



# 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*Status: Point in time view as at 27/04/2017.*

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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.
- [<sup>F1</sup>(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 [<sup>F2</sup>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 [<sup>F3</sup>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;

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- (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.
  - [<sup>F4</sup>(g) the making of reports to the Public Guardian by guardians.]
- (5) For the purpose of enabling him to carry out his functions [<sup>F5</sup>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) [<sup>F6</sup>or Chapter 2 of Part 1 of the Health and Social Care Act 2008]<sup>F6</sup>,
- so far as the record relates to P.
- (6) The Public Guardian may also for that purpose interview P in private.
- [<sup>F7</sup>(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) 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)**
- 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

#### <sup>F8</sup>59 Public Guardian Board

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#### Textual Amendments

- F8** S. 59 repealed (18.9.2012) by [The Public Bodies \(Abolition of Her Majesty's Inspectorate of Courts Administration and the Public Guardian Board\) 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:**

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**Changes to legislation:**

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