

## **Civil Aspects of Missing Persons**

In 2013, the Commission published a [Report on Civil Law Aspects of Missing Persons](#) (LRC 106-2013) (Third Programme of Law Reform, Project 37), which followed a [Consultation Paper on the Civil Law Aspects of Missing Persons](#) (LRC CP 64-2011). The Report made 19 recommendations for reform of the law and also contains a draft *Civil Law (Missing Persons) Bill* to implement these.

### **Immediate problems when a person goes missing: How to pay bills**

Having talked to representatives of missing persons during the consultation process leading up to finalising the Report, the Commission concluded that there is a need to have a statutory framework to deal with some immediate practical problems for family members (often referred to as those left behind). In particular, there is a need to allow access to a missing person's bank account (especially where the bank account is in his or her sole name) so that bills can be paid. The Commission therefore recommends that legislation should be enacted to allow the family left behind to apply to the Circuit Court after a person has been missing for 90 days to allow interim management of the missing person's property. This would allow the family to pay bills or, for example, to renew insurance on a car or motorbike. This process could be in place for up to 2 years (with a possible extension of 2 more years).

### **Presumption of Death Orders**

The current law is primarily based on a long-established rule that there is a presumption that a missing person is alive for up to 7 years, and that a presumption of death applies after 7 years. These are rebuttable presumptions, which means that a person can be presumed dead where they have been missing for less than 7 years, and an absence of 7 years does not always lead to a declaration of presumed death. The current law is limited in that family members may apply to the High Court to have the estate of the missing persons administered, but this does not allow them to obtain a death certificate. In some cases, an inquest can be held involving a missing person; and if it is almost certain that the missing person has died, a coroner can then make a declaration of death under the *Coroners Act 1962*, which allows the family to obtain a death certificate. This has already occurred in a number of instances under Irish legislation and comparable legislation in other jurisdictions.

The Commission's Report recommends reform of the law on presumed death, in particular to ensure that families can deal as far as possible in the least expensive way with the emotional trauma of their loved one going missing. This would include clarifying the existing law on inquests to allow families of missing persons to apply for a coroner's inquest and to have a declaration of presumed death; this would apply to cases where death is virtually certain. In cases where death is highly probable the Commission recommends that an application to the Circuit Court would be needed to provide not only for the administration of the missing person's estate but also to make a presumption of death order, allowing the family of the missing person to obtain a death certificate. This would have the same legal effect as any other death certificate. The Commission recommends that, as far as possible, the law in the State should

mirror the provisions of the 2009 Northern Ireland legislation, so that any cases involving "the Disappeared" that might be dealt with in the State would be based on a similar legal framework.