seirbhís tacaíochta cinnteoireachta
decision support service

Decision Support Service
Code of Practice

Code of Practice on Advance Healthcare Directives for Healthcare Professionals

This Code should be read in conjunction with the Assisted Decision-Making (Capacity) Act 2015. For the avoidance of doubt, in the event of any conflict or inconsistency, the legislative provisions prevail.

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1 Introduction and overview

1.1 Introduction to advance healthcare directives

Any person aged 18 or older with decision-making capacity can make an advance healthcare directive that will come into effect if they lack the capacity to make healthcare treatment decisions for themselves. The goal of an advance healthcare directive is to enable a person's will and preferences to guide their healthcare treatment even when they no longer have the capacity to make treatment decisions for themselves. This can be important because in some situations, in the absence of an advance healthcare directive, a person's will and preferences may not be known to their family members or to those providing healthcare treatment.

A designated healthcare representative is a person chosen by the directive-maker (the person who makes an advance healthcare directive) to ensure that the terms of the advance healthcare directive are complied with, by providing direction to healthcare professionals and taking steps to ensure that the will and preferences of the directive-maker in relation to their healthcare treatment decisions are respected. Advance healthcare directives can be made without appointing a designated healthcare representative; they can also include an alternate designated healthcare representative, should the first named person be unable to take up this position if required to do so.

1.2 Purpose of this code of practice

The purpose of this code of practice is to guide you, as a healthcare professional, in meeting your statutory obligations under the Assisted Decision-Making (Capacity) Act 2015 (the Act), specifically in respect of advance healthcare directives. It sets out the formalities relating to making, revoking and amending an advance healthcare directive. It provides direction for you when interacting with persons with advance healthcare directives as well as their designated healthcare representatives, where applicable.

A healthcare professional should refer also to the code of practice on supporting decision-making and assessing capacity which provides guidance on how the guiding principles may be applied and how to conduct a functional assessment of capacity as well as further information on supporting a relevant person in making a decision. The code of practice for designated healthcare representatives also provides useful and relevant information for healthcare professionals. These can be found on the Decision Support Service website www.decisionsupportservice.ie

In addition you may wish to consult your own professional body for guidance, including for relevant codes of conduct and practice directions.

1.3 About the Assisted Decision-Making (Capacity) Act 2015

The Assisted Decision-Making (Capacity) Act 2015 (the Act) was signed into law by the President on 30 December 2015, <and came into force on X date>. It is an important piece of reforming human rights law. The Act repealed two laws about decision-making capacity that had been in place since the 19th century. These are the Marriage of Lunatics Act 1811 (repealed in February 2021) and the Lunacy Regulation (Ireland) Act 1871 (repealed on commencement of the Act).

The Assisted Decision-Making (Capacity) Act 2015 established a modern legal framework to support decision-making by adults who may have difficulty making decisions without help. It includes three types of decision support arrangements for people who currently, or may shortly, face challenges when making certain decisions. It also provides for people who wish to plan for a time in the future when they might lose capacity, through a further two types of decision support arrangements.

Under the Act, a person over the age of 18 is always presumed to have capacity. In a situation where a person's capacity is questioned, capacity is assessed based on their ability to make a specific decision at a specific time. This is called the functional test of capacity. A person is considered to have the capacity to make a decision if they can:

- understand information relevant to the decision,
- remember the information long enough to make a choice,
- use or weigh up the information to make a decision, and
- communicate their decision (this may be with assistance).

The Act includes important safeguards requiring the Director of the Decision Support Service (DSS) to oversee and supervise decision support arrangements. This includes monitoring decision supporters, for example, through general and special visitors and through the review of annual reports that decision supporters are required to provide. The Act also requires the Director to receive and investigate complaints made about decision supporters and decision support arrangements.

1.4 Legal status of this code of practice

This code of practice is provided for under section 91 of the Act. Section 91(3) establishes that the Director of the DSS may publish codes for the purposes of providing guidance to specified people with regard to advance healthcare directives. Once published, those for whom the code is intended must have regard to its contents while performing any function under the Act to which that code refers, as set out in section 91(13). Section 91(12) of the Act provides for these codes to be admissible in legal proceedings. Under section 91(14), where it appears to a court, tribunal or other body conducting proceedings that a provision of or breach of a code is relevant to the question before it, it shall take the provision or breach of the code into account in deciding the question.

1.5 Terms and language used in this code

As far as possible, Plain English principles have been adhered to in the writing of this code. However, in order to accurately reflect the Act, it has sometimes been necessary to use terms and language that may not be familiar to readers. A full list of terms can be found in the Glossary.

The term intervention may be interpreted in a narrow way, limited to the actions of people defined in the Act as interveners and only when such actions are specifically identified within the Act as actions to be undertaken when acting as an intervener. Under section 8 of the Act, only these named interveners are obliged to apply the guiding principles (described in section 1.6). However, since this code of practice promotes the adoption of the guiding principles more generally, intervention is used throughout this code in its ordinary, broader sense unless otherwise specified, as any engagement with or action taken in respect of a relevant person in the context of the Act.

Similarly, the term intervene is used in its ordinary sense throughout this code unless otherwise specified. However, the term intervener is limited to its definition under section 2(1) of the Act (as set out in the Glossary).

1.6 Guiding principles

The Act is based on a set of guiding principles that are the foundation for interpreting and administering the Act. There are nine guiding principles in the Act, each of which is summarised below. For further information including how the guiding principles may be applied, please see the code of practice on supporting decision-making and assessing capacity.

- **Presume capacity:** Presume the relevant person has capacity to make a decision on the issue in question at the time the decision needs to be made.
- **Support the relevant person to make decisions:** Support the relevant person as much as possible to make their own decision on the issue in question before considering them unable to make this decision at the time the decision needs to be made.
- **Unwise decisions:** The fact that a decision appears unwise does not mean the person lacks the capacity to make it.
- **Do not intervene unless necessary:** Only intervene in respect of a relevant person where it is necessary to do so having regard to the individual circumstances of the relevant person.
- **Minimal intervention:** Any intervention in respect of a relevant person must:
  - take an approach that minimises restrictions of the person's rights and freedom of action,
  - have due regard for dignity, bodily integrity, privacy, autonomy and control over financial affairs and property,
  - be proportionate to the significance and urgency of the matter on which a decision is to be made, and
  - be as limited in duration as practicable having regard to the individual circumstances of the relevant person.

- **Give effect to will and preferences:** In making an intervention in respect of the relevant person, the intervener must, as far as practicable and ascertainable:
  - permit, encourage and facilitate the relevant person to participate, or to improve his or her ability to participate, as fully as possible in the intervention,
  - give effect to the past and present will and preferences of the relevant person,
  - take into account the beliefs and values of the relevant person, especially those in writing and any other factors which the relevant person would be likely to consider if they were able to do so,
  - consider the views of any person named by the relevant person as someone to be consulted on this or a similar issue, and any decision supporter for the relevant person,
  - act in good faith and for the benefit of the relevant person, and
  - consider all other circumstances of which they are aware, and which would be reasonably regarded as relevant.
- **Consider the views of others:** In making an intervention in respect of the relevant person, the intervener may consider the views of any person engaged in caring for, or with a bona fide interest in the welfare of the relevant person, or healthcare professionals.
- **Consider the urgency of the intervention:** Before making an intervention in respect of the relevant person, consideration should be given to the likelihood of the relevant person regaining capacity to make a decision on the issue in question and the urgency of making the intervention prior to such time as the relevant person may regain capacity.
- **Use of information:** In making an intervention in respect of the relevant person, the intervener must only obtain information that is reasonably required to make a decision on the issue in question; only use this information for the purposes of making that decision; and take reasonable steps to ensure this information is kept secure from unauthorised access, use or disclosure and is safely disposed of when the intervener believes it is no longer required.

1.7 Relevant decisions

The provisions of the Act apply to personal welfare decisions and to property and affairs decisions. Personal welfare decisions include decisions related to the relevant person's health and social care as well as to accommodation, employment, education and social activities. Property and affairs decisions include decisions related to the relevant person's property, business and/or money matters.

1.8 Decision support arrangements

The Act names five decision support arrangements for people with decision-making capacity challenges who may need support to make certain decisions. These arrangements are based on the different levels of support that a person requires to make a specific decision at a specific time. Under these arrangements, a person can be appointed as a decision supporter. The type of support a decision supporter can provide depends on the decision support arrangement that is put in place.

There are three decision support arrangements for people who currently, or may shortly, face challenges making certain decisions:

- **Decision-making assistance agreement:** A person who requires support to make certain decisions can appoint a decision-making assistant to help them access information, understand their options, and communicate their decisions to others.
- **Co-decision-making agreement:** A person who requires more support than that provided by a decision-making assistance agreement can appoint a co-decision-maker to make certain decisions jointly with them.
- **Decision-making representation order:** If a person is unable to make certain decisions, the court may appoint a decision-making representative to make those decisions on their behalf. The court can also make a decision-making order to make a decision on behalf of the person.

There are two types of arrangements for people who wish to plan for a time in the future when they might lose decision-making capacity:

- **Advance healthcare directive:** A person can set out their wishes regarding healthcare treatment decisions, including treatment refusals, in case they are unable to make those decisions at some time in the future.
- **Enduring power of attorney:** A person can appoint someone (or multiple people) to make certain decisions about their welfare, property and money matters if they are unable to make those decisions for themselves at some time in the future.

The Act recognises that a person's decision support requirements may change over time. This tiered system of decision support arrangements allows for the amendment, cancellation or replacement of one type of arrangement with another, depending on the person's capacity and needs.

2 Your functions and duties

This code of practice describes your role only in respect of advance healthcare directives as set out in Part 8 of the Act. General functions and duties of healthcare professionals as set out in the code of practice for healthcare professionals also apply here.

2.1 Where an advance healthcare directive is or may be in place

2.1.1 Determine if an advance healthcare directive should come into effect

An advance healthcare directive is only relevant where a person lacks capacity to make the specific treatment decision required at the time in question. It is presumed that a person has capacity to make the decision unless otherwise shown. The assessment of capacity should be in accordance with the functional test for capacity as set out in the Act and the guiding principles of the Act. The necessary support should be provided to the person to maximise decision-making capacity before deeming the person to lack capacity. For further details on how to maximise decision-making capacity see the code of practice on supporting decision-making and assessing capacity.

2.1.2 Take steps to ascertain if the person has an advance healthcare directive

It is good practice to ascertain if the person has made an advance healthcare directive. This could take place during routine admission to hospital or another healthcare or residential setting. It may be particularly appropriate to ascertain whether the person has an advance healthcare directive where they have a deteriorating chronic condition such as motor neurone disease, severe heart failure or in advance of a major clinical intervention such as surgery. In these instances, it is advisable to have a timely discussion with the person as to their healthcare treatment choices which would apply now or in the future.

Where you, as a healthcare professional, have reached a decision that the relevant person lacks the capacity to make a treatment decision, you should take all reasonably practicable steps to ascertain if that person has made an advance healthcare directive.

You should also, where practicable, take active steps to ensure that other healthcare professionals are made aware of the existence of the advance healthcare directive. This should also be the case where the directive-maker's care is being transferred between different services. Once you are made aware of the existence of an advance healthcare directive, you should ensure, where practicable, that this is accurately recorded on all relevant medical records, for example in all clinical notes, including medical, nursing and other healthcare care professionals' notes, healthcare provider administration systems, admission records, healthcare records and the National Ambulance Administration System. Ideally, and where practicable, a copy of the advance healthcare directive should be attached.

2.1.3 Requirement to read the advance healthcare directive

If you ascertain that there is an advance healthcare directive, you should take all reasonably practicable steps to view the advance healthcare directive and to familiarise yourself with the content of the advance healthcare directive. What is reasonably practicable will vary depending on the circumstances, e.g., the requirements in an emergency situation will be different to those in respect of a routine procedure.

It is not possible for you to make a judgement on the validity and applicability of an advance healthcare directive without accessing the directive itself. This means that verbal reports of the existence or the content of an advance healthcare directive are insufficient in all but very exceptional circumstances. You should check the following:

- Whether the formalities for the making of the advance healthcare directive have been complied with. These are that is it is signed by the directive-maker, by the designated healthcare representative (if one has been appointed) and by two witnesses (at least one of whom should not be a family member), all on the same date.
- The content of the advance healthcare directive. This is whether there is a specific refusal of healthcare treatment or request for a specific healthcare treatment, and how these relate in general terms to the circumstances which arise.
- Where a designated healthcare representative has been appointed and named in the advance healthcare directive, you should check that the person who states that he or she is the designated healthcare representative corresponds to the person set out in the advance healthcare directive.
- Where a designated healthcare representative has been appointed, you should check what power they have been given by the directive-maker in the advance healthcare directive.

2.1.4 Response to an advance healthcare directive

Having read the advance healthcare directive, you must determine if the advance healthcare directive is valid and applicable. The requirements for this are set out in detail in section 2.2.

If the advance healthcare directive is valid and applicable, you must comply with any refusal of healthcare treatment in the advance healthcare directive. This reflects the legal right of a person with capacity to refuse treatment. You must also take into consideration any request for treatment.

A situation may arise where you disagree in principle with and raise a conscientious objection to a person's will and preference with regard to their treatment decision as set out in a valid and applicable advance healthcare directive and raises a conscientious objection to complying with it. The Act does not include a reference to conscientious objection. However, under European human rights law, there is a limited legal right to conscientious objection. The fact that you have a conscientious objection cannot prevent a refusal of treatment in a valid and applicable advance healthcare directive

from being given legal effect in accordance with the Act and a healthcare professional who treats the directive-maker in such a circumstance is potentially liable under criminal and civil law. If you have a conscientious objection to acting in accordance with a valid and applicable advance healthcare directive, you should take the following steps:

- Make your objection clear when the matter initially arises and when you realise that the person's advance healthcare directive conflicts with your own held values.
- Inform the designated healthcare representative (if there is one) and also inform colleagues of the conscientious objection.
- Make arrangements to transfer the care of the person to another healthcare professional who does not have a conscientious objection. Arrangements to transfer a person for care or healthcare treatment should not be delayed or impeded in any way. The transfer arrangements should be noted on the person's file.
- If it is not possible to make arrangements to transfer the person within the necessary time, then the person must be treated in accordance with the valid and applicable advance healthcare directive, by the healthcare professional who has the conscientious objection.

2.2 Validity and applicability of advance healthcare directives

In order for an advance healthcare directive to apply, the healthcare professional responsible for providing the healthcare treatment must have determined that the directive-maker lacks capacity to make the decision at that time and the advance healthcare directive must be valid and applicable. In making a decision as to the validity or applicability of an advance healthcare directive, healthcare professionals should follow the guidance provided in this code.

Where you consider that the advance healthcare directive is not valid and applicable, you should set down in writing the grounds for this belief and also confirm this belief to the designated healthcare representative (if any). Where you consider that the advance healthcare directive is valid and applicable, it is good practice to document confirmation of the belief as to validity and applicability. If there is uncertainty about the validity and applicability of an advance healthcare directive, you should follow the steps outlined in sub-section 2.2.3.

2.2.1 Validity of an advance healthcare directive

In order for it to be necessary to comply with a refusal of healthcare treatment or take into consideration a request for healthcare treatment, the advance healthcare directive must be valid and applicable. A valid and applicable advance healthcare directive to refuse healthcare treatment has the same legal status as a decision to refuse healthcare treatment made by a person with capacity at the time of the treatment.

An advance healthcare directive is not valid if:

- The directive-maker did not make the directive voluntarily; or
- The directive-maker, while he or she had capacity to do so, has done anything clearly inconsistent with the relevant decisions in the directive.

In an emergency situation, there may not be time, or it may not be possible, to ascertain the validity of an advance healthcare directive, in which case the urgency of the medical condition requires you, as the healthcare professional, to take appropriate action (see chapter 6).

Voluntariness
All decisions regarding healthcare treatment must be voluntary and made without undue influence or coercion (whether by a healthcare professional, family member, friend, advocate, trusted person or other person). This principle applies whether the decision is made at the time treatment is required or is contained in an advance healthcare directive. During the course of healthcare treatment, a person may discuss different treatment options and the risks associated with each option with healthcare professionals, as well as with family and friends, advocates or other trusted person/s. It is a legitimate and normal part of a person's decision-making process to consult with trusted people close to them. It is also often reasonable for healthcare professionals and others to try to advise a person of the risks and benefits of particular choices although healthcare professionals should always remain particularly conscious of the potential for undue influence in discussing advance healthcare directive preferences. Pressure or influence will only be regarded as undue if, as a result, the decision no longer represents the will and preference of the person. It is important to remember too that simply because a person does not object does not mean that their decision was made voluntarily.

It is reasonable for healthcare professionals to presume that an advance healthcare directive was made voluntarily unless there are good grounds for concern, based on evidence, that this may not have been the case. Some indications that an advance healthcare directive may not have been made voluntarily are:

- Direct evidence from observation;
- The person said that they did not make the directive voluntarily;
- Evidence from a healthcare professional who has a long standing and comprehensive knowledge of the medical and social circumstances of the individual.

Decisions in advance healthcare directive inconsistent with usual actions
An advance healthcare directive is not valid where the directive-maker specifies healthcare treatment decisions that are clearly inconsistent with actions taken when the directive-maker has capacity to make decisions. The decision that the directive-maker has acted inconsistently is made by the healthcare professional responsible for the directive-maker's care and is based on the knowledge available to the healthcare professional at this time. An inconsistent decision will only invalidate those aspects of the advance healthcare directive which are inconsistent with the decision. All other aspects of the advance healthcare directive remain valid.

Matters which do not affect the validity of an advance healthcare directive
Any person who has attained the age of 18 years has a legal right to refuse treatment, including life-sustaining treatment. It does not affect the validity of a healthcare treatment refusal in an advance healthcare directive that the refusal:

- Appears to be an unwise decision;
- Appears not to be based on sound medical principles;
- May result in the death of the directive maker.

However, if the directive-maker wishes the refusal to apply to life-sustaining treatment, the advance healthcare directive must include a statement that the refusal is to apply to the treatment identified even if their life is at risk.

These reasons cannot be used by healthcare professionals or others (including family and friends of the directive-maker and persons appointed under the Act) to justify not complying with the treatment refusal set out in the advance healthcare directive even if their life is at risk.

2.2.2 Applicability of an advance healthcare directive

An advance healthcare directive is not applicable if:

- At the time in question the directive-maker still has capacity to give or refuse consent to the healthcare treatment in question.
- The treatment proposed is not materially the same as the specific healthcare treatment in the advance healthcare directive.
- The circumstances in which the advance healthcare directive is stated to apply are absent or not materially the same.
- The healthcare treatment in question is life-sustaining, and the advance healthcare directive does not contain a statement that the advance healthcare directive is to apply even if the directive-maker's life is at risk.
- The refusal in the advance healthcare directive relates to the administration of 'basic care' (as described later in this sub-section).

Presume capacity

It should be presumed that at the time the advance healthcare directive was made that the directive-maker had the requisite decision-making capacity. Therefore, at the time the advance healthcare directive is to take effect, it is not necessary to make enquiries as to the capacity of the directive-maker at the time the advance healthcare directive was made.

Materially the same healthcare treatment

A healthcare treatment is materially the same as treatment in the advance healthcare directive if the core elements of the healthcare treatment are the same. Minor differences such as different terms being used or minor variations in modes of delivery should not prevent the advance healthcare directive being applicable.

Some examples of healthcare treatments covered by an advance healthcare directive include:

- Cardiopulmonary resuscitation
- Mechanical ventilation
- Tube feeding
- Dialysis
- Antibiotics or antiviral medications
- Chemotherapy for treatment of cancer.

If there is a doubt as to whether the healthcare treatment proposed is materially the same as that in the advance healthcare directive, you should consult with another healthcare professional of the same specialisation. Where you reach a conclusion having consulted with a second healthcare professional, you should document the consultation in the patient's notes; the views of the second healthcare professional; their decision; and their reasons for the decision.

Materially the same circumstances

Whether an advance healthcare directive comes into effect in the particular circumstances depends first on whether the directive-maker lacks capacity to make the decision at the time in question and secondly on the contents of the advance healthcare directive.

Some directive-makers may wish their advance healthcare directive to apply even if they have no specific prior health problems at the time in question. An example of this is a directive-maker who for religious, or other reasons, does not wish to have a blood transfusion or to receive blood products. You should determine whether the circumstances identified in the advance healthcare directive are materially the same as those which arise at the time when the advance healthcare directive is to come into effect.

Where healthcare treatment or circumstances are set out precisely in the advance healthcare directive, minor variations between the circumstances set out and the circumstances now arising will not prevent the advance healthcare directive from being applicable. Particular care should be taken where the advance healthcare directive refers to all circumstances. The circumstances in which the refusal of the healthcare treatment identified is intended to apply must be specified. If the circumstances detailed in the advance healthcare directive are clear and unambiguous, then the advance healthcare directive must be respected and followed. So, for example, where a person had stated that, on religious grounds, they do not wish to have a transfusion of blood or primary blood components under any circumstances, the advance healthcare directive will be applicable. In other situations, it is necessary that the directive-maker clarifies specifically the circumstance in which the healthcare treatment is being refused.

A person who, in their advance healthcare directive, refuses an identified healthcare treatment in one set of circumstances cannot be taken to be providing a blanket refusal of healthcare treatments that may arise in different circumstances. For example,

a directive-maker who has set out in their advance healthcare directive their wish to refuse antibiotic treatment in one specified context cannot be presumed to be refusing antibiotics in other contexts. Some circumstances may refer to specific conditions. Examples of possible conditions are set out include where the directive-maker has:

- A specified level or severity of disability
- A terminal illness:
- An end-stage irreversible condition limiting their likely survival
- A prolonged disorder of consciousness

Life-sustaining treatment
Treatment can be regarded as life-sustaining where failure to provide that treatment at that time would result in a significant risk of death. If the directive-maker intends the advance healthcare directive to apply to life-sustaining treatment, it must include a statement that the directive-maker understands that they may die as a result of refusing that treatment. The advance healthcare directive is not applicable if there is no statement to the effect that the advance healthcare directive is to apply to that healthcare treatment even if the directive-maker's life is at risk. However, the advance healthcare directive still gives important information as to the will and preferences of the directive-maker and, under the guiding principles in the Act, this should play an important role in treatment decisions.

Basic care
Basic care is defined in the Act as including warmth, shelter, food and liquids provided orally, and hygiene measures. Basic care does not include artificial nutrition (for example, tube feeding) or artificial hydration (including sub cutaneous fluids). Basic care includes care that can be provided by someone who is not a healthcare professional in order to promote the comfort and dignity of a person. Basic care also includes some, but not all, measures taken to relieve a person's pain, for example, positioning a person to alleviate discomfort or breathlessness, bandaging and other wound care measures and administration of non-prescription medicinal products for example, laxatives, analgesic and antacids for heartburn, to alleviate pain or other symptoms. An advance healthcare directive is not applicable to the administration of basic care to the directive-maker, and basic care cannot be refused in an advance healthcare directive. Artificial nutrition and artificial hydration are not categorised as basic care and therefore they may be refused in an advance healthcare directive.

Relief of pain and other distressing symptoms
Measures to relieve pain and other potentially distressing symptoms range from relatively simple interventions, such as positioning the person or providing mouth care, to invasive procedures including the use of infusion pumps to administer medications and even surgical procedures. While some low-level measures to relieve pain might be categorised as basic care, many interventions aimed at providing pain relief represent treatment that is serving to alleviate and provide temporary relief from symptoms or suffering without effecting a cure and these do not come under the definition of basic care. Although many healthcare professionals may regard providing such treatment as a fundamental part of healthcare treatment, the consent of the person is required, and the Act is explicit that such treatment can be refused in an advance

healthcare directive. If you are unsure whether the intervention represents basic care or a healthcare treatment, you should seek the opinion of another colleague and if necessary legal advice. In a situation where you consider that the refusal of clinically appropriate treatment for pain relief may result in severe, otherwise untreatable distress and hence infringe on the essential human rights of that person and in order to protect that person from inhuman and degrading treatment, you should refer the matter to the court. If immediate healthcare treatment is essential to relieve unbearable distress while awaiting the outcome of the court application, this should be provided.

2.2.3 Uncertainty regarding validity or applicability of an advance healthcare directive

A situation may arise where you are uncertain regarding whether an advance healthcare directive is valid or applicable because of an ambiguity in the advance healthcare directive. In such situations, you must, in an effort to resolve the ambiguity:

- Consult with the directive-maker's designated healthcare representative (if any) or, if there is no designated healthcare representative, the directive-maker's family and friends, and
- Seek the opinion of a second healthcare professional.

After so doing, if the ambiguity still has not been resolved, you must resolve the ambiguity in favour of the preservation of the directive-maker's life, if this is the issue at stake. Ultimately, questions about uncertainty or ambiguity may have to be resolved by the court. All of the steps taken should be documented in the directive-maker's records.

Referral to court

Ultimately, if there is doubt about the validity and applicability of an advance healthcare directive and, in particular, disagreement about the correct course of action, a determination may be obtained from the court. Any interested person may make an application to court for a declaration as to whether an advance healthcare directive is valid and/or applicable or whether a designated healthcare representative is acting in accordance with the powers contained in the advance healthcare directive. A court application relating to life-sustaining treatment must be made to the High Court. Other applications are made to the Circuit Court.

Where an application has been made to the High Court and the decision of the court is awaited, the advance healthcare directive does not prevent you from administering life-sustaining treatment or performing any action which you believe to be necessary to prevent a serious deterioration in the health of the directive-maker or, if the directive-maker is pregnant, from having a deleterious effect on the unborn child.

2.2.4 Relevance of advance healthcare directive which is not valid or applicable

An advance healthcare directive does not have any effect and should be disregarded:

- If the directive-maker has capacity to make their own healthcare treatment decisions at the time in question
- There is evidence that an advance healthcare directive was not made voluntarily, under undue influence or coercion.

In other circumstances, an advance healthcare directive which is not applicable because it does not apply to a particular healthcare treatment or circumstance may still provide important guidance and evidence of the person's will and preferences and as such should be taken into consideration.

2.3 Advance healthcare directives outside the Act

2.3.1 Advance healthcare directives made prior to the commencement of the Act

Advance healthcare directives made before the Act came into force will still be valid and applicable provided they substantially comply with the requirements set out in the Act.

2.3.2 Advance healthcare directives made outside Ireland

An advance healthcare directive made outside Ireland which substantially complies with the Act has the same legal status as if it had been made in Ireland. In order to substantially comply with the requirements of the Act, the advance healthcare directive must comply with the formalities (be in writing and witnessed) and must identify the healthcare treatment to be refused and the circumstances in which it is to apply. If the advance healthcare directive is to apply to life-sustaining treatment, this must be clearly identified within the advance healthcare directive. Where an advance healthcare directive is made in a language other than English or Irish, arrangements should be made by the directive-maker or the designated healthcare representative to have this translated. However, if this has not happened, healthcare professionals should make all reasonable efforts to have the advance healthcare directive translated by appropriate professionals in accordance with the Equal Status Acts 2000-2015.

3 Making, revoking or amending an advance healthcare directive

3.1 Making an advance healthcare directive

Anyone aged 18 years or older who has capacity may make an advance healthcare directive. The person who makes the advance healthcare directive is known as the directive-maker. The advance healthcare directive must be made in writing and contain:

- the name, date of birth and contact details of the directive-maker, their signature and date that the directive was signed
- the name, date of birth and contact details of the designated healthcare representative (if any), their signature and date that the directive was signed
- the signatures of two witnesses, both of whom must be aged 18 years or older and at least one of whom must not be an immediate relative of the directive-maker.

The advance healthcare directive may be signed on behalf of the directive-maker by a person aged 18 or older who is not one of the witnesses if the directive maker is unable to sign the directive, is present and directs that the directive be signed on their behalf by that person and the signature is witnessed by the two witnesses and by the designated healthcare representative (if any).

3.2 Role of the healthcare professional

You should, as far as practicable, ensure that the person has the opportunity and is supported in discussions around advance healthcare directives. You are advised to encourage and facilitate such discussion in a timely manner to reduce the likelihood of later rushed and potentially stressful decision-making.

The Act does not require a person to consult with a healthcare professional before making an advance healthcare directive. However, a directive-maker may wish to discuss their proposed advance healthcare directive with you to ensure they have an accurate understanding of the context in which the advance healthcare directive is made. This discussion may include reviewing the implications of the person's known medical condition(s) and explaining available healthcare treatment options and their risks and benefits to the directive-maker, including which forms of healthcare treatment may be life-sustaining and the consequences of the refusal of such treatment. You should also ensure that the directive-maker understands the need for them to review the advance healthcare directive on a regular basis, given that future healthcare developments may impact on choices made in the advance healthcare directive.

If you do not agree with the views of the person making an advance healthcare directive, you may state this but you should provide objective information and ensure that you do not unduly influence the person's decisions (bearing in mind that there may be a power imbalance between you as a healthcare professional and a directive-maker).

You may be asked to be a witness to an advance healthcare directive. You are under no obligation to do so but you should be aware that acting as a witness does not require you to agree with the contents of the advance healthcare directive.

3.2 Amending an advance healthcare directive

A directive-maker who has capacity may, in writing, alter their advance healthcare directive. An alteration to an advance healthcare directive is of no effect unless it is signed by the directive-maker and has two witnesses. If consulted by the directive-maker about whether to amend an advance healthcare directive, you should provide all necessary up-to-date information regarding the amendments.

3.3 Revoking an advance healthcare directive

A directive-maker who has capacity may revoke (cancel) their advance healthcare directive. In accordance with the presumption of capacity, it must be presumed that the directive-maker has capacity to do this unless the contrary has been established. A directive-maker may ask you for guidance in making the decision to revoke their advance healthcare directive. You should be very careful to ensure that you do not unduly influence a directive-maker to alter or revoke their advance healthcare directive.

The cancellation must be in writing. There are no further formalities provided for in the Act and it is not necessary that the revocation be witnessed. From a practical perspective, the cancellation should clearly identify that the advance healthcare directive is being cancelled and that the date of cancellation is included. The directive-maker should also inform any designated healthcare representative of the cancellation. It remains the responsibility of the directive-maker to ensure that the cancellation of the advance healthcare directive is brought to the attention of healthcare professionals. However, where you are aware of a cancellation of an advance healthcare directive, you should ensure that this is recorded on the person's file.

In some exceptional circumstances, the directive-maker may, while they have capacity, have verbally stated to you that they wish to cancel their advance healthcare directive but may not have had the opportunity to put this in writing. In such circumstances, the directive-maker's change of mind should be respected. The directive-maker's verbal statement and surrounding circumstances should be formally documented by you and if possible, this should be signed by the directive-maker (and witnessed). If the directive-maker is unable to sign, it should, if possible, be signed by a person on their behalf in the presence of the directive-maker.

It is generally the responsibility of the directive-maker to inform their designated healthcare representative of the change. However, if the directive-maker is unable to do this, you should endeavour insofar as is practicable to inform the designated healthcare representative of the directive-maker's change of mind.

4 Functions and scope of designated healthcare representatives

4.1 Powers of a designated healthcare representative

The designated healthcare representative has the power to ensure that the terms of an advance healthcare directive are complied with. This means that they can provide direction to you, as a healthcare professional, in relation to the directive-maker's healthcare treatment decisions and take steps to ensure that the directive-maker's will and preferences are respected. This must always be done with reference to the relevant advance healthcare directive. The designated healthcare representative can be given specific power/s as follows:

- To advise and interpret what would be the directive-maker's will and preferences in relation to treatment. This must always be done with reference to the advance healthcare directive.
- To consent to or refuse treatment based on the directive-maker's known will and preferences. This must always be done with reference to the advance healthcare directive. This specific power can include the power to consent to and refuse life-sustaining treatment only if the advance healthcare directive expressly gives this power to the designated healthcare representative.

If the directive-maker wishes to give either or both of these powers to the designated healthcare representative, they must state this clearly in their advance healthcare directive. They should also state clearly whether this includes the power to consent to or refuse treatment and if this extends to life-sustaining treatment. A designated healthcare representative cannot delegate any of the powers given to them and may only exercise the powers when and for so long as the directive-maker lacks capacity.

4.2 Interacting with a designated healthcare representative

The scope of the designated healthcare representative's powers depends on what has been detailed in the advance healthcare directive. Where a person presents as a designated healthcare representative, they should have a copy of the advance healthcare directive (if this is not already part of the directive-maker's healthcare records). You must check the terms of the advance healthcare directive to establish:

- That the person who has presented to the service has been appointed as the designated healthcare representative.
- The scope of that person's powers as the designated healthcare representative.

Where a directive-maker has appointed a person as their designated healthcare representative, you must consult with them in order to resolve any uncertainty as to the validity or applicability of the advance healthcare directive. The views of the designated healthcare representative will take priority over views of any other person, including family members. You should check that the person who states that they are

the designated healthcare representative corresponds to the person set out in the advance healthcare directive. In addition, where an advance healthcare directive requests treatment which you do not provide, you must provide the designated healthcare representative with a copy of the reasons why you did not comply with the healthcare treatment request in the directive-maker's advance healthcare directive. This must be done as soon as practicable after the decision not to comply was made, in order for the designated healthcare representative to be able to comply with their statutory record-keeping obligations as set out in section 88(3) of the Act.

In general, it is reasonable for you to assume that the designated healthcare representative is accurately representing the will and preferences of the directive-maker as specified in their advance healthcare directive, unless they have evidence to the contrary. You are legally entitled to request to see the advance healthcare directive which must set out clearly the will and preferences of the directive-maker in relation to healthcare treatment.

4.3 Concerns about a designated healthcare representative

In exceptional circumstances, you may have reason to believe, which must be based on evidence, that the designated healthcare representative is not acting in accordance with the powers which they have been given under the advance healthcare directive or in accordance with the directive-maker's known will and preferences.

In such circumstances, you should first discuss the matter with the designated healthcare representative and express your concerns about the action that the designated healthcare representative proposes to take. Ultimately, if you continue to have concerns, you should make a complaint in respect of the conduct of the designated healthcare representative to the Director of the Decision Support Service, who will review this complaint and, if satisfied that it has substance, undertake an investigation. The Director may, on completion of an investigation, refer the matter to the court and if the court is satisfied that the designated healthcare representative is acting or is proposing to act outside the scope of their powers, the court may make an order prohibiting the designated healthcare representative from exercising those powers. In some situations, for example in an emergency situation, referral to the Director of the Decision Support Service may not be sufficient to resolve the matter in time and it may be necessary to make an immediate application to court for a declaration.

5 Complaints and investigations against healthcare professionals

5.1 Introduction

This chapter focuses on complaints and investigations with respect to advance healthcare directives. For a more general overview please see the code of practice for healthcare professionals.

5.2 Acting contrary to a valid and applicable advance healthcare directive

The Act states that a healthcare professional who provides treatment to a person contrary to their valid and applicable advance healthcare directive may be found to have committed an assault for which they may be made liable at civil law, i.e., through a legal action taken by the directive-maker or by a person acting on behalf of the directive-maker, and/or criminal law, i.e., through a prosecution for assault/battery. Failure to comply with a valid and applicable advance healthcare directive could also provide the basis for a complaint to a healthcare professional's regulatory authority.

The Act states that a healthcare professional is not liable where:

- You complied with a refusal of healthcare treatment set out in an advance healthcare directive, provided that, at the time in question, you had reasonable grounds to believe, and did believe, that the advance healthcare directive was valid and applicable.
- You did not comply with a refusal of healthcare treatment, provided that, at the time in question, you had reasonable grounds to believe, and did believe, that the advance healthcare directive was not valid or applicable, or both.
- At the time in question, you had no grounds to believe that an advance healthcare directive existed.
- You had grounds to believe that an advance healthcare directive existed but had no immediate access to the advance healthcare directive or its contents and the medical condition was sufficiently urgent that you could not reasonably delay taking appropriate medical action until you had access to the advance healthcare directive. This means that in an emergency situation, you are not required to delay taking appropriate medical action if you do not have immediate access to the advance healthcare directive.

In all of these situations, if there is any concern regarding potential liability, it would be prudent for you to make a contemporaneous record of the basis for the action taken at the time the issue arises.

Late discovery of an advance healthcare directive, after life-prolonging treatment has been initiated, is not sufficient grounds for ignoring it. Any on-going treatment which is contrary to the advance healthcare directive must be stopped.

6 Emergency and urgent situations

6.1 Introduction

This chapter focuses on emergency and urgent situations with respect to advance healthcare directives. For a more general overview please see the code of practice for healthcare professionals.

6.2 Relevant person

In some emergency and urgent situations (e.g., where a person is unconscious following a road traffic accident or having a heart attack), the person may lack capacity to consent to or refuse life-saving treatment which is urgently required. In these situations, they are a relevant person for the purposes of the Act. This applies whether or not the person has a decision-support arrangement in place prior to this situation developing.

6.3 Where an advance healthcare directive exists

In emergency situations where a relevant person lacks capacity to make a decision, and has an advance healthcare directive, but the healthcare professional is not aware of it or does not have access to it, then urgent treatment may be given to the relevant person. If it is subsequently brought to the attention of the healthcare professional that there is an advance healthcare directive in existence and if it can be made available, then its relevance to continuing treatment must be considered.

Glossary

(the) Act

The Assisted Decision-Making (Capacity) Act 2015

Advance healthcare directive

An advance healthcare directive is an advance expression made by a person with decision-making capacity in accordance with the requirements of the Act of the person's will and preferences concerning healthcare treatment decisions that may arise if he or she subsequently lacks decision-making capacity.

Advance healthcare planning

Advance healthcare planning is a process of discussion and reflection about the goals, values, will and preferences for healthcare treatment occurring in the context of an anticipated deterioration in the person's condition. Advance healthcare plans are generally not legally enforceable unless they are in the form of an advance healthcare directive.

Advocate

A person nominated by an individual adult to speak on their behalf and represent their views. Advocacy comes in different forms including informal support and independent advocacy services. Advocacy should always be independent from the service providing care or support.

Another person

A person, whom the court deems suitable, willing and able to assist the relevant person during the course of a Part 5 application hearing and who is chosen by the relevant person to assist him or her during the course of the hearing. Another person could be, for example, a trusted family member or friend or an independent advocate.

Applicability

Applicability refers to whether something applies, in other words, is relevant or appropriate in a particular situation. When used in the context of a decision-support agreement, directive or order, it means checking that the relevant criteria are being met for a specific decision at a specific time.

Assessment of decision-making capacity

An assessment of decision-making capacity is where a person's ability to understand the nature and consequences of a decision to be made by him or her is assessed in accordance with a functional test of capacity.

Attorney (2015 Act)

An attorney is a person appointed by an adult who has decision-making capacity (referred to as a donor), in an enduring power of attorney, to make decisions on behalf of the donor when the donor no longer has the capacity to make those decisions for himself or herself. The enduring power of attorney must be registered with the Director of the Decision Support Service before the attorney has the authority to make relevant decisions on behalf of the donor.

Attorney (1996 Act)

An enduring power of attorney created under the Powers of Attorney Act 1996 will continue to be governed by the rules and regulations provided for in the 1996 Act. On commencement of Part 7 of the 2015 Act, no further enduring powers of attorney can be created under the provisions of the 1996 Act. Part 7 of the Act provides for some oversight of attorneys under the 1996 Act by the Director of the Decision Support Service. The Director can investigate complaints against attorneys under the 1996 Act in a similar manner to an investigation of complaints against attorneys appointed under the 2015 Act.

Autonomy

The right to make decisions and take actions that are in keeping with one's beliefs and values.

Basic care

Basic care includes (but is not limited to) warmth, shelter, oral nutrition, oral hydration and hygiene measures but does not include artificial nutrition or artificial hydration.

Bona fide

Bona fide means acting in good faith.

Capacity

Capacity is understood to refer 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.

Cardiopulmonary resuscitation (CPR)

Cardiopulmonary resuscitation (CPR) is a treatment which attempts to restart a person's heart and maintain breathing where the person's heart or breathing has stopped. Cardiopulmonary resuscitation usually involves chest compressions, ventilation of the lungs, attempted defibrillation with electric shocks and the injection of drugs.

Co-decision-maker

This is a person appointed by a relevant person to jointly make decisions with him or her. This may occur where the relevant person does not have the capacity to make decision(s) even with the aid of a decision-making assistant but does have the capacity to make decision(s) with the help of a co-decision-maker. A co-decision-maker must be appointed in a written and witnessed agreement. The co-decision-making agreement must be registered with the Director of the Decision Support Service in order to bring it into force.

Cohabitant

A cohabitant is one of two adults who live together as a couple in an intimate and committed relationship, and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other.

Consent

Consent is the giving of permission or agreement for an intervention (including medical treatment), receipt or use of a service or participation in research following a process of communication in which the person has received sufficient information to enable them to understand the nature, potential risks and benefits of the proposed intervention or service. Consent is a legal requirement at common law and the requirement is supported by the Constitution of Ireland and the European Convention on Human Rights.

Court

The circuit court has general jurisdiction under the Act, apart from certain matters reserved for the high court:

- Any decision regarding the donation of an organ from a living donor where the donor is a person who lacks capacity
- Where an application in connection with the withdrawal of life-sustaining treatment for a person who lacks capacity comes before the courts for adjudication.

Court friend

A person appointed by the Director to assist the relevant person in relation to an application to the circuit court under Part 5 of the Act in respect of which the relevant person is the subject. A court friend is appointed by the Director when no other person is available, willing or suitable to assist the relevant person in relation to a Part 5 application.

Decision-making assistant

A person appointed through a formal decision-making assistance agreement by a relevant person to support him or her in making a decision, for example, by obtaining information or personal records and by ensuring that the relevant person's decisions are implemented. The decision-making assistant will not make the decision on behalf of the person. Decision-making responsibility remains with the relevant person.

Decision-making representation order

A court order appointing a decision-making representative to make one or more decisions for a person who has been declared to lack capacity.

Decision-making representative

A person appointed by the court when the relevant person lacks capacity to make a decision. The scope of a decision-making representative's authority to make decisions depends on the court order, which may include the attachment of conditions relating to the making of decisions by the decision-making representative, or the period of time for which the order is to have effect.

Decision supporter

Someone with legal authority specified in a decision-making support arrangement to support a relevant person to make their own decisions or to make the decisions on their behalf.

Decision Support Service

The Decision Support Service is an office based within the Mental Health Commission established by the Act 2015. See also Director of the Decision Supporter Service.

Designated healthcare representative

A person named by the directive-maker, in his or her advance healthcare directive, to exercise certain powers as set out in the advance healthcare directive.

Directive-maker

The directive-maker is the person who makes the advance healthcare directive.

Director of the Decision Support Service

The role of the Director of the Decision Support Service is to support decision-making by and for adults whose capacity is or may be in question. The statutory functions of the Director, as provided for in Part 9 of the Act, are:

- to provide information in relation to the various decision-making support options under the Act
- to provide guidance and information to organisations in the State in relation to their interaction with people who have decision-making capacity difficulties and those who have been appointed to assist in decision-making
- to identify and make recommendations for changes of practices in organisations where the practices may prevent a person with decision-making capacity difficulties from exercising his or her capacity under the Act
- to supervise and handle complaints about those who are appointed to assist persons in making decisions, decision-making arrangements and any person who used fraud, coercion or undue pressure to induce a person to make, vary or revoke a decision-making arrangement

- to maintain registers of co-decision-making agreements, decision-making representation orders and enduring powers of attorney created under the Act
- to maintain panels of suitable persons to act as decision-making representatives, court friends, general visitors and special visitors
- to approve, draft and consult on codes of practice under the Act
- to act as the central authority for the purposes of the operation of the Hague Convention on the International Protection of Adults.

Donor

The person who creates an enduring power of attorney and who appoints an attorney to make decisions on his or her behalf when the donor no longer has the decision-making capacity to make those decisions.

Do not attempt cardiopulmonary resuscitation order

This is a written order stating that cardiopulmonary resuscitation should not be attempted if a person suffers a cardiac or respiratory arrest.

Enduring power of attorney

This is a legal agreement made in accordance with the requirements of the Act whereby a donor gives authority to an attorney to act on their behalf in the event that the donor lacks decision-making capacity at any time in the future. An enduring power of attorney created under the Powers of Attorney Act 1996 will remain valid after commencement of the 2015 Act. An enduring power of attorney created after commencement of the2015 Act will be subject to the 2015 Act.

Financial professionals and financial service providers

All persons who provide one or more financial products or services, whether regulated or unregulated including those operating in the State and those outside the State who provide a financial service to consumers in the State.

Functional assessment of decision-making capacity

Assessing decision-making capacity on a functional basis means that the emphasis is on the capacity to make a specific decision, at the time the decision has to be made (issue-specific and time-specific):

- **Issue-specific:** Decision-making capacity is assessed only in relation to the decision in question. A judgement that someone lacks decision-making capacity in relation to one issue does not have a bearing on whether decision-making capacity is present in relation to another issue.
- **Time-specific:** Decision-making capacity is assessed only at the time in question. A judgement that someone lacks decision-making capacity at one time does not have a bearing on whether decision-making capacity in relation to that issue is present at another time.
- Functional decision-making capacity focuses on how a person makes a decision and not the nature or wisdom of that decision.

General practitioner

A medical doctor based in the community who provides initial, on-going and continuous personal medical care, with responsibility for integrating care, treating people with acute, minor or chronic illnesses, and referring those with serious conditions to a hospital when specialist treatment is likely to be necessary and be of benefit.

General visitor

A person appointed by the Director of the Decision Support Service to assist the Director in performing his or her supervisory functions as defined in the Act. A general visitor may be directed by the Director to visit a relevant person, decision-making supporters and any other person who may be able to assist with information, and to submit a report to the Director following such visits. A general visitor may also be directed by the Director to obtain copies of any health, personal welfare or financial records held in relation to a relevant person.

Healthcare professionals

Healthcare professionals refers to the various health and social care staff who support people while they are receiving healthcare treatment. The term covers all health and social care professions whether or not the profession is a designated profession within section 3 of the Health and Social Care Professional Act 2005.

Healthcare treatment/ treatment

Healthcare treatment means an intervention that is or may be done for a therapeutic, preventative, diagnostic, palliative or other purpose related to the physical or mental health of the person and includes life-sustaining treatment.

Independent advocate

A person who works with and for a relevant person, around a specific issue or issues which have arisen, where they have difficulty voicing their will and preferences. An Independent Advocate is employed or engaged by an advocacy organisation, is free from conflict of interest and is independent of family and service providers.

Instrument/legal instrument

This is the document in which the decision-support arrangement (such as an enduring power of attorney) is created.

Interveners

The Act provides for legally recognised persons referred to as interveners to support a person to maximise their decision-making capacity. As defined in the Act, an intervener can be:

- The circuit court or high court
- A decision-making assistant, co-decision-maker, decision-making representative, attorney or designated healthcare representative
- The Director of the Decision Support Service
- A special visitor or a general visitor
- A healthcare professional
- Court friend

Intervention

This is any action taken, direction given, or any order made in respect of a relevant person under the Act. The intervention may be made by the courts, by a healthcare professional, or any person under the formal agreements set out in the Act and should reflect the level of support the relevant person requires.

Jointly

When used in reference to decision supporters, this means that all the appointed interveners must work together to make joint relevant decisions and where appropriate each person must sign any relevant documents. A decision made by one person alone will not be valid. A document signed by one person only will not be valid.

Jointly and severally

When used in reference to decision supporters, this means that any one of the appointed interveners may make a relevant decision or where appropriate sign a relevant document. Signatures from other decision supporters are not required to make the document valid.

Key worker

The staff member in the service who carries particular responsibility for the person with a disability, liaises directly with them, coordinates their services and supports, and acts as a resource person.

Legal practitioner

A practicing barrister or a practicing solicitor.

Life-sustaining treatment

This is any clinically appropriate medical treatment, technology, procedure or medication that is administered to forestall the moment of death. These treatments may include, but are not limited to, mechanical ventilation, artificial hydration and nutrition, cardiopulmonary resuscitation (CPR), haemodialysis, chemotherapy, or certain medications including antibiotics although antibiotics are not routinely considered to be life-sustaining treatment.

Multidisciplinary team

A group of healthcare professionals who are members of different disciplines (e.g., psychiatrists, social workers etc.) each of whom provide specific services to the relevant person.

Palliative care

Palliative care aims to improve the quality of life of a person and their family facing the problems associated with life-threatening illness, through the prevention and relief of suffering by means of early identification and assessment and treatment of pain and other problems, physical, psychosocial and spiritual. The aim of palliative care is to enhance quality of life and, wherever possible, to positively influence the course of illness. Palliative care also extends support to families to help them cope with their family member's illness and their own experience of grief and loss.

Palliative care approach

This is the application of palliative care principles by healthcare professionals who do not solely work in specialist palliative care.

Personal welfare decisions

These include decisions concerning accommodation, employment, education, training, social activities, social services, healthcare and well-being.

Presumption of decision-making capacity

This means that it must be presumed that a person has capacity in respect of a specific decision unless otherwise shown. The onus of proving that a person lacks capacity to make a decision is on the person who is questioning a relevant person's ability to make a particular decision.

Property and affairs decisions

These include decisions concerning property (i.e., acquisition, sale, lease and mortgage), business, contracts, debts, taxes, benefits and finances.

Registered medical practitioner

A person who holds a basic medical qualification, and who is registered under section 46, 47, 48, 49 or 50 of the Medical Practitioners Act 2007.

Relevant decision

A decision made, or to be made, which is the subject of a decision-making assistance agreement, co-decision-making agreement, a decision-making order, decision-making representation order, enduring power of attorney or advance healthcare directive.

Relevant person

This is a person:

- whose decision-making capacity is in question or may shortly be in question in respect of one or more matters (i.e., a person who may have difficulty reaching a decision without the support of someone), or
- who lacks decision-making capacity in respect of one or more matters (i.e., a person who may be able to make some decisions but not others), or
- whose decision-making capacity is in question or may shortly be in question in respect of one or more matters and who lacks decision-making capacity at the same time but in respect of different matters (this is a combination of the above).

Revocation

This means the cancellation of a legal document., the act of stating officially that an agreement, right, or legal document is no longer effective.

Special visitor

A person appointed by the Director of the Decision Support Service to assist the Director in carrying out his or her functions. A special visitor may be directed by the Director to visit a relevant person, decision-making supporters and any other person who may be able to provide relevant information and carry out assessments of decision-making capacity in relation to a relevant decision. A special visitor submits a report to the Director following such visits. A special visitor may also be directed by the Director to obtain copies of any health, personal welfare or financial record held in relation to a relevant person.

Suitable person

This refers to the eligibility of a person to become a decision-supporter or other intervener, through meeting the specific criteria set out in the Act.

Supporting decision-making

This refers to any process in which an individual is supported, through whatever means necessary, in making a particular decision.

Trust corporation

A category of companies empowered to undertake trust business, provided certain other conditions are met which are contained in section 30 of the Succession Act 1965. A trust corporation is deemed a person for the purposes of an enduring power of attorney in the Act but may only be given authority in relation to property and affairs decisions.

Unwise decision

This is a decision which may be perceived as being ill-advised or risky. This may reflect a difference in values, goals and preferences between the relevant person and the person interacting with them. The decision may have adverse consequences for the relevant person.

Validity

This is the state of being officially legally binding or acceptable.

Wardship

This was the process whereby an application was made to the court to hold a formal inquiry into the question of a person's decision-making capacity. If, following such an inquiry, a person was declared by the court to be of unsound mind and incapable of managing their personal affairs and property then they were described as a ward of court and the court assumed overall control of the person's affairs and had to make decisions on the person's behalf in their best interests. The wardship process operated under the following legislative provisions: Courts (Supplemental Provisions) Act 1961, section 9; Rules of the Superior Courts, Order 67; Circuit Court Rules, Order 47; and the Lunacy Regulations (Ireland) Act 1871. The Assisted Decision-Making (Capacity) Act 2015 provides for people who were brought into wardship under the above-mentioned legislative provisions to have their capacity by the wardship court and to be assessed and to be provided with supports under the new statutory framework as appropriate.

Witness

A witness is a person who signs one of the following legal instruments: an advance healthcare directive; a co-decision-making agreement; or an enduring power of attorney, in accordance with the requirements of the Act, so as to attest that the instrument was signed by the person making it. Alternatively, a witness could refer to a person whom the Director of the Decision Support Service has called to provide information as part of an investigation.

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