



# 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.
- (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,
  - (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).

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*Status: This is the original version (as it was originally enacted).*

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## **51 Court of Protection Rules**

- (1) The Lord Chancellor may make rules of court (to be called “Court of Protection Rules”) with respect to the practice and procedure of the court.
- (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;
  - (d) for the exercise of the jurisdiction of the court, in such circumstances as may be specified, by its officers or other staff;
  - (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.

## **52 Practice directions**

- (1) The President of the Court of Protection may, with the concurrence of the Lord Chancellor, give directions as to the practice and procedure of the court.
- (2) Directions as to the practice and procedure of the court may not be given by anyone other than the President of the Court of Protection without the approval of the President of the Court of Protection and the Lord Chancellor.
- (3) Nothing in this section prevents the President of the Court of Protection, without the concurrence of the Lord Chancellor, giving directions which contain guidance as to law or making judicial decisions.

## **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.
- (2) Court of Protection Rules may provide that where a decision of the court is made by—
  - (a) a person exercising the jurisdiction of the court by virtue of rules made under section 51(2)(d),

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- (b) a district judge, or
- (c) a circuit judge,

an appeal from that decision lies to a prescribed higher judge of the court and not to the Court of Appeal.

- (3) For the purposes of this section the higher judges of the court are—
  - (a) in relation to a person mentioned in subsection (2)(a), a circuit judge or a district judge;
  - (b) in relation to a person mentioned in subsection (2)(b), a circuit judge;
  - (c) in relation to any person mentioned in subsection (2), one of the judges nominated by virtue of section 46(2)(a) to (c).
- (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 higher 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.