

GUARDIANSHIP (MISSING PERSONS) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Guardianship (Missing Persons) Bill as brought from the House of Commons on 27 March 2017 (HL Bill 117).

- These Explanatory Notes have been prepared by the Ministry of Justice with the consent of Baroness Hamwee in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

Table of Contents

Subject	Page of these Notes
Overview of the Bill	2
Policy background	2
Legal background	2
Territorial extent and application	3
Commentary on provisions of Bill	3
Clause 1: Missing persons	3
Clause 2: Applying for a guardianship order	3
Clause 3: Making a guardianship order	3
Clause 4: Choice of a guardian	4
Clause 5: Guardian's role: property and financial affairs	4
Clause 6: Guardian's role: rights and powers etc	5
Clause 7: Period of guardianship	5
Clause 8: Guardians and effect of guardianship order	5
Clause 9: Expenses, remuneration and records	6
Clause 10: Directions by the court to guardians	6
Clause 11: Actions outside guardian's authority etc	6
Clause 12: Variation of guardianship order	6
Clause 13: Revocation of guardianship order	6
Clause 14: Automatic revocation	7
Clause 15: Protection following variation or revocation	7
Clause 16 and Schedule: Appointment of two or more guardians	7
Clause 17: Supervision of guardians by the Public Guardian	8
Clause 18: Missing person's best interests	9
Clause 19: Requirement for applicants to have sufficient interest	9
Clause 20: Giving notice of applications	9
Clause 21: Right to intervene	10
Clause 22: Codes of practice	10
Clause 23: The court	10
Clause 24: Interpretation	10
Clause 25: Extent, commencement and short title	10
Commencement	11
Financial implications of the Bill	11
Parliamentary approval for financial costs or for charges imposed	11
Compatibility with the European Convention on Human Rights	11
Related documents	12
Annex A – Territorial extent and application in the United Kingdom	13

These Explanatory Notes relate to the Guardianship (Missing Persons) Bill as brought from the House of Commons on 27 March 2017 (HL Bill 117)

Overview of the Bill

- 1 The Bill enables the appointment by the court of a person (“the guardian”) to act for a missing person, who, by reason of being missing, is not able to act in relation to his or her property and financial affairs. The Bill also provides for the ongoing supervision and regulation of the exercise by the guardian of his or her powers. The Bill will amend the law of England and Wales only.

Policy background

- 2 Under the current law, when a person disappears his or her property is effectively left ownerless. No one has legal authority to protect or use it on his or her behalf. This may lead to assets dissipating, property falling into disrepair and dependants facing legal and financial problems because they no longer have access to the financial support that the missing person provided. The absence of the missing person may also cause problems for businesses and institutions holding the missing person’s assets or liabilities as well as for creditors who may not be able to obtain payment as a result of the disappearance.
- 3 This bill seeks to provide a means of resolving these problems, by creating a new legal status – the guardianship of the property and financial affairs of a missing person. The Bill enables the court to appoint a guardian to “stand in the shoes” of the missing person in relation to his or her property and financial affairs (“guardian” is defined in clause 24 as “a person appointed as a guardian under this Act”). The appointment may be general or limited but will only be made if the court considers it is in the best interests of the missing person. The guardian may, depending on the terms on which the court makes the appointment, be able to access bank accounts, authorise mortgage and insurance payments, sell or rent a property or manage investments. The guardian may also be able to make payments to dependants of the missing person to meet ongoing expenses and other needs. The guardian must, however, exercise the powers conferred in the best interests of the missing person.
- 4 The appointment will be for up to four years but can be renewed. It can also be varied or revoked by the court. The bill seeks to enable the missing person and others to hold the guardian to account and the guardian will be subject to supervision by the Office of the Public Guardian.
- 5 The proposals for guardianship were the subject of a public consultation by the Ministry of Justice in 2014. The consultation paper *Guardianship of the Property and Affairs of Missing Persons* and the response to the consultation are available at <https://www.gov.uk/government/consultations/guardianship-of-the-property-and-affairs-of-missing-persons>.

Legal background

- 6 The relevant legal background is explained in the policy background section to these Notes.

Territorial extent and application

- 7 The Bill extends to England and Wales only (Clause 25). The Bill will apply throughout the whole of England and Wales.
- 8 There is a convention that the UK Parliament will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.
- 9 The matters to which the provisions of the Bill relate are not within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, and no legislative consent motion is being sought in relation to any provision of the Bill. If there are amendments relating to matters within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for the amendments. As the Bill is a Private Member's Bill, the new English votes provisions in the House of Commons Standing Orders do not apply.
- 10 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Missing persons

- 11 This clause defines when a person is “missing”. A guardian can only be appointed where a person is missing and the guardian has a duty to apply for revocation of the appointment if he or she believes the missing person is no longer missing (clause 13(2)). For the purposes of the Bill a person is “missing” in two circumstances only. In both cases the person must be missing from his or her usual residence and activities (which includes being detained elsewhere, for example, in prison) (subsection (1)). In the first circumstance, the person’s whereabouts is unknown or not known sufficiently precisely to enable contact to be made to obtain decisions (subsection (2)). This would be expected to apply where a person has disappeared without explanation. The second circumstance is likely to be of more limited application. It occurs when for reasons beyond his or her control, other than physical or mental capacity, the person is unable to make effective decisions or to communicate such decisions, or both (subsection (3)). This might be applicable in a hostage or kidnap situation.

Clause 2: Applying for a guardianship order

- 12 Clause 2 provides that anyone may apply to the court for a guardianship order, but this must be read with the requirement in clause 19 that an applicant for a guardianship order must satisfy the court that he or she has a sufficient interest in the property or financial affairs of a missing person (subsection (1)). Further, the court will only have jurisdiction to deal with the application if the missing person or the applicant has a sufficiently close connection with England and Wales (subsection (2)).
- 13 The court for these purposes will be designated under clause 23. Domicile is a common law 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.

Clause 3: Making a guardianship order

- 14 Clause 3 defines the two sets of circumstances when a court with jurisdiction under clause 2 to hear the application may make a guardianship order. The first is when the conditions in

subsection (2) are satisfied. The court must in this case be satisfied that (a) the person in respect of whom the application is made is missing and was missing for at least 90 days (including and ending with the day on which the application is made); (b) the appointment of guardian is in the best interests of the missing person; and (c) there is a person who could be appointed as guardian. Missing for these purposes is defined in clause 1 and the test of whether a proposed course of action is in the best interests of the missing person is set out in clause 18. The person proposed as guardian must satisfy the requirements of clause 4. The second set of circumstances, set out in subsection (3), is when a decision in relation to the property or financial affairs of a missing person is needed or likely to be needed urgently before the 90 day absence period requirement (subsection (2)(b)) has been satisfied. This is referred to as the urgency condition. In this case the 90 day requirement (which is referred to as the absence condition) does not apply.

- 15 Guardianship orders must be sent by the court to the Public Guardian (subsection (4)), who will enter them on a register (see clause 17(2)).
- 16 The length of the period specified in the absence condition may be varied by the Secretary of State from time to time (subsections (5) – (7)). This aims to allow it to be reviewed in the light of experience. The regulations making the change will be made by statutory instrument subject to prior approval by both Houses of Parliament.

Clause 4: Choice of a guardian

- 17 Only individuals aged 18 and over and trust corporations, who consent to the appointment, can be appointed as guardians. The appointee does not have to be the person nominated in the application to the court (subsection (5)). Two or more persons may be appointed as a guardian (see clause 16). Trust corporations are the Public Trustee or a corporation either appointed by the court in any particular case to be a trustee, or entitled by rules made under the Public Trustee Act 1906 to act as custodian trustee.
- 18 Clause 4(1) defines other personal characteristics that the court must be satisfied the prospective guardian possesses. These are that the court must be satisfied the appointee is suitable (as to the factors to be taken into account in deciding this, see subsection (2)) and will act in the best interests of the missing person. Best interests is defined in clause 18.
- 19 A guardian may, for example, be a close family member of the missing person or a creditor. It is possible that the interests of the missing person and the appointee may conflict. In deciding whether there is a conflict of interest, the court is required to consider how any connection in relation to property or financial affairs between the missing person and the proposed appointee might affect decisions that the guardian may take (subsection (3)), but for the purposes of the appointment certain close family relationships, co-residence or the prospect that the guardian may benefit from the appointment are not of themselves conflicts of interest (subsection (4)).

Clause 5: Guardian's role: property and financial affairs

- 20 The order must appoint the guardian in relation to all or part of the missing person's property and financial affairs (subsection (1)), but it may not relate to the property and affairs of more than one person (subsection (2)).
- 21 The property and financial affairs in relation to which the order is made need not be the property and financial affairs in respect of which the application was made (subsection (3)). However, in relation to the property and financial affairs included in the order the court must be satisfied that the appointment of the guardian is in the best interests of the missing person and that there is a person who could be appointed guardian (see clause 3(2)(c) and (d)); and, where the urgency condition applies, it is satisfied in relation to the property and financial affairs in question (clause 3(3)) (subsection (4)).

Clause 6: Guardian's role: rights and powers etc

- 22 The guardianship order must appoint the guardian to exercise some or all of the missing person's rights and powers in relation to the relevant property or financial affairs (subsection (1)). Furthermore, the order may impose duties, conditions or restrictions, including providing security and reports to the Public Guardian (as to the Public Guardian see generally clause 17) and may provide for the suspension of the appointment (subsections (2) and (3)). Therefore, the court may tailor the terms of the appointment to the circumstances of the missing person and the guardian. Accordingly, the guardian may be able to exercise a wide range of rights and powers in relation to the property and financial affairs of the missing person; or, conversely, be narrowly confined.
- 23 Within the terms of the appointment the guardian is intended to "stand in the shoes" of the missing person in relation to the missing person's property and financial affairs (see clause 8(2)). The guardian cannot therefore act instead of the missing person as a trustee of another person's property (subsection (6)(b)).
- 24 Subsection (4) gives an indication of the range of actions that a guardian might be authorized to take under the authority of the appointment. This includes the power to make a gift out of the missing person's property (subsection (4)(h)). Subsection (7) provides that the power to make such a gift will only exist where it has been expressly authorized by the order, but this is not the case where the gift is made to a dependant of the missing person (subsections (8)-(9)). Dependant is defined in subsection (9). A guardian may not, however, make a will (defined in clause 24(1) to include a codicil) for the missing person (subsection (6)(a)). The manner in which the guardian should exercise the rights and powers under the appointment of the guardian is addressed in clause 8.

Clause 7: Period of guardianship

- 25 The period for which the guardian is appointed will be stated in the court order. The maximum is four years from and including the date of the order of appointment. However, this would not prevent the court from making further guardianship orders, including orders reappointing a person as guardian (subsection (3)).

Clause 8: Guardians and effect of guardianship order

- 26 Clause 8(1) requires the guardian to act in what he or she reasonably believes to be the best interests of the missing person. The test for ascertaining what is in the best interests of the missing person is set out in clause 18.
- 27 Clause 8(2) classifies the relationship of the missing person and the guardian as principal and agent. The rights and powers of the missing person to act remain alongside the new powers of the guardian. As the missing person cannot appoint the guardian, the court order and the Bill provide the guardian's authority (subsection (2)).
- 28 Subject to the terms of the Bill the general law of agency will apply. The relationship of missing person and guardian is therefore a fiduciary relationship and would imply certain obligations on the guardian. The guardian must therefore, for example, become familiar with the property and affairs to which the appointment relates; must act in good faith and with reasonable diligence; must use reasonable skill and care, including taking appropriate advice and assessing whether action is needed; and must avoid conflicts of interest.
- 29 The guardian is appointed in respect of property and financial affairs of the missing person, the appointment does not therefore affect the interests of third parties, including co-owners, mortgagees and other creditors, in the missing person's property and affairs (subsection (4)).

Clause 9: Expenses, remuneration and records

- 30 A guardian may incur expense in acting as such and some guardians may act in the course of a business or profession. Clause 9(1) provides that any guardian may recoup reasonable expenses and, with the authority of the court, may be paid for acting as a guardian: in both cases from the missing person's property. However, the guardian must keep records, including accounts, of his or her stewardship and at the end of the appointment, if the court directs, must give copies of the records to designated persons (for example, the missing person or his or her personal representatives (subsections (3))). Anyone with a sufficient interest (see clause 19) may apply to the court for accounts or other information about the exercise of the guardian's functions (subsection (4)). The court must in considering the application have regard to the matters mentioned in subsection (5).

Clause 10: Directions by the court to guardians

- 31 Guardians may be faced with difficult decisions about how to act and whether he or she has authority to act. A guardian may therefore apply to the court for directions as to how to proceed. The court may also issue such directions without an application (although there would have to be other proceedings ongoing for the issue to be before the court in any event). Applicants must have a sufficient interest and may be required to serve notice (see clauses 19 and 20).

Clause 11: Actions outside guardian's authority etc

- 32 As a guardian is treated as the agent of the missing person (clause 8(2)) any acts outside the authority of the guardian do not bind the missing person. Questions as to the extent of the authority of the guardian are covered by Clause 11. Clause 11(1) gives the court power to decide whether the guardian has acted within the scope of his or her authority and complied with his or her duties (for example, to act in what the guardian reasonably believes to be the best interests of the missing person). Clause 11(3) sets out the specific powers conferred on the court where the guardian has acted outside his or her authority or failed to perform a duty. These powers are without prejudice to any other powers the court may have (subsection (4)). Further, the court can relieve the guardian of personal liability for the unauthorized actions or breach of duty in the circumstances described in subsections (5) and (6).

Clause 12: Variation of guardianship order

- 33 During the currency of a guardianship order events may occur that indicate that the terms of the order are no longer appropriate. Clause 12 allows the court (see clause 23) to vary the order in a wide variety of ways (see subsection (3)) if the conditions in subsection (2) are satisfied, save that the appointment may not be extended beyond the four year period (subsection (5) and see clause 7)). The variation may be made as a result of an application (in which case clauses 19 and 20 will apply) or by the court of its own motion in other proceedings (subsection (1)). A copy of the order must be sent by the court (see clause 23) to the Public Guardian, who is responsible for maintaining the register of guardianship orders (see clause 17(2)). The urgency condition and the absence condition are defined in clause 3(3) and (2) respectively.
- 34 Special provision is made regarding variation where there are two or more guardians (see clause 16 and schedule 1 para 2(2)).

Clause 13: Revocation of guardianship order

- 35 Circumstances may also occur in which it is no longer appropriate for the guardianship to continue: for example, the missing person may return or the guardian may no longer be able to act due to ill health or other commitments. The court is therefore given power to revoke an order if it is satisfied doing so is in the best interests of the missing person (see clause 18) or that the missing person is no longer missing (see clause 1) (subsections (1) and (3)). Clause

13(2) also requires a guardian who has reasonable grounds to believe that the missing person no longer qualifies as missing to apply to the court (clause 23) for the revocation of the order as soon as reasonably practicable.

- 36 As in relation to variation orders, the revocation may be made as a result of an application (in which case clauses 19 and 20 will apply) or by the court of its own motion in other proceedings. A copy of the order must be sent by the court (see clause 23) to the Public Guardian, who is responsible for maintaining the register of guardianship orders (see clause 17(2))(subsection (4)).

Clause 14: Automatic revocation

- 37 Clause 14(1) sets out the circumstances in which the guardianship order will be revoked even though no revocation order has been made under clause 13. In these circumstances the authority of the guardian to act will cease immediately and in cases of death or presumed death of the missing person the guardian is obliged to notify the Public Guardian as soon as reasonably practicable (see clause 17(2)).
- 38 When a person is missing there is an inevitable possibility that he or she may in fact be dead, but will only be discovered to have been so some time later. This may even be the case when the order is made. Clause 14(2) applies in this case.
- 39 Special provision is made regarding automatic revocation where there are two or more guardians (see clause 16 and schedule 1 para 4).

Clause 15: Protection following variation or revocation

- 40 It is possible that a guardianship order may be automatically revoked (clause 14) but the guardian is unaware of the revocation or the event that caused it (see clause 15(4)(a) as to knowledge of the revocation) and carries on acting as guardian. In this situation, in relation to acts within the authority conferred by the appointment, authority is in effect deemed to continue to the extent only that the guardian will not be personally liable (subsection (1)). Similarly, third parties may deal with a guardian when unknown to them the guardianship order has been revoked or varied in a way that takes the dealing outside the authority of the guardian. In these cases the transaction is deemed to be valid notwithstanding the variation or revocation in question (subsection (2)). Clause 15(3) provides a way in which a purchaser can demonstrate clause 15(2) applies to a transaction with a guardian. Purchaser is defined in subsection (4)(b) by reference to section 205(1) of the Law of Property Act 1925. The general definition in this subsection provides that a purchaser is a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property. Special provision is made regarding clause 15(2) where there are two or more guardians and the term of one of their appointments expires (see clause 16 and schedule 1 para 5(3)).
- 41 The provisions in clause 15 are largely based on section 5 of the Powers of Attorney Act 1971.

Clause 16 and Schedule: Appointment of two or more guardians

- 42 Although a guardianship order may only relate to the property and financial affairs of one missing person (clause 5(2)), clause 16 provides that the court (see clause 23) may at the same or different times appoint more than one guardian in relation to that property and those financial affairs (subsections (1) and (2); and schedule paragraph 1(1)). The appointments may be made whether or not an application was made for the appointment of more than one guardian (subsection (3)). They may also result from a variation of an order (see clause 12).
- 43 If two or more guardians are being appointed, the appointments may be joint appointments in respect of all the property and financial affairs within the scope of the proposed appointment or may be separate appointments in relation to different parts of the missing person's property

and financial affairs (schedule paragraph 1(2)). Appointments combining these two arrangements in relation to different parts of the property and financial affairs are also possible (schedule paragraph 1(2)(c) and (3)). The appointments may be for different periods (schedule paragraph 1(5)).

- 44 Where there are two or more guardians and the guardians are responsible for different property and financial affairs the guardians may be appointed on different terms (schedule 1, paragraph 1(4)). If the appointment is joint then the terms must be the same.
- 45 Variation orders under clause 12 may remove all but one of the appointed guardians where clause 16 applies (schedule 1, paragraph 2(2)). If all the guardians are to be removed then the order should be revoked (clause 13).
- 46 Where guardians are to act jointly they must act unanimously (schedule 1 paragraph 3(2)). All of them will be bound by the terms of the appointment (schedule 1 paragraph 3(3)) and a direction of the court (clause 10) will apply to all of them.
- 47 The death of a guardian automatically revokes an order appointing a guardian (clause 14) but in situations where there are two or more guardians the death of one of them will only revoke the order if there is no surviving guardian or the appointment was joint (schedule 1 paragraph 4(2)). However, even where the order continues the guardian or guardians remaining must apply to the court for the variation or revocation of the order as soon as reasonably practicable after learning of the death of their co-guardian. This would allow the court to review the arrangements. See schedule 1 paragraph 4(3).
- 48 The expiry of the period of appointment of a guardian also has the effect of causing the order to be treated as revoked automatically (clause 14(1)(d)). Where there are two or more guardians appointed under an order the order will not be revoked if some of the term of one or more of the co-guardians remains unexpired. However, in such cases, a person dealing with the guardian whose term has expired can still claim the protection of clause 15(2) (protection of third parties dealing with guardian who, unknown to them, no longer has authority by virtue of a revocation or variation of the order) .
- 49 As potential circumstances in which clause 16 and the schedule may apply are diverse, it is possible that situations may arise that have not been foreseen. Clause 16(5) – (7) therefore allow the Secretary of State to make regulations relating to situations where there are two or more guardians. These regulations may modify the application of the Act as it applies in those cases. The regulations would be made by statutory instrument following prior approval by both Houses of Parliament.

Clause 17: Supervision of guardians by the Public Guardian

- 50 The Public Guardian is appointed by the Lord Chancellor under section 57 of the Mental Capacity Act 2005. As the Chief Executive and Accounting Officer of the Office of the Public Guardian (OPG), the Public Guardian is personally responsible to the Lord Chancellor and Secretary of State for Justice for the effective operation of the agency, including the way the agency spends public money and manages its assets. The Public Guardian is supported by OPG in the delivery of his statutory functions under the Mental Capacity Act 2005. The Public Guardian's responsibilities extend throughout England and Wales. Guardians are to be supervised by the Public Guardian in very similar manner to Deputies appointed by the Court of Protection under section 16 of the Mental Capacity Act 2005 in relation to the property and affairs of a person lacking mental capacity. Although there are important differences between the nature of the appointment of a guardian and a Deputy and how best interests are determined, they may both be required to take decisions about the management and use of another person's property and affairs and to make those decisions on the basis of the best interests of that person.

- 51 Clause 17 therefore amends section 58 of the Mental Capacity Act 2005 to add this new responsibility to the role of the Public Guardian. The content of the proposed new section 58(2A) is closely based on the provision already in section 58(1) in relation to Deputies.
- 52 Regulations made by the Lord Chancellor under section 58(3) of the Mental Capacity Act 2005 as amended by clause 17(3) may confer other functions on the Public Guardian in relation to the Bill or make provision in connection with the discharge by him of his functions under the Bill. Section 58(4) provides that regulations made under it may include provision as to the charging of fees.
- 53 Unlike Deputies, who can be responsible for decisions about the personal welfare of the person lacking capacity, guardians would only be responsible for the property and financial affairs of a missing person. Clause 17(5) therefore restricts section 58(5) of the Mental Capacity Act 2005, which enables the Public Guardian to examine medical records, to his functions in relation to lasting powers of attorney and Deputies.

Clause 18: Missing person's best interests

- 54 The concept of the court and the guardian acting in the best interests of the missing person is an important feature of the Bill. Ascertaining what is in the best interests of the missing person requires the ability to adapt to different circumstances. Clause 18 sets out how the best interests of the missing person are to be decided. It draws in particular on section 4 of the Mental Capacity Act 2005.
- 55 The starting point is that the court or guardian must consider all the circumstances of which they are aware (clause 18(1)(a)). Although they are not bound to reach the same decision as the missing person is likely to have made, they must consider, as far as the factors in question can reasonably be identified, the factors that the missing person would be likely to have considered (clause 18(2) and (5)(a)). They must also take into account the views of people with an interest in the decision so far as it is reasonable and practicable to do so (clause 18(3)).
- 56 It is clear from the rights and powers that may be conferred on the guardian that the guardian may use the missing person's property for the benefit and maintenance of third parties.
- 57 In order for the bill to operate effectively The court and guardians should be able to apply the best interests test with the minimum practical difficulty. How this can be achieved may only become apparent as the proposals for the scheme of guardianship are developed in more detail and experience is gained. Clause 18(6)-(8) seeks to allow the benefit of these lessons to be applied generally, by enabling the Secretary of State to make regulations to state when making an order or taking an action of a specified kind is or is not in the best interests of a missing person. The content of regulations under these provisions has not yet been decided. The regulations will be made by statutory instrument following prior approval of the draft by both Houses of Parliament.

Clause 19: Requirement for applicants to have sufficient interest

- 58 Under clause 19(1) the court (clause 23) can refuse an application for any of the orders listed in clause 19(2) if it considers that the applicant does not have a sufficient interest in the property and affairs of the missing person. For these purposes, however, the persons listed in subsection (3) cannot be refused for lack of a sufficient interest in relation to the types of application specified. Siblings are defined in clause 24(1).

Clause 20: Giving notice of applications

- 59 Subsection (1) provides for rules of court to specify the giving of notice and the placing of advertisements for persons who may be interested in the appointment of a guardian to be made aware of applications to the court to make, vary or revoke an order. In the normal course

of events the court will be able to ascertain if the required notices and advertisements have been given and must refuse to hear an application if it thinks they have not been given (subsection (3)) but failure to give the required notices or advertisements is not of itself to invalidate the order (subsection (4)). Rules of court may extend the requirements for notice and advertisement to other applications under the Bill and where the court proposes making, varying or revoking a guardianship order of its own motion (as opposed to on application) (subsection (5)).

Clause 21: Right to intervene

60 Where court proceedings in relation to guardianship are ongoing people who were not parties to the original application may want to join in. Apart from the people listed in subsection (1) prospective interveners will need the court's permission (subsection (2)). Applications for permission to intervene by a person without a sufficient interest in relation to the missing person's property or financial affairs will be rejected by the court (clause 21(3)). Siblings are defined in clause 24(1).

Clause 22: Codes of practice

61 This clause provides for the Lord Chancellor to make and revise a code or codes of practice for guardians and others (subsection (1)). Guardians will be under an obligation to have regard to any relevant code and courts and tribunals conducting legal proceedings will have regard to the content of the code and any breach of it (subsections (2) and (3)). The codes of practice and any revisions will only be able to be issued if they have been laid before both Houses of Parliament for 40 days and neither House has resolved not to approve them (subsection (7)). The codes must be published in such manner as the Lord Chancellor thinks fit to bring them to the attention of people likely to be affected by them (subsection (8)). This clause is modelled on sections 42 and 43 of the Mental Capacity Act 2005.

Clause 23: The court

62 The Lord Chancellor must, after consulting the Lord Chief Justice (or his delegate), make regulations by statutory instrument to designate either the High Court or the Court of Protection to exercise the functions of the court under the Bill. The requirement to consult is found in other similar legislation conferring jurisdiction on particular parts of the court system (see section 1 of the Courts and Legal Services Act 1990). The regulations will be made subject to either House of Parliament resolving to annul them.

Clause 24: Interpretation

63 To cover situations where the guardian's appointment has ended subsection (1) defines a guardian as a person appointed under the Bill. Similarly, subsection (2) extends the definition of a missing person so that it will still apply in the provisions mentioned after the missing person has returned.

Clause 25: Extent, commencement and short title

64 The Bill applies to England and Wales only. The Bill is to be brought into force on a date to be fixed by the Secretary of State by regulations save for the provisions mentioned in subsection (2) which relate to powers to make regulations, which will come into force on Royal Assent.

Commencement

- 65 No date has been set by which the Bill must be in force, but commencement will be conditional on the making of secondary legislation.

Financial implications of the Bill

- 66 An impact assessment has been prepared in relation to the Bill. It estimates that there could potentially be between 50 and 300 appointments of guardians annually, but that it is probably more likely that there will be between 50 and 100, subject to the possibility of an early spike in respect of existing demand when the system is introduced. It is expected that court fees will be charged for all applications subject to standard remissions and exemptions. Similar applications attract court fees of £400-£530. Fees will also be payable to the Public Guardian. The analogous supervision fee for Deputies appointed under the Mental Capacity Act 2005 is £320 p.a. No decision has been taken on the basis or level at which fees in relation to guardianship will be set but is expected they will be set on a basis that is no lower than full cost recovery.
- 67 Court and Office of the Public Guardian systems (including IT) will have to be adapted to support the new guardianship applications. On the assumptions used in the impact assessment these transition costs are estimated to be about £456,000. Ongoing costs are expected to be met from fees. Businesses, for example, banks and other financial institutions, will also need to adapt their systems but the costs of doing so are expected to be small. They will also incur some ongoing costs but these will be offset by the benefits of a structured system reducing the need for ad hoc arrangements as created at present, where there is no clear legal solution. They may also decide to charge fees. If they do not, the impact assessment estimates that they may incur costs of about £200,000 annually in carrying out know your customer due diligence for anti-money laundering purposes (subject to a spike following commencement if there is existing demand to use the new system).

Parliamentary approval for financial costs or for charges imposed

- 68 Neither a money resolution nor a Ways and Means resolution is required for the Bill.

Compatibility with the European Convention on Human Rights

- 69 The articles of the Convention potentially engaged are: articles 6 (fair hearing) and 8 (right to private and family life) and article 1 of Protocol 1 (peaceful enjoyment of property). In the opinion of the Member in Charge the provisions of the Bill are compatible with the Convention Rights.

Related documents

70 The following documents are relevant to the Bill and can be read at the stated locations:

- Impact assessment – an impact assessment will be published by the Ministry of Justice
- Consultation paper and response
<https://www.gov.uk/government/consultations/guardianship-of-the-property-and-affairs-of-missing-persons>
- The Justice Committee, which recommended legislation to introduce guardianship in its Twelfth Report of the 2010-2012 Session on Presumption of Death.
<http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/news/publication-of-presumption-of-death-report/>

Annex A – Territorial extent and application in the United Kingdom

The Bill extends and applies to England and Wales only.¹

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Legislative Consent Motion needed?
Whole Bill Clauses 1 – 25	Yes	Yes	No	No	No

¹ References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

GUARDIANSHIP (MISSING PERSONS) BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Guardianship (Missing Persons) Bill as brought from the House of Commons on 27 March 2017 (HL Bill 117).

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