

*These notes refer to the Mental Capacity Act 2005
(c.9) which received Royal Assent on 7 April 2005*

MENTAL CAPACITY ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: the Court of Protection and the Public Guardian

The Court of Protection

Section 45: The Court of Protection

130. This section establishes a superior court of record, called the Court of Protection, which will be able to sit anywhere in England and Wales. Welfare matters previously referred to the High Court may be referred to this court. It is intended that the Court of Protection will have a regional presence but will have a central office and registry as designated by the Lord Chancellor. Additional registries (being High Court district registries or county courts) may also be designated. *Subsection (6)* provides that the former office of the Supreme Court known as the Court of Protection will cease to exist.

Section 46: The judges of the Court of Protection

131. The Lord Chancellor or an appropriate person acting on his behalf will nominate judges to exercise the jurisdiction of the Court of Protection. *Subsection (2)* sets out which judges may be nominated. *Subsection (3)* gives the Lord Chancellor the power to appoint one of the senior nominated judges to be designated President of the Court of Protection and another to be Vice-President of the Court of Protection. *Subsection (4)* gives the Lord Chancellor the power to appoint a judge to be Senior Judge of the Court of Protection, with various administrative functions.