

Missing Persons Guardianship Bill [HL]

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TO

Make provision for the administration of the affairs of missing persons; and for connected purposes.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Missing Persons Guardianship Orders

1 Application for a Guardianship Order in respect of the estate of a missing person

- (1) Any person may apply to the High Court for an order appointing a Guardian in respect of the estate of a missing person. 5
- (2) The court may only hear an application under subsection (1) if—
- (a) the application is made by the missing person's spouse, civil partner, parent, child, sibling, grandparent, grandchild, uncle, aunt, nephew or niece; and
 - (b) the court considers that the applicant has a sufficient interest in the determination of the application. 10

2 Entitlement to notice of an application

- (1) A person who makes an application under section 1 must send notice—
- (a) of the making of an application for an order appointing a Guardian,
 - (b) of the hearing of the application, and 15
 - (c) of any order made by the court in respect of the application to—
 - (i) the spouse, civil partner and close relatives of the person in respect of whom the application is made;
 - (ii) the primary carer (where applicable) of the person in respect of whom the application is made; 20
 - (iii) the Attorney General;
 - (iv) any guardian of the person in respect of whom the application is made; and

- (v) any person who has advised the court of an interest in the person in respect of whom the application is made or in his or her estate.
- (2) An application under section 1 must be advertised in accordance with rules of court. 5
- (3) The court must refuse to hear an application under section 1 if the requirements in this section have not been met.
- (4) In this Act, “close relative” in relation to a person means a parent, child or sibling of that person.
- 3 Date for hearing 10**
- The court must begin to hear an application under section 1 within 30 days, starting with the day on which the application is received by the court.
- 4 Appointment of a Guardian in respect of the estate of a missing person**
- (1) If the court is satisfied that—
- (a) it has jurisdiction to hear and determine an application under section 1; 15
 - (b) the person in respect of whose estate an application has been made under section 1 is a missing person;
 - (c) while the person is missing there is, or is likely to be, a need for a decision in relation to the person’s financial affairs or property; and
 - (d) it is in the best interests of the missing person for a person to be appointed to administer his or her estate while he or she is missing; 20
- the court may make an order appointing a Guardian.
- (2) The court has jurisdiction to hear and determine an application under section 1 if—
- (a) the missing person was domiciled in England and Wales on the day on which he or she was last known to be alive, 25
 - (b) the missing person had been habitually resident in England and Wales throughout the period of one year ending with that day, or
 - (c) either subsection (3) or subsection (4) is satisfied.
- (3) This subsection is satisfied if the application is made by the spouse or civil partner of the missing person and—
- (a) the spouse or civil partner is domiciled in England and Wales on the day on which the application is made, or
 - (b) the spouse or civil partner has been habitually resident in England and Wales throughout the period of 1 year ending with that day. 35
- (4) This subsection is satisfied if an application is made under section 1 to deal with an interest in land or other property which is located within England and Wales.
- (5) A person is a missing person for the purpose of making an order under subsection (1) if the court is satisfied that— 40
- (a) it is not known whether the person is alive;
 - (b) reasonable efforts have been made to find the person; and
 - (c) for at least 90 days, the person has not contacted—
 - (i) anyone who lives at the person’s last-known home address; or

- (ii) any relative or friend of the person with whom the person is likely to communicate.
- (6) In exceptional circumstances the court may make an order under subsection (1) where one or more of the criteria set out in subsection (5) has not been met, if it is satisfied that, in all the circumstances, it is appropriate to do so. 5
- (7) An order may be made under this section in respect of a person who is a missing person whether the person became missing before or after the commencement of these provisions.
- (8) A Guardian may be appointed under subsection (1) to administer all or a specified part of the estate of the missing person. 10
- (9) The court may appoint two or more Guardians to act—
- (a) jointly,
 - (b) jointly and severally, or
 - (c) jointly in respect of some matters and jointly and severally in respect of others. 15
- (10) An order under this section must state—
- (a) the name of the missing person and any other details that may be necessary to identify the missing person;
 - (b) the name of the appointed Guardian or Guardians; and
 - (c) the terms of the appointment. 20
- (11) An order made under subsection (1) is referred to in this Act as a “Missing Person Guardianship Order”.
- (12) In this Act “M” means a person in respect of whom a Missing Person Guardianship Order is made.
- 5 Persons eligible as Guardians 25**
- (1) The court may appoint as a Guardian of the estate of a missing person any person who consents to act as Guardian if the court is satisfied that—
- (a) the person will act in the best interests of the missing person;
 - (b) the person is not in a position where the person’s interests conflict or may conflict with the interests of the missing person; 30
 - (c) the person is a suitable person to act as the Guardian of the estate of the missing person;
 - (d) where the person is an individual, the person is 18 years of age or more; and
 - (e) the person has sufficient expertise to administer the estate or there is a special relationship or other special reason why that person should be appointed as Guardian. 35
- (2) In determining whether a person is suitable to act as the Guardian of the estate of a missing person, the court must take into account the wishes of the missing person, so far as they can be ascertained. 40
- (3) Where a spouse, civil partner or close relative of the missing person is proposed as the Guardian, that person is not by virtue only of that person’s relationship with the missing person to be taken to be in a position where the person’s interests conflict or may conflict with those of the missing person.

6 Right to intervene

- (1) The missing person's spouse, civil partner, or close relative may intervene in proceedings on an application under this Act for a Missing Person Guardianship Order.
- (2) The Attorney General may intervene in such proceedings. 5
- (3) Any other person may intervene in such proceedings only with the permission of the court.
- (4) In this section intervening includes –
 - (a) arguing before the court any question in relation to the application under section 1, and 10
 - (b) arguing before the court in proceedings on an application under section 10 or 11.

7 Remuneration of professional Guardian

- (1) A Guardian other than a Guardian who carries on a business of, or a business that includes, the administration of estates, is not entitled to receive any fee, remuneration or other reward from the estate of M for acting as Guardian under this Act unless the court otherwise specifies in the Missing Person Guardianship Order. 15
- (2) The remuneration to which a Guardian who carries on a business of, or a business that includes, the administration of estates is entitled must be approved by the court. 20

8 Payment of costs and expenses to Guardian or former Guardian from estate

- (1) If, in any proceeding, a court orders that a Guardian pay any costs of the proceeding, the court may order that the Guardian pay, or be reimbursed for, all or part of those costs from the estate administered by the Guardian. 25
- (2) In any proceeding, a court may order that a Guardian be reimbursed for all or part of the Guardian's costs of the proceeding from the estate administered by the Guardian.
- (3) The court may order that the costs incurred in administering an estate by a person appointed as a Guardian (including the costs of any proceeding) may be paid out of, or reimbursed from, the estate, whether or not the appointment has been revoked or quashed. 30

9 Guardian to notify court

- A Guardian must notify the court in writing without delay if the Guardian becomes aware that – 35
- (a) M is alive;
 - (b) M has died; or
 - (c) a declaration has been made under section 1 of the Presumption of Death Act 2013.

10 Order to remove a Guardian

- (1) The court may, by order, remove a Guardian or quash a Missing Person Guardianship Order –
- (a) on application by M;
 - (b) if it is satisfied, on application by the Guardian or any other person, that –
 - (i) M is alive; or
 - (ii) M is dead;
 - (c) on application by the Guardian; or
 - (d) if, on application by a person with an interest in M's property or affairs, the court finds that the Guardian has –
 - (i) acted improperly, or
 - (ii) failed to exercise the appropriate degree of care and skill in dealing with M's estate.
- (2) The court must, by order, remove a Guardian where –
- (a) a higher court, on being satisfied of M's death, whether by direct evidence or on presumption of death, has made a grant of probate of the will or administration of the estate of M under the law of probate;
 - (b) the Probate Registrar, on being satisfied of M's death, whether by direct evidence or on presumption of death, has made a grant of probate of the will or administration of the estate of M under the law of probate;
 - (c) any part of M's estate becomes subject to an order under the law of probate;
 - (d) a declaration of presumed death under section 1 of the Presumption of Death Act 2013 has been made; or
 - (e) on application by a person interested in M's property or affairs, the court finds that the Guardian has died, does not have mental capacity, or is unable to carry out the role of Guardian for any other reason.

11 Duration of order

- (1) Subject to section 10, an order under section 4 continues in effect for a period not exceeding four years as may be specified in the order. 30
- (2) An order under section 4 may on the application of the Guardian be renewed once for a further period not exceeding four years if the court is satisfied that the matters specified in section 4 continue to apply.
- (3) Nothing in this section shall prevent a person applying for a new order in accordance with section 1 if the previous order has expired or if a Guardian has been removed under section 10(1)(c) or (d). 35

12 Further notification provisions

- (1) Where –
- (a) the Guardian applies to the court to be removed under section 10(1)(c), and there is still, or is likely to be, a need for a decision in relation to M's financial affairs or property; or
 - (b) the Guardian makes an application to renew his or her appointment under section 11(2),

the Guardian must notify the persons specified in section 2 of the making of the application, the hearing of the application and any order made by the court in respect of the application, and must also comply with any rules of court on advertising made in respect of this section.

- (2) Where an application is made under section 10(1)(d) or section 10(2)(e) the applicant must notify the Guardian (where possible) and the persons specified in section 2 of the making of the application, the hearing of the application and any order made by the court in respect of the application, and must also comply with any rules of court on advertising made in respect of this section. 5
- (3) Where the appointment of Guardian is terminated for any other reason, or the powers of the Guardian are varied, rules of court must make provision for notifying third parties known to have an interest in M's estate. 10

Powers and duties of the Guardian

13 Powers and duties of the Guardian

- (1) A Guardian has the powers and duties conferred by this Act. 15
- (2) Where a decision is made, an action taken or consent given by a Guardian appointed under section 4 it has effect as if it had been done by M and M had the legal capacity to do so, subject to subsection (3) of this section and sections 15 and 16.
- (3) The court may impose limitations on the powers of a Guardian where it considers it appropriate to do so, and all limitations imposed by the court must be stated in the Guardianship Order. 20
- (4) Where a Guardian has been appointed on the basis of the jurisdiction granted to the court under section 4(4), the power conferred on the Guardian under the Guardianship Order will be limited to property located within England and Wales. 25

14 Guardian to act in M's best interests

- (1) A Guardian must act in M's best interests.
- (2) A Guardian acts in M's best interests only if the Guardian takes actions that the Guardian considers are necessary or desirable for – 30
- (a) the payment of M's debts and the fulfilment of M's obligations;
 - (b) the maintenance and benefit of any dependant of M; or
 - (c) the care and management of M's estate.

15 General powers of the Guardian

- (1) A Guardian may take all necessary actions to give effect to any power or duty vested in the Guardian, subject to subsection (2). 35
- (2) Nothing in this Act confers on a Guardian the power to execute a will in M's name.

16 Powers and duties in relation to missing persons

- (1) A Guardian has – 40

- (a) the duty to oversee the general care and management of M's estate;
 - (b) the duty to take possession and care of, recover, collect, preserve and administer M's property and generally to manage his or her affairs and to exercise all rights statutory or otherwise which M might exercise if he or she were not missing; and 5
 - (c) the power to take all actions and exercise all powers with respect to the estate as in the same manner as M could have done if he or she were not missing.
- (2) A Guardian may – 10
- (a) collect, receive and recover money due to M;
 - (b) invest money in securities;
 - (c) demise land at a rent and on conditions as the Guardian thinks fit for any term not exceeding five years or, with the consent of the court, for any longer term;
 - (d) exercise to the extent and in the manner the Guardian thinks proper any power of leasing vested in M; 15
 - (e) surrender any lease, accept any lease, accept the surrender of any lease or renew any lease;
 - (f) with the approval of the court, sell, exchange, partition or convert into money any property; 20
 - (g) mortgage or charge any property;
 - (h) pay any debts and settle, adjust or compromise any demand made by or against the estate and discharge any encumbrance on the estate;
 - (i) carry on so far as appears desirable any trade, profession or business which M carried on; 25
 - (j) agree to any alteration of the conditions of any partnership into which M has entered or to a dissolution and distribution of the assets of the partnership;
 - (k) bring and defend actions and other legal proceedings in M's name;
 - (l) execute and sign deeds, instruments and other documents; 30
 - (m) complete any contract for the performance of which M was liable, or enter into any agreement terminating liability;
 - (n) pay any sum for the maintenance of any dependant of M to the extent that the Guardian deems reasonable; and
 - (o) request, receive and use any information relating to M's property and affairs as he reasonably considers necessary for carrying out the role of Guardian. 35
- (3) A Guardian is not personally liable for any of M's debts or obligations unless such debts or obligations have arisen as a result of fraud or wilful negligence by the Guardian. 40
- 17 M's interest in property not to be altered by sale or other disposition of property**
- (1) M and his or her heirs, executors, administrators, next of kin, devisees, legatees and assigns have the same interest in any property, including money, arising from or received in respect of any disposition made under section 16 as such person would have had in the property. 45

- (2) For the purposes of this section money arising from the compulsory acquisition or purchase of M's property is deemed to be money arising from the sale of that property.
- (3) A Guardian who receives property, including money, on behalf of M must keep a separate account and record of the property. 5
- (4) Money received by a Guardian on behalf of M may be invested in any manner currently allowed for the investment of trust funds under the law of England and Wales.
- 18 Guardian may seek advice**
- (1) A Guardian may apply for the advice of the court regarding the exercise of any power by the Guardian under the Guardianship Order. 10
- (2) The court may –
- (a) give such advice as it considers appropriate; and
 - (b) make any order it considers necessary.
- (3) The court may on its own initiative direct, or give an advisory opinion to, a Guardian concerning any matter. 15
- (4) A Guardian is not liable for any action or omission on the advice or direction of the court unless the Guardian represented the facts to the court in a manner that was fraudulent or amounted to wilful concealment or misrepresentation.
- 19 Power to Guardian to act until notice of discharge etc received** 20
- (1) Where the court learns that a person has ceased to be the subject of a Missing Person Guardianship Order, the court must without delay give notice of that fact to the Guardian.
- (2) A Guardian may exercise all or any of the powers conferred on him or her by the Missing Person Guardianship Order until the Guardian has been given notice under subsection (1). 25
- Safeguards*
- 20 Accounts**
- (1) A Guardian must lodge with the Office of the Public Guardian on, or as soon as practicable after, the anniversary of the appointment of the Guardian in each year, accounts of the administration of M's estate. 30
- (2) The accounts provided under subsection (1) should include a full and true account of the assets and liabilities of that estate and all receipts and disbursements in respect of that estate.
- (3) The court may require a Guardian to lodge accounts at a time other than that specified in subsection (1). 35
- (4) The Office of the Public Guardian may refuse to permit any item in the accounts, provided that no item may be so refused where the Office of the Public Guardian is satisfied that the Guardian acted in good faith and with reasonable care in the exercise of powers conferred on the Guardian. 40

- (5) Where any item is refused by the court the Guardian is liable for the amount of the item disallowed.
- (6) A Guardian must, in respect of each estate administered by the Guardian, pay to the Office of the Public Guardian such fees as may be prescribed.
- (7) The Office of the Public Guardian may upon an application by the Guardian waive payment of the whole or part of the amount required to be paid under subsection (6). 5
- 21 Court may open will**
- The court may either before or after M's death open and read any paper or writing which is purported or alleged to be M's will. 10
- 22 Application to the court by a creditor etc**
- (1) Any person interested or who considers himself to be interested as a creditor, beneficiary, next of kin, guardian, primary carer or otherwise in any estate administered by a Guardian may apply to the court upon any matter arising out of the administration of the estate by the Guardian. 15
- (2) The court may make such order in relation to the application as the circumstances of the case may require.
- 23 Security**
- (1) The court may require the Guardian to give to the Office of the Public Guardian such security as the court thinks fit. 20
- (2) The court may order the Office of the Public Guardian to use the security provided under subsection (1) to compensate M's estate if the court finds that loss or damage has been suffered by the estate as a result of wrongdoing or negligence on the part of the Guardian.
- 24 Action upon a person ceasing to be a missing person** 25
- (1) If a Guardian has received notice from the court that M has ceased to be a missing person or has died, the Guardian must –
- (a) pay or cause to be paid to M or to M's personal representative all money standing to his or her credit with the Guardian; and
- (b) deliver to M or to M's personal representative all property forming part of his or her estate and any documents relating to that estate. 30
- (2) Any payment made under subsection (1) is subject to the satisfaction of any amount due to the Guardian and all costs, expenses and liabilities incurred by the Guardian in respect of the administration of M's estate.
- 25 M's entitlement to inspection of accounts** 35
- Any person who has ceased to be the subject of a Missing Person Guardianship Order or the personal representative of any such person is entitled, before or after obtaining the restoration of all or any part of the estate from a Guardian –
- (a) to examine and inspect or cause to be examined and inspected by a legal or other authorised agent all books, accounts, notices and other 40

- documents in the custody of the Guardian relating to the estate and to make or cause to be made copies or extracts;
- (b) to have supplied to him or her or his or her legal practitioner or other authorised agent copies of or extracts from any book, account, notice or document; and
- (c) to have given to him or her or his or her legal practitioner or other authorised agent information respecting the estate as is reasonably requested and can be given by the Guardian.

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Supplementary

- 26 Supplementary provisions as to Missing Person Guardianship Orders** 10
- (1) An application under section 1 and a Missing Person Guardianship Order made under section 4 must be in the prescribed form.
- (2) An application under section 10 or 11 must be in the prescribed form.
- (3) Rules of court must make provision as to the information required to be given to the High Court by – 15
- (a) any applicant under section 1;
- (b) the Guardian under section 10 or 11; and
- (c) any other person under section 10.
- 27 Regulations**
- (1) Regulations under this Act are to be made by statutory instrument. 20
- (2) A statutory instrument containing regulations which amend, repeal, revoke or modify any Act of Parliament or any Act or Measure of the National Assembly for Wales (whether alone or with other provision) may not be made unless a draft has been laid before and approved by a resolution of each House of Parliament. 25
- (3) Any other statutory instrument containing regulations under this Act (except for statutory instruments made under section 30(2)) is subject to annulment in pursuance of a resolution of either House of Parliament.
- 28 Interpretation**
- In this Act – 30
- “dependant” means a spouse, civil partner, child, parent or other person dependent on M;
- “enactment” includes an enactment contained in –
- (a) an instrument made under an Act of Parliament, or
- (b) an Act or Measure of the National Assembly for Wales or an instrument made under such an Act or Measure; 35
- “personal representative” means the executor or administrator of M’s estate;
- “next of kin” means any person who would be entitled to M’s property or to any share of it if M had died intestate; 40
- “Office of the Public Guardian” means the Office of the Public Guardian of England and Wales;

“prescribed” means prescribed by regulations made by the Secretary of State;

“sibling” means a person who shares either one or both parents with M;

“statutory provision” means any provision of an Act or instrument made under an Act;

“trustee” means a trustee, executor, administrator or any other person administering trust property.

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29 Consequential and supplementary etc provision

(1) The Secretary of State may by regulations make consequential, supplementary, incidental, transitional, transitory or saving provision in relation to any provision of this Act.

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(2) Regulations under this section may amend, repeal or revoke an enactment made by or under an Act passed or made before this Act or in the same Session.

30 Extent, commencement and short title

(1) This Act extends to England and Wales.

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(2) Sections 1 to 26 come into force on such day as the Secretary of State may by regulations made by statutory instrument appoint.

(3) Different days may be appointed for different purposes.

(4) Sections 27, 28, 29 and this section come into force on the day on which this Act is passed.

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(5) This Act may be cited as the Missing Persons Guardianship Act 2016.

Missing Persons Guardianship Bill [HL]

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To make provision for the administration of the affairs of missing persons; and for connected purposes.

Baroness Hamwee

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