

MENTAL CAPACITY ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Persons Who Lack Capacity

General powers of the court and appointment of deputies

Section 19: Appointment of deputies

72. This deals with deputies appointed by the court. The general rule is that a deputy must be at least 18 years of age. If a trust corporation is appointed deputy it can only act in respect of property and affairs. The court may appoint the holder of a specified office as deputy (this is different to LPAs where the attorney must be an individual). Before being appointed deputy, a person must consent to being appointed. The court will be able to appoint more than one deputy to act on behalf of an individual who lacks capacity and these deputies can act jointly, jointly and severally, or jointly for some matters and jointly and severally for other matters. That is, the court can specify that they must all act together, that each can act independently of the other or that they can act either way, depending on the matter in question. When appointing a deputy, the court will also have the power to appoint a successor or successors to the original appointees. The court will specify the circumstances under which this could occur.
73. *Subsection (6)* provides that a deputy will be treated as an “agent” of the adult who lacks capacity. The law of agency imposes a range of duties on those who act as agents for someone else. For example, an agent must act with “due care and skill” and is bound by fiduciary duties amongst other duties. Case law has established that receivers appointed by the original Court of Protection under Part 7 of the Mental Health Act 1983 are agents but it is considered helpful to make statutory provision to that effect in relation to deputies.
74. All deputies will be able to claim reasonable expenses from the estate of the adult lacking capacity and if the court directs, the deputy can be paid for his services from the estate. The court will be able to give a deputy the power to deal with all matters concerning the control and management of any property belonging to the adult lacking capacity, including being able to invest. The court will also be able to require a deputy to give the Public Guardian security against misbehaviour (that is, either a deposit of money or a guarantee bond) and to direct the deputy to file with the Public Guardian reports and accounts as it sees fit. These provisions are broadly in line with arrangements in the original Court of Protection (Mental Health Act 1983, Part 7).