

# MENTAL CAPACITY ACT 2005

---

## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: the Court of Protection and the Public Guardian**

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

##### *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)*).