



# 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 Vice-Chancellor,
  - (c) a puisne judge of the High Court,
  - (d) a circuit judge, or
  - (e) a district judge.
- (3) The [<sup>F3</sup>Lord Chief Justice, after consulting the Lord Chancellor,]<sup>F3</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>F4</sup>Lord Chief Justice, after consulting the Lord Chancellor,]<sup>F4</sup> must appoint one of the judges nominated by virtue of subsection (2)(d) or (e) to be Senior Judge of the

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*Status: Point in time view as at 01/10/2007. This version of this provision has been superseded.*

*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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Court of Protection, having such administrative functions in relation to the court as the Lord Chancellor [<sup>F5</sup>, after consulting the Lord Chief Justice,]<sup>F5</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(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)**
- F4** 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)**
- F5** 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)**

**Status:**

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**Changes to legislation:**

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