

Briefing session: The Assisted Decision-Making (Capacity) Act 2015 and the Decision Support Service

Áine Flynn

Director of the Decision Support Service

Family Carers Ireland

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seirbhís tacaíochta
cinnteoireachta

decision support service



30th December 2015

President Higgins signed the
Assisted Decision-Making
(Capacity) Act



Assisted Decision-Making Capacity Act 2015

- Decision-making capacity means being able to make your own decisions
- This Act is about facilitating people to make decisions by themselves....
- and how we support them if they have problems with decision-making
- This Act is only for adults over 18
- The Act is not operational yet



Key Reforms

- Abolition of the Wards of Court system under the Lunacy Regulation (Ireland) Act 1871
- Statutory functional test of capacity
- New guiding principles
- New three-tier support framework
- New tools for advance planning
- Establishment of the Decision Support Service

‘Relevant Person’



- The person whose capacity is in question or may shortly be in question in relation to a decision
- The central person under the Act and the Decision Support Service

Abolition of Wardship

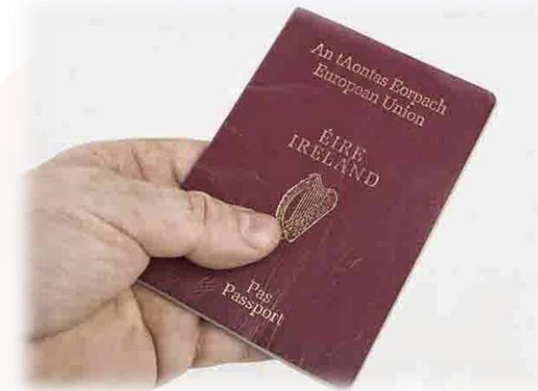
- Under wardship, the Court declares that a person is 'of unsound mind'.
- The Court becomes the decision-maker.

Big decisions



and

Small decisions



- After the new Act there will be no new adult Wards of Court
- All Wards will come out of wardship within 3 years at the latest

Functional Assessment of Capacity

- Do you have capacity to decide a particular thing at the time when you need to decide it?
- Not a medical test
- A medical condition only matters if it actually affects your decision-making
- “You lack capacity” is not a full sentence

A person lacks capacity if unable to:

- ❑ Understand information
- ❑ Retain information for as long as you need to
- ❑ Weigh up this information
- ❑ Communicate decision, **with support if necessary**

Note: this is already the proper test but the Act makes it written law

Guiding Principles

- **Presumption of Capacity:**
- Start off by thinking that everyone can make their own decisions. Assessing capacity is not the first step.
- Give the person all the support they need to help them make their own decisions.
- Wanting to do something that seems unwise does not mean that you lack the capacity to decide to do it.
- Respect dignity, privacy, bodily integrity, autonomy
- Include the person in the decision-making
- **Respect for Will and Preferences instead of Best Interests**
- Act in good faith and for the relevant person's benefit

What sorts of decisions can be supported under the new framework?

- **Personal Welfare**, like deciding where you live and who takes care of you
- Health, including medical decisions
- **Property**, like buying or selling or renting a house
- Money, like how you should manage a bank account or apply for benefits



New three-tier framework of 'decision supporters'



The diagram illustrates a three-tier framework of decision supporters. It consists of three blue L-shaped blocks arranged in a row, each representing a different level of support. The first block on the left is labeled 'Decision-Making Assistant (DMA)' and 'Person still decides'. The middle block is labeled 'Co-Decision Maker (CDM)' and 'Joint decision-making'. The third block on the right is labeled 'Decision-Making Representative (DMR)' and 'Appointed by the Circuit Court to make decisions'. The text for the first two blocks is in blue, while the text for the third block is in red. The background features a faint, stylized graphic of a person's head and shoulders.

Decision-Making Assistant (DMA)

Person still decides

Co-Decision Maker (CDM)

Joint decision-making

Decision-Making Representative (DMR)

Appointed by the Circuit Court to make decisions

- Suitability and eligibility criteria apply
- All supporters must apply the guiding principles
- When you are putting supports in place, you must give notice to other interested parties who may object

‘Next of Kin’: current position

- When you are an adult, your ‘next of kin’ has no automatic legal status to make your decisions for you
- Your ‘next of kin’ cannot consent or refuse consent to medical treatment
- Close family members are always important because they know you best and can provide information about your wishes. This will still be the case when the Act begins.

Tier 1. Decision-Making Assistant (DMA)

- Someone whom you trust to help you obtain and understand information and the choices you have.
- You may have a **decision-making assistance agreement** to set out the kind of things that you want them to help you with.
- You still make the decision yourself
- Can help to let others know about your decision or help you have your decision carried out.



Tier 2. Co-Decision Maker (CDM)



- You can choose someone to make decisions together with you.
- Your CDM should be a close friend or family member that you trust.
- You make a co-decision-making agreement (CDMA) that sets out the things you will decide together
- The CDMA is registered with the DSS
- The CDM should not stand in your way unless there is a risk of serious harm
- Supervised by the DSS

Tier 3. Decision-Making Representative (DMR)



- There is an application to court
- If the judge decides that you cannot make certain decisions even with lower tier support, then the judge can choose a decision-making representative to make decisions for you.
- The court has to listen to you and to others who care about you and think about your family relationships
- The court must consider whom you want to be your DMR
- If nobody suitable is available, the court can appoint a DMR from the DSS's panel
- Legal Aid will be available for court

Role of Decision-Making Representative

- The court decides what decisions your **DMR** is allowed to take
- The DMR cannot stop people from seeing you
- The DSS will supervise and receive reports from the DMR
- Guidance and template forms will be available

Advance planning: Enduring Power of Attorney

- While you are still able to decide, you can make a legal document called an Enduring Power of Attorney (EPA)
- Your attorney is somebody you trust to make the right decisions.
- You decide what sort of decisions your attorney will make in the future
- The EPA only starts working when you can no longer make these decisions by yourself
- Supervised by the DSS



Advance Planning: Advance Healthcare Directive (AHD)

- An **Advance Healthcare Directive** is a legal document.
- You use it to let people know your wishes about medical treatment.
- It only starts to work when you can no longer make these decisions for yourself.
- It can include refusing treatment that keeps you alive.
- You can choose a person called a **designated healthcare representative (DHR)** to make decisions in the future about medical treatments



The Decision Support Service



- New service set up under the Act
- An outward-facing accessible, person-centred service
- Getting ready for commencement mid-2022

The Director of the DSS

The Director will:

- promote awareness and confidence about the Act
- provide information about decision supports
- answer questions about how to be a decision supporter
- provide information and guidance to organisations and bodies
- maintain a register and supervise decision support arrangements
- investigate complaints about decision support arrangements
- promote organisational change
- make reports and recommendations about the Act



Getting ready: Codes of Practice

- The Director will publish codes of practice and other guidance
- The Director will encourage families, carers and others to read the codes of practice and to use them for help with assessing capacity and supporting everyone to make decisions
- The codes of practice will tell doctors, nurses, care workers, social workers, lawyers and other people, how to make sure that they are following the Act
- The codes of practice will be ready before the Decision Support Service is set up.

What the DSS will not do

- Make decisions for people
- Manage people's money and property
- Directly appoint decision supporters
- Provide an independent advocacy service
- Regulate and supervise arrangements, apart from the formal arrangements under the Act
- Act as regulator of other professionals or services



Offences under the Act

- It is an offence to make a person enter into a supported decision-making arrangement against their will.
- It is an offence not to cooperate with an investigation by the Director.
- It is an offence to put false information in any of the documents required to register an arrangement.
- It is an offence for a decision supporter to ill-treat or neglect the relevant person

Getting Ready

- How are you managing decision-making at present?
- What property and affairs or personal welfare decisions do I need to make?
- Who would be suitable to act as decision supporter **if necessary?**
- Discuss with family and friends
- Can I plan ahead by way of an EPA or an AHD?

Conclusion



We need to make sure that we are doing what it says in the United Nations Convention on the Rights of Persons with Disabilities:

- **full human rights for all persons with disabilities without discrimination**
- **the right to recognition everywhere as persons before the law**
- **persons with disabilities have legal capacity on an equal basis with everyone else**
- **Loss of your decision-making capacity is not an off-switch for your human rights!**



Thank You

www.decisionsupportservice.ie

This presentation is intended as an overview of certain parts of the Assisted Decision-Making (Capacity) Act 2015 and related matters and should not be relied on as legal advice or opinion

