



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 2 **E+W**

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

##### *The Court of Protection*

#### 45 **The Court of Protection** **E+W**

- (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)**

*Status: Point in time view as at 01/10/2007.*

*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 02 June 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)*

- 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 **E+W**

- (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 Vice-Chancellor,
  - (c) a puisne judge of the High Court,
  - (d) a circuit judge, or
  - (e) a district judge.
- (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) or (e) to be Senior Judge of the Court of Protection, having such administrative functions in relation to the court as the Lord Chancellor <sup>F8</sup>[, after consulting the Lord Chief Justice,]<sup>F8</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(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) 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:**

Point in time view as at 01/10/2007.

**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 02 June 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.