in the determination of the application.

Subsection (2) sets out the jurisdictional rules which must be met in order for the High Court to be able to hear the application: either the missing person must have been domiciled or habitually resident in Northern Ireland or, where the applicant is the spouse or civil partner of the missing person, the applicant is domiciled or habitually resident in Northern Ireland.

With regard to the duration of disappearance, the Department asked: ‘Do consultees agree the High Court should have power to make a declaration of presumed death where a person has not been known to be alive for a period of seven years or more?’

Two respondents (Eastern Health & Social Services Board and *WAVE*) considered that the seven year period was too long. It was suggested that families affected by the disappearance of a loved one would consider a five year period as more appropriate. Other respondents who commented considered the seven year period to be appropriate.

On the matter of applications to the High Court, the Department asked: ‘Do consultees agree with the formulation of the jurisdictional rules in Clause 1(2) of the draft Bill?’

As currently drafted the Bill allows any person with an interest to apply to the High Court for a declaration. However, the Bill provides that the High Court can only hear cases in relation to missing persons who were domiciled or habitually resident in Northern Ireland, except where the applicant is the spouse or civil partner of the missing person. In that case, it is sufficient for the applicant to have a connection to Northern Ireland by being domiciled or habitually resident here. Special provision is made for applications by the spouse or civil partner in Clause 1(3) in that such applicants will be deemed to have a sufficient interest in seeking the declaration under Clause 1(1).

The jurisdictional rules were broadly welcomed by the majority of respondents. However two respondents expressed some concerns. The Eastern Health & Social Services Board noted that the draft Bill applied only to people normally domiciled in Northern Ireland. Noting that the *International Commission for the Location of Victims’ Remains* is an all-island body, there is a suggestion that some of the disappeared within the remit of the



Commission may not be domiciled in Northern Ireland and may fall outside the scope of the draft Bill.

A second respondent (Mr Alan Hewitt, retired former partner L'Estrange & Brett) queried the need for Clause 1(2)(b)(ii) which allows a spouse or civil partner of a non Northern Ireland domiciled missing person to apply to the High Court if that spouse or civil partner can establish domicile or habitual residence. He noted that in a given situation neither the missing person nor the applicant may have any real connection with Northern Ireland. However, if the applicant moves to Northern Ireland (say from England) he or she may apply to the High Court in Northern Ireland even though the marriage or civil partnership was formed in England and the missing person and the applicant were both domiciled in England at the time of the disappearance.

### **Clause 2: Making of declaration of presumed death**

This Clause makes further provision in relation to declarations of presumed death. It provides that when the High Court makes a declaration of presumed death it must also find either that (a) the missing person has died at a specified time and date or at the end of a specified period in cases where the evidence leads the Court to conclude that the missing person has died, or (b) where the missing person has not been known to be alive for a period of at least 7 years that the missing person died at the end of the day occurring after the date on which the missing person was last known to be alive.

### **Clause 3: Effect of declaration of presumed death**

This Clause provides for the general effect of a declaration of presumed death under Clause 1. In essence, the declaration of presumed death shall be conclusive for all purposes and against all persons – it will have the same effect in law as if the missing person had died and his or her death recorded by the Registrar General for Northern Ireland in the usual manner.

The Department recognised that there may be additional sensitivities involved where the missing person was married or in a civil partnership and the spouse or civil partner is not the applicant and does not wish the marriage or civil partnership to be brought to an end. The Department's view was that it would not be right to seek to protect the status of the subsisting marriage or civil partnership. The Department asked: 'Do consultees agree that a declaration of presumed death should be binding on all persons and for all purposes, including the dissolution of the missing person's marriage or civil partnership?'

Apart from one respondent, all those who commented agreed that a declaration of presumed death should be binding on all persons and for all purposes. Although recognising that the making of a declaration may involve ending a person's marriage or civil partnership against their wishes respondents acknowledged the Department's explanation that it is undesirable for a person to be recognised as dead for some purposes but not others.

One respondent did not believe that a declaration should in every case be binding on all persons for all purposes (Mr Alan Hewitt, retired former partner, L’Estrange & Brett). A concern was raised about the provision in Clause 3(2) in the draft Bill (that a declaration shall bind the Crown) to the extent that this might possibly prevent criminal or civil proceedings against a missing person who has gone missing to avoid criminal or tax problems.

The Department has now removed Clause 3(2) from the Bill.

#### **Clause 4: Powers of the High Court**

This Clause deals with the ancillary powers of the High Court which may only be exercised if it makes a declaration of presumed death. There are 3 powers: to determine the domicile of the missing person; to determine questions relating to the interest of any person in the missing person’s property and to make such order as it considers reasonable as to any rights to or in property acquired as a result of the making of a declaration of presumed death.

Subsection (2) provides that an order under Clause 4(1)(b) may direct that the value of any rights to or in property acquired as a result of the making of a declaration of presumed death are irrecoverable.

The Department expects that in the majority of cases the applicant will seek only the declaration of presumed death and there will be no cause for the High Court to make further orders relating to property rights or determinations in relation to domicile or interests in the property of the missing person. If further action is required it is likely that this will relate to the administration of the estate of the missing person and in such a case the existing law governing succession to the estates of deceased persons will apply.

The Department asked: ‘Do consultees consider that the range of ancillary powers available to the High Court is appropriate?’

Those who responded generally agreed that the draft Bill contained sufficient ancillary powers to enable the High Court to deal with the cases which came before it. A concern was expressed by the Northern Bank Ltd that the draft Bill did not give the High Court “leave to grant ancillary orders to corporate entities, especially creditors, with an interest in the missing person’s property” and sought clarification.

#### **Clause 5: Variation orders**

This Clause provides the High Court with the power, on application to it, both to vary and to revoke a declaration of presumed death made under Clause 1. Whilst any person may apply for a variation order, subsection (2) provides that the Court must refuse to hear the application if it considers that the applicant does not have a sufficient interest in the determination of the application.

## **Clause 6: Effect on property rights of variation order**

This Clause sets out the general rule that a variation order under Clause 5 is to have no effect on property rights acquired as a result of the making of a declaration under Clause 1. While subsection (2) allows the High Court to make a further order in relation to any rights to or in any property acquired as a result of the making of a declaration of presumed death, subsection (5) makes clear that, except in exceptional circumstances, no order under subsection (2) can be made unless the application for a variation order was made within 5 years of the making of the declaration of presumed death. Subsection (3) further limits the scope of any order which may be made under subsection (2) by providing that no such order shall cause income, generated during the period from the making of the declaration to the making of the variation order, to be returned to the missing person or otherwise redistributed to a person entitled to it in consequence of the variation order.

Subsection (4) sets out the considerations which the High Court must take into account in deciding whether to make an order under subsection (2). Subsection (6) provides protection to a bona fide purchaser for value of any property acquired from a person who was entitled to it on foot of a declaration under Clause 1. Subsection (7) deals with a trustee's liability for breach of trust.

The need to vary the terms of the declaration may arise because new evidence comes to light that the person may be presumed to have died at a time or date other than that specified in the declaration. The need to revoke the declaration will arise if the missing person turns out to be alive.

If the declaration has been revoked the question arises as to whether any property of the missing person or its value can be returned to him or her. Clause 6 sets out the circumstances in which the High Court can make an order for the return of property to the missing person following a revocation of the declaration. It also deals with cases where a new time of presumed death of the missing person (a variation of the declaration) might result in the property of the missing person being transferred to persons other than the original recipients.

The Department asked: 'Do consultees agree that a variation or revocation of a declaration of presumed death made more than five years after the date of the declaration should have no effect on the rights to or in property of others acquired as a result of the making of the declaration of presumed death in relation to the missing person?'

No respondent objected to the Court having power to make a property variation order. Several respondents, however, expressed strong reservations about the lack of flexibility which the 5 year rule imposes on the Court. Arguments were made that the Court should have some measure of discretion in deciding whether the 5 year rule should apply in a specific case. For example, the judiciary noted that the automatic application of a 5 year rule may not be appropriate in the case of a child who is declared to be presumed dead. It was suggested that in exceptional cases such as this the Court should have the power to

order that the 5 year period should not begin until the date of the child's 18th birthday had been reached. Another respondent also argued for greater judicial discretion.

One respondent also queried the availability of remedies in cases where an insurance fraud was being perpetrated if the 5 year rule applied automatically to prevent the High Court from making an order for restitution under Clause 6(2).

The Department has since added the words 'except where it considers there are exceptional circumstances' to the draft version of Clause 6(5). This should give the Court some flexibility in relation to the 5 year rule.

### **Clause 7: Insurance against claims**

This Clause sets out two rules relating to insurance. First, subsection (1) provides that where following a declaration of presumed death a person becomes trustee of the property of the missing person, the trustee shall take out insurance to cover the cost of returning the property to the missing person if he turns out to be alive or to transferring property to another person in consequence of a variation order under Clause 6(2). Second, subsection (3) provides that where the missing person's life was insured, an insurer may require the person who receives the insurance money to take out insurance to cover the cost of returning the insurance money should the missing person turn out to be alive.

Recent press reports have highlighted the real but rare possibility that a person who has been declared to be dead will in fact still be alive. This could happen either through simple mistake where the person declared dead had simply wanted to break contact with his or her family and was unaware that the disappearance had resulted in court proceedings for a declaration of presumed death. Or, the declaration of presumed death may have been obtained by fraud.

Although modelled on section 6 of the Presumption of Death (Scotland) Act 1977, Clause 7 departed from the Scottish model in its treatment of insurance monies paid out on foot of a declaration.

The Department asked: 'Do consultees agree that the payment of insurance monies by way of annuity or periodical payment should be treated in the same way as payment of a capital lump sum?'

While the inclusion in the Bill of a requirement to take out insurance to cover subsequent claims was accepted in principle, two respondents expressed some reservations. One respondent questioned the reasons for departing from the insurance provisions in the Presumption of Death (Scotland) Act 1977 which exclude the obligation to repay capital sums paid by an insurer by way of an annuity and other periodical payment.<sup>viii</sup> It was suggested by the Church of Ireland that depending on the actual amount of any annuity or periodical payment the person in receipt of such a payment may find it difficult

financially to raise the amount of any insurance premiums payable, as would be required by Clause 7(3).

It was further suggested that unless there is conclusive evidence that the missing person was dead the premiums could be prohibitively expensive (Alan Hewitt, retired former partner L'Estrange & Brett). Further clarification of this issue with the insurance industry was suggested.

**Clause 8: Supplementary provisions as to declarations, etc.**

This Clause provides that Rules of the Supreme Court shall make supplementary provision, inter alia, in relation to applications for declarations of presumed death and variation orders. The Rules will prescribe the forms to be used and detail those persons who should receive notice of applications made under the Bill.

**Clause 9: Provisions relating to the Attorney General**

This Clause provides that the Attorney General for Northern Ireland shall receive notice of all applications for a declaration of presumed death and a variation order under the Bill. Subsection (3) provides that the Attorney General may intervene in any proceedings to argue before the High Court any question which he or she thinks should be fully argued.

**Clause 10: Right to intervene**

This Clause sets out the circumstances in which any person may intervene in any proceedings for a declaration of presumed death under Clause 1 or a variation order under Clause 5. Subsection (2) provides that a person seeking to intervene (other than the spouse, civil partner or close relative of the missing person) shall have to obtain the leave of the High Court.

Subsection (3) provides that a person intervening may (a) argue before the High Court any question which the Court considers it necessary to have fully argued; (b) seek the making by the Court of an order or determination under Clause 4 (if intervening on an application under Clause 1); and (c) seek the making by the Court of a determination under Clause 5(4) or an order under Clause 6(2) (if intervening on an application under Clause 5).

**Clause 11: Costs**

This Clause confers on the High Court a broad power to make such order as to who shall pay for the costs of proceedings as it considers just. Costs may be ordered to be paid using the property of the missing person.

**Clause 12: Power to amend certain time periods**

This Clause allows the Department of Finance and Personnel to amend certain provisions in the Bill. First, the Department may increase or decrease the length of time a person must have not been known to be alive before the High Court may make a declaration under Clause 1. Second, the Department may increase or decrease the 5 year limitation period in relation to property variation orders made by the Court under Clause 6(2).

### **Clause 13: Repeal of certain statutory provisions relating to presumption of death**

This Clause provides that the existing statutory provisions permitting the High Court to dissolve a marriage or civil partnership on the ground of the presumed death of a spouse or civil partner (contained in the Matrimonial Causes (Northern Ireland) Order 1978 and the Civil Partnership Act 2004 respectively) shall cease to exist.

### **Clause 14: Register of Presumed Deaths**

This Clause, together with Schedule 1, provides for the Registrar General for Northern Ireland to establish and maintain a Register of Presumed Deaths. The powers of the Registrar General in relation to the new Register are set out in Schedule 1.

### **Clause 15: Orders and Regulations**

This Clause deals with the subordinate legislation procedure applicable to the making of orders and regulations under the Bill.

### **Clause 16: Interpretation**

This Clause defines certain words or phrases used in the Bill.

### **Clause 17: Supplementary provision**

This Clause allows the Department to make transitional, saving, supplementary, incidental and consequential provision in connection with the Bill.

### **Clause 18: Amendments and repeals**

This Clause, together with Schedules 2 and 3, deals with a small number of consequential amendments and repeals of legislation. They should be read alongside Clause 13.

### **Clause 19: Commencement**

This Clause provides that the substantive provisions shall come into force at a date to be determined by the Department. The commencement order will be made as soon as the necessary rules of court and registration regulations have been drafted.

### **Clause 20: Short title**

This Clause provides that the new legislation shall be known as the Presumption of Death Act (Northern Ireland) 2008.

### **Schedule 1: Register of Presumed Deaths**

This Schedule and Clause 14 provide for the Registrar General for Northern Ireland to establish and maintain a Register of Presumed Deaths. The powers of the Registrar General in relation to the new Register are set out in Schedule 1.

### **Schedule 2: Consequential amendments**

This Schedule deals with a small number of consequential amendments of legislation. This should be read alongside Clause 13.

### **Schedule 3: Repeals**

This Schedule deals with a small number of repeals of legislation. This should be read alongside Clause 13.

### ***Costs and Options Considered***

The Bill will give rise to additional administrative costs in the Registrar General's office which can be accommodated within existing resources. Some additional cost to the legal aid budget is likely.

The following options and the Department's views on them are listed in the Explanatory Memorandum:

Four options were considered:

i) Do nothing – doing nothing would have failed to meet the political imperative of legislating to enable the deaths of the disappeared to be registered and certificates issued to their families.

ii) Amend the Births and Deaths Registration (Northern Ireland) Order 1976 to allow registration of a missing person's death after an investigation had concluded that the person is believed to be dead and provided the person had been missing for 7 years. This limited proposal was rejected as it would sit uneasily with the existing system of death registration in Northern Ireland in the 1976 Order which requires the presence of a dead body and the involvement of a medical practitioner or coroner.

iii) Amend the Coroners Act (Northern Ireland) 1959 to allow a coroner to investigate the cases of missing persons where it is believed that the person was dead. This option was dismissed as, in the absence of a body, it was difficult to see how the coroner would be

able to come to any determination as to how, when and where the missing person came by his or her death.

iv) Introduce a new comprehensive piece of legislation, modelled on the Presumption of Death (Scotland) Act 1977, which would confer on the High Court in Northern Ireland the power to issue a declaration that a person who is missing may be presumed to have died (a) if there is evidence that the person is likely to have died, or (b) where the missing person has not been known to be alive for a period of at least 7 years. The Bill implements this fourth option.

### ***Human Rights and Equality Impact Assessment***

The provisions of the Bill are considered by the Department to be compatible with the Human Rights Act 1998.

In the Consultation Paper, the Department asked: ‘Do you agree with the Department’s opinion that the provisions of the draft Bill are Convention compliant?’

Three respondents commented on this question and agreed with the Department’s view that the provisions of the draft Bill were Convention compliant.

The Department also included its Equality Impact Screening as part of the public consultation. The screening exercise concluded that an Equality Impact Assessment was not required.

Equality considerations are largely confined to Clause 1 of the Bill which sets out the jurisdictional rules which must be satisfied before the High Court may hear an application for a declaration of presumed death. The primary jurisdictional rule is that the missing person must have been domiciled in Northern Ireland on the date on which he or she was last known to be alive or habitually resident there throughout the period of one year ending with that date. This in itself raises no equality issues. Rather, Clause 1 makes special provision for applications by the spouse or civil partner of the missing person. In those cases it is the applicant’s domicile or habitual residence which is important and in such cases the High Court can hear the case even though the missing person himself was neither domiciled nor habitually resident in Northern Ireland. This raises the question as to why other persons who lived/cohabited with the missing person before his or her disappearance should not be treated in the same way as spouses and civil partners.

No respondent argued that the proposals in the draft Bill merited a full Equality Impact Assessment. Those who responded on the issues raised commented that the proposals in relation to the jurisdictional rules in Clause 1 did not result in any adverse impact/unfair disadvantage on any of the groups identified in section 75 of the Northern Ireland Act 1998.



## ***Regulatory Impact Assessment***

The Department included its consideration of the potential regulatory impacts as part of the public consultation. It concluded that no Regulatory Impact Assessment was required.

The Department included, as an Annex to the Consultation Paper, a consideration of the regulatory impacts which may arise as a result of the draft Bill. The Department had concluded that the impacts on businesses, charities, social economy enterprises and the voluntary sector would be negligible, if any costs arose at all.

No respondent argued that the proposals merited a Regulatory Impact Assessment.

## ***Conclusions***

While the response to the consultation was disappointing, the Department does appear to have taken on board most of the points raised by those who did respond. However, it appears that there may still be at least two important issues that have not yet been fully addressed i.e. the disclosure of information by government bodies (to help the Court make a decision on a declaration of presumed death), and the cost of taking out insurance (particularly where the insurance is taken out to cover the possible repayment of annuities or other periodical payments made by insurers).

The Presumption of Death (Scotland) Act 1977 contains a Clause which imposes a duty on any person (including the Secretary of State for Social Services) with information relating to the survival or death of the missing person to disclose that information. The Department for Finance & Personnel, however, did not consider this Clause to be useful.

Of the few who did respond to the consultation, almost all who commented, including the judiciary, emphasised the need for some provision in the Bill which would enable all relevant information to be before the High Court to ensure the Court is fully informed when making an order for a declaration of death. The families of the disappeared suggested a role for the Independent Commission for the Location of Victims' Remains in assisting the High Court.

It might provide a useful safeguard, if a cross-check of government records (particularly those relating to benefits, health or wider police records) was included somewhere in the process.

In relation to insurance, the Presumption of Death (Scotland) Act 1977 excluded the obligation to take out insurance to repay an insurer for any annuity or other periodical payment, where a declaration has been overturned. In this Bill, all insurance payments are treated the same i.e. the insurer may, before making a payment as a result of a declaration, require the beneficiary to take out an insurance policy to cover any future claim that the insurer may make as a result of a variation order being made. As pointed out by two of the respondents, the cost of these premiums could be prohibitive, or at the

very least could substantially reduce any insurance benefits for the relatives of the missing persons.

Apart from these issues, the Bill appears to provide a useful legal framework for addressing the needs of the families of people from Northern Ireland who go missing.

## ***Annex A: List of Respondents to the Consultation***

Church of Ireland (Church in Society, Social Justice and Theology (NI) Group)  
Eastern Health & Social Services Board  
Mr Alan Hewitt (Retired Solicitor, former partner L'Estrange & Brett)  
Lisburn City Council  
Lord Chief Justice's Office (on behalf of the judiciary)  
Northern Bank Ltd  
WAVE Trauma Centre

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<sup>i</sup> [http://www.niassembly.gov.uk/legislation/primary/2007/nia23\\_07.htm](http://www.niassembly.gov.uk/legislation/primary/2007/nia23_07.htm)

<sup>ii</sup> See Explanatory and Financial Memorandum -

[http://www.niassembly.gov.uk/legislation/primary/2007/niabill23\\_07efm.htm](http://www.niassembly.gov.uk/legislation/primary/2007/niabill23_07efm.htm)

<sup>iii</sup> [http://www.dfpni.gov.uk/presumption\\_of\\_death\\_bill.pdf](http://www.dfpni.gov.uk/presumption_of_death_bill.pdf)

<sup>iv</sup> [http://www.dfpni.gov.uk/presumption\\_of\\_death\\_bill\\_-\\_consultation\\_report.pdf](http://www.dfpni.gov.uk/presumption_of_death_bill_-_consultation_report.pdf)

<sup>v</sup> [http://www.dfpni.gov.uk/presumption\\_of\\_death\\_bill.pdf](http://www.dfpni.gov.uk/presumption_of_death_bill.pdf)

<sup>vi</sup> <http://www.statutelaw.gov.uk/SearchResults.aspx?TYPE=QS&Title=&Year=1977&Number=&LegType=Act+%28UK+Public+General%29>

<sup>vii</sup> [http://www.niassembly.gov.uk/legislation/primary/2007/niabill23\\_07efm.htm](http://www.niassembly.gov.uk/legislation/primary/2007/niabill23_07efm.htm)

<sup>viii</sup> <http://www.statutelaw.gov.uk/SearchResults.aspx?TYPE=QS&Title=&Year=1977&Number=&LegType=Act+%28UK+Public+General%29>