



National Office for Human Rights and Equality Policy

Webinar series

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

Webinar 5: Respecting the rights of the person and the role of families under the 2015 Act (1/5/22)

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

Will the Assisted Decision Making (amendment) Bill 2022 include necessary provisions in terms of the Nursing Homes Support Scheme Act 2009 (as amended), in particular, clarifications in terms of specified persons, who may apply for State support under s47 of NHSS Act. If yes can these changes be detailed and described?

These changes are to be introduced at Committee Stage on the 14th June 2022 along with a number of other amendments.

What are responsibilities of decision supporter and Co-Decision Maker?

These are roles set out in the Act and detailed information is available on www.decisionsupportservice.ie.

You can find lots of information about the support arrangements under the Act here: <https://www.hse.ie/eng/about/who/gid/other-quality-improvement-programmes/assisteddecisionmaking/frequently-asked-questions.html> and <https://decisionsupportservice.ie/services/decision-support-arrangements>. You might also be interested in watching the recording of Webinar 1: Decision-making support arrangements under the 2015 Act - How do I support someone to make a decision? which is available to watch back on www.assisteddecisionmaking.ie.

I cannot understand how someone who has a profound intellectual disability can possibly have capacity when they may not be able to understand what is going on around them, never mind making life's decisions. Could that be explained please?

The Act states that all adults have the presumption of capacity, unless the contrary is shown. This applies regardless of disability. This presumption applies already.

The Act says that persons must be supported as far as possible to make their own decisions.

If it is necessary to assess capacity, then it is assessed in relation to a particular decision when that decision needs to be taken. The outcome of this assessment may point to the need for formal supports available under the Act. Information and guidance will be available from the Decision Support Service.

Will the HSE prepare information leaflets for service users and their families? Also, will the HSE develop an information campaign for the general public?

The Decision Support Service has started to prepare information for service users and families and will also have a national information campaign on the Act. See www.decisionsupportservice.ie for more details.

On Gary's scenario, residential nursing homes are also regulated environment does this also mean that the Assisted Decision Making Act (ADM) is not relevant e.g. state pensions or occupational pension spends access etc - this seems odd?

Apologies for any misunderstanding. ADM absolutely has a role in regulated services and there will be adults living in these settings who have formal supports for decision-making. Staff in the regulated setting cannot be nominated as decision supporters. The case study as outlined doesn't indicate that there is a decision to be made at this point, and therefore relying on ADM (at this point) may not be the most appropriate. ADM remains available to Gary if/when he has a decision to make.

Regarding funds, etc. if already set up with support of intermediary (SAGE) to fund their care, etc. does this need to be revisited under the Act?

Subject to the person's wishes if an existing financial arrangement is the least intrusive option, safeguards the beneficiary's funds satisfactorily and permits easy access to those funds then the only reason to change is if there is better option or beneficiary isn't happy with it. All such decisions should in first place put the beneficiary at the heart of the conversation. The Act where this is working well does not require any change here.

I work in residential service, the residents I work with have restrictions on their bank accounts, as a service the PIC has had meetings with the bank, we have brought the residents into the bank but is refusing to lift the restrictions, any advice would be very grateful on this?

Áine Flynn's offer to receive this question formally for onward transmission to the banking federation is the best way to deal with this query.

Can staff other than residential staff be decision supporters?

If the relevant person is residing in a designated centre or mental health facility, the relevant sections in the Act exclude the owner, registered provider, and any person residing with, employed by, or agent of the owner or registered provider.

I would also suggest that there should be a section in the Residents contract of care informing the Next of Kin (NOK)/representative of their role.

If someone is in a formal role (Co-Decision Maker or CDM, Decision-Making Representative or DMR etc.) their functions are determined by the individual agreement/ court order and by the Act. The interaction of services with decision supporters will be a matter for services/their regulator and developing best practice. It is hoped that NOK as a term will be removed from documentation.

What protection is there for services users where there is a suspicion of abuse? For example, a solicitor calling to a patient with dementia and 'revisited their will' (no advocate present, not the purpose of their visit etc.). Resident's spouse's Will had already fallen due to same Solicitor's failures and new Will was drawn up to 'mend their hand' and align to Spouse's Will and not Resident's wishes. Argues that solicitors can deem resident competent.

If a Service Provider has a concern about potential abuse, they must follow their own internal Safeguarding Policy aligned to the HSE's policy. Testamentary capacity (i.e., capacity to

write a will) is not part of the Assisted Decision-Making Act (ADM) and stands separately as a legal concept. Even although the person has dementia it does not mean they do not have capacity to instruct a solicitor to rewrite their will - which is not uncommon at the end of life. If there is a potential issue about undue influence by a spouse, the service should highlight this with the solicitor (but they make their own determination) and follow the organisation's safeguarding policy.

How do you suggest proceeding when a family member makes decisions for an individual and the individual will agree with the family member simply to stay in favour with them and not cause any conflict?

The individual could be supported by staff to build up their own self-confidence and self-esteem to enable them to find their own voice and become empowered about their own will and preference. It will depend on the types of decisions being made and their impact on the individual - service providers should always be mindful of potential safeguarding issues and may wish to take advice from their designated safeguarding staff member on this.

Will the codes of practice set out how to support a patient who lacks capacity in obtaining medical treatment- in situations which previously would have required court ordered care/wardship applications?

Health colleagues may wish to say more here about consent to treatment.

There is a code that deals with supporting decision making. The Act provides a tiered framework of supports where these are required.

Will there be information sessions for families from the Decision Support Service (DSS)?

We have done a number of these and will do more and have recently been considering the best way of delivering such an information session Please look out for updates.

If an individual needs assistance accessing their banking online can this be done with staff in residential service, or does it require a formal support arrangement under the act e.g. Co-Decision Maker?

It does not require formal support but residential services offering supported banking supports must ensure robust oversight and segregation of duties on such supports.

Why do some HSE services continue to seek primary decisions to be made by parents (of adults), especially for application for residential support?

This has to change - hence the Act.

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When a person is deemed as having capacity, though I would say compromised due to a severe and enduring mental health difficulty, is there anything in the Act in this regard?

The guiding principles require that the person is supported to self-determine as much as is possible.

If the capacity of a person is in question, what is involved in the Functional Assessment?

The Codes of Practise which will issue shortly will clarify this in detail.