
ADMC

14th June 2023

Part 5 Applications to the Circuit Court

Consent Applications & Capacity Applications

Presented by Elaine Kenny - Courts Service



An tSeirbhís Chúirteanna
Courts Service

Agenda

- ❖ **The Relevant Person**
- ❖ **The Decision-Making Representative (DMR)**
- ❖ **Jurisdiction**
- ❖ **Consent Applications**
- ❖ **Capacity Applications**
- ❖ **Court Forms and other information**
- ❖ **Legal Aid**
- ❖ **Support and Resources available**



The Relevant Person

What is a Relevant Person?

The Assisted Decision Making (Capacity) Act is a rights-based Act.

The Relevant Person is at the heart of all actions.

The **Relevant Person** is a person:

- whose capacity is in question or may shortly be in question in respect of one or more matters
- who lacks capacity in respect of one or more matters
- whose capacity is in question or may shortly be in question in respect of one or more matters and who lacks capacity at the same time but in respect of different matters (this is a combination of the above)



Decision-Making Representative (DMR)

How do I become a DMR and who can be a DMR?

To become a DMR, you must apply to the Court by way of a Capacity Application to be appointed as a DMR.

A decision-making representative (DMR) is the person responsible for making the decisions included in the order. The order will state what functions the DMR will have and what decisions they can make.

The Court will usually appoint someone who is known to and trusted by the Relevant Person in the role of decision-making representative.

If there is no-one known to the Relevant Person who is willing or suitable to be appointed as their decision-making representative, then the Court can select someone from the DSS panel of trained experts.



Decision-Making Representative (DMR)

What decisions can a DMR make on behalf of a Relevant Person?

The DMR can only make decisions that are written down in the decision-making representation order given by the Court.

The DMR must consider the will and preference of the Relevant Person during the decision-making process.

The court can appoint more than one person to act as a DMR for a Relevant Person. They can be appointed in relation to separate decisions or can be given responsibility for the same decisions. The court can specify if they must act together or individually.



Jurisdiction

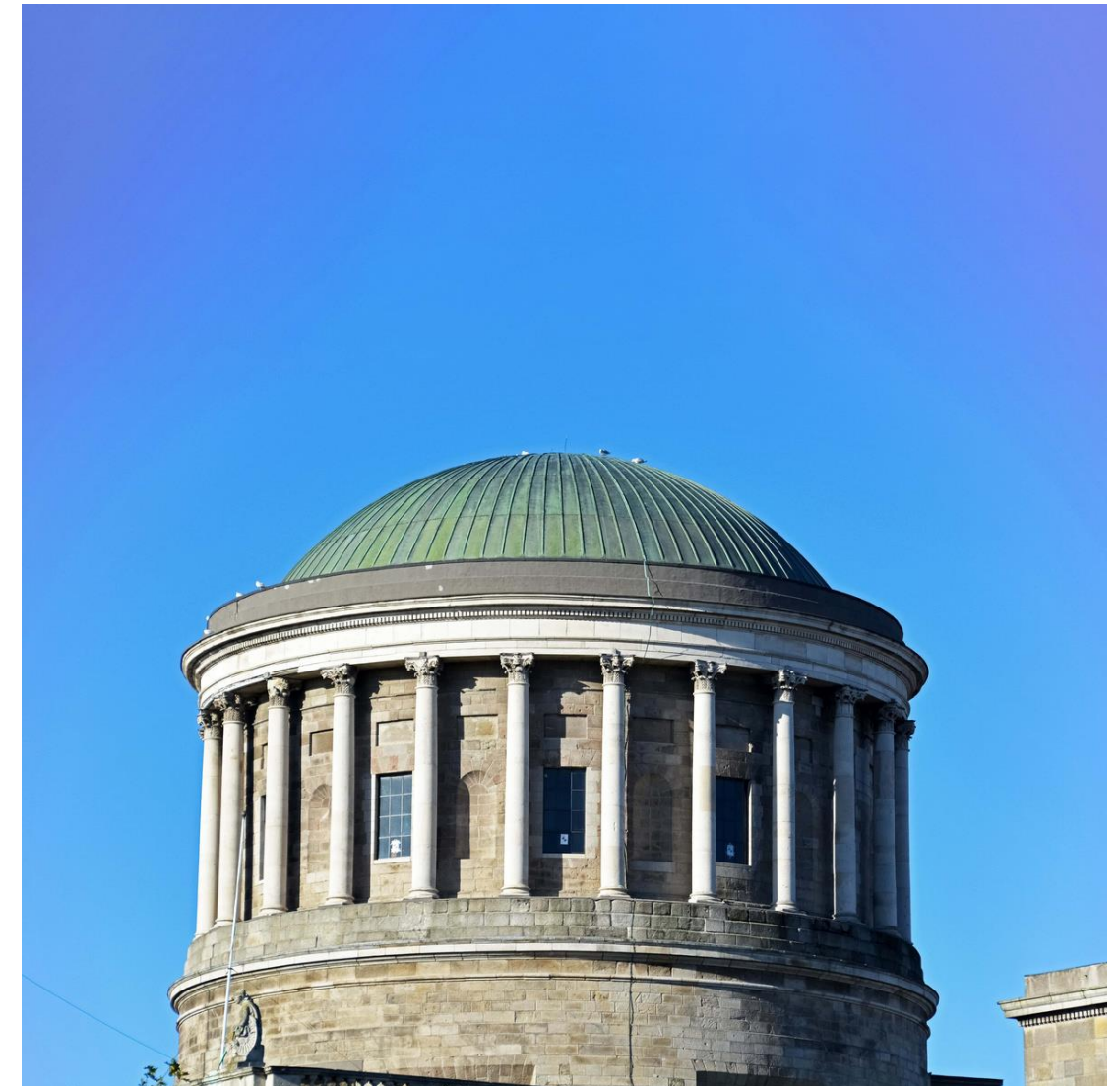
How do I know what court office / court do I send my application to?

All ADMC Court applications are dealt with by a Judge of the Circuit Court

The basis of jurisdiction is on the location of the **Relevant Person**

The application will be dealt with in the Circuit Court in the County where the **Relevant Person**:-

- Resides in that Circuit
- Carries on business in that Circuit
- Resided in that Circuit at any point in the three years immediately prior to an application



Part 5 Applications

How do I know what court office / court should I send my application to?

8 Circuits in Ireland

Circuit	Counties within Circuit
Dublin	Dublin (City and County)
Cork	Cork (City and County)
Eastern	Kildare, Meath, Louth, Wicklow
Midland	Laois, Longford, Offaly, Roscommon, Sligo, Westmeath
Northern	Cavan, Donegal, Leitrim, Monaghan
South Eastern	Carlow, Kilkenny, Tipperary, Waterford, Wexford
South Western	Clare, Kerry, Limerick
Western	Galway, Mayo





Consent Application

Consent Application

Why do I need consent of the court to make an application?

The legislation sets out who can make Part 5 applications to the Court at Section 36(4) of the Act.

If a person who intends to make an application under Part 5 does not fall into the category of people they must make an ex-parte application for 'consent' to make a part 5 application to the Court.

An Chóirt Chuarda
The Circuit Court
Form 55B

Record Number:

Capacity Application: Statement of Particulars (Form 55B)
Part 5 of the Assisted Decision Making (Capacity) Act 2015, as amended
This form must be completed for all applications.
All information provided must be verified by affidavit.

A) Details of the Relevant Person

First Name: Surname:

Date of Birth:

Phone Number:

Marital / civil partnership status:

B) Relationship of the applicant(s) to the Relevant Person
What is the applicant's relationship or connection to the Relevant Person or the capacity in which the applicant makes the application? (Please select one)

I am the Relevant Person

The Director

The spouse or civil partner of the Relevant Person

A decision-making assistant for the Relevant Person

A decision-making representative for the Relevant Person

The co-habitant of the Relevant Person

A co-decision-maker for the Relevant Person

A designated healthcare representative for the Relevant Person

An attorney acting under an enduring power of attorney for the Relevant Person

A child of the Relevant Person who has attained the age of 18 years

A person specified for that purpose in an existing order of the court under this Part where the application relates to that order

A person / body prescribed by Ministerial regulations under section 36(4)(k)

If the application relates, whether in whole or in part, to the Relevant Person's capacity to make a decision to consent to being married or to being in a civil partnership

a registrar within the meaning of section 17 of the Civil Registration Act 2004

the other party to the proposed marriage or civil partnership (if any), as the case may be, of the Relevant Person

1



Consent Application

What documents do I need to make this Consent application?

The application consists of 2 documents:

- **Form 55G** Ex-Parte Consent Application form (€60 Court Fee)
- Grounding Affidavit (€15 Court Fee)

The grounding affidavit **must** exhibit the final draft of the completed:

- *Form 55A* (Capacity Application, and
- *Form 55B* (Statement of Particulars)

that the applicant is intending to be issued if the Consent is granted.



An Chóirt Chuarda
The Circuit Court
Form 55G

**Ex-Parte Consent Application
Notice of Motion (Form 55G)**

Record Number:

Circuit: County:

Applicant to complete:

In the Matter of the Assisted Decision - Making (Capacity) Act 2015, as amended

Part: Section:

And In the Matter of

Relevant Person:

Application of

Applicant 1:

Applicant 2 (if applicable):

Court Office to complete:

TAKE NOTICE that on

Date of Hearing: at Time:

Court Venue:

the Applicant will apply for orders as set out in this document, and for such further or other orders as the Court is empowered to make under said Act.

COURT FEE
STAMP AREA

1



Consent Application

What do I do once I have all the documents ready for Court?

When all the documents are finalised and ready, the original and a copy should be sent to the court office for issue.

If there are any issues or omissions in the documents they will be returned.

If all documents are in order, the court office will issue the application and provide you with a Record Number and a Court date and return the copy of the application to the applicant / applicants solicitor.



Consent Application

How soon will my Consent application be heard?



Consent applications will be dealt with at the next available sitting within the Circuit



Consent Application

How is the case heard in Court?



Consent applications are heard
'in-camera'

This means that only officers of the court, the parties to the case and their legal representatives, witnesses and such other people as the judge allows will be in the courtroom while the case is being heard

Consent applications are heard
'Ex-Parte'

This means that only one party to the case is present in court. There is no requirement to put any other person on notice of the application.





Capacity Application

Capacity Application

How do I apply to be appointed a DMR?

An application to appoint a DMR is called a **Capacity Application**.

Within this capacity application, a person seeks:

- **Declaration as to Capacity of a Relevant Person (RP)**
- **Appointment of a Decision Making Representative (DMR)** to that Relevant Person
- **Decision Making Order (DMO)** where the Court makes a decision on a specific issue for the Relevant Person
- Any other Orders thereafter for that Relevant Person

The Court must first declare that the Relevant Person lacks capacity in relation to specified decisions.

A DMO or a DMRO cannot be made unless the Court has first made that declaration.



Capacity Application

What is a Capacity Application?

Capacity refers to decision-making capacity.

In this context, capacity means a person's ability to understand, at the time that a decision is to be made, the nature and consequences of the decision to be made by them in the context of the available choices at the time.

An application to the Circuit Court for a declaration under section 37 of the Act that a Relevant Person lacks capacity to make certain decisions.

The application will usually also include a request to the court for a decision-making representative (DMR) to be appointed to make certain decisions on behalf of the relevant person. An order appointing a decision-making representative, setting out their functions and what decisions they can make, is called a decision-making representation order (DMRO).



Capacity Application

What is a Capacity Application?

The applicant must indicate what **Declaration** they wish the Court to make:

- A declaration under section **37(1)(a)** is a declaration that the Relevant Person lacks capacity to make those decisions, unless they have the support of a co-decision-maker.
- A declaration under section **37(1)(b)** is a declaration that the Relevant Person lacks capacity to make those decisions even if they had the support of a co-decision-maker. This means that they need the support of a decision-making representative to make those decisions.

The applicant must also indicate what **Order** they wish the Court to make:

- An order under section **38(2)(a)** is a Decision-Making Order (for the Court to make the decision on behalf of the RP).
- An order under section **38(2)(b)** is a Decision-Making Representation Order (looking for a DMR to be appointed).

A DMO or a DMRO cannot be made unless the Court has first made a declaration that the Relevant Person lacks capacity to make specified decisions even with support.



Capacity Application

What types of the decisions can the DMR make?

Personal Welfare

includes decisions around:

- Interests
- Health
- Accommodation
- Well-being

Property & Affairs

includes decisions around:

- Property
- Business
- Money matters

One or both categories of decisions can be selected on the form and the details of the specific decisions can be indicated.

More than one DMR can be proposed for separate or the same decisions.



Capacity Application

What documents are required to make a Capacity application?

The application consists of 3 documents:

- **Form 55A** Capacity Application form (€130 Court Fee)
- **Form 55B** Statement of Particulars (no fee)
- **Form 55I** Grounding Affidavit (€15 Court Fee)

The grounding affidavit **must** exhibit a medical report / capacity assessment from a medical practitioner or healthcare professional and Consent Order, if one was granted.

The image displays two sample forms for a Capacity Application. The left form is Form 55A, titled 'Capacity Application (Form 55A)'. It includes fields for 'Record Number', 'Circuit', and 'County'. The main section is for the 'Applicant to complete' and contains the text 'In the Matter of Part 5 of the Assisted Decision - Making (Capacity) Act 2015, as amended'. Below this, there are sections for 'And In the Matter of' (with a 'Relevant Person' field), 'Application of' (with 'Applicant 1' and 'Applicant 2 (if applicable)' fields), and 'Court Office to complete'. A 'TAKE NOTICE that on' section includes fields for 'Date of Hearing' and 'Court Venue'. At the bottom, it states 'the applicant will apply for orders as set out in this document:' and a 'COURT FEE STAMP AREA'. The right form is Form 55B, titled 'Capacity Application: Statement of Particulars (Form 55B)'. It includes a 'Record Number' field. The main section is for 'A) Details of the Relevant Person' and includes fields for 'First Name', 'Surname', 'Date of Birth', 'Phone Number', and 'Marital / civil partnership status'. Below this is section 'B) Relationship of the applicant(s) to the Relevant Person', which asks 'What is the applicant's relationship or connection to the Relevant Person or the capacity in which the applicant makes the application? (Please select one)'. It lists various relationship options with checkboxes, including 'I am the Relevant Person', 'The Director', 'The spouse or civil partner of the Relevant Person', 'A decision-making assistant for the Relevant Person', 'A decision-making representative for the Relevant Person', 'The co-habitant of the Relevant Person', 'A co-decision-maker for the Relevant Person', 'A designated healthcare representative for the Relevant Person', 'An attorney acting under an enduring power of attorney for the Relevant Person', 'A child of the Relevant Person who has attained the age of 18 years', 'A person specified for that purpose in an existing order of the court under this Part where the application relates to that order', 'A person / body prescribed by Ministerial regulations under section 36(4)(k)', and 'If the application relates, whether in whole or in part, to the Relevant Person's capacity to make a decision to consent to being married or to being in a civil partnership'. The final option is a checkbox for 'a registrar within the meaning of section 17 of the Civil Registration Act 2004' and another for 'the other party to the proposed marriage or civil partnership (if any), as the case may be, of the Relevant Person'. Both forms have a small '1' in the bottom right corner.



Capacity Application

What medical practitioner or healthcare professionals can provide reports?

In addition to medical practitioners and set out in S.I. No 204 of 2023, the classes of healthcare professionals who may provide a medical report / capacity assessments are:

- Occupational therapists – registered members of the profession of occupational therapist
 - Registered midwives
 - Registered nurses
 - Social workers – registered members of the profession of social worker
 - Speech and language therapists – registered members of the profession of speech and language therapist
-



Capacity Application

What medical practitioner or healthcare professionals can provide reports?

An assessment **cannot** be provided by an immediate family member of a relevant person.

Immediate family member means –

- (a) a spouse, civil partner, or cohabitant,
- (b) a child, son-in-law or daughter-in-law,
- (c) a parent, step-parent, mother-in-law or father-in-law,
- (d) a brother, sister, step-brother, step-sister, brother-in-law or sister-in-law,
- (e) a grandparent or grandchild,
- (f) an aunt or uncle, or
- (g) a nephew or niece

Note: psychologists are not included among the healthcare professionals who are entitled to provide a capacity assessment.



Capacity Application

What should be included in a medical report / capacity assessment?

As per the Circuit Court Rules, such a report shall:

(a) include details of:

- the extent to which the person making the report has treated the relevant person and
- include details of any examination or assessment undertaken for the purposes of making the report, and

(b) report on matters within the person's expertise which relate to:

- the relevant person's capacity, considered in accordance with [section 3 of the Act](#), to the extent relevant to the relief sought in the Capacity Application, including the likelihood of recovery of the relevant person's capacity



Capacity Application

What do I do once I have all the documents ready for Court?

When all the required documents are ready, the original and a number of copies are sent to the court office where the application is to be heard.

If there are any issues or omissions in the documents they will be returned.

If all documents are in order, the court office will issue the application and provide you with a Record Number and a Court date and return copies of the application to the applicant / applicants solicitor.

The applicant / applicants solicitor are responsible for the service on the Relevant Person and other Notice Parties



Capacity Application

How soon will my Capacity application be heard in Court?



The Relevant Person and other notice parties must be provided with 21 days' notice of the court hearing date.



The court office will list the application for the first available date that allows for compliance with the statutory notice periods.



Capacity Application

How is a court date assigned to an application?



Court dates are provided by the court office when issuing a Capacity Application.

In order to issue an application, all required documents must be submitted to the court office for checking and processing.

There are currently no set court sittings for ADMC matters for the current legal term in June & July, however once all required documents are submitted, the court office will arrange a sitting to hear your matter during June / July, ensuring compliance with the statutory notice periods.

Capacity Application

What and who are 'Notice Parties'?

Notice Parties are people who must be notified and provided with a copy of the application due before the Court. They are persons who are related or involved in the Relevant Persons life.

The following persons must be served with copies of the application:

- a) the spouse or civil partner of the Relevant Person
- b) the cohabitant of the Relevant Person
- c) a child of the Relevant Person who is aged of 18 years or more
- d) any existing decision supporter appointed by or on behalf of the Relevant Person, such as;
 - decision-making assistant
 - co-decision-maker
 - attorney or
 - designated healthcare representative

Where the Relevant Person in his or her reply does not consent to the Capacity Application, a copy of that reply must be served on each notice party.



Capacity Application

What does 'Serve the Notice Parties' mean?

The applicant / applicant's solicitor must send a copy of all documents relating to the Capacity Application, once issued from the court office, to the Relevant Person and any notice parties, notifying them of the application made to the Court.

This process is called serving.

Note: The applicant should keep a copy of the Capacity Application for their own records.



Capacity Application

How do I serve the Notice Parties?

RELEVANT PERSON:

The issued Capacity Application documents must be served personally on the Relevant Person.

The Relevant Person must be given 21 days notice of the court hearing date.

The Relevant Person must also be served with a blank Form 55C. This is a form which the Relevant Person can fill in if they want to reply to the application.

The person serving the application on the Relevant Person must also explain that the Relevant Person is permitted and encouraged to participate in and will be facilitated in participating in the hearing of the Capacity Application.

They must also record any response by the Relevant Person.



Capacity Application

How do I serve the Notice Parties?

OTHER NOTICE PARTIES:

The issued Capacity Application documents must be service on other notice parties by registered post.

Each Notice Party must be given 21 days notice of the court hearing date.

- a) the spouse or civil partner of the Relevant Person
 - b) the cohabitant of the Relevant Person
 - c) a child of the Relevant Person who is aged of 18 years or more
 - d) any existing decision supporter appointed by or on behalf of the Relevant Person, such as;
 - decision-making assistant
 - co-decision-maker
 - attorney or
 - designated healthcare representative
-



Capacity Application

What documents need to be returned to the Court office before the Court date?

After serving the Capacity Application on the Relevant Person and the notice parties, the applicant must file the following documents in the court office at least **four days before the hearing date** of the Capacity Application:

- **Affidavit of service on the Relevant Person** ([Form 55D](#))
 - **Affidavit(s) of service** on the other notice parties
 - **An indexed booklet** containing copies of:
 - The completed Capacity Application ([Form 55A](#))
 - The completed Statement of Particulars ([Form 55B](#)), grounding affidavit and any exhibits
 - Every medical or other report prepared for the purpose of the application or intended to be relied upon in the application
 - Any other affidavit relied upon by the applicant
 - Any affidavit or response delivered by or on behalf of any person served with the application
 - Any other document to be relied upon at the hearing of the Capacity Application
-



Capacity Application

What happens in Court?



Capacity applications are heard
'in-camera'

This means that only officers of the court, the parties to the case and their legal representatives, witnesses and such other people as the judge allows will be in the courtroom while the case is being heard



Court Forms

Where can I find the forms?

Court Forms can be found at
<https://www.courts.ie/assisted-decision-making-circuit-court>

- General Information
- Court application processes
- Court fees
- Legislation & Court Rules
- FAQ's
- Glossary of terms
- Information on Legal Aid

The Assisted Decision Making (Capacity) Act 2015 was signed into law on the 30 December 2015. The Act is about supporting decision-making and maximising a person's capacity to make decisions.

Assisted Decision Making (Capacity) Act - (ADMC)

This page provides general information on ADMC, and details on how to make an ADMC Circuit Court application.

Care Representative Applications:

Please note: The 26th of April 2023 was the last date for receipt of Care Representative applications in all Court Offices.

From 26th of April 2023, all such applications must be made under Part 5 of the Assisted Decision Making (Capacity) Act, 2015.

Where previously a Care Representative would have been appointed, applications must now be made to the Circuit Court for the appointment of a Decision Making Representative (DMR).

General Information on the ADMC Act

For General Information on ADMC please follow the link.



Capacity Applications and Decision-Making Representation Orders (DMRO's)

Find out more about Capacity Applications and Decision-Making Representation Orders



I have been served with a Capacity Application

Find out what to do if you have been served with a Capacity Application



ADMC Court Application Forms

Find the forms to use for Circuit Court applications under the ADMC Act.



ADMC Court Application Fees

Find out the fees associated with each of the applications under Part 5 of the ADMC Act.



Frequently Asked Questions

A list of Frequently Asked Questions concerning ADMC Court Applications.



Contact Information

If you have queries on ADMC, please follow this link for more information.



ADMC Legislation and Glossary of Terms

You will find links to ADMC Act 2015 and Amendment Act 2022. You can also find a [list of terms](#) referred to in the ADMC legislation.



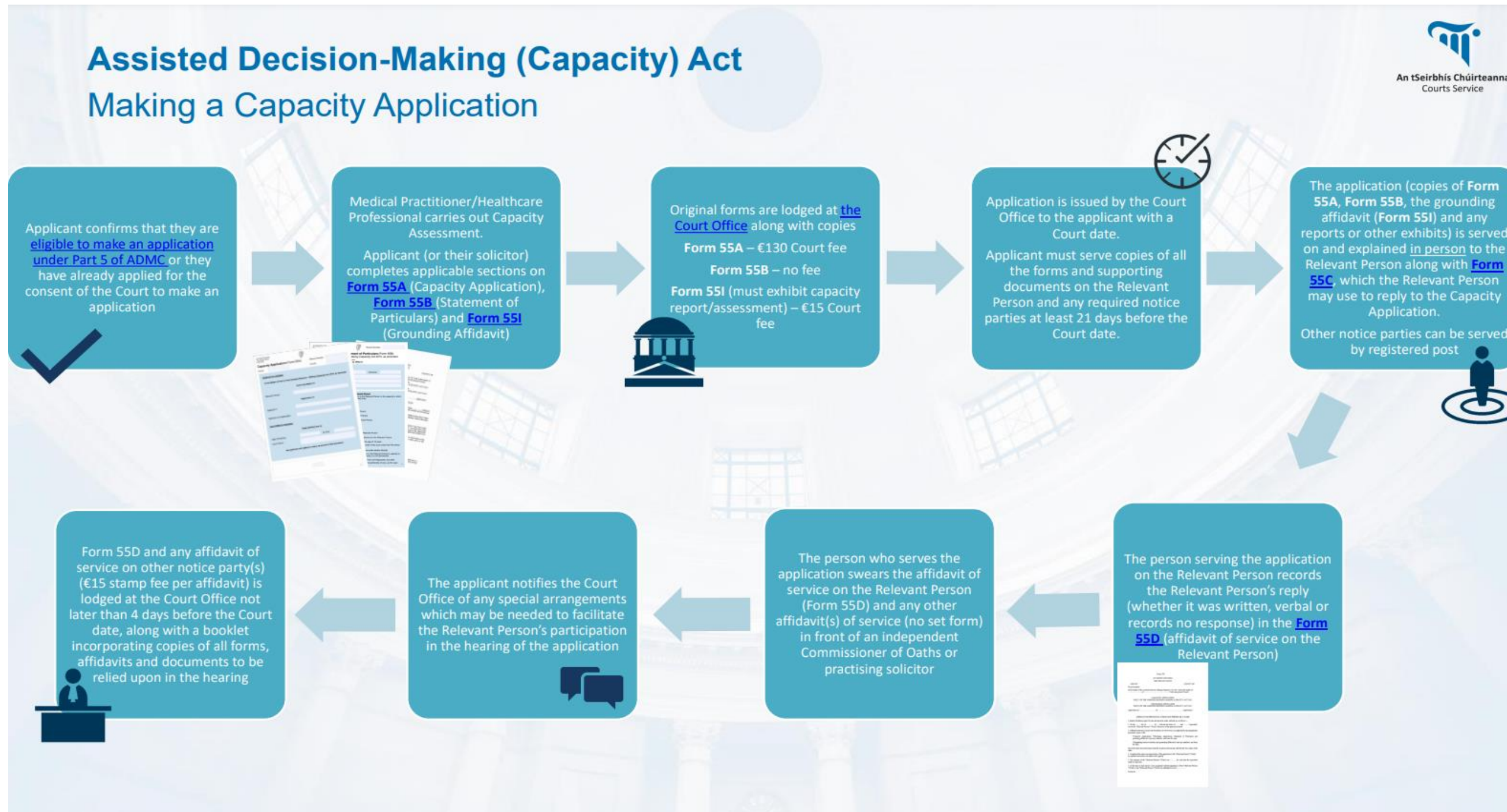
Legal Aid and ADMC

Follow the link for information on Legal Aid and ADMC



Court Forms

How do I make a Capacity Application Flow Chart



Legal Aid

Who is entitled to Legal Aid in ADMC matters?

- If the Applicant in the proceedings is not the Relevant Person (or a Ward if Part 6 discharge application) it is the applicant's own means which are assessed for eligibility to access legal aid. It is not the means of the Relevant Person that is assessed.
- If the Applicant in the proceedings is the Relevant Person (or a Ward if Part 6 discharge application) they do not need to be assessed to be eligible to access legal aid.

However, the Relevant Person will still be financially assessed for the purposes of determining whether or not the Board can recover any costs contributed by way of legal aid (S52(e) ADMC Act).

Further information on Legal Aid can be found on the Legal Aid Board website at <https://www.legalaidboard.ie/en/our-services/assisted-decision-making-and-discharge-from-wardship/>



ADMC

Support & Resources available

ADMC Support Desk



Elaine Kenny
Clíodhna Tynan
Mary Lamey

ADMC support mailbox



admc@courts.ie

ADMC Website



<https://www.courts.ie/as-sisted-decision-making-circuit-court>



Thank You



An tSeirbhís Chúirteanna
Courts Service