

# Assisted Decision Making (Capacity) Act, 2015

Discharge from Wardship

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An tSeirbhís Chúirteanna  
Courts Service

# Assisted Decision Making (Capacity) Act

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- Commencement
  - 26th April 2023
  - Applications accepted to 25th April 2023
  - All wards of court to be discharged by 26th April 2026
  - Three tiers of decision support available
- Transitional Arrangements s.56A (amendment)
  - Option to withdraw & seek declaration under s.55 ADMCA
  - This has not occurred
  - Court is still declaring adult wards of court

# Decision Supports

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Assisted Decision Making has replaced substituted decision making in Ireland

All adult wards of court will be discharged, the relevant person (RP) assessed and will align with one of the following tiers of support:

1. Discharge and no decision-making assistance is required
2. Discharge with the assistance of a decision-making assistant
3. Discharge with the assistance of a co-decision maker
4. Discharge with a decision-making representative

At all times consideration must be given to the guiding principles of the Act set out in s.8

# Capacity Assessment

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- Court's Medical Visitor - functional capacity assessment
- Committee or RP can obtain their own functional capacity report
- Functional Capacity Assessment – assess the RP's capacity in the areas of Healthcare, Welfare/ADL and Property & Finance
  - to understand the information relevant to the decision
  - to retain that information long enough to make the decision
  - to use or weigh that information as part of the process of making the decision, or
  - to communicate his or her decision (by talking, writing, using sign language, assistive technology or to communicate by any means with that third party)
- Report will recommend to Court a tier of decision support

# Part 6 ADMCA Discharge Application

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## Who

- The committee, the ward of court or
- **On consent** of Court -
- a relative or friend (position of trust with the RP), other person with existing relationship, interest and expertise
- Application for consent is ex-parte on affidavit for directions of the Court

## Notice of Motion

- Lodge the Notice of Motion
- Address to RWOC, the RP, the committee (if not the applicant)
- Name the applicant – Who is bringing the application?
- Lodge original and two copies (for return and service)
- Issues on receipt of all required documents & proofs



# Discharge Application

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## Other Documents

- **WOCO arrange** a functional capacity assessment & receive assessment report
- **WOCO prepare** statement of assets & income as known to the office
- **WOCO send** these with relevant orders & reports to Solicitor for the applicant
- **Applicant** - own functional capacity assessment if required
- May require a proposal on future management of RP assets – **contact the case officer**
- **DMR** recommended – signed statement to cover s.38 & 39 (sample available from WOCO)

# Service of the Documents / Grounding Affidavit

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## **Solicitor serves**

- Functional capacity report
- Statement of assets & income
- Orders & other reports (if applicable)
- Encourage participation & attendance

on

- RP (personal service)
- Committee (reg post)

- The application and implications are explained to RP – may require alternative means of communication
- Any response and or reaction is recorded and averred to
- Will and preference?
- Reg Post service on Committee if not the applicant

# Decision Making Representative Order

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- Order acts as a decision support agreement
- Court can
  - Confer powers on DMR
  - Impose duties
  - Attach conditions to making decisions
  - Limit the order in time and scope
- More than one DMR can be appointed to RP
- Only level of Decision Support appointed by Court
- Order is registered with the DSS
- The appointment of a DMR will be reviewed in the Circuit Court no later than 12 months or up to 3 years where Court is satisfied there will be no change in capacity



# Panel Decision Making Representative

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A Decision Making Representative (DMR) will be appointed if:

- The relevant person does not have capacity with a CDM
- A panel DMR will be requested if:
- A CDM agreement is not registered within 5 weeks of signing, time may be extended by Court
- A person is not available to act as CDM for the relevant person
- WOCO requests DSS to nominate two panel members for Court to choose from (in chambers)
- A DMR is appointed by the Court
- The DMRO acts as the agreement for the DMR to operate within

# Return of Assets to RP

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## **CDM –**

- Agreement must be registered with DSS
- Proof of registration required to pay out
- RP to open bank account
- Takes approx. 3-4 week to process pay out
- Registration of CDM agreement up to 4 months

## **DMR –**

- Order acts as agreement, so RP to register with DSS
- Proof of registration required to pay out
- DMR to open bank account (contact DSS re same)
- Takes approx. 3-4 week to process pay out

# Minors

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- Wardship generally undisturbed in the context of Minors as ADM applies to adults only
- No provision for Guardian to apply for discharge of minors, though envisaged –
- All minors need to be reviewed within 6 months of turning 18
- If minors are in wardship due to financial awards but no capacity issues otherwise – then discharge can potentially be automatic
- Ideally lodge application before 18<sup>th</sup> Birthday
- If subject to orders, agencies involved will need to allow for the cessation of wardship at 18 and make advance applications to make sure status quo maintained if needed

# Administration & Sitings

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- To date 90 discharge applications have been received
- 29 discharge orders have been made with another 8 listed
- 2,160 declared wards of court
- 208 wards of court declared in 2023
- 157 detention reviews currently before the courts
- Discharge applications are part of the main wardship list but will have their own lists when numbers increase