

*These notes refer to the Mental Capacity Act (Northern Ireland)
2016 (c.18) which received Royal Assent on 9 May 2016*

Mental Capacity Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Public Guardian and Court Visitors

Part 7 of the Act provides for the creation of an officer to be known as the Public Guardian, the functions to be performed by this officer, as well as imposing duties upon relevant authorities to notify the Public Guardian of certain events. Part 7 also provides a further power for the Department of Justice to appoint Court Visitors.

Section 125 – The Public Guardian

This section provides for the creation of a new officer, to be known as the Public Guardian, to be appointed by the Department of Justice. The section also provides the Department of Justice with powers to pay to the Public Guardian a salary and allowances, subject to approval by the Department of Finance. The section also provides that the Department of Justice may, after consulting the Public Guardian, provide such staff and officers as it considers necessary for the proper performance of the Public Guardian's functions.

Section 126 – Functions of the Public Guardian

This section provides for the functions of the Public Guardian, which include: establishing and maintaining registers of lasting powers of attorney, and orders appointing deputies; supervising deputies appointed by the court; directing a Court Visitor to visit certain individuals and produce a report for the Public Guardian; receiving court-imposed securities from persons; receiving reports from persons who are attorneys under lasting powers of attorney and court-appointed deputies; reporting to the court on matters relating to proceedings under this Act, except proceedings under Part 10, as required; dealing with complaints about the operation of lasting powers of attorney; and publishing reports about the performance of the Public Guardian as appropriate.

This section includes a power for the Department of Justice to make provision for other functions of the Public Guardian by regulations. The scope of these regulations is outlined within the section.

Section 127 – Further powers of the Public Guardian

This section includes powers for the Public Guardian to require the production of relevant records from certain bodies to assist with carrying out the above mentioned functions, as well as a power to interview the person who lacks capacity in private for the same purpose.

Section 128 – Duty to notify the Public Guardian

This section imposes a duty upon relevant authorities to notify the Public Guardian about a person with whom the authority is concerned in certain circumstances. These circumstances include that the person in question lacks capacity in relation to matter(s) concerning their care, treatment, personal welfare, or property and affairs. If the relevant authority also considers that any of the powers under section 113 ought to be exercised in respect to that matter or matters, and that arrangements have not been made and are not being made in this regard, then it must notify the Public Guardian.

Section 129 – Notifications under section 128: procedure and effect

This section provides for the procedure and effect of a notification to the Public Guardian under section 128. The section requires that the timing and form of any notification must be made as specified within court rules, and the relevant authority making the notification must inform P's nominated person, where practicable. Upon receipt of the notification, the Public Guardian must consider if it is appropriate to make inquiries into the case and seek leave from the court to do so. Where inquiries have been made, the Public Guardian may, if he or she considers it appropriate to do so, arrange for proceedings to be brought before the court under section 113.

Section 130 – Court Visitors

This section provides a power for the Department of Justice to appoint Court Visitors. Court Visitors may be appointed to two different panels: Special Visitors or General Visitors. The Department of Justice must be satisfied that Special Visitors are medical practitioners or have other sufficient qualifications or training, as well as special knowledge and experience of persons with impairment of or disturbance in the functioning of the mind or brain. General Visitors do not require a medical qualification.

The section provides for the appointment, remuneration and allowances of a Court Visitor to be determined by the Department of Justice.

Section 131 – Powers of Court Visitors

The section provides powers for Court Visitors to require the production of relevant records from certain bodies to assist with carrying out the above mentioned functions, as well as a power to interview the person who lacks capacity in private for the same purpose.