

St. Michael's House and Assisted Decision Making Act 2015

This Act applies to everyone and is relevant to all health and social care services.

St. Michael's House

5/23/2019

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

The Assisted Decision Making (Capacity) Act 2015 was signed into law on the 30th December 2015.

This Act applies to everyone and is relevant to all health and social care services.

The Act is about supporting decision making and maximizing a person's capacity to make decisions. It establishes a modern statutory framework to support decision-making by adults who have difficulty in making decisions without help.

The Act is seen as a necessary reform of Ireland's legal framework for vulnerable adults where their capacity is in question or may become in question in the future. The new legislation when fully commenced will repeal the Lunacy Act of 1871.

The former Minister for Justice, Frances Fitzgerald T.D. and the Minister for Health, Simon Harris T.D. have signed Statutory Instruments which commence some parts of the Assisted Decision-Making (Capacity) Act 2015.

The commencement orders – which were signed in October 2016 – mean that some parts of the Capacity Act have been brought into effect. These orders mean that the Decision Support Service can be established and the working group to establish the code of practice for Advance Healthcare Directives can also be convened.

Key features of the Assisted Decision Making (Capacity) Act 2015:

- It applies to everyone and to all health and social care settings.
- It provides for ;
 - the individual's right of autonomy and self-determination to be respected through an Enduring Power of Attorney and an Advance Healthcare Directive – made when a person has capacity to come into effect when they may lack decision-making capacity.
 - legally recognised decision-makers to support a person maximise their decision making powers.
 - a legal requirement on service providers to comprehensively enable a person make a decision through the provision of a range of supports and information appropriate to their condition.
 - for a review of all existing wards to either discharge them fully or to transition those who still need assistance to the new structure.
- It abolishes the Wards of Court system.
- It repeals the Lunacy regulations governing the Ward of Court system.
- It establishes a Decision Support Service with clearly defined functions which will include the promotion of public awareness relating to the exercise of capacity by persons who may require assistance in exercising their capacity.
- The Director of the Decision Support Service will have the power to investigate complaints in relation to any action by a decision-maker in relation to their functions as such decision-maker

Capacity Assessment

The Act proposes to change the law from the current all or nothing status approach to a flexible functional definition, whereby capacity is assessed only in relation to the matter in question and only at the time in question.

If a person is found to lack decision-making capacity in one matter, this will not necessarily mean that s/he also lacks capacity in another matter.

The Act recognises that capacity can fluctuate in certain cases and changes Irish law from the current all or nothing status approach to a functional capacity assessment.

Decision Making Support Options

In summary, when the Act is commenced it will introduce **three types of decision-making support** options to respond to the range of support needs that people may have in relation to decision-making capacity.

With each of the three decision-making support options decisions can be made on personal welfare, property and finance or a combination of both. The support options are as follows:

(1) Assisted decision-making: a person may appoint a decision-making assistant – typically a family member or carer – through a formal decision-making assistance agreement to support him or her to access information or to understand, make and express decisions. Decision-making responsibility remains with the person. The decision-making assistant will be supervised by the Director of the Decision Support Service.

(2) Co-decision-making: a person can appoint a trusted family member or friend as a co-decision-maker to make decisions jointly with him or her under a co-decision-making agreement. Decision-making responsibility is shared jointly between the person and the co-decision-maker. The co-decision-maker will be supervised by the Director of the Decision Support Service.

(3) Decision-making representative: for the small minority of people who are not able to make decisions even with help, the Act provides for the Circuit Court to appoint a decision-making representative. A decision-making representative will make decisions on behalf of the person but must abide by the guiding principles and must reflect the person's will and preferences where possible. The functions of decision-making representatives will be as limited in scope and duration as is reasonably practicable. The decision-making representative will be supervised by the Director of the Decision Support Service.

The Decision Support Service is currently located under the auspices of the Mental Health. The Director of the Decision Support Service, Áine Flynn commenced on 2nd October 2017. Commission. The Director has a number of specific regulatory functions under the 2015 Act in respect of six different types of decision-making support arrangements:

1. Decision making assistance agreements;
2. Co-decision making agreements;
3. Decision-making representatives;
4. Individuals exercising enduring powers of attorney;
5. Advanced healthcare directives;
6. Wards of Court who are being transitioned from the Wards of Court system.

Current Wards of Court

In summary, when relevant provisions of the Act come into operation it will no longer be possible to make a new application to make an individual a Ward of Court where they are unable to manage their assets because of mental incapacity. The decision support options in the Act shall apply.

When Part 6 of the Act comes into operation, a wardship court will be tasked with reviewing and discharging from wardship existing Wards of Court within three years of the commencement of Part 6. Alternative decision making supports will be put in place for former Wards where deemed necessary and appropriate by the wardship court.

Enduring Powers of Attorney

When Part 7 of the Act comes into operation, it will put in place provisions similar to the Powers of Attorney Act 1996. Under the Powers of Attorney Act 1996, a person can create an enduring power of attorney appointing an attorney to make decisions on his or her behalf in relation to property and finance or personal welfare or a combination of both. The Act expands these powers to include health care matters. It requires attorneys appointed under the Act to abide by the guiding principles and to be subject to supervision by the Director of the Decision Support Service who will also have the role of registering new enduring powers of attorney.

Advanced Healthcare Directives

When Part 8 of the Act comes into operation, it will make provision for advance healthcare directives. The purpose of the advance healthcare directive is to enable a person to be treated according to their will and preferences and to provide healthcare professionals with important information about the person in relation to their treatment choices. A person may, in an advance healthcare directive, appoint a designated healthcare representative to take healthcare decision on his or her behalf when he or she no longer has the capacity to make those decisions. Designated healthcare representatives will be supervised by the Director of the Decision Support Service.

Role of the Courts

The Act provides that the Circuit Court will have jurisdiction on most issues arising under this legislation. It is anticipated that the specialist judges will undertake this work. The Act provides that the High Court will continue to have jurisdiction in relation to matters relating to withdrawal of life-sustaining treatment and donation of an organ from a living donor.

Codes of Practice

The NDA, at the request of the Department of Justice & Equality, is progressing development of 11 non-health Codes of Practice provided for under section 103 (2) of the Assisted Decision-Making (Capacity) Act 2015. Work on the Codes has commenced, and will continue until approximately end 2018.

St Michael's House ADM Preparation

Whilst the Act has not yet been commenced St Michael's House is doing a number of things to prepare for commencement.

- a) We established an Internal Steering Group to scope out what the Act means for St Michael's House,
- b) The Steering Committee is developing an action plan and will oversee the implementation of this plan for ADM in SMH
- c) The Steering Group met with the National Project Team for ADM at its October meeting to advise the Steering Committee.
- d) Members of the National Project Team for ADM have expressed an interest to join our Steering Committee and are joining our next meeting
- e) 5 staff members were being supported to attend a programme convened by the Centre for Disability Law and Policy in NUIG in September 2018 with a view to developing and growing internal organisational knowledge and expertise in ADM.
- f) The Open Training College is scoping out an awareness and training approach.
- g) The Steering Group membership has attended workshops on and developed submissions in response to draft legislation in 2018 on Deprivation of Liberty Safeguards and Advanced Healthcare Directives in 2019.
- h) St. Michael's House are presently working on additional information including accessible materials.

This legislation impacts everything SMH does and needs to be threaded through all our documentation and activities.

It represents a significant change in culture and will happen with appropriate planning, support and time.