

# A new era in assisted decision-making

**Áine Flynn outlines the significant reforms in the Assisted Decision-Making (Capacity) Act, which fully commences later this month**

**APRIL 26, 2023 HAS BEEN ANNOUNCED** as the date for full commencement of the Assisted Decision-Making (Capacity) Act 2015. Essential reforms in the Act include the abolition of the wards of court system for adults; a statutory functional assessment of capacity; new guiding principles that emphasise giving effect to ‘will and preferences’ instead of a best interests approach; a graduated framework for supported decision-making; instruments for advance planning; and the establishment of the Decision Support Service (DSS) to promote, register and supervise the new decision support arrangements, are also recommended.

On December 17 last, the Assisted Decision-Making (Capacity) (Amendment) Act 2022 (‘the 2022 Act’) was signed into law. Many of the amendments that it contains are technical and the essentials of the 2015 Act are largely unchanged. Some of the more significant amendments for healthcare professionals are:

#### Transitional arrangements for wardship

As of April 26, there will be no new applications for wardship. However, an application for wardship that has already been initiated as of that date may proceed. It will also be possible for the proposed ward to access the alternative supports under the 2015 Act.

#### Enduring powers of attorney

GPs will be familiar with the requirements for capacity statements under the current Powers of Attorney Act 1996. There is a similar requirement for capacity statements under the 2015 Act at the time of making an enduring power of attorney and at the time when it is to come into effect. These may be supplied by designated healthcare professionals as well as medical practitioners. Amendments contained in the 2022 Act introduce a two-step process: an enduring power of attorney is submitted to the DSS for review and registration and there is a subsequent procedure for notifying the DSS when the instrument needs to be activated. Previously, the document remained with the parties, or often their solicitor, until needed.

Another amendment in the 2022 Act means an enduring power cannot authorise the attorney to consent to or refuse treatment. An advance healthcare directive is the appropriate legal instrument for planning in relation to treatment decisions. Treatment is defined as an intervention for therapeutic, preventative, diagnostic, palliative or other purposes related to the physical or mental health of the person, including life-sustaining treatment.

#### Advance healthcare directives

An amendment in the 2022 Act clarifies that an advance directive is to be complied with unless the person is detained

on the grounds of likelihood of immediate and serious harm to themselves or others. The advance healthcare directive is to be complied with in respect of the refusal of treatment of physical illness but not in respect of mental disorders.

#### Codes of practice

A suite of codes of practice under the new legislation will be published on the DSS website ahead of commencement together with explanatory materials. There is a code to provide guidance to healthcare professionals and a separate code on advance healthcare directives.

#### Training in providing capacity statements

A training module for medical practitioners and other healthcare professionals who may supply formal capacity statements in relation to co-decision-making agreements and enduring powers of attorney will be recorded and available via the DSS.


#### Access to the DSS registers

GPs may encounter new decision supporters acting in relation to healthcare decisions. It is important to establish that a decision supporter is properly appointed and acting within their legal remit. The DSS will hold a register of co-decision-making agreements, decision-making representation orders from the court and enduring powers of attorney. This may be searched by a designated body or class of persons, expected to include healthcare professionals, and any person who satisfies the DSS of their legitimate interest. Further information will be available on our website.

There will be a lead time after commencement before any such arrangements appear on the register. There will not be a DSS register of advance healthcare directives until the Minister for Health makes necessary regulations, but an advance directive does not require registration to be valid.

#### Public awareness

A public information campaign will coincide with the launch of the DSS. We welcome referrals to our information services team, which is already managing queries.

The full commencement of this legislation will obviously bring challenges. The DSS will keep the operation of the Act under review and will report to Government with recommendations. The views of those working in primary care will be welcome. Information about the Act is available on the website [www.decisionsupportservice.ie](http://www.decisionsupportservice.ie) and at [www.assisteddecisionmaking.ie](http://www.assisteddecisionmaking.ie) 

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This article provides an overview of parts of the Assisted Decision-Making (Capacity) Act 2015 and related matters and should not be relied on as legal advice or opinion.