



Mental Capacity Act 2005

2005 CHAPTER 9

PART 2

THE COURT OF PROTECTION AND THE PUBLIC GUARDIAN

The Court of Protection

45 The Court of Protection

- (1) There is to be a superior court of record known as the Court of Protection.
- (2) The court is to have an official seal.
- (3) The court may sit at any place in England and Wales, on any day and at any time.
- (4) The court is to have a central office and registry at a place appointed by the Lord Chancellor [^{F1}, after consulting the Lord Chief Justice]^{F1}.
- (5) The Lord Chancellor may [^{F2}, after consulting the Lord Chief Justice,]^{F2} designate as additional registries of the court any district registry of the High Court and any county court office.

[^{F3}(5A) 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).]

^{F3}(6) The office of the Supreme Court called the Court of Protection ceases to exist.

Textual Amendments

- F1** Words in s. 45(4) inserted (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. 32(2)**

Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Cross Heading: The Court of Protection. (See end of Document for details)

- F2** Words in s. 45(5) inserted (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. 32(3)**
- F3** S. 45(5A) inserted (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. 32(4)**

46 The judges of the Court of Protection

- (1) Subject to Court of Protection Rules under section 51(2)(d), the jurisdiction of the court is exercisable by a judge nominated for that purpose by—
- (a) the [^{F4}Lord Chief Justice]^{F4}, or
 - [^{F5}(b) where nominated by the Lord Chief Justice to act on his behalf under this subsection—
 - (i) the President of the Court of Protection; or
 - (ii) a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005).]

^{F5}(2) To be nominated, a judge must be—

- (a) the President of the Family Division,
- (b) the [^{F6}Chancellor of the High Court],
- (c) a puisne judge of the High Court,
- (d) a circuit judge, ^{F7}...
- (e) a district judge.
- [^{F8}(f) a District Judge (Magistrates' Courts),]
- [^{F8}(g) a judge of the First-tier Tribunal, or of the Upper Tribunal, by virtue of appointment under paragraph 1(1) of Schedule 2 or 3 to the Tribunals, Courts and Enforcement Act 2007,]
- [^{F8}(h) a transferred-in judge of the First-tier Tribunal or of the Upper Tribunal (see section 31(2) of that Act),]
- [^{F8}(i) a deputy judge of the Upper Tribunal (whether under paragraph 7 of Schedule 3 to, or section 31(2) of, that Act),]
- [^{F8}(j) the Chamber President, or Deputy Chamber President, of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal,]
- [^{F8}(k) the Judge Advocate General,]
- [^{F8}(l) a Recorder,]
- [^{F8}(m) the holder of an office listed in the first column of the table in section 89(3C) of the Senior Courts Act 1981 (senior High Court Masters etc),]
- [^{F8}(n) a holder of an office listed in column 1 of Part 2 of Schedule 2 to that Act (High Court Masters etc),]
- [^{F8}(o) a deputy district judge appointed under section 102 of that Act or under section 8 of the County Courts Act 1984,]
- [^{F8}(p) a member of a panel of Employment Judges established for England and Wales or for Scotland,]
- [^{F8}(q) a person appointed under section 30(1)(a) or (b) of the Courts-Martial (Appeals) Act 1951 (assistants to the Judge Advocate General),]
- [^{F8}(r) a deputy judge of the High Court,]
- [^{F8}(s) the Senior President of Tribunals,]
- [^{F8}(t) an ordinary judge of the Court of Appeal (including the vice-president, if any, of either division of that court),]

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- [^{F8}(u) the President of the Queen's Bench Division,]
[^{F8}(v) the Master of the Rolls, or]
[^{F8}(w) the Lord Chief Justice.]
- (3) The [^{F9}Lord Chief Justice, after consulting the Lord Chancellor,]^{F9} must—
- (a) appoint one of the judges nominated by virtue of subsection (2)(a) to (c) to be President of the Court of Protection, and
 - (b) appoint another of those judges to be Vice-President of the Court of Protection.
- (4) The [^{F10}Lord Chief Justice, after consulting the Lord Chancellor,]^{F10} must appoint one of the judges nominated by virtue of subsection (2)(d) [^{F11}to (q)] to be Senior Judge of the Court of Protection, having such administrative functions in relation to the court as the Lord Chancellor [^{F12}, after consulting the Lord Chief Justice,]^{F12} may direct.

Textual Amendments

- F4** Words in s. 46(1)(a) 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. 33(2)**
- F5** S. 46(1)(b) 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. 33(3)**
- F6** Words in s. 46(2)(b) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 14 para. 5(3)**; [S.I. 2013/2200](#), art. 3(g)
- F7** Word in s. 46(2)(d) omitted (1.10.2013) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 14 para. 5(2)**; [S.I. 2013/2200](#), art. 3(g)
- F8** S. 46(2)(f)-(w) inserted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 14 para. 5(2)**; [S.I. 2013/2200](#), art. 3(g)
- F9** Words in s. 46(3) 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. 33(4)**
- F10** Words in s. 46(4) 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. 33(5)(a)**
- F11** Words in s. 46(4) substituted (1.10.2013) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 14 para. 5(4)**; [S.I. 2013/2200](#), art. 3(g)
- F12** Words in s. 46(4) inserted (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. 33(5)(b)**

Changes to legislation:

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