

The Assisted Decision-Making (Capacity) Act 2015 & Decision Support Service

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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



30 December 2015

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



The Decision Support Service



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

Abolition of wardship

- The law that we are using now is a very old law from 150 years ago.
- Under this old law we have the Wards of Court system.
- At present, if the court decides that a person is of ‘unsound mind’ and cannot manage their money or their personal care, then the court can make the person a Ward of Court.

The 1871 System

- If you are a Ward of Court, the Court makes decisions for you:

Big decisions



and

Small decisions



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

The New System

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

Functional test

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

Guiding Principles

- **Presumption of Capacity:**
Start off by thinking that everyone can make their own decisions.
- 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 person's benefit

What sorts of decisions are covered by the new law?

- 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 staircase pattern from left to right. The first block on the left is labeled 'Decision-Making Assistant (DMA)'. The second block in the middle is labeled 'Co-Decision Maker (CDM)'. The third block on the right is labeled 'Decision-Making Representative (DMR)'. The text for the second and third blocks is in yellow and red respectively. In the background, there are two overlapping circles, one light purple and one light orange, and a grey trapezoidal shape at the bottom.

Decision-Making Assistant (DMA)

Co-Decision Maker (CDM)

Decision-Making Representative (DMR)

1. Decision-Making Assistant (DMA)

- Someone whom you trust to help you 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 let others know about your decision or help you have your decision carried out.



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

3. Decision-Making Representative



- If the judge decides that you cannot make certain decisions even with other 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
- The court must consider whom you want to be your **DMR**.
- Legal Aid will be available for court

Decision-Making Representative

- Your **DMR** must consider your **will and preferences** every time they make a decision for you.
- The court decides what your **DMR** is allowed to do and what they are not allowed to do.
- The Court must review your case regularly
- Supervised by the DSS.

Planning Ahead: 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



Planning Ahead: Advance Healthcare Directive



- An **Advance Healthcare Directive** is a legal document.
- You can make it while you have capacity, and it only starts working if you lose capacity.
- It is used it to let people know your wishes about medical treatment.
- You can choose a person called a **designated healthcare representative (DHR)** to make decisions in the future about medical treatments

The Director of DSS

The Director will:

- raise awareness about the Act and supported decision-making
- answer questions about how to use decision supports
- answer questions about how to be a decision supporter
- supervise decision support arrangements
- investigate complaints
- promote organisational change
- make reports and recommendations about the Act



What the DSS will not do

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

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 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 person they are supposed to be looking after.

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.

Preparing for commencement

Questions to consider:

- Will I need access to the new supports under the Act?
- At present, are decisions taken by another person on my behalf?
- Can I make these decisions for myself?
- Who can help me to make my own decisions as far as possible?
- Will I require a formal arrangement?
- How can I engage with the DSS to make an arrangement?
- Who is available and eligible to assume a role in a formal arrangement?
- Do I need to consider advance planning by way of an EPA or AHD?

- For current adult wards: do I need to be supported with a review by the wardship court?

- How can I find out more?

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

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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