

**Guide to the Registration of
Deaths (Temporary
Provisions)(Amendment)
Act, No. 16 of 2016**

**Centre for Policy
Alternatives
October 2016**



CENTRE FOR POLICY ALTERNATIVES

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The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

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Guide to the Registration of Deaths (Temporary Provisions)(Amendment) Act, No. 16 of 2016

by

Centre for Policy Alternatives

October 2016

The Parliament of Sri Lanka unanimously enacted into legislation the Registration of Deaths (Temporary Provisions)(Amendment) Act on 25 August 2016. This legislation provides for the issuing of Certificates of Absence (CoA). The present guide briefly sets out key aspects of the legislation.

Certificates of Absence are critically important for victims at both the symbolic and practical level. It is an official documentation by the state recognizing that a significant number of people are still either disappeared or missing. This is also an important step for families who continue to search for disappeared and missing loved ones, in the hope of finding their loved one alive. At a practical level, the Certificate of Absence facilitate in obtaining benefits, deal with property and other issues, listed below.

The Centre for Policy Alternatives (CPA) has advocated for a range of reforms with transitional justice including championing the introduction of Certificates of Absence. The present legislation is a welcome step forward in addressing the challenges faced by families of disappeared and missing loved ones and CPA urges the authorities to implement the legislation without any further delays. For more information on Certificates of Absence, please read documentation on the issue prepared by CPA available at www.cpalanka.org and www.tjsrilanka.org

Criteria to apply for a Certificate of Absence (CoA)

Section 8A (1) states that a Certificate of Absence can be applied for any person who is reported missing and has not been heard of for a period of more than one year.

As per Section 8A (1), the disappearance should be attributable to:

- The conflict which took place in the Northern and Eastern Provinces or its aftermath,
- Or political unrest or civil disturbances or enforced disappearances
- Or is a member of the armed forces or police who is identified as missing in action

Who can apply for a CoA?

A relative can apply for the Certificate of Absence. (Section 8A (1))

As per Section 14, a 'relative' shall include the following persons:-

- (i) Spouse;
- (ii) (ii) Children including adopted children, non-marital children, or step children;
- (iii) (iii) Parents (including step-mother, step-father, adopter);
- (iv) (iv) Full or half brothers or sisters or adopted brothers or sisters;
- (v) (v) Father-in-law/mother-in-law, brothers/sisters-in law, sons/daughters-in-law;
- (vi) (vi) Grandchildren and grandparents.

What are the documents required?

Section 8B states that the applicant will be required to attach the following documents:

- An affidavit giving the grounds on which the applicant believes that the person to be registered is missing
- A Report of the Grama Niladhari of the Grama Niladhari Division in which the person who is sought to be registered as missing was last resident or had his permanent residence, confirming that such person has not been seen or heard of, for a period of over one year
- Any other evidence to support the application

What is the procedure?

Section 8A (2) provides that the application should be forwarded to Registrar-General or the District Registrar of the District in which such missing person was last resident or had his permanent residence.

Section 8C - The Registrar-General or the District Registrar should display a copy of such application for two weeks on the notice board at his office and in the office of the relevant Grama Niladhari.

Section 8D - Objection to the registration of such person as missing or to the appointment of the relative must be raised within a month from the date on which the notice is displayed. The objection should be supported by:

- An Affidavit of the objector and of any other person, giving the grounds for their objections
- Evidence in support of such objections.

Following the expiry of one month, the District Registrar or the Register General should consider the application, any evidence tendered and objections raised. The District Registrar or the Register General can also question any person or call for evidence. Following this, if satisfied of the truth of the application, the application will be allowed.

The District Registrar shall enter the details in the Register of Missing persons and issue a Certificate of Absence to the relative. The Registrar General shall enter the relevant details into an electronic register as per Section 8H (1).

For persons found to be missing by a Commission/Special Presidential Commission/Office of Missing Persons (Section 8G)

If a person is found to be missing or disappeared by:

- A Commission appointed under the Commissions of Inquiry Act (Chapter 393)
- Or a Special Presidential Commission of Inquiry established under the Special Presidential Commission Law, No. 7 of 1978
- Or the Office on Missing Persons established under the Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No. of 2016

The relative of that person can apply for a Certificate of Absence from the Registrar-General or to the District Registrar in which that person was last residing or had his permanent residence. The application should be accompanied by:

- An affidavit giving the grounds on which the applicant believes that the person to be registered is missing
- A certified copy of the findings of the Commission of Inquiry or Special Presidential Commission of Inquiry or the Interim Report or Report of the Office on Missing Persons, relating to such missing person.

The District Registrar should send a report with the details to the Registrar General, who will consider the report and direct the District Register to register the person in the Register of Missing Persons and to issue a Certificate of Absence. The Registrar General should enter the details in the electronic register.

The Certificate of Absence can be used by the relative for any of the following:

- Apply for benefits under any social welfare program
- To temporarily manage property and assets of the missing person under the District Court and to be a the provisional guardian of any dependent children of the missing person.

Section 8J (2) provides that all institutions and persons in authority shall recognize and accept the Certificate of Absence as proof of the status of the person missing.

Appeals

An applicant who is dissatisfied with the decision of the District Registrar can appeal within one month to the Registrar General. Section 8F further provides that an applicant who is dissatisfied with the decision of the Registrar General, or a person who objects to the application, can appeal to the District Court within one month.

Validity

According to Section 5(2) the period of operation of the relevant provisions can be extended up to five years. This extension should be effected by Order published in the Gazette not less than one month prior to the date of expiry of the Act.

Section 8K (1) states that the Certificate of Absence shall be valid for a period of two years from the date specified therein.

If any remains of the missing person is recovered or other conclusive evidence is discovered regarding the death of the missing person, in such instances the Certificate of Absence shall be annulled and a Certificate of Death shall be issued.

If the Missing Person is found to be alive, the District Registrar shall accordingly take action to cancel the registration and annul the Certificate of Absence.

At the end of two years, the District Registrar shall inquire concerning the status of the missing person from the relative, and one of these options will be available:

- Extend the period of the Certificate of Absence for another period of two years
- If the relative is willing, the relative can apply for a Certificate of Death and the Certificate of Absence and the registration as a missing person shall be cancelled.
- The Certificate of Absence can be cancelled if the relative does not wish to extend for another two years

Certificate of Death

Under Section 8 of the Registration Of Deaths (Temporary Provisions) Act (No. 17 of 2005), a Certificate of Death can be obtained for those who are reported as missing or disappeared. However, Section 7 of this Amendment provides that if a Certificate of Absence is issued in respect of a missing person, a Certificate of Death will not be issued for the same missing person, until the Certificate of Absence is cancelled.

Converting a Certificate of Death to a Certificate of Absence

Section 8L provides for a process where relatives of missing persons have previously received Certificates of Death or have applied for Certificates of Death in relation to a missing person, they can now make an application for a Certificate of Absence as provided in Section

8G (1). The Registrar-General shall cancel such Certificate of Death or such application for a Certificate of Death and instead issue a Certificate of Absence.

Offences

Offences would include failure to furnish information to the Registrar General, if it is known that the person registered as missing, is in fact alive. It is also an offence to dishonestly or fraudulently uses a Certificate of Absence issued under this Act knowing or having reason to believe that the person referred to in such Certificate is alive.