



# A GUIDE TO IRELAND'S NEW ASSISTED DECISION- MAKING LAW

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# PRESUME I HAVE CAPACITY

A new law which includes a much improved approach to upholding the rights of people who have difficulty making decisions (called ‘decision-making capacity’) came into effect in April 2023.

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This law is the *Assisted Decision-Making (Capacity) Act*.

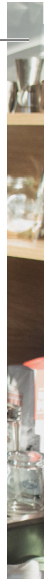
A new State Agency called the **Decision Support Service (DSS)** has been established to help the law be understood and put into practice.

The approach of this Act is to presume that every person has the ability, or **capacity**, to make decisions about their own health, living arrangements, finances or activities.

If a person has a challenge with decision-making – but through help with language, literacy, meeting face-to-face, or assistive technologies – they can make their own decisions; the Act places responsibility on families, professionals and services to support people to do so.

If a person requires support to make decisions, the Act sets out **five different levels of assistance** which can be provided and have legal standing.

Also included in the Act is guidance for doctors, lawyers and financial providers such as banks on actions they must take to uphold the rights of all people to decision-making.



The 150 year old **Wards of Court** system is being phased out and all 2,000 existing cases are being reviewed during 2023-2026.

Furthermore, **Advance Healthcare Directives** (where people document future healthcare wishes) will have legal standing and **Enduring Powers of Attorney** (where people appoint a person to act on their behalf in the future if needed) are being made easier to put in place.

### The Background

In 1871, the Lunacy Regulations (Ireland) Act became law and was in use until 2023. It created a system of 'Wards of Court' whereby if a person was declared of 'unsound mind' their ability to make major decisions was taken away and people in authority decided what was in the person's 'best interests'.

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This system no longer applies.

### Who is the Act for?

The new law is about **rights**, and taking every possible step to assist people to continue making their own decisions about their health, finances, housing, work or personal welfare – even if there are challenges in doing so.

The Act is of particular importance for people who have challenges with decision-making such as those living with frailty, dementia, an intellectual disability, an acquired brain injury, or mental illness. But it may be important to all of us at certain times in our lives.

The new law is also relevant to a wide range of professionals and service providers such as health services and banks.

## Preventing Adult Abuse

We know that there is unacceptable adult abuse, neglect and coercive control in Ireland. The aim of the 2015 Act is to support a person to make their own decisions which will in turn help to prevent, reduce and detect adult abuse.

### Guiding Principles

The Guiding Principles of the Act include:

- To firstly always presume that each person has the ability to make decisions about their own life
- If a person has a challenge, but with help can make their own decision, then that support must be provided
- An unwise decision does not mean a person is unable to make a decision
- If a person has reduced decision-making capacity, then the Act sets out five different support arrangements which can be put in place and have legal standing.





# I CHOOSE WHO HELPS

## 5 Types of Decision Support Arrangements

- 1. A Decision-Making Assistant** can be appointed by a person to gather and explain information and communicate a decision for them. However, the person still makes the decision. The agreement must be recorded with the Decision Support Service and certain people must be notified about it.
- 2. A Co-Decision Maker** can be appointed by a person to make decisions jointly with them. This arrangement can be used where a person feels unable to make decisions on their own. The agreement must be written down and registered with the DSS. Co-decision-makers make annual reports to the DSS about the decisions that have been taken under the agreement.
- 3. A Decision-Making Representative** can be appointed if a person is unable to make decisions, even with help. This person is appointed by the Court and can be someone trusted by the person, or from a panel maintained by the DSS. Their role is limited to the specific requirement identified by the Court and must take into account the wishes, values and beliefs of the person. It is registered with the DSS and the Representative submits reports to the DSS.
- 4.** When a person has decision-making capacity they may legally appoint a person to make decisions on their behalf, if in the future they are unable to do so. This is known as an appointing an **Enduring Power of Attorney (EPA)**. An EPA includes financial, property and personal welfare decisions.
- 5.** For healthcare decisions, a person may appoint a **Designated Healthcare Representative (DHR)** for if in the future they no longer have decision-making capacity. In appointing a DHR, the person sets out their preferences for healthcare and treatment decisions in an *Advance Healthcare Directive*, a document which has legal standing.



It is important to clarify the common and completely incorrect ‘myth’ that when someone needs help a ‘**next-of-kin**’ would assume charge of their affairs. While next-of-kin can be an important contact point, a ‘next-of-kin’ has no legal standing or authority to act on a person’s behalf.

To have legal authority a person must be appointed under one of the five decision support arrangements.

### Time to get Informed

Rights-based assisted decision-making has commenced.

Safeguarding Ireland encourages every person, professional and organisation to become familiar with the Assisted Decision-making Act and to apply it in their lives and work.

Assisted decision-making will help to uphold our rights and independence, and to safeguard against risk of harm.

If there are things described in this booklet relevant to you, your family, or your work but you are not sure what to do – please find out more.



# FIND OUT MORE



## Decision Support Service

The central contact for information is the **Decision Support Service** which is available by phone at **01 211 9750** or its website is at: **decisionsupportservice.ie**. The site includes information about common questions.

The DSS's role is to promote public awareness, register decision support arrangements, supervise arrangements and investigate complaints about appointed decision supporters or decision support arrangements.

## Other information at:

HSE:

**assisteddecisionmaking.ie / 1800 700 700**

National Advocacy Service for People  
with Disabilities:

**advocacy.ie / 0818 073000:**

Sage Advocacy:

**sageadvocacy.ie / 01 536 7330.**



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