

# Assisted Decision Making (Capacity) Act, 2015

Wards of Court Office Planning Arrangements

November  
2022



An tSeirbhís Chúirteanna  
Courts Service

# When and Who

- ADMCA commencement now expected early 2023 but subject to the amending legislation being enacted
- WOCO is still accepting applications
- Transitional Arrangements are provided for in the Amendment Bill at S. 47 amending S. 56 of the original Act
- *“Notwithstanding its repeal by section 7(2), the Lunacy Regulation (Ireland) Act 1871 shall remain in force on and after the date of the coming into operation of this Part with regard to any proceedings in being on that date that were initiated under that Act before that date.”*
- The section also provides that the 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S. 55 of the ADMCA and nothing shall prevent the appointment of a DMA, CDM or DMR and the wardship application is to be withdrawn as soon as practicable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

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- If the WOCO has received a wardship application this will proceed and the application will be heard
- If the relevant person is found to lack capacity under the wardship application the Court may seek the nomination of a decision supporter under the ADMCA
- If appointed the 'transitional arrangements' provide the wardship application may be withdrawn as soon as is practicable

# Part 6 – Application for Discharge

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- Discharge Applications can be made by:
  - The Ward, Committee or their solicitor or **On the consent of the Court**
  - Relative or friend (position of trust with the ward)
  - Other person with existing relationship, interest and expertise (eg advocate)
- Notice of Motion, grounding Affidavit, Affidavit of Service
- Functional Capacity Assessment Report – from the medical visitor
- Schedule of Property and Assets – provided by the WOCO
- Outline of plans for future management of funds on discharge (not required in all cases)
- WOC 2 Form
- Booklet of Pleadings
- Remote hearing or in person hearing where requested – held in the Four Courts

# Capacity Review

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- Court's Medical Visitor or a consultant psychiatrist
- 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)



# Discharge with or without a DMA

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- If the person has capacity within the meaning of the Act
- They are discharged and their property and assets returned to them
- Notice of Motion open as to the type of declaration to be made
- Grounding Affidavit to include the will and preference of the ward of court and other relevant information as referred to S. 8(7)(b) and (c)
- Affidavit of Service to include averments; as to service, explanation of the application and implications, the response of the relevant person
- Medical Visitor report –to be provided to the
  - Applicant
  - Committee
  - Relevant Person
- Schedule of Assets to be provided by the Wards of Court Office

# Discharge with Co-Decision-Maker

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- If the person has capacity with the assistance of a Co-Decision Maker
- They are discharged and their property and assets returned to them
- All the proofs identified above in the context of a declaration under s.55(1)(a) (DMA)
- If a CDM is not available to the relevant person a supplement affidavit requesting a panel DMR and explaining why one is required
- A copy of the co-decision-making agreement
- A stay to be placed on the discharge order pending production of the proof of registration of the agreement
- Proof of registration of the agreement to enable return of property and assets

# Discharge with 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
- DSS will nominate two panel members for Court to choose a DMR (in chambers)
- A DMR is appointed by the Court
- The Court Order (DMRO) is registered with the DSS and the property and assets are returned to the person – in reality it's the DMR
- The DMRO acts as the agreement for the DMR to operate within



# Decision Making Representative Order

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- Court can
  - Confer powers on DMR
  - Impose duties
  - Attach conditions to making decisions
  - Set a time period for the order
- Order should be limited in scope and duration having regard to RP
- More than one DMR can be appointed to RP
- 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

## Part 10 - Review of Detention

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- S. 105 of ADMCA - Court directed review of detention by a DSS panel psychiatrist
- S. 107 provides for the review of persons detained in approved centres and subsequent orders
- S. 108 provides for the review of persons detained in unapproved centres and subsequent orders
- Discharge of the detention order under ADMCA still requires a separate discharge from wardship application and order

# Administration & Sittings

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- 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
- Discharge applications will only be listed when all papers are lodged and in order
- Rules & forms awaiting Amendment Bill for finalisation

# Additional Points

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- 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
- Applications in Year 1 of the review period will be managed in a sequential manner
- Applications in Year 2 & 3 will be listed by the office if a party fails to move the discharge application

**2022 to 2025 –  
3 years**

