



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 [^{F1}Lord Chief Justice]^{F1}, or
 - [^{F2}(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).]

^{F2}(2) To be nominated, a judge must be—

- (a) the President of the Family Division,
- (b) the [^{F3}Chancellor of the High Court],
- (c) a puisne judge of the High Court,
- (d) a circuit judge, ^{F4}...
- (e) a district judge.
- [^{F5}(f) a District Judge (Magistrates' Courts),]
- [^{F5}(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,]
- [^{F5}(h) a transferred-in judge of the First-tier Tribunal or of the Upper Tribunal (see section 31(2) of that Act),]
- [^{F5}(i) a deputy judge of the Upper Tribunal (whether under paragraph 7 of Schedule 3 to, or section 31(2) of, that Act),]

Status: Point in time view as at 31/07/2019.

Changes to legislation: Mental Capacity Act 2005, Section 46 is up to date with all changes known to be in force on or before 25 May 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)

- [^{F5}(j) the Chamber President, or Deputy Chamber President, of a chamber of the First-tier Tribunal or of a chamber of the Upper Tribunal,]
 - [^{F5}(k) the Judge Advocate General,]
 - [^{F5}(l) a Recorder,]
 - [^{F5}(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),]
 - [^{F5}(n) a holder of an office listed in column 1 of Part 2 of Schedule 2 to that Act (High Court Masters etc),]
 - [^{F5}(o) a deputy district judge appointed under section 102 of that Act or under section 8 of the County Courts Act 1984,]
 - [^{F5}(p) a member of a panel of Employment Judges established for England and Wales or for Scotland,]
 - [^{F5}(q) a person appointed under section 30(1)(a) or (b) of the Courts-Martial (Appeals) Act 1951 (assistants to the Judge Advocate General),]
 - [^{F5}(r) a deputy judge of the High Court,]
 - [^{F5}(s) the Senior President of Tribunals,]
 - [^{F5}(t) an ordinary judge of the Court of Appeal (including the vice-president, if any, of either division of that court),]
 - [^{F5}(u) the President of the Queen's Bench Division,]
 - [^{F5}(v) the Master of the Rolls, or]
 - [^{F5}(w) the Lord Chief Justice.]
- (3) The [^{F6}Lord Chief Justice, after consulting the Lord Chancellor,]^{F6} 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 [^{F7}Lord Chief Justice, after consulting the Lord Chancellor,]^{F7} must appoint one of the judges nominated by virtue of subsection (2)(d) [^{F8}to (q)] to be Senior Judge of the Court of Protection, having such administrative functions in relation to the court as the Lord Chancellor [^{F9}, after consulting the Lord Chief Justice,]^{F9} 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(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)
- F4** 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)
- F5** 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)
- 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) 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)

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F9 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)**

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