



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 2

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

##### *The Court of Protection*

#### **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 [<sup>F1</sup>Lord Chief Justice]<sup>F1</sup>, or
  - [<sup>F2</sup>(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).]

<sup>F2</sup>(2) To be nominated, a judge must be—

- (a) the President of the Family Division,
- (b) the [<sup>F3</sup>Chancellor of the High Court],
- (c) a puisne judge of the High Court,
- (d) a circuit judge, <sup>F4</sup>...
- (e) a district judge.
- [<sup>F5</sup>(f) a District Judge (Magistrates' Courts),]
- [<sup>F5</sup>(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,]
- [<sup>F5</sup>(h) a transferred-in judge of the First-tier Tribunal or of the Upper Tribunal (see section 31(2) of that Act),]
- [<sup>F5</sup>(i) a deputy judge of the Upper Tribunal (whether under paragraph 7 of Schedule 3 to, or section 31(2) of, that Act),]

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*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 46. (See end of Document for details)*

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- [<sup>F5</sup>(j) the Chamber President, or Deputy Chamber President, of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal,]
  - [<sup>F5</sup>(k) the Judge Advocate General,]
  - [<sup>F5</sup>(l) a Recorder,]
  - [<sup>F5</sup>(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 ), ]
  - [<sup>F5</sup>(n) a holder of an office listed in column 1 of Part 2 of Schedule 2 to that Act (High Court Masters etc ), ]
  - [<sup>F5</sup>(o) a deputy district judge appointed under section 102 of that Act or under section 8 of the County Courts Act 1984,]
  - [<sup>F5</sup>(p) a member of a panel of Employment Judges established for England and Wales or for Scotland,]
  - [<sup>F5</sup>(q) a person appointed under section 30(1)(a) or (b) of the Courts-Martial (Appeals) Act 1951 (assistants to the Judge Advocate General),]
  - [<sup>F5</sup>(r) a deputy judge of the High Court,]
  - [<sup>F5</sup>(s) the Senior President of Tribunals,]
  - [<sup>F5</sup>(t) an ordinary judge of the Court of Appeal (including the vice-president, if any, of either division of that court),]
  - [<sup>F5</sup>(u) the President of the Queen's Bench Division,]
  - [<sup>F5</sup>(v) the Master of the Rolls, or]
  - [<sup>F5</sup>(w) the Lord Chief Justice.]
- (3) The [<sup>F6</sup>Lord Chief Justice, after consulting the Lord Chancellor,]<sup>F6</sup> 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 [<sup>F7</sup>Lord Chief Justice, after consulting the Lord Chancellor,]<sup>F7</sup> must appoint one of the judges nominated by virtue of subsection (2)(d) [<sup>F8</sup>to (q)] to be Senior Judge of the Court of Protection, having such administrative functions in relation to the court as the Lord Chancellor [<sup>F9</sup>, after consulting the Lord Chief Justice,]<sup>F9</sup> may direct.

### Textual Amendments

- F1** 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)**
- F2** 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)**
- F3** 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)
- F4** 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)
- F5** 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)
- F6** 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)**
- F7** 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)**
- F8** 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)

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**Changes to legislation:** *There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 46. (See end of Document for details)*

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**F9** 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:**

There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 46.