

A Guide to the Legal Aspects of Caring



**Community
Law & Mediation**



**Family
Carers
Ireland**

No one should have to care alone

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ABOUT THIS GUIDE

Looking after someone can be a rewarding experience. However, it can also be lonely and difficult to understand the various supports and legal arrangements that exist. But you're not on your own. This guide will help explain important legal supports available to family carers, including Wills and Trusts, and Enduring Power of Attorney as well as explain the social welfare appeals process and your rights to housing and education. This guide also provides an explanation of the Assisted Decision-Making Capacity Act. For more detailed information about the Act please go to www.familycarers.ie to download our **Practical Guide to the Assisted Decision Making Capacity Act.**

If you still have questions or concerns regarding legal aspects of your caring role, you can contact your local Family Carers Ireland Support Centre:

- Find your nearest Centre by visiting www.familycarers.ie or
- Freephone our Careline 1800 24 07 24

or please contact [Community Law and Mediation](#) (CLM).

This guide has been prepared by Community Law and Mediation (CLM) on behalf of Family Carers Ireland. CLM is an independent, community-based law centre that works to empower individuals experiencing disadvantage through free legal information, advice and representation; mediation and conflict coaching; information and education and policy and law reform.

Family Carers Ireland is **the** national charity dedicated to supporting Ireland's 500,000+ family carers. The charity is here to listen, to give expert information and guidance and to champion carer rights. Our vision is an Ireland in which family carers are properly recognised, supported and empowered and where **no one should have to care alone.**



Disclaimer

The information in this document is not intended to provide, and does not constitute, legal or any other advice on any particular matter, and is provided for general information purposes only. The authors give no guarantees or warranties concerning the accuracy, completeness or up-to-date nature of the information provided in this guide and do not accept any liability arising from any errors or omissions. The information is correct as of March 2023.

GLOSSARY: LEGAL TERMS EXPLAINED

ASSISTED-DECISION MAKING (CAPACITY) ACT 2015

Capacity Act

The Assisted Decision-Making (Capacity) Act 2015 is often called 'The Act' or the '2015 Act'. The Capacity Act establishes a new legal framework for supported decision-making.

Capacity

A person's ability to make decisions for themselves. Under the Capacity Act, this will be based on the person's ability to make a specific decision at a specific time.

The Decision Support Service (DSS)

A public body established within the Mental Health Commission by the Assisted Decision-Making (Capacity) Act 2015. Its job is to register the new decision support arrangements and supervise the individuals who are providing support to people with capacity difficulties.

Decision Support Arrangements

An umbrella term for all of the legally recognised arrangements to support people who have challenges with their capacity to make certain decisions.

Decision Supporter

An umbrella term for any person who is given the legal authority to support someone with capacity challenges to make certain decisions. They must be appointed to their role in a legally recognised arrangement called a decision support arrangement. The type of support they can provide depends on the type of arrangement in place.

Decision-Making Assistance Agreement

A legally recognised arrangement that you can make if you need support to make certain decisions for yourself. It lets you give someone you know and trust the legal authority to help you, by gathering information and helping you to understand it.

Decision-Making Assistant

A person who has the authority to help you when you are making certain decisions for yourself. You can appoint someone you know and trust to be your Decision-Making Assistant by making a legally recognised arrangement called a Decision-Making Assistance Agreement.

Co-Decision-Maker

A person who has the authority to make certain decisions together with you if you need support to make decisions. You can appoint someone you know and trust to be your Co-Decision-Maker by making a legally recognised arrangement called a Co-Decision-Making agreement.

Co-Decision-Making Agreement

A legally recognised arrangement that you can make if you are unable to make certain decisions for yourself and require support. It lets you set out the types of decisions you want help with and give a person you know and trust the authority to make them together with you.

Decision-Making Representation Order

A legal arrangement made by an order from the Circuit Court. The Court can appoint a person to make certain decisions on your behalf if you are unable to make them for yourself. This person is called a Decision-Making Representative.

Decision-Making Representative

A person appointed by the Circuit Court to make certain decisions on your behalf if you are unable to make them for yourself. Where possible, the court will appoint someone you know and trust in this role. If there is no one suitable who is able to do the role, the court can appoint a Decision-Making Representative from a panel of trained experts maintained by the Decision Support Service.

Ward of Court

Under the previous law, if a person was unable to make certain decisions because of capacity difficulties, they may have been made a Ward of Court. When a person was made a Ward of Court, a Committee was appointed to control their assets and make decisions about their affairs.

PLANNING AHEAD

Enduring Power of Attorney

A legally recognised arrangement that lets you plan ahead for a time when you may be unable to make certain decisions for yourself. It lets you set out the types of decisions you may need help with and appoint someone you know and trust to make them on your behalf.

Attorney

A person who has the authority from an Enduring Power of Attorney to make certain decisions on your behalf if you become unable to make them for yourself.

Advance Healthcare Directive

A legally recognised arrangement that lets you plan ahead for healthcare and treatment decisions. It lets you set out your wishes about these types of decisions in case you are unable to make these decisions sometime in the future.

Designated Healthcare Representative

A person who has the authority to make certain decisions on your behalf regarding healthcare and treatment decisions. These decisions must be based on your wishes set out in an advance healthcare directive. They can only act on your behalf if you lose the ability to make certain healthcare decisions for yourself.

WILLS AND TRUSTS

Will

A legal document setting out how you would like your estate to be distributed when you die and who you would like to distribute those possessions.

Testator

The person who makes a will is called the testator.

Executor

The executor is the person tasked with distributing your assets and possessions. Your executor should be someone capable of administering your estate and who you can trust to follow your wishes.

Estate

Your estate is all of the valuable assets that you own. For example, your home, bank account, cars, jewellery and money. Assets that are jointly held may automatically pass to the co-owner.

Beneficiaries

The people you leave your assets and possessions to are called beneficiaries. You can choose who and how many people you would like to benefit from your will. A trust should be considered if your intended beneficiaries are young, vulnerable, disabled or in receipt of means-tested benefits.

Codicil

A legal document used to make changes to your will.

Trust

A legal agreement created to manage assets on behalf of another person.

Settlor

The person who creates the trust is called the settlor.

Trustee

A trusted person, appointed to manage the inherited estate on behalf of a person/people, and in accordance with your wishes.

Letter of Wishes

A personal letter to the trustees providing them with guidance on how you would like your assets to be managed.

Life Interest Trust

A legal arrangement which ensures that the person can continue living in a property for a set period of time, usually their lifetime.

Discretionary Trust

A legal agreement which provides trustees with a wide discretion to manage the inherited estate for the benefit of certain beneficiaries.

ACCESS TO HOUSING

UN Convention on the Rights of People with Disabilities (UNCRPD)

An international agreement which aims to protect the human rights and fundamental freedoms of people with disabilities. Ireland has ratified the UNCRPD, which means it is part of the agreement.

Social Housing Supports

Housing provided by a Local Authority or an Approved Housing Body to people who are assessed as being unable to afford housing from their own resources.

Local Authorities

The main providers of social housing for people who cannot afford to buy a home or rent accommodation privately.

Approved Housing Body

Independent, not-for-profit organisations that provide affordable rented housing for people who cannot afford to pay private sector rents or buy their own homes.

Choice Based Letting

A scheme used by Local Authorities for the allocation of designated social housing. Under this scheme, vacancies that come about are advertised online and people can register their interest in them.

Housing Assistance Payment (HAP)

A social housing support provided by Local Authorities. Under the scheme, rent is paid directly to private landlords and you pay a weekly contribution to your Local Authority.

Rental Accommodation Scheme (RAS)

A social housing support provided by Local Authorities. Under the scheme, local authorities draw up contracts with landlords to provide housing for people with a long-term housing need.

Rent Supplement

A means-tested payment for certain people living in private rented accommodation who cannot provide for the cost of their accommodation from their own resources.

Housing Adaptation Grants

Payments from the State which are designed to help make a person's house or apartment more suitable for them to live in.

Housing Aid for Older People

This grant helps older people who live in poor housing conditions to make necessary repairs or improvements to their home.

Housing Aid for People with a Disability

This grant is for people with a disability who requires adaptation works to render a house more suitable for their accommodation needs.

Mobility Aid Grant

This grant is for older people and people with a disability who find it hard to move around their home due to mobility issues.

EDUCATION RIGHTS

Education for Persons with Special Educational Needs (EPSEN) Act 2004

An Act designed to make provision for the education of people with Special Educational Needs and to provide that their education shall, wherever possible, take place in an inclusive environment.

Special Educational Needs

A person has special educational needs if their capacity to participate in and benefit from education is restricted due to an enduring physical, sensory, mental health or learning disability.

Disability Access Route to Education (DARE)

A third level alternative admissions scheme for school-leavers under the age of 23 whose disabilities have had a negative impact on their second level education.

National Council for Special Education

The National Council for Special Education (NCSE) works with the Department of Education to improve the delivery of special needs education.

Social Welfare Appeals Office

The Social Welfare Appeals Office operates independently of the Department of Social Protection. It aims to provide an independent, accessible and fair appeals service with regard to entitlement to social welfare payments.

Deciding Officer

Decisions relating to a person's entitlement to social welfare payments are made by staff in the Department of Social Protection known as Deciding Officers. This will likely be the person who made the initial decision with regard to an application for a social welfare payment.

Appeals Officer

An Appeals Officer is independent of the Department of Social Protection and will look decisions made by the department where a formal Appeal has been lodged with the Social Welfare Appeals Office.

THE ASSISTED DECISION-MAKING (CAPACITY) ACT 2015

For more information about the new system of tiered decision-making supports and advance planning tools, visit the Decision Support Service at www.decisionsupportservice.ie or send a query to queries@decisionsupportservice.ie or phone 01 2119750. See also our **Practical Guide for Family Carers on the Assisted Decision Making (Capacity) Act 2015** to find out more.

What is the Assisted Decision-Making (Capacity) Act 2015?

The Assisted Decision-Making (Capacity) Act (the 2015 Act) was first signed into law in December 2015, however it was not commenced at that time. The Act was amended by the Assisted Decision-Making (Capacity) (Amendment) Act 2022 and commenced on **26 April 2023**. This means that there is now a new system of tiered decision-making supports and advance planning tools available.

What is the purpose of this Act?

The Act recognises that all adults have the right to play an active role in decisions that affect them. These decisions can be about their personal welfare and/or their property and financial affairs. The 2015 Act brings about important changes for people who require support to make decisions and for anyone interacting with them. It introduces three types of support arrangements for people who currently, or may shortly, face challenges when making certain decisions. It also provides for people who wish to plan ahead for a time in the future when they might lose capacity, by way of an Advance Healthcare Directive or an Enduring Power of Attorney.

How will the Assisted Decision-Making (Capacity) Act 2015 affect me as a family carer?

In practice, family members and carers frequently make day-to-day decisions, including decisions on the spending of money, on behalf of people who lack capacity. However, without a support arrangement in place, there is no legal right to make such decisions for adults nor is there any protection for the person making the decision.

If you care for an adult who has difficulty making decisions without support, or for someone who may experience difficulty making decisions in the future, then it is important that you understand the protections and provisions contained within the Act, and how they can support you and the person you care for.



What are the Guiding Principles of the Act?

Section 8 of the Act sets out nine guiding principles for anyone interacting with a person who has difficulties with their decision-making capacity. The guiding principles are as follows:

1. Presume every person has the capacity to make decisions about their life.
2. Support people as much as possible to make their own decisions.
3. Don't assume a person lacks capacity just because of an unwise decision.
4. Only take action where it is really necessary.
5. Any action taken should be the least restriction on a person's rights and freedoms.
6. Give effect to the person's will and preferences as far as practicable and act at all times in good faith and for their benefit.
7. Consider the views of other people.
8. Think about how urgent the action is.
9. Use information appropriately.

What does the Assisted Decision-Making (Capacity) Act 2015 mean when it refers to a 'relevant person'?

When the 2015 Act refers to a 'relevant person', it means a person whose capacity to make one or more decisions is, or may shortly be, in question. Under the new law, a person's capacity must be assessed based on their ability to make a specific decision at a specific time.

How is capacity assessed?

A person is always presumed to have capacity to make decisions about their own life. The first step is to support people to make their own decisions. In some circumstances, there may be a reason to question a person's capacity to make a certain decision. In these instances, a person's capacity will be assessed by way of a capacity assessment.

The assessment used under the new law involves a functional test for capacity. This means the assessment is about a specific decision that needs to be made at a specific time. You cannot make a blanket assessment that a person has no capacity.



What is the Decision Support Service?

The Decision Support Service (DSS) is a new service for all adults who have or may have difficulty with decision making. Its job is to register the new decision support arrangements and supervise the individuals who are providing support to people with capacity difficulties.

The Decision Support Service will also receive and investigate complaints made about decision supporters and decision support arrangements.

FAMILY CARERS & THE ASSISTED DECISION-MAKING (CAPACITY) ACT

What rights do family carers have when it comes to making decisions for a person who faces challenges with their decision-making capacity?

To date, there is no legal basis for a family member or 'next-of-kin' to take on an automatic decision-making role or to give or withhold consent on behalf of another adult.

It is important to be aware that a 'next of kin' cannot therefore assume an automatic decision-making role or supply or withhold consent on behalf of another adult without a decision support arrangement in place. If the person you care for has difficulty making certain decisions, you should discuss with them the different types of decision support arrangements available to find out whether they would like assistance in making decisions and if so, to figure out which arrangement would work best for them.

If you believe that the person you care for is unable to make certain decisions for themselves, even with the support of a Co-Decision-Maker, it may be necessary to ask the court to make a Decision-Making Representative Order. If the court agrees that the person you care for is not able to make certain decisions for themselves, it can appoint a Decision-Making Representative to make those decisions on their behalf.

The person I care for needs support to make certain decisions on their own. How can I take on a decision-making role under the new Act?

Now that the 2015 Act has commenced, a person who has difficulty making decisions may give someone they know and trust, such as a family member or carer, the legal authority to act as their decision supporter. The Decision Support Service will provide information for family members and carers who wish to help a person to make a decision support arrangement. The person's need for a decision support arrangement will depend on their circumstances and the decisions that they need to make.

What is a 'decision supporter'?

The term decision supporter is not actually mentioned in the Act but it refers to a person who has been appointed as a:

- Decision-Making Assistant under a Decision-Making Assistance Agreement
- Co-Decision-Maker under a Co-Decision-Making Agreement
- Decision-Making Representative under a Decision-Making Representation Order
- Attorney under an Enduring Power of Attorney
- Designated Healthcare Representative under an Advance Healthcare Directive.

Ideally, a decision supporter will be a family member or trusted friend.

What if someone has no one to be their decision supporter?

If someone does not have a person they know and trust who is able to be their decision supporter, at the upper tier of support, the Circuit Court may be able to nominate a Decision-Making Representative from the Decision Support Service's expert panel. A Decision-Making Representative can only be assigned to a person by a court order.



DECISION SUPPORT ARRANGEMENTS

What are decision support arrangements?

There are five different decision support arrangements available. These arrangements are based on the different levels of support that a person requires to make a specific decision at a specific time.

3 Levels of Decision-Making Support

Decision-Making Representative (last resort)	<ul style="list-style-type: none">• Appointed by the <u>Circuit Court</u> to help a relevant person who is unable to make a decision even with help.• They make decisions based on the will and preference of the relevant person.• The representative report to the Director of the DSS.
Co-Decision-Maker	<ul style="list-style-type: none">• Registered with the <u>Decision Support Service (DSS)</u>• A relative or friend whom the relevant person trusts is appointed to help them make a decision.• They make the decision jointly with the relevant person.
Decision-Making Assistant	<ul style="list-style-type: none">• Registered with the <u>Decision Support Service (DSS)</u>• Decision-making responsibility remains with the relevant person.• The Assistant gets the information needed to make the decision; explains the information to the person and gets the persons will and preference in relation to the decision.

There are two types of arrangements for people who wish to plan ahead for a time in the future when they might lose capacity. These are:

1. Advance Healthcare Directive
2. Enduring Power of Attorney

What types of decisions should be included in a decision support arrangement?

When someone is planning a decision support arrangement, they should think about including decisions about property and financial affairs and/or personal welfare.

Is Legal Aid available to a person making a decision support arrangement or a decision supporter?

You may be entitled to Legal Aid and legal advice if you are involved in a court application, or you are the subject of a court application under the Capacity Act. Eligibility for Legal Aid is generally subject to a financial means test and an assessment of the legal merit of your case. However, the merits test is reduced for court applications under the 2015 Act. The financial means test does not generally apply to the relevant person, the person at the centre of any application.

Legal Aid may also be available in connection with the drafting of Decision-Making Assistance Agreements, Co-Decision-Making Agreements, Advanced Healthcare Directives, and Enduring Powers of Attorney. For more information and to see whether you are eligible for Legal Aid, visit , Advanced Healthcare Directives, and Enduring Powers of Attorney. For more information and to see whether you are eligible for Legal Aid, visit www.legalaidboard.ie.

DECISION-MAKING ASSISTANCE AGREEMENT

In what situations might the person I care for consider making a Decision-Making Assistance Agreement?

If the person you care for needs support to make certain decisions on their own, then they might want to consider making a Decision-Making Assistance Agreement. This agreement lets this person appoint someone they know and trust as a Decision-Making Assistant. These decisions can be about personal welfare or property and money matters. The agreement can be for a certain period of time, or it can be ongoing.

What would my role be as a Decision-Making Assistant?

The role of a Decision-Making Assistant is to help the relevant person to get information and to help them to understand and weigh up their options. The Decision-Making Assistant's role is to help the person to make decisions for themselves. You can also support the person to let other people know about the decision that has been made.

Can the person I care for have more than one Decision-Making Assistant?

Yes, a person can have more than one Decision-Making Assistant and can decide whether they act jointly, separately or a mix of both.

How does the person I care for make a Decision-Making Assistance Agreement?

The agreement must be in writing and include details of the decisions that the Decision-Making Assistant will help with. It must include a statement by the relevant person that they understand the agreement. The Decision-Making Assistant must also confirm that they understand their duties and will carry them out. The Decision Support Service will be able to provide the person you care for with a certified copy of the agreement which can be used by you, as the Decision-Making Assistant, to show that you have the legal authority to help the person you care for.

CO-DECISION-MAKING AGREEMENT

In what situations might the person I care for consider making a Co-Decision-Making Agreement?

If the person you care for needs a higher level of support then they can make a Co-Decision-Making Agreement. This agreement lets a person choose someone they know and trust to act as a Co-Decision-Maker. The Co-Decision-Maker and the person make the decision together.

What would my role be as a Co-Decision-Maker?

As a Co-Decision-Maker, you make certain decisions jointly with the person you care for. You will also help them to gather information and explain it to them in order for them to understand and weigh up their options. You can also support them to let other people know about the decision you have made together.

The Co-Decision-Maker must also send a written report to the Decision Support Service every year. These reports must include details of financial matters, costs and expenses related to the agreement.

Can the person I care for have more than one Co-Decision Maker?

A person can appoint more than one person as a Co-Decision-Maker if the person would like different people to assist them in making different decisions. However, to do so, a person will have to make separate Co-Decision-Making Agreements with each person. Essentially, a person can have more than one Co-Decision-Making Agreement, but they can only have one Co-Decision-Maker for each agreement.

How does the person I care for make a Co-Decision-Making Agreement?

The agreement must be in writing and must be signed by the relevant person and the Co-Decision-Maker. The agreement needs to be witnessed by two other people. It must contain details of the decisions that the relevant person and the Co-Decision-Maker will make together. The easiest way to make this application is via the MyDSS portal:

<https://portal.decisionsupportservice.ie>.

A medical practitioner or another healthcare professional (e.g. nurses, occupational therapists, social workers, speech and language therapists) will need to assess the capacity of person and sign a statement of capacity.

The agreement must be registered with the Decision Support Service. The person you care for and you, as the Co-Decision-Maker, must tell certain people, like their spouse and adult children, about the agreement. They must also be provided with copies of the agreement. Any of those people have five weeks to object to the registration of the agreement.

DECISION-MAKING REPRESENTATION

In what situations would the person I care for require a Decision-Making Representative Order?

If you believe that the person you care for is unable to make certain decisions for themselves, you may ask the court to make a Decision-Making Representative Order so that you can make those decisions on their behalf. The Circuit Court will decide whether to appoint a Decision-Making Representative for the person and who will act in this role.

What would my role be as a Decision-Making Representative?

As a Decision-Making Representative, you would make certain decisions on behalf of a person if they are unable to make those decisions for themselves even with the assistance of a Co-Decision-Maker. You will need to be appointed by the court to be made a Decision-Making Representative. The court will usually appoint someone that the person knows and trusts in this role.

The court order will then list all the decisions that you, as a Decision-Making Representative, can make. This may include decisions about the person's personal welfare and property and affairs. As a Decision-Making Representative, you can only make decisions that are written down in the court order and you must always consider the wishes of the relevant person when making decisions on their behalf.

Can more than one person be appointed as a Decision-Making Representative?

The court can appoint more than one Decision-Making Representative to make decisions on behalf of another person. The court decides whether the Decision-Making Representatives must make decisions together, whether they can make decisions individually or both.

How do I apply for a Decision-Making Representative Order?

If you believe that the person you care for is unable to make certain decisions for themselves, even with the support of a Co-Decision-Maker, you can ask the court to make a Decision-Making Representative Order. If the court agrees that the person you care for is not able to make certain decisions for themselves, it can appoint you as a Decision-Making Representative to make those decisions on their behalf. The court will consider the will and preferences of the relevant person as well as the desirability of preserving family relationships when appointing a Decision-Making Representative.

WARDS OF COURT

What happens to current Wards of Court?

When the new law comes into effect, people will no longer be able to be made a Ward of Court. Any ward of court or an interested party can apply to the wardship court to have their case reviewed. All current Wards of Court will be reviewed by the wardship court and discharged from wardship within three years after the new law comes into effect. The courts will decide whether or not a current Ward of Court needs formal support under the new Act.

PLANNING AHEAD

There are two types of decision support arrangements that will let you and the person you care for plan ahead for a time where they might not be able to make certain decisions for themselves.

These are an Enduring Power of Attorney and an Advance Healthcare Directive. There are a number of things you can do now if you wish to make either of these types of arrangement.

ENDURING POWER OF ATTORNEY

What is an Enduring Power of Attorney?

If the person you care for does not currently have capacity issues, but would like to plan ahead, they can make an Enduring Power of Attorney (EPA). This arrangement gives authority to a person they know and trust to act on their behalf should they lose the capacity to make certain decisions in the future. This person is called their attorney but does not need to be a lawyer.

An Enduring Power of Attorney can cover decisions relating to property and affairs and/or personal welfare. Decisions relating to future health (such as consent and refusal of medical treatment) are expressly excluded. If the person you care for wants to ensure that you or another trusted person can make decisions on healthcare treatments in the future then they should also create an Advance Healthcare Directive.

The person I care for already has an Enduring Power of Attorney in place; however, it has not yet been registered. What will happen to their current Enduring Power of Attorney?

If someone has already made an Enduring Power of Attorney (under the Powers of Attorney Act 1996) then you can keep that arrangement and it will continue to be valid. The only difference is that attorneys under the 1996 Act will be subject to the complaints and investigation function of the Decision Support Service.



Enduring Power of Attorneys created under the 1996 Act will continue to be registered with the Courts Service. EPAs that have not yet been registered may now be registered with the Decision Support Services. If you wish to make an Enduring Power of Attorney following commencement of the 2015 Act, you will only be able do so under the new law.

What would my role be as an Attorney?

As an attorney, you have the authority to make certain decision on behalf of the person you care for if they lose the ability to make those decisions in the future. An attorney can only act on behalf of the person if the Enduring Power of Attorney has been registered and the Decision Support Service has been notified.

When making the Enduring Power of Attorney, a person can decide whether their attorney will have authority to act on their behalf and make decisions about property, finances and/or personal welfare.

Attorneys must submit details of assets and liabilities and projected income and expenditure for the year within the first three months along with an annual report.

Can the person I care for have more than one Attorney?

The person you care for can have more than one attorney and can specify if their attorneys have to make decisions together, separately or a mix of both.

What's the difference between an Enduring Power of Attorney and the othertypes of decision support arrangements on the new three-tier framework?

An Enduring Power of Attorney is a tool for advance planning. It allows someone who has capacity to plan ahead and to appoint a trusted person to make decisions for them in the future. The Enduring Power of Attorney only comes into effect when a person is no longer able to make decisions. The attorney then acts as the person's agent, having regard to his or her known will and preferences. Attorneys are obliged to follow the Guiding Principles and Codes of Practice relevant to them. It is a good idea to have an Enduring Power of Attorney in place as it could avoid the need for a court appointed Decision-Making Representative.

How does the person I care for make an Enduring Power of Attorney?

There are **two stages** that must be completed before an Enduring Power of Attorney can come into force.

The **first stage** involves a person with capacity making an Enduring Power of Attorney to plan for the future. At this stage, an Enduring Power of Attorney must:

- Be made in writing and signed by the relevant person, their attorney and two witnesses.
- Include details of the authority the person intends to give their attorney.
- Include an assessment from a doctor and another healthcare professional as to the capacity of the person and confirm they are able to enter into the agreement.
- Include confirmation that they have talked to a lawyer, who will make sure that the relevant person understands the agreement they are signing.
- Make an application to register the document containing the Enduring Power of Attorney with the Decision Support Service within three months of making the Enduring Power of Attorney and getting the supporting statements. The easiest way to make this application is via the MyDSS portal: <https://portal.decisionsupportservice.ie>.
- Subsequently inform certain people about the arrangement, like the person's spouse/civil partner and adult children.
- Allow those people five weeks to object to the registration of the agreement. There are specific grounds on which an objection can be made which will then be reviewed by the Decision Support Service.

The **second stage** of an Enduring Power of Attorney only comes about if the relevant person loses capacity to make certain decisions. If this happens, their attorney must notify the Decision Support Service for the Enduring Power of Attorney to take effect.

The second stage requires the attorney to:

- Notify the DSS that the relevant person lacks capacity to make certain decisions.
- Include two statements from a doctor and/or another healthcare professional that the person lacks capacity to make certain decisions which are provided for in the Enduring Power of Attorney.
- Inform certain people, for example, the person's spouse/civil partner and adult children, and give them a copy of the agreement.
- Allow those people five weeks to object to the notification. There are specific grounds on an objection can be made which will then be reviewed by the DSS.
- Pending acceptance of the notification by the DSS, the attorney may take action and make certain decisions on behalf of the relevant person which cannot wait for the notification to be accepted.



ADVANCE HEALTHCARE DIRECTIVE

What is an Advance Healthcare Directive?

If you and the person you care for are planning ahead, you can make an Advance Healthcare Directive (AHD). This arrangement lets the person you care for write down their wishes about healthcare and medical treatment decisions in case they are unable to make these decisions at some time in the future. Importantly, it also lets them write down any treatments that they do not want.

They can then appoint someone they know and trust as their Designated Healthcare Representative to ensure their Advance Healthcare Directive is followed. Doctors and other healthcare professionals must consult a person's Advance Healthcare Directive if they lose the ability to make a treatment decision.

What would my role be as a Designated Healthcare Representative?

As a Designated Healthcare Representative, your role is to make healthcare and treatment decisions on behalf of the person you care for in accordance with their wishes as set out in their Advance Healthcare Directive. A Designated Healthcare Representative only acts on the person's behalf if they lose the ability to make certain healthcare decisions for themselves.

The person can give their Designated Healthcare Representative the power to interpret their wishes, and to agree or refuse treatment on their behalf, based on what's set out in the AHD.

Can the person I care for have more than one Designated Healthcare Representative?

The person you care for can appoint an alternate Designated Healthcare Representative who can act should the Designated Healthcare Representative be unable to do so.

How does the person I care for make an Advance Healthcare Directive?

An Advance Healthcare Directive must be made in writing and signed by the relevant person, two witnesses, and by their Designated Healthcare Representative, if they decide to have one.

The person you care for can write down any treatments they wish to refuse and the circumstances in which this should apply.

They can also include requests for specific treatments. Requests for treatments are not legally binding. However, by including them they can make sure they are considered during any related decision-making process.

What happens if a person has not made an Enduring Power of Attorney or Advance Healthcare Directive and now lacks capacity to make decisions?

Where a person is considered to lack capacity to make the specific decision and has not planned ahead with an Enduring Power of Attorney and/or an Advance Healthcare Directive, the Circuit Court can appoint a Decision-Making Representative to make the decision on behalf of the person.

What will happen in a medical emergency?

If there is a medical emergency, and a person does not have a decision supporter or an advance statement (for example an Advance Healthcare Directive or an Enduring Power of Attorney), a healthcare professional may need to provide the person with necessary treatment without their consent. If the person does have a decision supporter or an advance statement - and the healthcare professional has access to it, they will have to consult their supporter or statement, unless the delay in doing so might cause the person serious harm.

It is important that if a person you care for makes an Advance Healthcare Directive or an Enduring Power of Attorney, which includes their wishes about healthcare and treatment, that you let important people know, like family, friends and their general practitioner. In this way, you can help to make sure their medical wishes are respected even in an emergency.



WILLS

How do I go about making a will?

As a family carer, you will naturally have a lot of questions and concerns about how you can plan ahead to provide for the person you care for in the future and how you can ensure that the person you care for is protected after you die.

These questions are frightening, and it might seem inconceivable to imagine a time when you aren't around to care for your loved one. However, planning ahead is essential to ensure that the person you care for is not left in a precarious situation, in particular if there is any concern in relation to their ability to manage their own financial affairs. If you don't make a will, you will lose the opportunity to make any special provisions for the person you care for. However, there are many legal mechanisms available to you to ensure that the vulnerable people in your life are protected. One of the most popular mechanisms is called a discretionary trust (see page 24).

What is a will?

- A will is a legal document which sets out how you would like your estate (money, possessions and property) to be distributed when you die and who you would like to look after distributing those possessions.
- The person who makes the will is called the testator and the person who you appoint to administer your estate is called an executor.
- You can also appoint guardians for your young children in your will.
- The people who will inherit from your estate are called beneficiaries.
- You can leave your estate to beneficiaries outright or you can create a trust. If your intended beneficiaries are vulnerable, disabled or incapacitated, creating a trust in your will can ensure that your estate is managed properly and in accordance with your wishes.

How do I ensure that my will is valid?

For your will to be valid, the following formalities must be met:

- The will must be in writing.
- You must be over 18.
- You must be of sound mind.
- The will must be signed (or marked) at the end of the will in the presence of two witnesses.
- If necessary, the will may be signed on your behalf in the presence of two witnesses at your direction.
- The witnesses or their spouses must not benefit from the will.

No special format is required for a will.

How do I change my will?

You can make changes to your will at any time, for any reason, up to your death.

If you want to make small changes to your existing will, you can do so with a legal document called a **codicil**. If substantial changes are required to your will, you should consider creating an entirely new will. It is important that the changes made are clear and that the codicil is witnessed and written correctly. You should therefore consider seeking legal advice to make any changes to your will.

Do I need a solicitor?

You can write a will yourself, however it is recommended that you contact a solicitor to ensure that your will is valid and clearly sets out your wishes. If you are also considering putting a trust in place for a vulnerable person, you should engage a solicitor with experience in trusts.

How do I leave a gift in my will?

You can leave gifts to anyone you choose in your will.

A gift of personal property is called a legacy, while a gift of real property such as a house or land is called a devise. The exact wording used to give a gift in your will is important and will affect how your assets are distributed. It is therefore recommended to seek legal advice to ensure that your gifts are left according to your wishes.

Dying without a will - what happens?

If you die without leaving a will, then your estate will be distributed in accordance with the law. Your wishes and how you would like your estate to be divided will not be considered. A person who dies without leaving a will is deemed to have died 'intestate'.

If you are survived by:

- **A spouse or civil partner but no children:** your spouse/civil partner will get your entire estate.
- **A spouse or civil partner and children:** your spouse/civil partner will get two-thirds of your estate and the remaining one-third will be divided equally among your children. If one of your children has died, that share goes to his/her children.
- **Children, but no spouse or civil partner:** your estate will be divided equally among your children (or their children).
- **Parents, but no spouse/civil partner or children:** your estate will be divided equally between your parents or given entirely to one parent if only one is living.
- **Brothers and sisters only:** your estate will be shared equally among them, with the children of a deceased brother or sister taking his/her share.
- **Nieces and nephews only:** your estate will be divided equally among those surviving.
- **Other relatives only:** your estate will be divided equally between the nearest equal relations.
- **No relatives:** your estate will go to the State.

INHERITANCE TAX

Will the beneficiaries of my will need to pay inheritance tax?

Inheritance tax is the tax paid on your estate. This tax is called Capital Acquisitions Tax (CAT) and the person who is receiving the gift or inheritance is the person responsible for paying it. This tax may be payable on inheritance received from someone following their death or on gifts received from someone during their lifetime.

The amount of tax payable is dependent on the relationship between you and the beneficiary and the value of the gift or inheritance which you have left for them in your will. It will also depend on whether the gift or inheritance qualifies for tax exemptions and reliefs.

For instance, spouses and civil partners are exempt from paying tax on gifts or inheritances passed from their spouse/civil partner.

If you are leaving a gift or inheritance to a vulnerable person, it may also qualify for tax exemptions or reliefs. These exemptions and reliefs include:

- Gifts or inheritances to be used only for the medical expenses of a person who is permanently incapacitated by reason of physical or mental infirmity.
- Gifts or inheritances for the purpose of providing reasonable support for the maintenance or education of a child or spouse or civil partner.
- A gift or inheritance of a house to a person who lives in the house. This is known as the **dwelling house exemption**. A person may be exempt from tax if that house is their main residence, and they don't own any other house.
- Inheritance left to an incapacitated person in the form of a trust is not subject to inheritance tax.

Some of my beneficiaries don't qualify for these tax exemptions or reliefs, how much inheritance tax might they need to pay?

Your beneficiary will only have to pay inheritance tax if the gift or inheritance they receive is above the relevant threshold. The threshold varies depending on the relationship between you and beneficiary of the gift or inheritance. The tax rate is 33% on the remaining amount above the threshold.



If you leave a gift or inheritance to:	THRESHOLD: Inheritance tax is only payable if the gift or inheritance is above:
<p>A.</p> <ul style="list-style-type: none"> • Your child, adopted child, stepchild, or foster child. • Your grandchild (if your child has died before you and your grandchild is under 18). • Your parent if they have full ownership of your inheritance. • Your nephew or niece if they worked in your business for the previous five years. 	<p>€335,000</p>
<p>B.</p> <ul style="list-style-type: none"> • Your parent if they do not have full ownership of your inheritance. • Your brother or sister. • Your nephew or niece. • Your grandparent or great-grandparent. • Your grandchild or great-grandchild. 	<p>€32,000</p>
<p>C.</p> <ul style="list-style-type: none"> • Anyone else. 	<p>€16,250</p>

TRUSTS & HOW THEY WORK

What is a trust?

- A **trust** is a legal agreement created to manage assets on behalf of another person.
- The person who creates the trust is called the **settlor**.
- The person appointed to manage the assets on behalf of another person is called the **trustee**.
- The person or group of people that benefit from the trust are called the **beneficiaries**.

When can I set up a trust for the person I care for?

You can set up a trust during your lifetime or through your will. You can also decide whether you want the trust to take effect at a certain point during your lifetime or if you want the trust to take effect upon your death.

Why is the creation of a trust important for a vulnerable person?

A trust can offer a large degree of flexibility in particular in providing for young children, beneficiaries with disabilities or vulnerable adult beneficiaries.

A trust can be particularly valuable for carers of vulnerable persons who may not have the capacity to hold or manage the assets themselves. Incorporating a trust into your will is therefore an effective way to safeguard their inheritance.

How does it work?

The trustee or trustees agree to look after the assets (savings, possessions and/or property) held in the trust and will decide how the assets of the trust are used for the benefit of the beneficiaries in accordance with your wishes.

A discretionary trust is often the best method of providing for vulnerable beneficiaries. In the case where you have been the primary caregiver and are anxious to ensure the person you care for will be looked after, not only financially but also to ensure that their day-to-day living and emotional needs will be met, you should consider setting up a discretionary trust.

DISCRETIONARY TRUSTS

What is a discretionary trust?

A discretionary trust is a legal agreement which involves appointing persons called trustees to receive your inheritance on the basis that they use it to benefit the person you care for (the beneficiary). A discretionary trust provides a flexible structure for carers of vulnerable persons who may not have the capacity to hold assets directly or to manage the assets themselves.

How does a discretionary trust actually work?

A discretionary trust grants the trustees wide discretion over how much of the funds or assets they give to the beneficiary and the frequency in which they give it to them. This allows the trustees to, over time, exercise their judgement based on the changing circumstances and requirements of the beneficiary. This discretion allows them to decide how funds should be used to best provide care and support for the vulnerable person you care for.

How do I make sure the person I care for can remain living in my house after I pass away?

If you own a home and would like the person you care for to use and enjoy your home for their lifetime and then have the property pass to someone else upon their death, you might want to consider a life interest trust.

How do I make sure the person I care for can remain living in my house after I pass away?

If you own a home and would like the person you care for to use and enjoy your home for their lifetime and then have the property pass to someone else upon their death, you might want to consider a life interest trust.

LIFE INTEREST TRUST

What is a life interest trust?

A life interest trust is a legal arrangement which ensures that the person you care for can continue living in a property for a set period of time, usually their lifetime. Again, you would be required to appoint trustees who will hold the property in trust for the benefit of the person you care for.

A life interest trust can ensure that the person you care for has the right to enjoy the benefit of the property for their lifetime (for example the right to live in a house) whilst ensuring the property can be passed on to another loved one in the future.

Catherine owns her house and has three adult children. One of her children, Kevin, has additional needs and she wants to make sure he can stay in the house after she passes away. How can she ensure this?

Catherine should consider setting up a life interest trust in her will to benefit Kevin. With a life interest trust, Catherine can ensure that Kevin will be able to continue living in the family home for the rest of his life while also ensuring that the house can be passed to her other children for their benefit in the future.

SETTING UP A TRUST

How do I set up a trust for the person I care for?

If you are considering putting a trust in place for a vulnerable person, you should engage a solicitor with experience in trusts. The process of setting up a trust is complex and the type of trust you choose will affect how your assets are distributed and the tax rules which apply.

Who should I choose as the trustee(s)?

A trustee has a legal obligation to the beneficiaries of a trust. A trustee must do whatever is in the best interests of the beneficiaries.

You can decide who you would like to appoint as a trustee and how many trustees you would like to appoint. A trustee can be someone in your family, a friend, or a professional person such as a solicitor or accountant. A professional trustee is allowed to charge for their work and their charges will be deducted from the trust fund. It is important to choose someone trustworthy and capable who will manage the trust in line with your wishes.

How can I make sure that the person I care for is being looked after in accordance with my wishes?

When you set up a trust, such as a discretionary trust, it is generally accompanied by a **Letter of Wishes**. A letter of wishes is a personal letter to the trustees providing them with guidance on how you would like your assets to be managed and in what way you would like your money or assets to be used. This letter can also include your preferences regarding the care and medical treatment of the beneficiary in the future. While a letter of wishes is not legally binding, the trustees will usually act in accordance with your wishes unless there are particular reasons for departing from them.

Will the beneficiaries of a discretionary trust need to pay inheritance tax?

Discretionary Trust Tax generally consists of an initial annual tax. However, a discretionary trust set up for the benefit of a vulnerable person may be eligible for an exemption.

A discretionary trust is exempt from this tax where it can be shown that it has been created exclusively for the benefit of a person or group of people who due to physical, mental or legal incapacity are incapable of managing their affairs.

Where the discretionary trust is for a young child, the discretionary trust tax of 6% will arise on the death of the parent(s) or when the youngest child beneficiary is 21, whichever is later.

TRUSTS & ENTITLEMENT TO SOCIAL WELFARE

I am worried that the inheritance I leave to the person I care for will affect their social welfare payments. In what way might an inheritance affect a person's social welfare entitlements?

If the person you care for is in receipt of Disability Allowance or other social welfare benefits, then any inheritance that you leave them may have an impact on their payments. Social welfare entitlements are subject to a financial means test and therefore any inheritance left to a person will be taken into account in assessing their means.

The creation of a discretionary fund is the best way to address this concern. The benefit of using a trust fund is that any inheritance held in the trust will generally not interfere with the social welfare benefits of the beneficiary. This is because when you leave inheritance in a trust, you are technically leaving your money or assets to the trustees rather than to the person you care for. A discretionary trust then gives great flexibility to the trustees to deal with the person's circumstances into the future.

Carers should be aware that while irregular or once-off payments from the trust are generally not assessed as means, regular maintenance payments may be considered as cash income and could therefore be assessed as means. Trustees may be able to avoid this by putting in place some kind of individualised arrangement that allows for payments from the trust in line with the means tests for these benefits. Ultimately, however, everyone's individual circumstances are different and will need to be assessed independently. Legal advice should be sought from an experienced solicitor to see whether a discretionary trust could address your concerns.

Siobhan cares full-time for her vulnerable adult son, Colm. She is updating her will and wants to leave all her savings and assets to be divided equally between her children. However, Siobhan is concerned that Colm would not be able to financially manage his share of the inheritance. What options are available to her?

The best option for Siobhan would be to set up a discretionary trust in her will for the benefit of Colm. Siobhan would be able to choose people that she trusts to act as the trustees of the trust such as her other children. They will then be responsible for ensuring that Colm receives his inheritance. A discretionary trust would also give them the discretion to decide how and when he would receive his share and provide them with the ability to adapt to changes in the future. Siobhan would also be able to prepare a letter of wishes for them that would set out how she would like the assets and savings in the trust to be used for the benefit of Colm.



ACCESS TO HOUSING

HOUSING RIGHTS

Does a vulnerable person have a right to access housing?

Ireland ratified the UN Convention on the Rights of People with Disabilities (UNCRPD) in 2018. The UNCRPD provides that people with disabilities have an equal right to access housing and to receive the supports necessary to enable them to live in their own home in the community. A person with a disability may choose to live alone or choose from a variety of arrangements such as sharing with family, host families, friends and/or others who may or may not have a disability.

The National Housing Strategy for Disabled People 2022 – 2027 was launched by the Government in 2022. It sets out the Government's framework for delivering housing and related supports for disabled people over the next 5 years, with a particular emphasis on disabled people having choice and control over their living arrangements.

Everyone also has the right not to be directly or indirectly discriminated against in relation to access to housing or other services on the grounds of gender, marital status, family status, sexual orientation, religion, age, disability, race, membership of the Traveller Community or housing assistance.

HOUSING SUPPORTS

What housing supports are available to the person I care for?

There are a number of supports available to the person you care for, including:

- Renting a house or apartment from your local authority or an Approved Housing Body.
- Renting a house or apartment (long term leasing) for 10-20 years from the local authority or Approved Housing Body.
- Renting a house or apartment through schemes such as the Rental Accommodation Scheme (RAS) and Housing Assistance Payment Scheme (HAP).
- Getting a grant of money to make your home more accessible (i.e. the Mobility Grant Aids Scheme and Housing Adaptation Grant Scheme operated by your local authority)
- Getting additional support with housing if you are an older person, experiencing homelessness, a member of the travelling community or a person with a disability.

What is social housing support?

Social housing support is housing provided to people who do not have enough money to pay for their own place to live in, like a house or apartment.

You can get social housing support from the local authority (city or county council) or another agency called an Approved Housing Body. An Approved Housing Body is an organisation that can offer housing to groups of people, for example, Clúid and The Simon Community.

How does the person I care for qualify for social housing support?

To qualify for social housing support, a person:

- Must not have any other suitable house or apartment to live in.
- Must satisfy the income criteria.
- Must not owe any rent or money to any other local authority in Ireland.
- If from another country, must have a right to reside in Ireland.
- Must apply to the local authority area where they want to live.
- Must have a connection to the area they want to live in and must explain the connection on their form. **The connection can be family, work, education or medical needs.**
- Can apply to one local authority and choose 3 areas where they would like to live in that local authority. **Careful consideration should be given to the selection of these areas as only suitable housing in these areas will be offered to the person. Consideration should be made based on things such as services, transport, links to family and friends, and availability of suitable housing in the areas of choice.**
- If applying for social housing support based on a disability, they should make sure to give additional or extra information with their application form.

How does the person I care for apply for social housing support?

A person must complete a social housing application form and submit the form to their local authority. If they want to apply for housing provided by an Approved Housing Body, they must also apply through their local authority. A person can only apply to one local authority for social housing support.

It is important to make sure you give all the information they ask for on the application form. If you do not give all the information, your form will be sent back to you. There is a checklist at the front of the form to help you make sure you give all the information. All local authorities have websites where additional and more detailed information can be found on all the options available to people seeking social housing support. Application forms can be obtained from the Housing Section of your local authority or downloaded from their website. [Find your local authority here.](#)

Why has the person I care for been placed on a housing waiting list?

Every person that has applied and is approved for social housing, is placed on the local authority housing waiting list. Each local authority manages the housing waiting list for its own area.

Each local authority can determine the order of priority that applies to their waiting list. Most local authorities operate a 'time on list' system, whereby priority is given to those with most time spent on the waiting list. Some local authorities may provide medical priority if someone in your household with a disability or a medical condition is living in unsuitable accommodation and a change in housing will improve or stabilise the circumstances of the person with a disability or medical condition. Check with your local authority to see if this is available to you.

What is Choice Based Letting?

Several local authorities use an online system called Choice Based Letting. Only people on the housing list can look at it. That way, a person can let the local authority know they are interested in the house or apartment, and it will give them some choice about where they live.

What is the Housing Assistance Payment (HAP)?

HAP is another type of social housing support provided by local authorities. Instead of giving you a house, the local authority will give you money to help you pay rent to a private landlord. You must fit all the rules for social housing to get HAP. If you get HAP, the local authority will take you off the housing waiting list. You will still be able to apply for a transfer down the line to housing owned by your local authority or a Housing Association. If you do this, your time on the housing waiting list will be considered on the transfer waiting list.

If you qualify for HAP, your local authority will make a rent payment on your behalf directly to the landlord. You must also pay a rent contribution to your local authority. Your contribution is a differential rent based on your income and ability to pay. If you get HAP and you start working, you will be able to stay in your home and continue receiving HAP. Your rent contribution may change if your income increases or household composition changes.

How can the person I care for apply for the HAP?

Any person or household that is qualified for social housing support and is not already in receipt of another form of such support, is eligible for HAP.

How does HAP work?

If the person you care for is receiving HAP, they must find their own accommodation in the private rented market and the landlord must agree to rent their property to the HAP recipient. The local authority will then make a monthly payment to the landlord. The HAP recipient pays their rent contribution to the local authority. More information on HAP is available at hap.ie.

What is the Rental Accommodation Scheme (RAS)?

RAS is also a type of social housing support provided by local authorities. Instead of giving you a house, the local authority will arrange a lease with a private landlord on your behalf. The tenant pays a differential rent to the local authority and the local authority will make payments to the landlord on behalf of the tenant.

To qualify, a person must be getting Rent Supplement for a minimum period of 18 months and be assessed as having a long-term housing need. More information on RAS is available [here](#).

The person I care for does not meet the income threshold for social housing and therefore does not qualify. Is there any other housing support available to them?

If a person or a household is deemed ineligible for social housing, they can still have their short-term housing needs met in the private sector with the assistance of Rent Supplement.

The person you care for may also be eligible for HSE-funded community care and home care supports to support them to live independently. You can find out more about the home support service [here](#).

What is Rent Supplement?

The person you care for may be able to get Rent Supplement if they live in private accommodation (a home that is owned by a private landlord). The person you care for may qualify for Rent Supplement if they cannot pay their rent from their own resources such as their social welfare payments.

Rent Supplement is calculated to make sure that a person has enough money left to live on after their rent is paid. Rent Supplement is an income support. If a person gets Rent Supplement for a period longer than expected, their payment may be changed to a Housing Assistance Payment (HAP).

More information on Rent Supplement is available from the [Department of Social Protection](#).

The person I care for is unable to live at home and would struggle to live independently. What housing supports are available to them?

The person you care for may be able to avail of [residential care](#). People with disabilities who are unable to live at home can be provided with residential services directly by the HSE or, on its behalf, by voluntary organisations that are funded by the HSE. A residential service is where someone lives most or all of the time. They may have to pay [Long-Stay Contributions for Residential Support Services](#).

HOUSING ADAPTATION GRANTS

What Housing Adaptation Grants are available?

Housing Adaptation Grants is the collective term given to the three grants: Housing Aid for Older People, Housing Aid for People with a Disability and Mobility Aid Grant.

The Housing Adaptation Grants are designed to help make a person's house or apartment more suitable for them to live in. The types of works covered include the fitting of access ramps, grab rails, downstairs toilet, stair-lifts, level access showers, changes to allow wheelchair access, extensions, and any other works which are reasonably necessary to make a house more suitable to live in. You may need to get a report from an Occupational Therapist (OT) that says you need these works done. You must get approval for the grant before the work starts and payment of the grant is made when the work is completed.

Is the person I care eligible for a Housing Adaptation Grant?

The person you care for may apply for the **Housing Adaptation Grant** for people with a disability if they are a person with a disability who requires adaptation works to render a house more suitable for their accommodation needs. This grant is generally for big changes that needs to be made to the home. If your household income is more than €60,000 a year, you will not qualify for this grant. The maximum grant available is €30,000, which may cover up to 95% of the approved cost of works.

If the person you care for is an older person, then they may be able to apply for the **Housing Aid for Older People Grant Scheme**. This grant helps older people who live in poor housing conditions to make necessary repairs or improvements to their home. If your household income is more than €60,000 a year, you will not qualify for this grant. The maximum grant available is €8,000, which may cover up to 95% of the approved cost of works.

The person you care for may be able to apply for the **Mobility Aids Housing Grant**. This grant is for older people and people with a disability who find it hard to move around their home due to mobility issues. If your household income is more than €30,000 a year, you will not qualify for this grant. The maximum grant available is €6,000 or the total cost of the work approved by your local authority (whichever is less).

More information on the Housing Adaptation Grants are available from the [Department of Housing, Local Government and Heritage](#).



Patrick is 75 years old and lives with his wife Joan. Patrick is a vulnerable person and Joan is his primary carer. Patrick and Joan own their own home. Last week, the central heating stopped working and they were informed that it is beyond repair. Patrick and Joan are retired and primarily rely on their state pensions. Their combined income is €32,000 after the necessary deductions are applied. Joan's carer allowance is one of the deductions which is not taken into account when calculating their income. They have been told that it will cost them €6,000 to install a new central heating system. They don't have enough money to fix the central heating and Joan wants to know if they can avail of a grant to help them cover the costs.

Since Patrick is over 66 and owns his own house, he would be eligible to apply for the Housing Aid for Older People Grant Scheme. As their household income is €32,000 after deductions are applied, Patrick and Joan would be entitled to a grant that covers 85% of the costs of the work to a maximum of €6,800. This means that if the work on the home costs €6,000 including VAT, Patrick and Joan will be entitled to a grant for €5,100 to help them cover the cost of the work needed.

Where can I get more information on the available social housing options?

Further information on all of your support housing options is available on the **Housing Agency website** and Citizen's Information (Housing). See also the CLM Guide to Social Housing Support to find out more.

Can the person I care apply for Legal Aid?

If you require legal assistance in relation to your housing situation, you may be entitled to Legal Aid through your local Legal Aid Board law centre. Your application will be subject to a financial means test and an assessment of the legal merit of your case. Many of the law centres have quite lengthy waiting lists, so you should apply without delay. If your application is refused, you have a right of appeal. More information is available at www.legalaidboard.ie.



EDUCATION RIGHTS FOR PERSONS WITH DISABILITIES

EDUCATION RIGHTS

Does my child have a right to education?

All children and young people in Ireland have the right to education. This right is protected under the Irish Constitution. In addition, the Education Act 1998 requires the Government to make sure that everyone living in the State is guaranteed, as far as practicable, “a level and quality of education appropriate to meeting the needs and abilities of that person”. The Government must make sure that every child receives a certain standard of education. This right is generally defined as covering primary and second-level education.

My child has additional needs, how does the law protect their right to education?

The Education Act 1998 also requires the Government to ensure that people with a disability or other special educational needs have access to support services and a level and quality of education appropriate to meet their needs and abilities.

Further, Ireland ratified the **UN Convention on the Rights of Persons with Disabilities (UNCRPD)** in 2018. The **UNCRPD** recognises the rights of people with disabilities to an education that is inclusive and free from discrimination.

The Education for Persons with Special Educational Needs (EPSEN) Act 2004 also provides for the education of children aged under 18 years with special educational needs. The EPSEN Act says that children with special educational needs should, where possible, be educated in a mainstream school with children who do not have special needs. This should happen unless it would not be in their best interests or the best interests of the other children in the school. A full review of the EPSEN Act has recently been completed by the Department of Education. The purpose of this review is to assess whether the law that governs the provision of education for children with special educational needs is adequate.

The Education (Admission to Schools) Act 2018 also includes a power to compel a school to make additional provision for the education of children with special educational needs.

What is meant by 'special educational needs'?

The term 'special educational needs' includes a broad spectrum of children with different abilities and educational difficulties who may require extra teaching support and/or extra support with care needs.

The EPSEN Act defines special educational needs as a restriction in the capacity of the person to participate in and benefit from education on account of an enduring physical, sensory, mental health or learning disability, or any other condition which results in a person learning differently from a person without that condition.

Children with special educational needs may be in ordinary classes in mainstream primary schools or in special classes in these schools. They may get additional educational support from special education teachers and care support from Special Needs Assistants (SNAs).

SUPPORTS FOR CHILDREN WITH SPECIAL EDUCATION NEEDS

My child has special educational needs. What supports and services are available to them?

If your child has special educational needs, then they may be entitled to the following educational supports and services:

- **Special Needs Assistant (SNA) Scheme**

The SNA scheme plays an important role in providing assistance to students who have significant need for care support and who would not be able to attend school without such additional support.

- **Special Schools**

Special schools support students with more severe and/or complex special educational needs in cases where a full-time mainstream placement would not be in the student's best interest. These students may find the demands of mainstream schools very difficult. In order to be placed in a special school a child must have a professional report stating that he/she has a special educational need and that this need is of such complexity that a special school placement could be considered.

- **Special Equipment Grants Scheme**

A scheme of grants is available to purchase educational equipment for primary and post-primary pupils who have been diagnosed with serious physical or communicative disabilities.

- **Home Tuition**

This scheme is for children who are unable to attend school for reasons such as chronic illness, children with special educational needs who are seeking an educational placement and early educational

- **The Summer Education Programme (July Provision)**

The Summer Programme provides educational supports during the summer to children with special needs and those at most risk of educational disadvantage.

- **Irish Sign Language Tuition Scheme**

The Irish Sign Language (ISL) Tuition Scheme provides funding for a weekly tuition service. Tutors visit the home of a deaf or hard of hearing pre-school child or school-going pupil to provide training in ISL for the child, their siblings, and parents or guardian.

- **Visiting Teacher Service**

The Visiting Teacher Service provides a teaching and support service to parents of deaf or hard-of-hearing children and children with visual impairment.

- **School Transport Scheme**

In general, a child who is eligible for placement in a special class is also eligible for free transport to their nearest class.

- **Assessment of Need**

The Disability Act 2005 provides for an Assessment of Need to identify your child's health needs and what health services are needed to meet these needs. It is an assessment carried out by the HSE for children or young people with a disability.

You can find out more about the learning supports and additional resources available to your child by visiting [Citizens Information](#) – Special needs education in [primary school](#) and [post primary](#).

My daughter has a disability and attends a mainstream primary school. I'm concerned that she is not receiving enough support at school, what can I do?

If you have concerns with the level of support being given to your child in school, you should first discuss this with your child's school. You should then discuss this with your local Special Educational Needs Organiser (SENO) to find out what learning supports or additional resources may be available for your child. The National Council for Special Education (NCSE) administers and processes applications for special educational resources using its network of SENOs. The role of the SENO is to interact with parents and schools and liaise with the HSE in providing resources to support children with special educational needs. Find the contact details of [SENOs in your area](#).

POST-SCHOOL OPTIONS FOR ADULTS WITH A DISABILITY

The person I care for is an adult with additional needs. What post-school options are available to them?

Post-school options for adults with disabilities include attending further education, higher education, rehabilitative training courses or adult day support services.

What is Further Education and Training?

Further Education and Training (FET) helps people get skills and qualifications for employment, career, personal development, and social purposes. These courses provide a broad range of options to meet the diverse needs of learners and are also available as online courses.

FET Colleges and Training Centres may provide additional assistance for people with disabilities on mainstream FET Courses. Specialist Training Courses for people with disabilities are also available.

Can the person I care for be supported in attending Higher Education?

Higher or third-level education is provided by universities, institutes of technology and colleges of education as well as other State-aided and private bodies throughout Ireland. Supports are provided across a wide range of needs.

If the person you care has a disability and has experienced additional educational challenges in secondary school, they may be able to apply for DARE.

What is DARE?

Disability Access Route to Education (DARE) is a third level alternative admissions scheme for school-leavers under the age of 23 whose disabilities have had a negative impact on their second level education. DARE offers reduced points places to school leavers who, as a result of having a disability, have experienced additional educational challenges in secondary school.

What are Rehabilitative Training Courses?

These are training courses to help develop life skills, social skills and basic work skills. Trainees attend these courses for two to four years and are supported to develop and review training plans in line with their needs and abilities. Rehabilitative training is intended to help participants progress to greater levels of independence and integration in their community. It may help in transitioning to mainstream post-school education and training or to specialist vocational training.

What are Adult Day Support Services?

These services are for people who have significant support needs arising from disabilities and require extra help to access community and services in line with their wishes and needs.

Where can I get more information on the options available to the person I care for?

You can get more information from the National Council for Special Education and from representative bodies.

SOCIAL WELFARE APPEALS

What can I do if my application for a social welfare payment is refused?

If you think you have been wrongly refused a social welfare payment, for example Carer's Allowance or Carer's Benefit, you can appeal this decision to the Social Welfare Appeals Office. The Social Welfare Appeals Office operates independently of the Department of Social Protection. It aims to provide an independent, accessible and fair appeals service with regard to entitlement to social welfare payments and to deliver that service in a prompt and courteous manner. There is no charge for making an appeal.

Appeals must be submitted **within 21 days of the decision** of the Deciding Officer or Designated Person. If you don't appeal before this deadline, it may result in your appeal not being accepted. For this reason you should submit your appeal as quickly as possible and at a minimum within the 21 day timeframe, even if you need more time to gather your supporting evidence or to seek legal advice in finalising the reason for your appeal. When submitting your appeal, you can advise that you intend to send further evidence in support of your appeal as soon as possible.

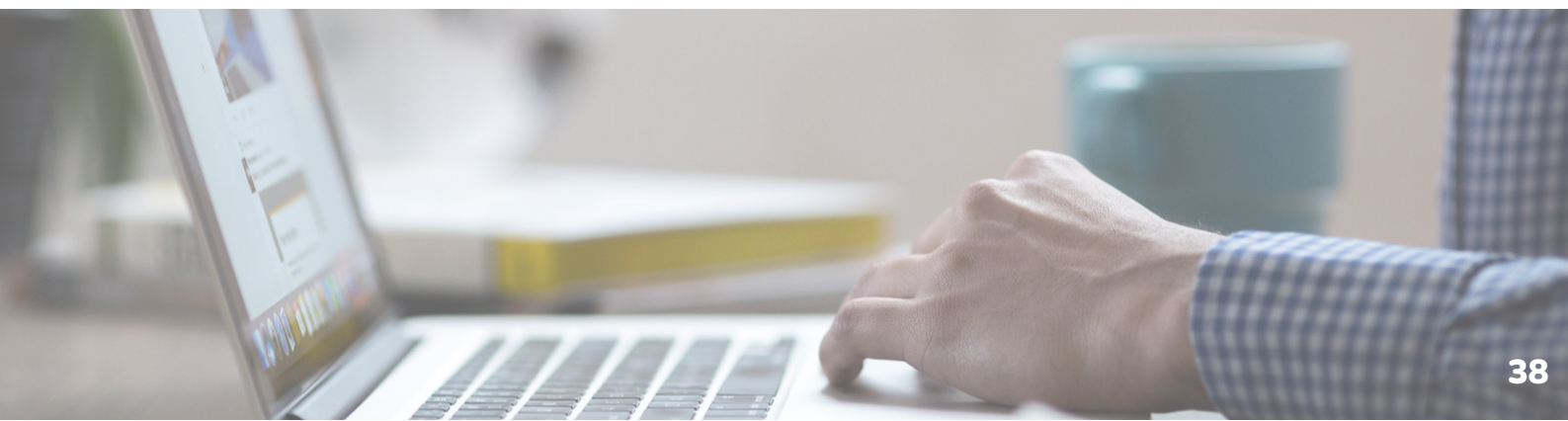
What should I include in my appeal?

Your appeal should state your name, your address and your Personal Public Service (PPS) number and enclose:

- a copy of the decision you are appealing
- the reasons why you are unhappy with the decision
- any relevant evidence that you think may support your appeal, ie evidence of how you fulfil the criteria of the particular payment

Should there be an oral hearing in my appeal?

The Appeals Officer dealing with your appeal will decide if an oral hearing is necessary to resolve the issue. If the refusal of a social welfare payment related to the Department's interpretation of the facts (e.g. the level of care a person requires or the impact of one's disability on your ability to work) in your case, you should request an oral hearing to clarify any disagreement on the facts. Sometimes your own factual evidence is better explained in person rather than on paper. The decision rests with the Appeals Officer. However, where there is a dispute in the facts of the case, there can be a strong case to argue for an oral hearing.



Where can I find more information?

You can find more information about the appeals process on www.gov.ie (Appeals Procedures). Your local Family Carers Ireland centre may be able to assist with your appeal.

Social Welfare Appeals Office

Address:

Social Welfare Appeals Office,

D'Olier House,

D'Olier Street ,

Dublin , D02 XY31

Website: www.gov.ie/socialwelfareappealsoffice

Email: swappeals@welfare.ie

Phone: 0818 747434 / 01 6732800





**Community
Law & Mediation**



**Family
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Freephone Careline 1800 24 07 24