



Assisted Decision Making (ADM) Legislation Information

A Resource for Disability Service Providers Sharing
Information with Families

Compiled by the National Federation of Voluntary Service Providers' ADM
Reference Group

Introduction

- The Assisted Decision-Making (Capacity) Act 2015 (as amended) ('the 2015 Act') establishes a modern legal framework to support decision-making by adults 18 years and over, who may have difficulty making decisions. This may include, for example, people with an intellectual disability, acquired brain injury, mental health difficulties or dementia.
- The Act introduces formal 'Decision Support Arrangements'. However, adults with intellectual disabilities and autism, who already have decision-making supports in place based on their will and preference - through family, paid supporters, circles of support, etc. can continue to make day to day decisions in the same way as previously.

There may come a time when a formal decision support arrangement under the ADM legislation is required, and this intervention may be chosen by the individual and could include a **decision-making assistant** or **co-decision maker**. Where it is deemed that a person does not have the capacity to make a particular decision(s) based on a functional assessment approach (as outlined below), a **Decision-Making Representative** may be appointed by the Court. This is always seen as a last resort and all other less restrictive options should be explored first.

Accessing formal decision support arrangements could also come about when there is a very significant decision that needs to be made; and adults can then choose to put a Decision Support Arrangement in place to support them with that decision.

A guiding principle of the 2015 Act is to take the least restrictive action on adult's rights and freedoms. This means supporting the person to make their own decisions in line with their will and preference whenever possible.

- **There is a presumption of capacity i.e., that an adult is able to make the decision in question. Under the legislation a person does not need to prove their capacity to make a decision.** The onus is on the person who says that the person *does not* have capacity to show that this is the case. The decision could be, for example, about entering into a contract or a decision to give or /refuse consent. This is a change from the *Status approach* whereby some people were previously assumed not to have capacity because they have a disability; or the *Outcome approach* where making an unwise decision implied that the person lacked capacity. A person no longer needs to prove their capacity to make a decision.
- Assessing capacity is not the first step. **The first step is to support a person as far as possible to make their own decision.** If capacity needs to be assessed, the assessment is based on their ability to make a **specific decision at a specific time.**
- In a situation where a person's capacity is questioned to make a particular decision, capacity will be assessed based on their ability to make that specific decision at that specific time. This is called the **'Functional Test' of capacity.**

A person will be considered to have the capacity to make a decision if they can:

- Understand the information relevant to the decision
 - Remember the information long enough to make a choice
 - Use or weigh up the information to make a decision
 - Communicate their decision (this may be with assistance)
- **The Act establishes the Decision Support Service (DSS).** This service was established to formally support people's rights to make their own decisions about their personal welfare, property, and affairs. **The Decision Support Service is preparing to formally launch its services on the 26th April 2023.** Aine Flynn, Director of the DSS has written a letter to accompany the information that services provide to families, to explain the DSS and their role.

- Under this Act, there will be **no new applications for adults to be made Wards of Court**. Once the relevant section of the Act is commenced, all current Wards of Court will be reviewed and discharged from wardship within three years. The courts will decide whether or not a current Ward of Court needs a decision support arrangement.

Formal Decision Support Arrangements

There are three types of formal decision support arrangements under the Act for people who currently, or may shortly, face challenges when making certain decisions:

- Decision-making assistance agreement
- Co-decision-making agreement
- Decision-making representation order made by the court.

There are two types of arrangements for people who wish to plan ahead for a time in the future when they might lose capacity to make certain decisions:

- Advance healthcare directive
- Enduring power of attorney

Guiding Principles of the Act

The Act sets out key principles which must be followed by people when interacting with a person who has or may have capacity challenges about a decision.

- Presume every adult has the capacity to make decisions, unless and until the contrary is shown. Support people as much as possible to make their own decisions.
- Don't assume a person lacks capacity just because of an unwise decision.
- Only take action where it is really necessary.
- Any action should be the least restriction on a person's rights and freedoms.
- Give effect to the person's will and preferences.
- Consider the views of other people.
- Think about how urgent the action is.
- Use information appropriately.

Contact Information

Decision Support Service			
Address	Phone	Email	Website
Waterloo Exchange, Waterloo Road, Dublin 4 Eircode: D04 E5W7 Ireland	+353 (01) 211 9750	queries@decisionsupportservice.ie	http://www.decisionsupportservice.ie/

Office of the Wards of Court			
Address	Phone	Email	Website
15-24 Phoenix Street North Smithfield Dublin 7	+ 353 1 888 6189	wards@courts.ie	https://www.courts.ie/assisted-decision-making-capacity-act

Below is a list of online resources which can be shared with families directly; or information can be taken from these resources and included in written communications to families. These resources are being updated regularly.

1. Starting Points

Websites

- The Decision Support Service: <https://www.decisionsupportservice.ie/about-us/legislation>
- The HSE National Office for Human Rights and Equality Policy: <https://www.hse.ie/eng/about/who/national-office-human-rights-equality-policy/assisted-decision-making-capacity-act/assisted-decision-making-capacity-act-2015.html>

Videos

- HSE, A short guide- Explainer video:
<https://www.youtube.com/watch?v=xOd72CVcBCA>
- HSE, Explainer video: <https://www.youtube.com/watch?v=4W0mSM1knkc>
- Sage Advocacy, Introduction to the ADM: <https://vimeo.com/749937447>
- Decision Support Service, Detailed Overview Presentation:
<https://vimeo.com/687042822>

2. Specific Resources that may be helpful for Families/Supporters

Webinars

HSE, Webinar focusing on Respecting the rights of the person and the role of families under the 2015 Act: <https://youtu.be/jEuU2RvIPzs>

- Case Studies examined: <https://www.hse.ie/eng/about/who/national-office-human-rights-equality-policy/assisted-decision-making-capacity-act/webinars/case-scenario-for-web-5-respect-the-rights-of-the-person-and-the-role-of-fam-under-the-2015-act.pdf>
- Transcript of the Q&A session: <https://www.hse.ie/eng/about/who/national-office-human-rights-equality-policy/assisted-decision-making-capacity-act/webinars/qa-from-webinar-5.pdf>

Decision Support Service Resources:

- DSS, Online Resources: <https://www.decisionsupportservice.ie/resources>
- DSS, Family Resource Page: <https://decisionsupportservice.ie/news-events/families-and-assisted-decision-making-capacity-act>
- DSS, Information Leaflet: <https://decisionsupportservice.ie/sites/default/files/2022-03/DSS-DL-leaflet-FINAL.pdf>

FAQ Documents:

- DSS FAQ page: <https://www.decisionsupportservice.ie/faq>
- HSE FAQ page: <https://www.hse.ie/eng/about/who/national-office-human-rights-equality-policy/assisted-decision-making-capacity-act/faqs/>

3. Wards of Court

- DSS: <https://decisionsupportservice.ie/services/wards-court>
- Courts Service: <https://www.courts.ie/assisted-decision-making-capacity-act>
- Courts Service, Overview Flowchart Explaining the Discharge of a Ward of Court after Commencement of the ADM: <https://www.courts.ie/acc/alfresco/41b73eee-2879-430e-8fe8-2068a612ecce/Flowchart%20for%20Wards%20of%20Court.docx/file#view=fitH>
- Courts Service, Detailed Flowchart Explaining the Discharge of a Ward of Court after the Commencement of the ADM: <https://www.courts.ie/acc/alfresco/57d58031-61f3-4d8e-9505-6430c4a5f952/Flow%20Chart%20Committees%20V1.pdf/pdf#view=fitH>

Note: Please be aware that dates for commencement changed over time, so there may be conflicting dates of commencement mentioned in some references. However, the confirmed date is 26 April 2023.

4. Additional Resources:

Webinars:

Other HSE Webinars: <https://www.hse.ie/eng/about/who/national-office-human-rights-equality-policy/assisted-decision-making-capacity-act/webinars/series-2022.html>

Topics covered:

- Decision-making support arrangements under the 2015 Act - How do I support someone to make a decision?
- How and when to engage with the Decision Support Service?
- Positive risk-taking and 'unwise' decisions
- Functional Assessment of Capacity

Documents:

- SAGE Advocacy Supporting Decision Making:
<https://www.sageadvocacy.ie/resources/legal-rights/decision-making-capacity/supported-decision-making>
- SAGE Supporting Decision Making & Maximising Capacity: A person has the right to make their own decisions: https://www.sageadvocacy.ie/media/1479/supporting-decision-making-maximizing-capacity_15012019.pdf
- SAGE Advocacy – Functional Approach to Capacity:
<https://www.sageadvocacy.ie/resources/legal-rights/decision-making-capacity/functional-approach-to-capacity>

The Assisted Decision-Making (Capacity) Act 2015 –

A message for families from Aine Flynn, Director of the Decision Support Service.

Dear Family Member

I am getting in touch to outline some information that you might find useful as we move closer to the commencement of the Assisted Decision-Making (Capacity) Act 2015. The Minister has announced that the Act will commence and the DSS will become operational on 26 April 2023.

Introduction to the Act/Role of the DSS

As set out in the accompanying material provided by the National Federation of Voluntary Services Providers, the 2015 Act introduces a framework of formal decision-making supports (to help a person with capacity issues to make decisions about their property, affairs, or personal welfare or both).

The role of the DSS is to promote public awareness about the 2015 Act and to provide information and guidance. The DSS will register, support, and supervise decision support arrangements, to ensure that all is working well for the benefit of the person.

When might formal support be needed?

The Act does not say that a person is obliged to enter a formal arrangement. An adult is presumed to have capacity to make their own decisions and should be supported as far as possible to do so independently. There may come a time when a particular decision may need to be made that requires a level of formal support

that can be provided under the Act. It could be, for example, that a professional or service provider has concerns about a person's capacity to enter a contract or supply consent. In these circumstances, a formal arrangement may be appropriate to ensure that relevant decisions can be progressed. It may help to think about the decisions that your loved one needs to make and to speak to professionals and services involved.

Role of Families

Families have and will continue to have a very significant and important role in helping and supporting their loved ones to make decisions. The Act acknowledges the importance of existing relationships of trust. If you are appointed as a co-decision maker, decision making representative or attorney for your loved one, you will have a duty to submit reports to the DSS. My staff are available to assist and support you in your role.

How to make a formal support arrangement

It will be possible to make a formal arrangement using our digital Portal. Paper forms will also be available on request for anyone who cannot access the DSS Portal.

To set up an account and apply through our Portal, a person will need a **MyGovid**. MyGovid is a single account that lets you access and use services from many government departments in Ireland. Information about setting up a MyGovid is available on <https://www.mygovid.ie>.

Detailed information will be available shortly on our website www.decisionsupportservice.ie in the form of "How to" guides which will step a person through the process of making each type of arrangement. Should an issue arise as part of the application process, our dedicated Information and Support Services Team will be available to provide practical information, guidance, and support. (Please get in touch by email at queries@decisionsupportservice.ie or call us on 01 2119750).

Fees/Fee Waivers

There will be a fee to make or vary a decision support arrangement. However, it will be possible for us to waive fees in circumstances where the applicant's income is below a certain threshold. It will also be possible to search our register of arrangements, subject to certain criteria and for a small fee. (Details of any fees/waivers will be published on our website).

Courts service

Any person with a genuine interest in the welfare of a relevant person may make an application to the Circuit Court for a declaration about a person's capacity to make decisions. A scheme of Legal Aid will be available. Please see www.legalaidboard.ie for further information. The application to court could result in the court appointing a decision-making representative for a person, under a decision-making representation order. Such an order is capable of being re-entered, varied, or revoked and the court must review its declaration in relation to the relevant person's capacity on a periodic basis.

It is expected that, as in wardship, applicants will often be family members. Where there is no family member available to do so, it is anticipated that the applicant will often be the HSE or another service provider who has an involvement in respect of the specified decisions.

The courts service website contains information about the abolition of the wardship system for adults and how a person can exit wardship. For further information please see www.courts.ie.

I hope the above information is useful. Please don't hesitate to get in touch with us if you have any queries or wish to seek clarification about our new service.

With best wishes

Áine Flynn
Director