

ASSISTED DECISION-MAKING (CAPACITY & HEALTH CARE DIRECTIVES)

WHAT IS IT?

This Act was passed on Thursday 17 December 2015. The Act applies to everyone and has relevance for all health and social care services.

KEY FEATURES OF THE ACT:

- 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.
- Both of these are made when a person has the capacity to make decisions. They come into effect when a person may lack decision-making capacity.
- It provides for legally recognised decision makers to support a person in maximising their decision-making powers.
- It places a legal requirement on service providers to comprehensively enable a person to make a decision through the provision of a range of supports and information appropriate to their condition. It abolishes the Wards of Court system.
- It provides for a review of all existing Wards to either discharge them fully or to transition those who still need assistance into the new structure.
- It establishes a Decision Support Service with clearly defined functions. This will include the promotion of public awareness relating to the exercise of capacity by persons who may require assistance in exercising (carrying out?) their capacity.
- The Director of the Decision Support Service will have the power to investigate complaints about any action by a decision-maker in connection to their functions as such decision-maker.

HOW THE ACT WILL WORK:

- It establishes a new basis for assessing a person's capacity to make decisions – a functional test.
- This test will determine a person's ability to understand **at the time of a decision** the nature and the consequences of the decision in the context of the available choices at the time.
- It sets out a positive and a negative test:
 1. A person lacks capacity if they are no longer able to understand the decision, are unable to retain information long enough to make a voluntary choice or are unable to communicate their decision by any means either directly or through a third party.
 2. A person is not regarded as unable to understand information if they require an explanation appropriate to their circumstances; can only retain information for a short period; lacks capacity for one decision but not for others; lacking capacity for a decision at one point does not preclude them from having the capacity later.

The Act defines information relevant to decision making as including information about the reasonable foreseeable consequences of the choices of failing to make the decision.

ADVANCED HEALTHCARE DIRECTIVES

This means an advance expression of a person's desire and preference on treatment decisions that may arise if they subsequently lack capacity. Treatment means an intervention which may be made for a therapeutic, preventative, diagnostic, palliative or other purpose for the physical or mental health of the person. This includes life-sustaining treatment. The objective of the directive is to enable people to be treated according to their wishes and preferences and to provide healthcare professionals with information about persons on their treatment choices.

This includes an entitlement to refuse treatment notwithstanding that the refusal

- Appears to be an unwise decision
- Appears not be based on sound medical principle
- May result in the person's death

The net effect of the Advance Health Care Directive is to provide civil and criminal indemnity for healthcare professionals if they act in accordance with such Directive.

ASSISTED DECISION-MAKING MECHANISMS AVAILABLE TO A PERSON?

- A Decision-Making Assistant
- A Co-Decision-Maker
- A Decision-making Representative
- An Attorney under an Enduring Power of Attorney
- A designated healthcare representative
- A Designated Healthcare Representative under an Advance Health Care Directive