

Assisted Decision Making (Capacity) Act, 2015

Wards of Court Office Planning Arrangements

June 2023



An tSeirbhís Chúirteanna
Courts Service

Transitional Arrangements

- ADMCA commenced 26th April 2023
- WOCO accepted applications until cob 25th April 2023
- Transitional Arrangements are introduced in the Amendment Act at S. 47 amending S. 56 of the original Act
- The section provides that the wardship Court may make a declaration under S. 55 of the ADMCA and nothing shall prevent the appointment of a DMA, CDM or DMR and the wardship application is to be withdrawn as soon as practicable

In Practical Terms

- If the WOCO has received a wardship application this can proceed and the application will go to hearing
- If RP is found to lack capacity under the wardship application the Court may seek the nomination of a decision supporter under the ADMCA
- The wardship application may be withdrawn as soon as is practicable – wardship applications can be withdrawn and an application lodged in Circuit Court at any time

Where to from 26th April

- New applications for decision making assistance will be made to the Circuit Court from the date of commencement under Part V of the Act
- Care Rep applications under NHSS Act will also cease new applications will be for the appointment of DMR in Circuit Court
- Hospital applications, medically fit for discharge but lacks capacity to consent will be for the appointment of DMR in Circuit Court
- Applications for detention for the purpose of medical treatment/detention will be made to the High Court, under Inherent Jurisdiction

Applications for treatment and detention

- Where urgent treatment is required – treat the person
- The Circuit Court cannot consent to medical treatment if a person is refusing or found not to have capacity nor order their detention for treatment
- An application to the High Court is required (not the wardship Court) under the Court's inherent jurisdiction
- Streamlined procedure is now in place in the High Court
- Organ donation (living donor) withdrawal of life sustaining treatment – High Court under ADMCA

Capacity Review

- Court's Medical Visitor will carry out the review
- 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)

The Discharge Application

- Discharge Applications can be made by:
 - The Relevant Person, Committee or their solicitor or **On the consent of the Court**
 - Relative or friend (position of trust with the RP)
 - Other person with existing relationship, interest and expertise (eg advocate)
 - These last 2 will involve lodging an ex parte docket & affidavit (in WOCO) seeking leave of the Court
- Notice of Motion, Grounding Affidavit, Affidavit of Service
- Functional Capacity Assessment Report – from the Court's medical visitor

Discharge Application

- A Functional Capacity Assessment Report – from the applicant (optional but if disputing the MV findings a requirement)
- Schedule of Property and Assets (prepared by WOCO)
- Outline of plans for future management of funds on discharge (not required in all cases)
- Remote hearing or in person hearing where requested – held in the Four Courts, Dublin

ADMCA Part 10 – Review of Detention

- S.105 – panel of independent consultant psychiatrists established by MHC
- S.107 – approved centres; S.108 – non-approved centres
- S.107 & S.108 – review of detention to assess if RP meets the criteria set out in MHA, 2001 of a mental disorder
- RP is assessed as having a mental disorder – detention and treatment is reviewed by wardship court until RP is discharged from wardship
- RP does no longer has a mental disorder – detention is discharged
- Application to High Court under Inherent Jurisdiction if treating clinician and solicitor believe this is necessary

Administration WOCO

- Notice of Motion – initiating document
- Filed in the WOCO and triggers capacity assessment review
- Capacity assessment received in office and distributed
- Office provides a schedule of assets as know to the office
- Any further supporting documentation to be filed, including grounding affidavit setting out will and preference
- When all papers in order a hearing date is assigned
- All papers then served on RP, Committee (or their solicitors)
- Affidavit of Service containing averments as to service, explanation and response is filed

Service

- Discharge application to be served on the RP, the Committee, the applicant
- Solicitor serving to explain nature and impact of the application to RP
- Response of the RP to be recorded in AOS (if any)

Will & Preference

- The applicant enquires as to the Will & Preference of RP
- Grounding Affidavit to include the known will and preference of RP
- Relating to a decision supporter, accommodation, supportive arrangements in place

Practice Direction & Rules

- A Practice Direction dealing with Discharge Applications and detention reviews is available on www.courts.ie
- Rules of Superior Courts are now available on www.courts.ie

EPA

- Any created under Powers of Attorney Act 1996 are registered with WOCO
- Any EPA created from 26th April 2023 are created under Assisted Decision Making (Capacity) (Amendment) Act 2022
- Director of DSS can now investigate complaints made about an Attorney (appointed under 1996 Act)

WOCO - Wards

- Every adult ward of court will be discharged
- Transitional arrangements will see new wards declared in the months ahead
- Solicitors are encouraged to withdraw wardship applications and bring a capacity application in Circuit Court
- Minors will still be admitted to wardship
- 17.5 years a discharge application & capacity assessment can commence
- Minor to adult wardship declarations have ceased and minors will be discharged from wardship at 18 years
- High Court PI Orders will have to reflect bringing a capacity application in Circuit Court

Communications Campaign

- Communications commenced September 2021
- Brief initial introduction to ADMCA and what it will mean
- De-risking of funds invested through the Courts Service
- Further information on the role of DMA, CDM, DMR and the changes to come
- Advice on preparing for the Court discharge application and what it will involve
- Electronic, postal, webinars, online Q&A sessions (currently ongoing)

Administration & Sittings

- Judge Hyland will oversee the discharge process for Court
- 3 High Court Judges will sit hearing discharge applications
- Rotating panel of Judges every 8 weeks
- Business as usual list for detention reviews, treatment orders, EPAs, Minor declarations
- Legal Aid Scheme is being extended to cover Part VI applications under the Amending Act – this will provide for family members meeting the criteria to also receive legal advice
- Court Funds have been de-risked in preparation for commencement and communications on this have issued directly to Committees

**2023 to 2026 –
3 years**

