

Has someone you know gone missing?

A brief guide to Coroners, Presumption of Death and Leave to Swear Death procedures

Factsheet 12

In England and Wales, Coroners can apply to hold an inquest for a long term missing person where there is reason to believe that a missing person is dead, the circumstances indicate there should be a Coroner's investigation into the likely death and no Coroner's investigation has been carried out or is being carried out. If you feel that you would like a Coroner to become involved in the case of a long term missing person, you should seek the advice of a solicitor before proceeding further.

The process

When would a Coroner be used?

If death occurs in any of the following circumstances, the doctor may report it to the Coroner:

- After an accident or injury
- Following an industrial disease (a chronic ailment that occurs as a result of work or occupational activity, e.g. asbestosis, skin diseases, etc)
- During a surgical operation
- Before recovery from anaesthetic
- If the cause of death is unknown
- If the death was violent or unnatural
- If the death was sudden and unexpected.

Anyone who is concerned about the cause of a death can inform a Coroner about it, but in

most cases, the death will be reported to the Coroner by the doctor or the police.

What happens once a death is reported to the Coroner?

The Coroner may be the only person to certify the cause of death. The Coroner will decide whether there should be further investigation into the death and the Registrar cannot register the death until they have been notified of the Coroner's decision.

What is an inquest and when would one be held?

An inquest is a legal enquiry into the medical cause and circumstances of death. It is held in public – sometimes with a jury – by a Coroner, in cases where the death was:

- Violent or unnatural
- Took place in prison or police custody
- The cause of death is still uncertain after a post-mortem.

Coroners hold inquests in these circumstances even if the death occurred abroad (and the body is returned to Britain). If a body is lost, the Coroner can hold an inquest by order of the Secretary of State if the death is likely to have occurred in or near a Coroner's area of jurisdiction.

If an inquest is held, the Coroner must inform:

- The married or civil partner of the deceased

- the nearest relative (if different from above)
- the personal representative (if different from above).

What happens if someone has died but no body has been found?

Where no body has been found, no death certificate and therefore no Grant (which allows the Executors or Administrators to distribute the person's assets and deal with any liabilities) can be obtained. The missing person's assets will be frozen and no one can claim inheritance or sell any of the missing person's assets.

What can be done if I think that a member of my family or a friend has died but no body has been found?

If there is no body, the Coroner can apply to the Secretary of State to hold an inquest under s.15 of the Coroner's Act 1988. The decision of whether to apply to hold an inquest is one for the Coroner, based on their belief that the person is likely to be dead and that sufficient time has elapsed. The Home Office will not consider any application which has not allowed time for the body to be recovered. At present, it is unclear as to what is regarded as 'sufficient time' and this is open to each Coroner to interpret.

What is the process when applying for an inquest in the absence of a body?

- I. The Coroner must apply to the Secretary of State in writing, stating that they believe the person to be dead and that they are dead in circumstances requiring an inquest (The Home Office requires copies of witness statements detailing the deceased's last sighting, frame of mind, etc and any other documentary evidence to support the case, i.e. bank statements)
- II. The Coroner has to evidence why they believe the missing person's body may be within their district, even though no body has been found, in order to hold the inquest

III. The Coroner believes death occurred in or near their district but the body no longer exists or cannot be retrieved

IV. If a request to hold an inquest without a body is granted, then the inquest will be held as normal.

If an inquest is held, can I deal with the missing person's assets?

Once the inquest has been held and a verdict reached, the death certificate may be obtained. It is the death certificate that will allow you to deal with the missing person's assets and liabilities.

What happens if the request to hold an inquest without a body is refused?

If the inquest is refused, there is still the possibility of obtaining a Presumption of Death and/or a Leave to Swear Death Order. A Presumption of Death Order is a court ruling stating that the person is deceased in the absence of a body or remains. Once there has been a presumption of death, a Leave to Swear Death Order will allow you to deal with that person's assets.

Presumption of Death Orders

What are the requirements for obtaining a Presumption of Death Order?

If there is no acceptable affirmative evidence that a person was alive at some time during a continuous period of seven years or more and it can be proved:

- That there are persons who would be likely to have heard of him/her over that period
- That those persons have not heard of him/her; and
- That all due enquiries have been made appropriate to the circumstances, without result, then the presumption of law is that the person died within that period.

In exceptional circumstances, the Presumption of Death Order may be obtained earlier.

When could a Presumption of Death Order be obtained earlier than a continuous period of seven years?

The issue whether a person is to be presumed dead is dependant on the circumstances of the case. The Court will allow the death of a missing person (testator) to be sworn after a disappearance of less than seven years on proof of sufficient enquiries. For example, for incidents such as plane crashes and the World Trade Center attack, a Presumption of Death Order could be obtained much earlier than the 7 year period, so long as it can be proved that the person was there on the day and the body cannot be found.

Leave to Swear to the Death

Once I have a Presumption of Death Order, will I be allowed to deal with the missing person's assets?

No. An application must also be made for Leave to Swear to the Death where there is no direct evidence of death. There is no seven year period in which you have to wait before this can be applied for.

How would I get Leave to Swear Death?

An application for Leave to Swear to the Death of a missing person may be made to a district judge or registrar. The application must be supported by an affidavit (a formal sworn statement of fact which is signed and witnessed), setting out the grounds of the application and containing particulars of any life insurance policies in the name of the missing person, together with such further evidence as the district judge or registrar may request.

What information would the affidavit need to contain?

The affidavit should generally state:

- When and in what circumstances the person who has disappeared was last seen or heard of
- Whether any advertisements have been inserted for the purpose of ascertaining his/her whereabouts and if so, in what newspapers and with what result

- The applicant's belief that the alleged deceased is dead
- Whether any letters have been received from him/her
- Whether s/he left any Will or died without a Will or similar declaration
- Who may be entitled to the assets when there is no Will or declaration
- If there is real estate and the death occurred before 1926, who is legally entitled to the assets
- Particulars of the estate.

The district judge or registrar must be satisfied that all reasonable enquiries have been made by the police and other appropriate agencies to locate the missing person.

Coroner's involvement

If a Presumption of Death Order or Leave to Swear Death is granted, will the missing person then be reported to the Coroner?

No. A case will only be referred to the Coroner where there is reason to believe that the missing person is likely to be dead, the circumstances indicate that there should be a Coroner's investigation into the likely death and no Coroner's investigation has been carried out or is being carried out.

References

The information provided here is meant as a guide only and formal legal advice should be sought from a solicitor if required.

The full Coroner's Act 1988 is available from the National Archives website at www.legislation.gov.uk/ukpga/1988/13/contents. Sections 8 and 15 are provided here for reference purposes.

Coroner's Act 1988

Section 8: Duty to hold Inquest

(1) Where a coroner is informed that the body of a person ("the deceased") is lying within his district, and there is reasonable cause to suspect that the deceased -

- a) Has died a violent or an unnatural death
- b) Has died a sudden death of which the cause is unknown; or
- c) Has died in prison or in such a place or in such circumstances as to require an inquest under any other Act,

Then, whether the cause of death arose within his district or not, the coroner shall as soon as practicable hold an inquest into the death of the deceased either with, or subject to subsection (3) below, without a jury.

Section 15: Inquest where a body destroyed or irrecoverable

(1) Where a Coroner has reason to believe -

- a) That a death has occurred in or near his district in such circumstances that an inquest ought to be held; and
- b) That owing to the destruction of the body by fire or otherwise, or to the fact that the body is lying in a place from which it cannot be recovered, an inquest cannot be held except in pursuance of this section, he may report the facts to the Secretary of State.

(2) Where a report is made under subsection (1) above, the Secretary of State may, if he considers it desirable to do so, direct a coroner (whether the coroner making the report or another) to hold an inquest into the death.

(3) Where a coroner is directed under this section to hold an inquest, the provisions of this Act and the law relating to coroners and coroner's inquests shall apply with such modifications as may be necessary in consequence of the inquest being one into the death of a person whose body does not lie within the coroner's district.

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The information in this guide is not definitive and should be utilised in conjunction with police guidance and independent legal advice.

If you require more information, other factsheets can be downloaded:
www.missingpersons.police.uk.