



National Office for Human Rights and Equality Policy

Webinar series

Assisted Decision-Making (Capacity) Act 2015 Commencement and Implementation

Webinar 2: How and when to Engage with Decision Support Service (22/3/22)

This is a transcript of the Q&A in the chat function at the live event, wherein panellists responded to questions from attendees.

HSE safeguarding do not take referrals for mental health patients so what would be the option then?

Mental Health Social Workers will take and respond to any Safeguarding referrals relating to those under the care of Mental Health Services

Why would the bank not give Simon his own card?

We don't know the circumstances under which the account was opened. Every case is different and it is important to engage with the bank, in particular their vulnerable adults sections, where issues arise.

What type of HSE Account was it was referred to take control for a person?

A patient's private property account if the service user is in a HSE funded care plan. Quick google search will give more info.

Hi. In relation to scenario 2, if Simon were in HSE care, the HSE would have access to various costs related to daily living, like accommodation, food, etc. Is there any current consideration of these costs when living with the family in the community? Naturally, all costs should be directly related to Simons needs.

Simon has his own income and it is entirely reasonable he contributes to reasonable household costs

In Simon's scenario, who would make the complaint to the DSS if it's clear that his brother is not fulfilling his role in line with DSS principles?

Anyone who has knowledge of the facts may raise a complaint with the DSS. The DSS will investigate an in-scope complaint made by 'any person'.

Please repeat frequency of reporting to the DSS when Act commences

Please consult the DSS website. Different reporting obligations apply under the Act depending on the arrangement and the category of decisions covered.

I'm concerned that there is a presumption that carers can be supported to do better. For some this is not the case and we do the person experiencing abuse an injustice by leaving them there.

It can be the case that family members in particular are not clear on their obligations and need them clarified to them.

Will existing named and active attorneys have to register themselves with DSS?

EPAs made under the Powers of Attorney Act 1996 remain valid and the registration and reporting requirements under the 2015 Act do not apply.

What about Kay's Will and Preference? Does the Power of Attorney remove same?

An Attorney under the 2015 Act is obliged to apply the guiding principles including the principle of giving effect as far as practicable to the donor's past and present will and preferences.

Hi Aine, what do you mean publish the complaint procedure on our website? In relation to scenario 4. what does that look like?

See section 96(5). The DSS is required to publish the procedures that apply to making and investigation of complaints. These are being finalised and will be published on our website.

If a person with dementia has put an EPA in place and has named their live-in partner but they then split up. Can the person's family challenge the EPA?

See section 66 generally in relation to the end of relationships and EPAs.

My understanding is that Enduring Power of Attorney can be quite costly, are they going to be financial resources in place to support those who may need assistance?

It is understood that the making of an EPA is capable of being supported by Legal Aid and enquiries should be directed there.

It is the intention that the costs of engaging with the DSS will not be prohibitive and may be waived based on means.

Which grade of / qualified person completes the capacity assessments in the community? What are the expected timeframes for completion of same?

Formal statements of capacity are required as part of the supporting documentation for CDMAs and EPAs. Regulations will specify who can complete these statements.

What process takes place in re-establishing capacity...how or who tests? Thank You

This webinar is part of a series in preparation for commencement of ADM. A recording of each webinar will be available on www.assisteddecisionmaking.ie. The topics covered are:

February- Decision-Making Support arrangements under the 2015 Act - How do I support Someone to make a decision?

March - How and when to Engage with DSS,

April - Positive risk-taking and 'Unwise Decisions'

May - Functional Assessment of Capacity,

June - Respecting the rights of the person / The Role of Families under 2015 Act

What if there is no power of attorney? Who can make decision re person with no capacity

An application can be made under the new Act to the Circuit Court and the person with capacity difficulties will be assessed as to the level of support they require making decision. A decision support agreement is then registered with the DSS.

Do power of attorney get training about their roles/responsibilities?

There will be a code of practice for attorneys under the 2015 Act.

If Simon's brother is a 1996 attorney would he be free of any obligations under the 2015 Act?

See earlier answer. A 1996 EPA is still valid and the only interaction with the 2015 Act is that the DSS can take a complaint about a 1996 attorney.

If a person's wish is to stay at home and all community resources available to support the person to be at home are been utilized but still aren't enough. What happens in this case - Nursing Home or additional resources/finding from HSE to carry out the person's wish to stay at home?

In this situation, you could also explore whether the person in question had any financial resources that they could utilise/access in order to procure/fund additional supports in order to help uphold the person's will and preference to remain living at home. If they do not have financial means, it would be making it clear to the HSE that it is the person's will and preference is to stay at home and not to enter nursing home care, identify the amount of additional support required in order to do this and seek for those supports to be provided as soon as funding/care is available.

If EPOA in place could Maureen change her Will?

Testamentary capacity is a different test. It would depend on Maureen testamentary capacity whether she could make a will, but it is possible.

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In relation to scenario 4, If it is clear that Enduring power of attorney does not include social, then how did the brother come to say NO? Could the management in the residential service simply not inform the brother that it was happening, and that he had no power to oppose the visit?

Correct, the attorney can only act within scope. This is why it will be important for a service to know the content of an existing arrangement by consulting the DSS registers as provided for under the Act.

How would one proceed, before the 2015 Act is commenced, if a family member has severe dementia and is not capable of understanding they no longer have capacity and the process of

Ward of Court has been started? Does one go ahead with the application and when the Act is commenced go through the steps to dissolve the Ward and help them enter into a DMR or CDMA, or hold off entirely (which would mean no support at all for the person and their family) until commencement?

It is still possible to bring a wardship application but it is possible it will not be concluded before commencement. However, if urgent orders were required for these could be dealt with, for example medical treatment. As the legislation stands any application commencement will cease on commencement of the 2015 Act.

Once concerns are established through the Safeguarding and Protection Team that a carer etc. is behaving abusively towards a vulnerable person that has no longer capacity what is the pathway to escalate this to ensure the vulnerable persons needs can be safeguarded going forward?

A full assessment of the situation would be completed by the Safeguarding and Protection social workers and depending on the type of abuse, different interventions could be actioned including assessing and clarifying the nature and extent of the abuse, trying to establish the vulnerable person's will and preference in terms of where they would like to live and what will make them feel safe. This would include exploring whether there are other family members or support persons who could provide care; depending on the type of abuse, a referral may need to be made to the Gardai if a crime such as financial abuse or physical abuse/assault has occurred, other options could be exploring whether a Safety Order or Barring Order needs to be applied for; does the vulnerable person need to be removed to a place of safety or emergency respite depending on the assessed level of immediate risk and under ADM legislation, an application for a Decision Making Representative to be appointed could be made.

Has it been established how the Act/ DSS will impact on those who are currently wards of court?

All current wards of court will be reviewed on commencement of the Act, a capacity review will establish the tier of support required and the person will be discharged from wardship. Their property and assets will be returned to them.

In terms of the process under the new legislation, will this require a legal professional or will a lay person be able to make an application on behalf of a loved one who has dementia (no POA in place) in place of the current Ward of Court regime. Also, will applicants have to get medical reports or will this be addressed by the Courts?

Any person with a bona fide interest in the welfare of a relevant person may apply to court under the new Part 5 process. Further detail is awaited in relation to court rules. The court may seek reports under the Act.

In relation to one of the queries above in relation to Wards of Court, will all Wards of Court be moved over to one of the Decision Support categories (Decision making assistant, co-decision maker, etc.) or will it still exist in some form? Thanks.

All adult wards of court will be discharged from wardship. If a person is found to have capacity, they will not transition to the DSS.

Does that mean the current "committee" for wards of court will also be removed and/or would they have to apply to be a decision making assistant under the act to continue in a similar role?

The committee may be the decision making supporter, the former ward will select their own decision making assistant or co decision maker. The court will appoint a decision making representative.

What will happen to Applications for Ward or Court between now and commencement of the Act in June?

As the legislation now stands any application not concluded by June will cease and an application will be made to the Circuit Court.

Can a client still remain a ward of court if capacity cannot be established?

No, all adult wards of court will be discharged.

Who completes mental capacity assessments?

See earlier answer in relation to the formal statements that are required for CDMAs and EPAs. Otherwise the Act is not prescriptive or exhaustive about who may assess capacity.

Last question! What would they then be applying to the Circuit Court for?

Under Part 5 the application is for the court to make a declaration in relation to the relevant person's capacity in relation to certain decision(s). If the court declares that the person lacks capacity, the court may make the decision itself, or appoint a DMR, if a lower tier support will not suffice.

Delighted to see Deprivation of Liberty being so well addressed by Sarah. Is there any progress on S.13 of the ADMA to support Healthcare providers in the absence of community supports? HSE involvement is essential but S.13 proposal doesn't contain this advice

It had been intended that a new Part 13 would deal with DOLs. Latest information is that this will instead be standalone legislation from Department of Health.

How do you appoint a Power of Attorney for an adult with Intellectual who is not capable of making a decision?

Under an EPA, a person (donor) with capacity to do so appoints their own attorney who will take specified decisions for them in the future if the donor becomes unable to do so.

A different support arrangement may be more appropriate and information is available on the DSS website.

What is required to do if the Gardaí ask for proof of capacity for questioning in a criminal case, yet the act clearly people have presumed capacity?

Currently an assessment would be carried out to see if the person has capacity to be interviewed by Gardaí, that's even if they have been determined as lacking capacity.

Section 48, 'practitioners will be able to apply for Interim Orders' does this provide for removing or detaining a person for safety reasons.

It is not intended that a detention order or deprivation of liberty will be dealt with under this section or in the Circuit Court, as the legislation currently stands.

Is there a charge for the decision making representatives from the panel? If the individual has limited means how is that addressed?

A proposed amendment to section 42 in the amending Bill will provide for payment by the DSS in these circumstances.

Could you please provide the contacts details for the DSS?

www.decisionsupportservice.ie

Thank you for all this information. When will clarity on the court rules be available, to make an application under part 5? I can imagine a rush of applications in late June how long do people

envisage an application under the new DSS system taking to put the formal decision making mechanism in place?

Thank you. This is a matter for the Courts Service who are intensively engaged in preparatory work. The DSS will be able to pass on information about Part 5 applications when it is available.

Should we not be moving away from best interest to will and preference? If a person wants to live independently should there not be a responsibility on services to look at what supports need to be put in place to make this happen?

Absolutely- we should all now be embracing and upholding will and preference.

Can the advocate manage the finances on behalf of the person?

No Martina that is not the role of an advocate.