

*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

Supplementary powers

Section 47: General powers and effect of orders etc.

132. *Subsection (1)* gives the Court of Protection the same powers as the High Court, for example in relation to witnesses, contempt and enforcement.

Section 48: Interim orders and directions

133. This section allows the court to make interim orders even if evidence as to lack of capacity is not yet available, where there is reason for the court to believe that the person lacks capacity in respect of a particular matter and it is in his best interests for the court to act without delay.

Section 49: Power to call for reports

134. This section makes provision for reports to assist the court in determining a case. Such reports can be commissioned from the Public Guardian, local authorities, NHS bodies or Court of Protection Visitors. The Public Guardian is a new statutory official (see [section 57](#)) and the Court of Protection Visitors replace current “Lord Chancellor’s Visitors” (see section 102 of the Mental Health Act 1983 and [section 61](#)). Local authority staff or NHS staff may already be providing services to the person concerned and be able to report to the court on the basis of their existing involvement.
135. *Subsections (7) to (9)* allow the Public Guardian or Court of Protection Visitor who is reporting to the court to have access to health, social services or care records relating to the person and interview him in private. Where a Court of Protection Visitor is a Special Visitor (e.g. a registered medical practitioner or someone with other suitable qualifications or training) he may, on the directions of the court, carry out medical, psychiatric or psychological examinations.