

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

St. Michael's House Presentation  
30.01.23

Áine Flynn –  
Director of the Decision Support  
Service



President Higgins  
signed the  
Assisted  
Decision-Making  
(Capacity) Act on  
30 December 2015



# Assisted Decision-Making (Capacity) Act 2015

- ▶ Decision-making capacity means being able to make your own decisions
- ▶ This Act is about how we support people to make their own decisions independently
- ▶ The Act also provides formal supports where necessary
- ▶ This Act is only for people who are over 18
- ▶ The Department of Children, Equality, Disability, Integration and Youth is responsible for the Act
- ▶ Ireland has obligations under United Nations Convention on the Rights of Persons with Disabilities



# Why do we need a new law?



The present law is the Lunacy Regulation (Ireland) Act 1871



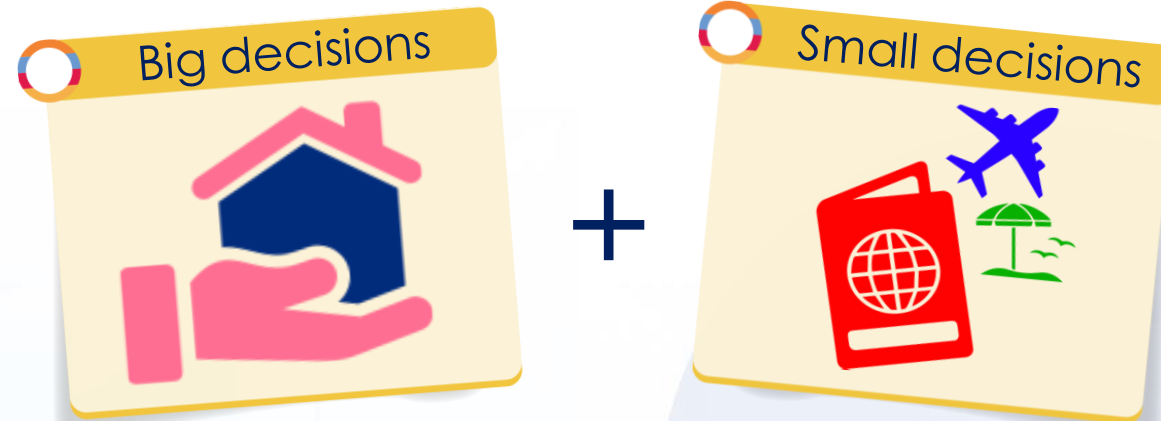
Under this old law we have the Wards of Court system.



If the court declares that a person is of 'unsound mind' and incapable of managing their affairs, 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:



After the new Act there will be no new adult wards of court



All adult wards (approximately 2,200) will be reviewed **by the wardship court** and exit wardship within 3 years

# Assessing capacity

The correct way to assess if someone has capacity to make a decision

**Not a  
medical test**



**Functional  
test**



**“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?

**Understand  
information**

# **Functional test**

**Weigh up this  
information**

**Retain information  
for as long as you  
need to**



**Communicate  
your decision**

**Already the standard in common law and policy**



## Relevant Person (RP)

### Section 2:

- a) a person whose capacity is in question or may shortly be in question in respect of one or more than one matter
- b) a person who lacks capacity in respect of one or more than one matter, or
- c) a person who falls within paragraphs a) and b) at the same time but in respect of different matters



Number 64 of 2015

Assisted Decision-Making (Capacity) Act 2015



# Guiding Principles

These are some of the most important principles:

- 1.**  
**Presumption of capacity: an adult is presumed to have capacity to decide unless the contrary is shown**
- 2.**  
Give the person all the support they need to help them make their own decisions
- 3.**  
Deciding to do something unwise does not mean that you do not have capacity

# More Guiding Principles

Intervene as little as possible

Respect for everyone's dignity, privacy, bodily integrity, autonomy

Let people make up their own minds as much as possible

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 sort of decisions can be supported?

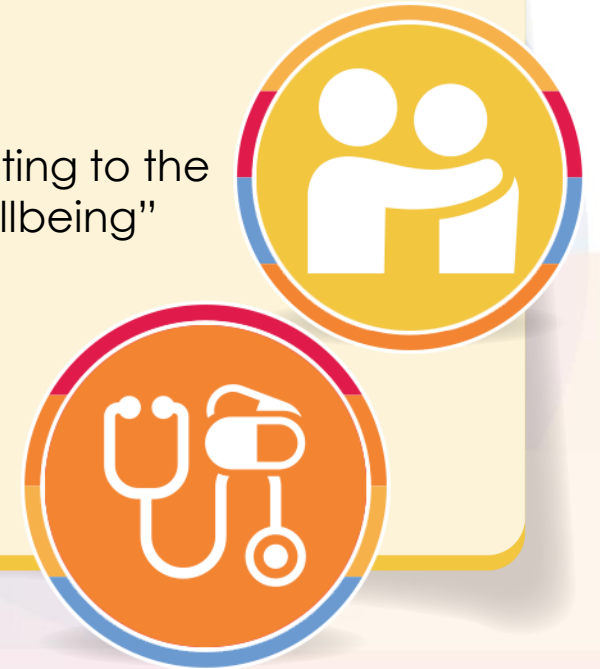
## Property and affairs including:

- Custody, control and management of property
- Sale, exchange, mortgage, gift etc. of property
- Acquisition of property
- Carrying on of business
- Discharging debt and liabilities
- Providing for other persons
- Conduct of court proceedings
- Applying for benefits



## Personal Welfare

- Accommodation
- Education and training
- Social services
- Healthcare
- "...other matters relating to the relevant person's wellbeing"



New  
support  
framework  
– 3 tiers

3

Decision-Making  
Representative (DMR)

2

Co-Decision-  
Maker (CDM)

1

Decision-Making Assistant  
(DMA)

- Eligibility criteria apply
- All must apply the guiding principles

# 1. Decision- making assistant



- Lowest and least formal tier
- Appointed by **a person who considers that his or her capacity is or may shortly be in question**
- Decisions are set out in a decision-making assistance agreement
- Functions of DMA:
  - assist to obtain relevant information about these decisions
  - explain relevant information
  - help to communicate will and preferences
  - assist person to make and express decisions
  - help to ensure that decisions are implemented
- **The person still makes the decision**

## 2. Co-decision- maker



- Mid-tier, more formal support
- Appointed by **a person who considers that his or her capacity is or may shortly be in question**
- CDM is a trusted relative or friend
- Relevant decisions are set out in a co-decision-making agreement and taken **jointly**
- Agreement is registered with DSS on a searchable register
- Notice parties may object to registration
- Formal capacity statements and character references are required
- **Effect of registration: relevant decision made otherwise than jointly is null and void**
- Agreement may be varied or revoked
- CDM keep accounts and records and reports to the DSS

# 3.

## Decision-making representative



- **Court appointment**
- Begins with an application to the Circuit Court by **person with bona fide interest in welfare of the relevant person**
- Court rules will set out the forms and reports required
- DSS will have information about this
- Notice parties may object
- Legal Aid available to the relevant person and the applicant
- The court may make a declaration about the person's capacity
- The court may make the decision for the person
- The court may appoint a decision-making representative

# Functions of decision-making representative

DMR's authority is based on the court order; restrictions apply


Must find out about and assist with communication of will and preferences

Act as agent, make decision on behalf of the relevant person


Keep accounts and records and submit reports to DSS from 3 months after order




# Planning ahead: enduring power of attorney



An EPA under the Powers of Attorney Act 1996 is still valid and does not need to be re-done



You appoint a trusted person ('attorney') to take decisions for you in future if necessary. This is set out in a formal EPA document



An attorney appointed under the 2015 Act will be supervised by the DSS and submit reports

# Planning ahead: advance healthcare directive

An advance healthcare directive is a legal document. You use it to state your will and preferences about medical treatment.



In your advance healthcare directive, you can choose a person called a **designated healthcare representative** to make decisions about treatment.



# 'Next of Kin': what does it really mean?

Incorrect belief that the next of kin already has a legally recognised role as decision-maker

57% of survey respondents believed that next of kin can make healthcare decisions and consent to treatment

32% believed that next of kin can access bank accounts and manage assets



- Sage Advocacy, Next of Kin Survey 2018

# Decision Support Service

## The Director has to:

- ✓ provide information and guidance about the Act
- ✓ promote organisational change
- ✓ keep a register of decision support arrangements
- ✓ supervise decision supporters
- ✓ establish certain panels
- ✓ investigate complaints about decision supporters and arrangements
- ✓ publish codes of practice
- ✓ make reports and recommendations to Ministers



# Pathway to to commencement of DSS

- Establishment project: timebound, costed plan with approximately 30 sub-projects across six workstreams
- Design Principles:
  - person-centred
  - digital first approach
  - outward-facing accessible service
  - data driven and responsive to need
- Communications and public awareness campaign ongoing
  - development of accessible information, tools and templates
  - diverse stakeholder engagement
- Assisted Decision-Making (Capacity) (Amendment) Act 2022 signed into law 17 December 2022: mostly technical changes.



# Questions to think about

What sort of decisions do I need to take?

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?

Will I require a decision support arrangement?

Who can be my decision supporter if I need one?

Can I plan ahead? ?

If I am a ward of court: what can I expect?

How can I find out more?

“It is important that we make sure that everyone understands what the 2015 Act is trying to achieve and that disabled people are supported in understanding and accessing the provisions of the 2015 Act so that true autonomy and effective self-advocacy can be realised.”

-Adam Harris, AsIAM

“I personally refer to the legislation as the Act of Emancipation!”

Mary and Damien O'Donovan  
Intellectual disability expert by experience

“The 2015 Act opens up new zones of freedom to people like myself because it inherently recognises that despite having dementia, people can continue to exercise choice, be valued, listened to and fully included as active citizens and participants in society.”

-Helen Rochford Brennan, Dementia campaigner

# Thank You



[www.decisionsupportservice.ie](http://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