



Mental Capacity Act 2005

2005 CHAPTER 9

PART 2

THE COURT OF PROTECTION AND THE PUBLIC GUARDIAN

The Public Guardian

57 The Public Guardian

- (1) For the purposes of this Act, there is to be an officer, to be known as the Public Guardian.
- (2) The Public Guardian is to be appointed by the Lord Chancellor.
- (3) There is to be paid to the Public Guardian out of money provided by Parliament such salary as the Lord Chancellor may determine.
- (4) The Lord Chancellor may, after consulting the Public Guardian—
 - (a) provide him with such officers and staff, or
 - (b) enter into such contracts with other persons for the provision (by them or their sub-contractors) of officers, staff or services,as the Lord Chancellor thinks necessary for the proper discharge of the Public Guardian's functions.
- (5) Any functions of the Public Guardian may, to the extent authorised by him, be performed by any of his officers.

58 Functions of the Public Guardian

- (1) The Public Guardian has the following functions—
 - (a) establishing and maintaining a register of lasting powers of attorney,
 - (b) establishing and maintaining a register of orders appointing deputies,
 - (c) supervising deputies appointed by the court,

Status: Point in time view as at 01/10/2010.

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- (d) directing a Court of Protection Visitor to visit—
 - (i) a donee of a lasting power of attorney,
 - (ii) a deputy appointed by the court, or
 - (iii) the person granting the power of attorney or for whom the deputy is appointed (“P”),
 and to make a report to the Public Guardian on such matters as he may direct,
 - (e) receiving security which the court requires a person to give for the discharge of his functions,
 - (f) receiving reports from donees of lasting powers of attorney and deputies appointed by the court,
 - (g) reporting to the court on such matters relating to proceedings under this Act as the court requires,
 - (h) dealing with representations (including complaints) about the way in which a donee of a lasting power of attorney or a deputy appointed by the court is exercising his powers,
 - (i) publishing, in any manner the Public Guardian thinks appropriate, any information he thinks appropriate about the discharge of his functions.
- (2) The functions conferred by subsection (1)(c) and (h) may be discharged in co-operation with any other person who has functions in relation to the care or treatment of P.
- (3) The Lord Chancellor may by regulations make provision—
- (a) conferring on the Public Guardian other functions in connection with this Act;
 - (b) in connection with the discharge by the Public Guardian of his functions.
- (4) Regulations made under subsection (3)(b) may in particular make provision as to—
- (a) the giving of security by deputies appointed by the court and the enforcement and discharge of security so given;
 - (b) the fees which may be charged by the Public Guardian;
 - (c) the way in which, and funds from which, such fees are to be paid;
 - (d) exemptions from and reductions in such fees;
 - (e) remission of such fees in whole or in part;
 - (f) the making of reports to the Public Guardian by deputies appointed by the court and others who are directed by the court to carry out any transaction for a person who lacks capacity.
- (5) For the purpose of enabling him to carry out his functions, the Public Guardian may, at all reasonable times, examine and take copies of—
- (a) any health record,
 - (b) any record of, or held by, a local authority and compiled in connection with a social services function, and
 - (c) any record held by a person registered under Part 2 of the Care Standards Act 2000 (c. 14) [^{F1}or Chapter 2 of Part 1 of the Health and Social Care Act 2008]^{F1},
- so far as the record relates to P.
- (6) The Public Guardian may also for that purpose interview P in private.

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Textual Amendments

F1 Words in s. 58(5)(c) inserted (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), **art. 17(5)**

59 Public Guardian Board

- (1) There is to be a body, to be known as the Public Guardian Board.
- (2) The Board's duty is to scrutinise and review the way in which the Public Guardian discharges his functions and to make such recommendations to the Lord Chancellor about that matter as it thinks appropriate.
- (3) The Lord Chancellor must, in discharging his functions under sections 57 and 58, give due consideration to recommendations made by the Board.
- (4) ^{F2}.....
- (5) The Board must have—
 - (a) at least one member who is a judge of the court, and
 - (b) at least four members who are persons appearing to the Lord Chancellor to have appropriate knowledge or experience of the work of the Public Guardian.
- [^{F3}(5A) Where a person to be appointed as a member of the Board is a judge of the court, the appointment is to be made by the Lord Chief Justice after consulting the Lord Chancellor.
- (5B) In any other case, the appointment of a person as a member of the Board is to be made by the Lord Chancellor.]
- ^{F3}(6) The Lord Chancellor may by regulations make provision as to—
 - (a) the appointment of members of the Board (and, in particular, the procedures to be followed in connection with appointments);
 - (b) the selection of one of the members to be the chairman;
 - (c) the term of office of the chairman and members;
 - (d) their resignation, suspension or removal;
 - (e) the procedure of the Board (including quorum);
 - (f) the validation of proceedings in the event of a vacancy among the members or a defect in the appointment of a member.
- (7) Subject to any provision made in reliance on subsection (6)(c) or (d), a person is to hold and vacate office as a member of the Board in accordance with the terms of the instrument appointing him.
- (8) The Lord Chancellor may make such payments to or in respect of members of the Board by way of reimbursement of expenses, allowances and remuneration as he may determine.
- (9) The Board must make an annual report to the Lord Chancellor about the discharge of its functions.
- [^{F4}(10) 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;

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- (b) a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005).^{F4]}

Textual Amendments

- F2** S. 59(4) omitted (3.4.2006) by virtue of The Lord Chancellor (Transfer of Functions and Supplementary Provisions) (No.2) Order 2006 (S.I. 2006/1016), arts. 1, 2, **Sch. 1 para. 36(2)**
- F3** S. 59(5A)(5B) 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. 36(3)**
- F4** S. 59(10) 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. 36(4)**

60 Annual report

- (1) The Public Guardian must make an annual report to the Lord Chancellor about the discharge of his functions.
- (2) The Lord Chancellor must, within one month of receiving the report, lay a copy of it before Parliament.

Status:

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