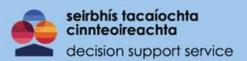
The Assisted Decision-Making (Capacity) Act 2015
& Decision Support Service

Áine Flynn Director of the Decision Support Service

Western Care Association 14 June 2021





#### **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 decisionmaking
- 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



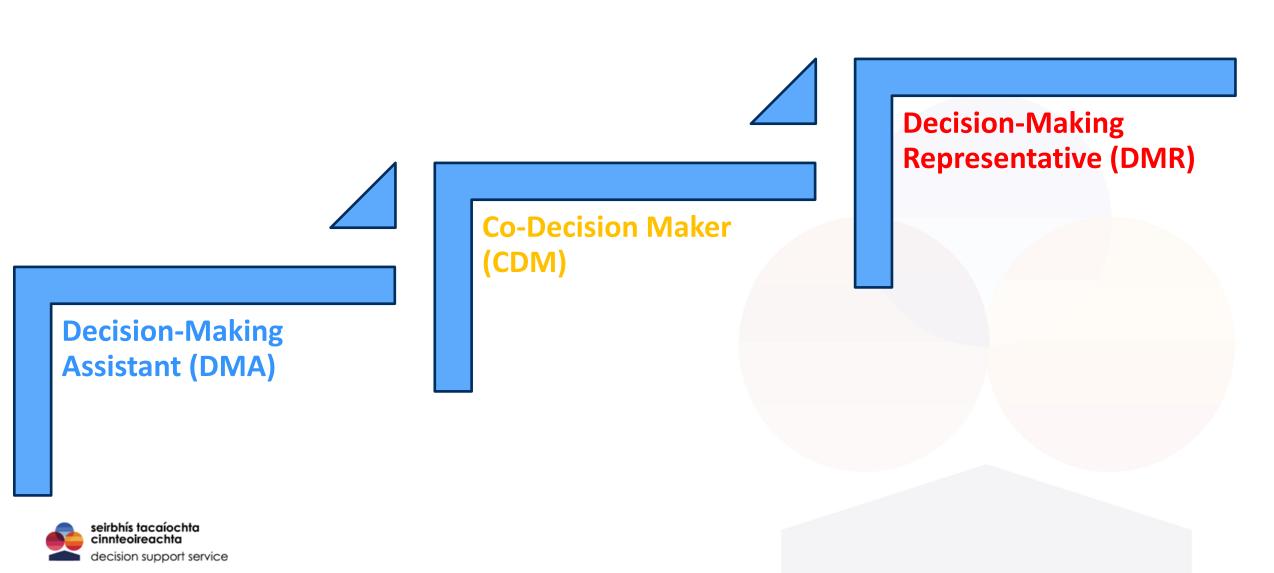
# What sorts of decisions are covered by the new law?

- 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 mange a bank account or apply for benefits





# New three-tier framework of 'decision supporters'



# 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.





#### **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.



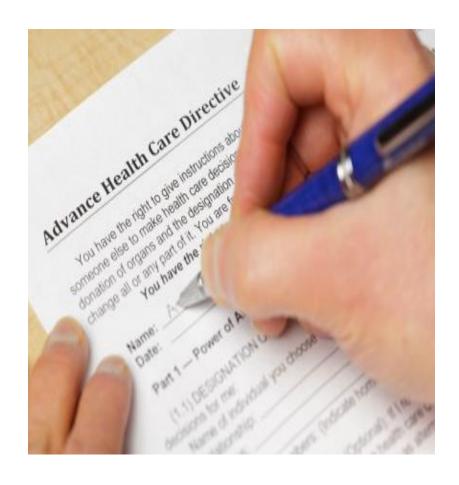
# Planning Ahead: Enduring Power of Attorney

- 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 decisionmaking 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**

## 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

