

*Status: Point in time view as at 01/04/2022. This version of this cross heading contains provisions that are prospective.*  
**Changes to legislation:** *Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Public Guardian is up to date with all changes known to be in force on or before 13 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)*



## 2016 CHAPTER 18

### PART 7

#### PUBLIC GUARDIAN AND COURT VISITORS

PROSPECTIVE

##### *Public Guardian*

##### **The Public Guardian**

**125.—**(1) The Department of Justice must appoint an officer, to be known as the Public Guardian.

(2) The Department of Justice may pay to the Public Guardian such salary and allowances as it may determine.

(3) A determination under subsection (2) requires the approval of the Department of Finance.

(4) The Department of Justice may, after consulting the Public Guardian—

- (a) provide the Public Guardian 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 it considers necessary for the proper performance of the Public Guardian's functions.

(5) Any functions of the Public Guardian may, to the extent authorised by the Public Guardian, be performed by any of the Public Guardian's officers.

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### **Functions of the Public Guardian**

**126.—(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;
- (d) directing a Court Visitor to visit—
  - (i) a person who is an attorney under a lasting power of attorney,
  - (ii) a deputy appointed by the court, or
  - (iii) a person who proposes to grant or has granted a lasting power of attorney or for whom a deputy is appointed (“P”),and to make a report to the Public Guardian on such matters as the Public Guardian may direct;
- (e) receiving security which the court requires a person to give for the performance of functions;
- (f) receiving reports from persons who are attorneys under lasting powers of attorney and deputies appointed by the court;
- (g) reporting to the court on such matters relating to proceedings under this Act (except proceedings under Part 10) as the court requires;
- (h) dealing with representations (including complaints) about the way in which powers of an attorney under a lasting power of attorney or of a deputy appointed by the court are being exercised;
- (i) publishing (in any way the Public Guardian considers appropriate) any information the Public Guardian considers appropriate about the performance of the Public Guardian's functions.

(2) The functions conferred by subsection (1)(c), (d) and (h) may be performed in co-operation with any other person who has functions in relation to the care or treatment of P.

(3) The Department of Justice may by regulations make provision—

- (a) conferring on the Public Guardian other functions in connection with this Act;
- (b) in connection with the performance by the Public Guardian of his or her 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 and the enforcement and discharge of security so given;

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- (b) the way in which, and funds into which, fees which may be charged by the Public Guardian under section 116 of the Judicature (Northern Ireland) Act 1978 are to be paid;
- (c) 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.

**Further powers of the Public Guardian**

**127.**—(1) The powers under subsections (2) and (3) may be exercised for the purpose of enabling the Public Guardian to carry out his or her functions in relation to a person (“P”)—

- (a) who proposes to grant or has granted a lasting power of attorney; or
- (b) for whom a deputy is appointed.

(2) The Public Guardian may visit P and interview P in private.

(3) The Public Guardian may at all reasonable times require the production of, examine and take copies of—

- (a) any health record (as defined by section 306), or
- (b) any relevant record,

so far as the record relates to P.

(4) But if P has capacity in relation to whether the power under subsection (3) should be exercised, the power may be exercised only with P's consent.

(5) In this section “relevant record” means a record relating to P's care, treatment or personal welfare which is a record of or held by—

- (a) an HSC trust or its employees or agents;
- <sup>F1</sup>(b) . . . . .
- (c) RQIA;
- (d) a Northern Ireland department or its employees or agents;
- (e) the managing authority of an independent hospital; or
- (f) the managing authority of a care home.

**Textual Amendments**

**F1** S. 127(5)(b) omitted (1.4.2022) by virtue of [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(b), [Sch. 1 para. 252\(4\)](#); S.R. 2022/102, art. 2(b)

**Duty to notify the Public Guardian**

**128.**—(1) Where a relevant authority is satisfied—

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- (a) that a person with whom the authority is concerned lacks capacity in relation to a matter or matters relating to that person's care, treatment, personal welfare or property and affairs,
- (b) that any of the powers of the court under section 113 ought to be exercised with respect to that matter or matters, and
- (c) that arrangements in that behalf have not been made and are not being made,

it is the duty of that relevant authority to notify the Public Guardian of the situation.

(2) In this section a “relevant authority” means—

- (a) an HSC trust;
- (b) [<sup>F2</sup>the Department] ;
- (c) RQIA;
- (d) the managing authority of an independent hospital;
- (e) the managing authority of a care home.

(3) In this section “a person with whom the authority is concerned” means—

- (a) in relation to an HSC trust, a person within the area of the trust;
- (b) in relation to [<sup>F3</sup>the Department] , any person;
- (c) in relation to RQIA, any person;
- (d) in relation to the managing authority of an independent hospital or of a care home, an in-patient or resident in the hospital or care home.

#### Textual Amendments

- F2** Words in s. 128(2)(b) substituted (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\), s. 8\(1\)\(b\), Sch. 1 para. 252\(5\)](#); S.R. 2022/102, art. 2(b)
- F3** Words in s. 128(3)(b) substituted (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\), s. 8\(1\)\(b\), Sch. 1 para. 252\(5\)](#); S.R. 2022/102, art. 2(b)

#### Notifications under section 128: procedure and effect

**129.—(1)** A notification under section 128 must be made within such time and in such form as rules of court may specify.

(2) Where a notification is made under section 128 in relation to any person (“P”), the body or person making the notification must, where practicable, inform P's nominated person.

(3) The Public Guardian, on receipt of a notification in respect of a person under section 128—

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- (a) must consider whether the Public Guardian should make inquiries into the person's case; and
  - (b) if the Public Guardian considers that he or she should make inquiries, must seek the leave of the court to make them and, if leave is granted, must make such inquiries as he or she considers appropriate.
- (4) Where inquiries have been made under subsection (3) the Public Guardian may, if he or she considers it appropriate to do so, arrange for the bringing of proceedings before the court under section 113.
- (5) Inquiries under subsection (3) must be made within the period specified by the court.

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