



Background to the Assisted Decision-Making (Capacity) Act 2015

Easy to Read Version



nDA

What is the Assisted Decision Making (Capacity) Act?



The Assisted Decision Making (Capacity) Act is a law about making decisions.



The Act became law at the end of 2015.

The Act has not fully commenced.

This means that not all parts of the law are working yet.



The Act has many purposes or jobs to do including:

1. Supporting Decision-Making
2. Setting up a Decision Support Service.
3. Repealing the Lunacy Regulations (Ireland) Act and changing the Ward of Court system.
4. Making a system for Advance Healthcare Directives.
5. Making sure there is a good system for making Enduring Powers of Attorney.



Codes of Practice



The Director of the Decision Support Service is making codes of practice for the Assisted Decision Making (Capacity) Act.



Codes of practice are like a set of guidelines so that people know how to use the Act.



The Director will make codes of practice for:

- Decision-making supporters
- Doctors
- Nurses
- Care Workers
- Social Workers
- Lawyers and others



This means people should know how to use and follow the Act.



People who help people make decisions or make decisions for other people must know what is in the codes of practice and follow them.

This will help us to make sure that everyone uses the Act in the right way.

I. Assessing capacity



Assessing capacity is all about checking to see if you can make a decision.

Assessing capacity will help to make sure you have the right level of support you need to make your decision.

The Act says that capacity is to be assessed on a person's ability to understand information about the decision at the time that a decision is to be made.



You must understand the choices you can make when making the decision.

You must understand what the consequences of your decision could be.



There is a test for assessing capacity;

You do not have the capacity to make a decision if you are unable to:

- (a) Understand all the information related to making the decision,
- (b) Remember that information long enough to make a choice,
- (c) Use that information to make the decision,
- (d) Communicate or tell others about the decision you make.





2.1 Supporting Decision-Making

The Act was set up to support adults to make their own decisions.



Decisions covered by the Act

- Personal welfare decisions
- Medical decisions
- Financial decisions
- Property decisions



Decisions not covered by the Act

- Marriage, divorce or separation
- Sexual relationships
- Being a member of a jury
- Voting





In the Act a 'relevant person' is a person whose capacity to make a decision is in question or may shortly be in question.

The Act says that a relevant person has capacity to make a decision unless somebody can show that they do not have capacity.



The 'relevant person' is not responsible for proving their own capacity.

The person who thinks the other person does not have capacity must prove that they do not have capacity.

The Act sets out different supports for people whose decision-making capacity is in question.

2.2 Decision-making assistant

A Decision-Making Assistant is a person you trust to help you understand information and the choices available to you.



A Decision-Making Assistant must make an agreement with you and write it down.

You can have more than one Decision-Making Assistant in your agreement.

The agreement will tell you what support they will give you to make the decision.



A Decision-Making Assistant helps to make decisions but does not make decisions for that person.

Anyone can make a complaint to the DSS about a Decision-Making Assistant if they feel the person is doing their job in the wrong way.



2.3 Co-Decision-Maker



If your capacity to make decisions is in question or may be in question soon, you can select a Co-Decision-Maker.

A Co-Decision Maker is someone who can make decisions together with you.



They can support you with one or more decisions on personal welfare or property and affairs, or both.

A Co-Decision-Maker should be a close friend, family member or person that you trust.

You can have one Co-Decision Maker per decision, and can have different Co-Decision Makers for different decisions.



You must make a Co-Decision-Making Agreement and write it down.



The agreement will tell you the kind of decisions you will make together.

Co-Decision-Makers must report into the Director of the Decision Support Service.

Anyone can make a complaint to the DSS about a Co-Decision-Maker if they feel the person is doing their job in the wrong way.



2.4 Decision-Making Representative



A Decision-Making Representative is for someone who cannot make decisions even with the help of someone else.

They are only appointed by court.



The court will think about:

- The wishes of the individual,
- The relationships within the person's family,
- How the representative will do the job
- Anything that might get in the way of the representative doing their job.



There can be more than one Decision-Making Representative per decision.

There can also be one Decision-Making Representative to make all decisions.



Staff of service providers where a person lives cannot be a Decision-Making Representative~~s~~.



A Decision-Making Representative can make decisions relating to personal welfare, medical decisions or financial and property decisions.



A Decision-Making Representative must take into account the person's past will and preferences and not what they think is best.

Will and preference is about what the person would want themselves.



Decision-Making Representatives must report into the Director of the Decision Support Service.

Anyone can make a complaint to the DSS about a Decision-Making Representative if they feel the person is doing their job in the wrong way.

2.5 Designated Healthcare Representative



A Designated Healthcare Representative (DHR) is someone who can make decisions about medical treatment if a person can no longer make those decisions themselves.

This representative can be chosen by a person writing an Advance Healthcare Directive.



This is a legal document where a person can write down what medical treatment they might or might not want in the future.

3. The Decision Support Service



A new service called the Decision Support Service has been set up in the Mental Health Commission to do the work of the Act.

A Director of the Decision Support Service has been appointed.

The Director is responsible for the service including:



- Giving information to the public about the Act,
- Monitoring Decision-Making Assistants,
- Monitoring Co-Decision-Makers,
- Monitoring Decision-Making Representatives,
- Monitoring Attorneys
- Monitoring Designated Healthcare Representatives to make sure they are working well.



4. Repeal the Lunacy Act



The Act brings an end to the Wards of Court system and the Lunacy Act.

The Lunacy Act created the Ward of Court system where some people had their decisions made by court if they could not make their own decisions.



Once this new Act is started, there will be 3 years for all existing wards to have their capacity assessed by the Wardship Court.



If the Court decides that a ward has capacity to make his or her own decisions the Court will free the Ward from Wardship and the Ward can make his or her own decisions.



If the Court decides that a Ward needs the help of a co-decision-maker to make decisions together, the ward can make a co-decision-making agreement with someone he or she trusts.



If the Court decides that a Ward cannot make their own decisions, even with support, they will appoint a Decision-Making-Representative.

5. Advance Healthcare Directives



An Advance Healthcare Directive is a legal document where a person can write down what medical treatment they might or might not want in the future.

An Advanced Healthcare Directive can say in writing who can make decisions about medical treatments if a person can no longer make those decisions themselves.

This person is called a **Designated Healthcare Representative**.



6. Power of Attorney

An Enduring Power of Attorney is a legal document where you can say in writing who you want to make certain decisions for you when you can no longer make those decisions yourself.



This person is called an attorney.

An Enduring Power of Attorney can only be drawn up if the person has capacity at the time when they are writing it.

An attorney can be given power to make all decisions or specific decisions like decisions about money or personal welfare.

Attorneys must report into the Director of the Decision Support Service.



This Easy to Read Document was developed by Inclusion Ireland for the National Disability Authority.

The document was proof-read by men and women with disability.



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