

# MENTAL CAPACITY ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

##### **Practice and procedure**

##### ***Section 50: Applications to the Court of Protection***

136. This section provides that persons listed in *subsection (1)* can apply to the Court of Protection as of right while others generally will be required to obtain permission from the court. Court of Protection Rules can, however, provide that certain types of application will not require permission. The factors that the court must have regard to when considering whether to grant permission are listed in *subsection (3)* and are designed to ensure that any proposed application will promote the interests of the person concerned, rather than causing unnecessary distress or difficulty for him.

##### ***Section 51: Court of Protection Rules***

137. The specialist jurisdiction of the new court calls for specialist rules of court, which will be made by the Lord Chancellor. *Subsection (2)* lists different matters in relation to which rules may be made and *subsection (4)* permits different provisions to be made for different geographical areas.

##### ***Section 52: Practice directions***

138. This section gives power to make practice directions. These are directions about a court's practices and procedures, issued for the assistance and guidance of litigants. They often support and add detail to rules of court. Practice directions for the Court of Protection will have to be made by the President with the approval of the Lord Chancellor or by another person (for example, the Vice-President) with the approval of the President and the Lord Chancellor. *Subsection (3)* provides that the Lord Chancellor need not approve any directions giving guidance about the law or the making of judicial decisions. *Section 51(3)* enables Court of Protection Rules, instead of providing for any matter, to refer to provision made or to be made by these directions. The intention is to make rules accompanied by practice directions, on the model of the Civil Procedure Rules 1998.

##### ***Section 53: Rights of appeal***

139. This section concerns appeals from the Court of Protection and will be supplemented by Court of Protection Rules. Subject to such rules, an appeal will lie from any decision of the court to the Court of Appeal. However, the Court of Protection will comprise a range of judges at different levels. It is therefore intended to make provision by rules of court, by virtue of *subsection (2)*, so that decisions made at a lower level of the Court of Protection are appealed to a higher judge within the Court of Protection. Rules may make further detailed provision as to permission to appeal and may provide that where

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

an appeal has already been made to a higher judge of the Court of Protection no appeal may be made to the Court of Appeal from that decision unless the Court of Appeal considers that the appeal would raise an important point of principle or practice or there is some other compelling reason to hear the appeal. This matches the “2<sup>nd</sup> appeal” test in the Civil Procedures Rules 1998, Rule 52.13.