



# 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 [<sup>F1</sup>, after consulting the Lord Chief Justice]<sup>F1</sup>.
- (5) The Lord Chancellor may [<sup>F2</sup>, after consulting the Lord Chief Justice,]<sup>F2</sup> designate as additional registries of the court any district registry of the High Court and any county court office.

[<sup>F3</sup>(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).]

<sup>F3</sup>(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: Mental Capacity Act 2005. Cross Heading: The Court of Protection is up to date with all changes known to be in force on or before 31 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

---

- 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 <sup>F4</sup>[Lord Chief Justice]<sup>F4</sup>, or
  - <sup>F5</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>F5</sup>(2) To be nominated, a judge must be—

- (a) the President of the Family Division,
- (b) the <sup>F6</sup>[Chancellor of the High Court],
- (c) a puisne judge of the High Court,
- (d) a circuit judge, <sup>F7</sup>...
- (e) a district judge.
- <sup>F8</sup>(f) a District Judge (Magistrates' Courts),]
- <sup>F8</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>F8</sup>(h) a transferred-in judge of the First-tier Tribunal or of the Upper Tribunal (see section 31(2) of that Act),]
- <sup>F8</sup>(i) a deputy judge of the Upper Tribunal (whether under paragraph 7 of Schedule 3 to, or section 31(2) of, that Act),]
- <sup>F8</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>F8</sup>(k) the Judge Advocate General,]
- <sup>F8</sup>(l) a Recorder,]
- <sup>F8</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>F8</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>F8</sup>(o) a deputy district judge appointed under section 102 of that Act or under section 8 of the County Courts Act 1984,]
- <sup>F8</sup>(p) a member of a panel of Employment Judges established for England and Wales or for Scotland,]
- <sup>F8</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>F8</sup>(r) a deputy judge of the High Court,]
- <sup>F8</sup>(s) the Senior President of Tribunals,]
- <sup>F8</sup>(t) an ordinary judge of the Court of Appeal (including the vice-president, if any, of either division of that court),]

---

*Changes to legislation: Mental Capacity Act 2005, Cross Heading: The Court of Protection is up to date with all changes known to be in force on or before 31 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

---

- [<sup>F8</sup>(u) the President of the Queen's Bench Division,]  
[<sup>F8</sup>(v) the Master of the Rolls, or]  
[<sup>F8</sup>(w) the Lord Chief Justice.]
- (3) The [<sup>F9</sup>Lord Chief Justice, after consulting the Lord Chancellor,]<sup>F9</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>F10</sup>Lord Chief Justice, after consulting the Lord Chancellor,]<sup>F10</sup> must appoint one of the judges nominated by virtue of subsection (2)(d) [<sup>F11</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>F12</sup>, after consulting the Lord Chief Justice,]<sup>F12</sup> 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:**

Mental Capacity Act 2005, Cross Heading: The Court of Protection is up to date with all changes known to be in force on or before 31 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

**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\(b\)](#)