



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 2

#### THE COURT OF PROTECTION AND THE PUBLIC GUARDIAN

##### *Practice and procedure*

#### **50 Applications to the Court of Protection**

- (1) No permission is required for an application to the court for the exercise of any of its powers under this Act—
- (a) by a person who lacks, or is alleged to lack, capacity,
  - (b) if such a person has not reached 18, by anyone with parental responsibility for him,
  - (c) by the donor or a donee of a lasting power of attorney to which the application relates,
  - (d) by a deputy appointed by the court for a person to whom the application relates, or
  - (e) by a person named in an existing order of the court, if the application relates to the order.
- (1A) [<sup>F1</sup>Nor is permission required for an application to the court under section 21ZA by any independent mental capacity advocate or appropriate person representing and supporting the cared-for person (see Part 5 of Schedule AA1).]
- <sup>F2</sup>(2) But, subject to Court of Protection Rules and to paragraph 20(2) of Schedule 3 (declarations relating to private international law), permission is required for any other application to the court.
- (3) In deciding whether to grant permission the court must, in particular, have regard to—
- (a) the applicant's connection with the person to whom the application relates,
  - (b) the reasons for the application,

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- (c) the benefit to the person to whom the application relates of a proposed order or directions, and
  - (d) whether the benefit can be achieved in any other way.
- (4) “Parental responsibility” has the same meaning as in the Children Act 1989 (c. 41).

#### **Textual Amendments**

- F1** S. 50(1A) substituted (16.5.2019 for specified purposes) by [Mental Capacity \(Amendment\) Act 2019](#) (c. 18), s. 6(3), [Sch. 2 para. 10](#)
- F2** S. 50(1A) inserted (1.4.2009) by [Mental Health Act 2007](#) (c. 12), ss. 50, 56, [Sch. 9 para. 9](#); S.I. 2009/139, [art. 2\(e\)](#) (with [art. 3](#))

## **51 Court of Protection Rules**

[<sup>F3</sup>(1) Rules of court with respect to the practice and procedure of the court (to be called “Court of Protection Rules”) may be made in accordance with Part 1 of Schedule 1 to the Constitutional Reform Act 2005.]

<sup>F3</sup>(2) Court of Protection Rules may, in particular, make provision—

- (a) as to the manner and form in which proceedings are to be commenced;
- (b) as to the persons entitled to be notified of, and be made parties to, the proceedings;
- (c) for the allocation, in such circumstances as may be specified, of any specified description of proceedings to a specified judge or to specified descriptions of judges;
- <sup>F4</sup>(d) .....
- (e) for enabling the court to appoint a suitable person (who may, with his consent, be the Official Solicitor) to act in the name of, or on behalf of, or to represent the person to whom the proceedings relate;
- (f) for enabling an application to the court to be disposed of without a hearing;
- (g) for enabling the court to proceed with, or with any part of, a hearing in the absence of the person to whom the proceedings relate;
- (h) for enabling or requiring the proceedings or any part of them to be conducted in private and for enabling the court to determine who is to be admitted when the court sits in private and to exclude specified persons when it sits in public;
- (i) as to what may be received as evidence (whether or not admissible apart from the rules) and the manner in which it is to be presented;
- (j) for the enforcement of orders made and directions given in the proceedings.

(3) Court of Protection Rules may, instead of providing for any matter, refer to provision made or to be made about that matter by directions.

(4) Court of Protection Rules may make different provision for different areas.

#### **Textual Amendments**

- F3** S. 51(1) substituted (3.4.2006) by [The Lord Chancellor \(Transfer of Functions and Supplementary Provisions\) \(No.2\) Order 2006](#) (S.I. 2006/1016), arts. 1, 2, [Sch. 1 para. 34](#)

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**F4** S. 51(2)(d) omitted (6.4.2020) by virtue of [Courts and Tribunals \(Judiciary and Functions of Staff\) Act 2018 \(c. 33\)](#), s. 4(3), [Sch. para. 38](#) (with savings in S.I. 2020/100, reg. 3); S.I. 2020/24, reg. 3(b)

## **[<sup>F5</sup>52 Practice directions**

- (1) Directions as to the practice and procedure of the court may be given in accordance with Part 1 of Schedule 2 to the Constitutional Reform Act 2005.
- (2) Practice directions given otherwise than under subsection (1) may not be given without the approval of—
  - (a) the Lord Chancellor, and
  - (b) the Lord Chief Justice.
- (3) The Lord Chief Justice may nominate any of the following to exercise his functions under this section—
  - (a) the President of the Court of Protection;
  - (b) a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005).]<sup>F5</sup>

### **Textual Amendments**

**F5** S. 52 substituted (3.4.2006) by [The Lord Chancellor \(Transfer of Functions and Supplementary Provisions\) \(No.2\) Order 2006 \(S.I. 2006/1016\)](#), arts. 1, 2, [Sch. 1 para. 35](#)

## **53 Rights of appeal**

- (1) Subject to the provisions of this section, an appeal lies to the Court of Appeal from any decision of the court.
- [<sup>F6</sup>(2) Court of Protection Rules may provide that, where a decision of the court is made by a specified description of person, an appeal from the decision lies to a specified description of judge of the court and not to the Court of Appeal.]
- <sup>F7</sup>(3) .....
- (4) Court of Protection Rules may make provision—
  - (a) that, in such cases as may be specified, an appeal from a decision of the court may not be made without permission;
  - (b) as to the person or persons entitled to grant permission to appeal;
  - (c) as to any requirements to be satisfied before permission is granted;
  - (d) that where a <sup>F8</sup>... judge of the court makes a decision on an appeal, no appeal may be made to the Court of Appeal from that decision unless the Court of Appeal considers that—
    - (i) the appeal would raise an important point of principle or practice, or
    - (ii) there is some other compelling reason for the Court of Appeal to hear it;
  - (e) as to any considerations to be taken into account in relation to granting or refusing permission to appeal.

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#### Textual Amendments

- F6** S. 53(2) substituted (12.2.2015) by [Criminal Justice and Courts Act 2015 \(c. 2\)](#), **ss. 62(2)**, 95(1)
- F7** S. 53(3) omitted (12.2.2015) by virtue of 2015 [Criminal Justice and Courts Act 2015 \(c. 2\)](#), ss. 62(3), 95(1)
- F8** Word in s. 53(4)(d) omitted (12.2.2015) by virtue of [Criminal Justice and Courts Act 2015 \(c. 2\)](#), **ss. 62(4)**, 95(1)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 58(4)(ca) inserted by [2023 c. 42 Sch. para. 10](#)
- Sch. 1 para. 4A inserted by [2023 c. 42 Sch. para. 3](#)
- Sch. 1 para. 10A and cross-heading inserted by [2023 c. 42 Sch. para. 6](#)
- Sch. 1 para. 13A inserted by [2023 c. 42 Sch. para. 7\(2\)](#)
- Sch. 1 para. 16(1A) inserted by [2023 c. 42 Sch. para. 8\(b\)](#)