

*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

Fees and costs

Section 54: Fees

140. This section concerns the setting of fees chargeable by the Court of Protection (which will be by order of the Lord Chancellor with the consent of the Treasury). The order will be subject to the negative resolution procedure (see *section 65(2)*). The order may set the level of fees, any exemptions from and reductions in the fees and any partial or whole remission of fees. Prior to making the order the Lord Chancellor must consult with the President, Vice-President and Senior Judge of the Court of Protection. The Lord Chancellor must take reasonably practicable steps to give out information about fees. Similar provision is made about other court fees in section 92 of the Courts Act 2003.

Section 55: Costs

141. This section concerns the costs of Court of Protection proceedings and will be supplemented by Court of Protection Rules. Subject to such rules, the court will have discretion to make costs orders, including wasted costs orders, against legal or other representatives. It seeks to put the new court in the same position as the other civil courts.

Section 56: Fees and costs: supplementary

142. This section provides that the Court of Protection rules can deal with the way in which, and funds from which, fees and costs are to be paid and make provision for them to be charged against the estate of the person concerned. It is modelled on the Mental Health Act 1983, section 106.