

MENTAL CAPACITY ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: the Court of Protection and the Public Guardian

The Public Guardian

Section 57: The Public Guardian

143. This section provides for a new public official, the Public Guardian, to be appointed by the Lord Chancellor. The Public Guardian will have staff and officers so that he can discharge his duties. The Lord Chancellor may also enter into contracts with other persons for the provision of officers, staff or services for the discharge of the Public Guardian's functions.

Section 58: Functions of the Public Guardian

144. This section sets out the role of the Public Guardian and may be supplemented by regulations made by the Lord Chancellor. It is intended that regulations will set out in more detail how the Public Guardian will exercise his administrative duties in connection with court-ordered security and reports. The regulations will also deal with fees and the sources from which they may be met.
145. The functions of the Public Guardian are set out in *subsection (1)*. They include establishing and maintaining registers of lasting powers of attorney and of orders appointing deputies and supervising deputies. He may also direct Court of Protection Visitors to visit donors or donees of LPAs, deputies or those appointing them. He may deal with complaints and concerns expressed to him about how an attorney or deputy is exercising his powers. He may also publish any information he thinks appropriate about his work.
146. *Subsection (2)* provides that certain functions may be discharged in co-operation with any other person who has functions in relation to the care or treatment of the person to whom the power of attorney or appointment of a deputy relates. It is intended that the Public Guardian will work closely with organisations such as local authorities and NHS bodies.
147. *Subsection (4)* provides for regulations made by the Lord Chancellor to make provision for the setting of fees which may be charged by the Public Guardian, and for any exemptions from and reductions in the fees and any partial or whole remission of fees.
148. *Subsections (5) and (6)* allow the Public Guardian to examine and take copies of relevant health, social services or care records, and to interview the person concerned in private. This is to ensure that the Public Guardian will be able to carry out his functions. The Public Guardian has similar rights when reporting to the Court of Protection (see *section 49(7) and (8)*). Court of Protection Visitors are given similar rights (see *section 61(5) and (6)*).

Section 59: Public Guardian Board

149. This section provides for a body, to be known as the Public Guardian Board, members of which are to be appointed by the Lord Chancellor. The Board will scrutinise and review the Public Guardian's work and make recommendations to the Lord Chancellor.
150. The Board must have at least one member who is a judge of the Court of Protection and at least four members with appropriate knowledge or experience of the Public Guardian's work. *Subsection (6)* provides a regulation-making power that will allow the Lord Chancellor to set out in more detail how members will be appointed and how the Board will operate.
151. *Subsection (8)* provides for the Lord Chancellor to make payments to members of the Board for reimbursement of expenses, allowances and remuneration. *Subsection (9)* requires the Board to make an annual report to the Lord Chancellor.

Section 60: Annual report

152. This requires the Public Guardian to make an annual report about his work to the Lord Chancellor, who must within one month of receipt lay a copy of the report before both Houses of Parliament.