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Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Mental Capacity Act 2005, Cross Heading: The Public Guardian is up to date with all changes known to be in force on or before 15 September 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)*

(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.

[[F1](2A) The Public Guardian also has the following functions—

(a) establishing and maintaining a register of guardianship orders,

(b) supervising guardians,

(c) receiving security which the court requires a guardian to give for the exercise of the guardian's functions,

(d) receiving reports from guardians,

(e) reporting to the court on such matters relating to proceedings under the Guardianship (Missing Persons) Act 2017 as the court requires,

(f) dealing with representations (including complaints) about the way in which a guardian is exercising the guardian's functions, and

(g) publishing, in any manner the Public Guardian thinks appropriate, information about the exercise of his or her functions in connection with guardians and guardianship orders.**]**

(3) The Lord Chancellor may by regulations make provision—

(a) conferring on the Public Guardian other functions in connection with this Act **[**[F2]or the Guardianship (Missing Persons) Act 2017**]** ;

(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 **[**[F3]or guardians**]** 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;

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Mental Capacity Act 2005, Cross Heading: The Public Guardian is up to date with all changes known to be in force on or before 15 September 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)*

(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.

[[F4](g) the making of reports to the Public Guardian by guardians.**]**

(5) For the purpose of enabling him to carry out his functions **[**[F5]in relation to lasting powers of attorney or deputies**]** , 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) **[**[F6], Chapter 2 of Part 1 of the Health and Social Care Act 2008 or Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016**]**,

so far as the record relates to P.

(6) The Public Guardian may also for that purpose interview P in private.

[[F7](7) In this section "guardian" and "guardianship order" have the same meaning as in the Guardianship (Missing Persons) Act 2017.**]**

Textual Amendments

F1 S. 58(2A) inserted (27.4.2017 for specified purposes, 31.7.2019 in so far as not already in force) by Guardianship (Missing Persons) Act 2017 (c. 27), **ss. 17(2)**, 25(2)(b) (with s. 18(5)); S.I. 2019/1032, reg. 3

F2 Words in s. 58(3) inserted (27.4.2017 for specified purposes, 31.7.2019 in so far as not already in force) by Guardianship (Missing Persons) Act 2017 (c. 27), **ss. 17(3)**, 25(2)(b) (with s. 18(5)); S.I. 2019/1032, reg. 3

F3 Words in s. 58(4)(a) inserted (27.4.2017 for specified purposes, 31.7.2019 in so far as not already in force) by Guardianship (Missing Persons) Act 2017 (c. 27), **ss. 17(4)(a)**, 25(2)(b) (with s. 18(5)); S.I. 2019/1032, reg. 3

F4 S. 58(4)(g) inserted (27.4.2017 for specified purposes, 31.7.2019 in so far as not already in force) by Guardianship (Missing Persons) Act 2017 (c. 27), **ss. 17(4)(b)**, 25(2)(b) (with s. 18(5)); S.I. 2019/1032, reg. 3

F5 Words in s. 58(5) inserted (27.4.2017 for specified purposes, 31.7.2019 in so far as not already in force) by Guardianship (Missing Persons) Act 2017 (c. 27), **ss. 17(5)**, 25(2)(b) (with s. 18(5)); S.I. 2019/1032, reg. 3

F6 Words in s. 58(5)(c) substituted (2.4.2018) by The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments) Regulations 2018 (S.I. 2018/195), regs. 2(1), 31

F7 S. 58(7) inserted (27.4.2017 for specified purposes, 31.7.2019 in so far as not already in force) by Guardianship (Missing Persons) Act 2017 (c. 27), **ss. 17(6)**, 25(2)(b) (with s. 18(5)); S.I. 2019/1032, reg. 3

[F8]59 Public Guardian Board

. . . . . .

Status: *Point in time view as at 02/04/2018.*
Changes to legislation: *Mental Capacity Act 2005, Cross Heading: The Public Guardian is up to date with all changes known to be in force on or before 15 September 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)*

Textual Amendments

F8 S. 59 repealed (18.9.2012) by The Public Bodies (Abolition of Her Majestyâ€™s Inspectorate of Courts Administration and the Public Guardian Board) Order 2012 (S.I. 2012/2401), art. 1(2)(3), **Sch. 2 para. 2** (with art. 2)

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:
Point in time view as at 02/04/2018.

Changes to legislation:
Mental Capacity Act 2005, Cross Heading: The Public Guardian is up to date with all changes known to be in force on or before 15 September 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.