



Adult Guardianship and the Mental Capacity and Guardianship Bill 2007

In February 2007 a private member's bill was sponsored by Senator Joe O'Toole and Senator Mary Henry in the Senate on the issue of adult guardianship. Once a person has turned 18 they are under law an adult. At present in Ireland there is no form of adult guardianship other than Ward of Court.

The Bill includes much of the Law Reform Commission's recommendations in Vulnerable Adults and the Law (December 2006) in abolishing the overarching system of Wards of Court with a system of guardianship around specific issues. The report is available from www.lawreform.ie

The Minister of State at the Department of Justice, Equality and Law Reform Frank Fahey at the time stated that the Government accepts the principle of the Bill however there are no indications at present of a timeframe for the introduction of this bill into the Dáil.

If the bill is enacted it will provide for the following;

A definition of capacity

Capacity would be defined as "the ability to understand the nature and consequences of a decision in the context of available choices at the time the decision is to be made"

A presumption of capacity

Every person who has reached the age of majority (18 years) is presumed to have capacity to make decisions. To have this presumption removed it has to be proven that it is probable that they do not have the capacity to make certain decisions.

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Guardianship

A personal guardian may be appointed on behalf of a person who is deemed to lack capacity. The personal guardian must be over 18 and must consent to becoming a personal guardian. The personal guardian may be granted the power to deal with matters relating to property, finance or personal welfare. There may be more than one personal guardian appointed and they may work together or have responsibility for different matters.

Guardianship Board

A board would be set up to appoint personal guardians and guardianship orders and would comprise of three members. The High Court will retain the right to make decisions on matters of sterilisation, withdrawal of life supports and organ donation.

The Office of the Public Guardian

This is an independent office set up to supervise the Personal Guardians and Guardianship Board. The office would also provide information and advice about the Guardianship law. The office would produce codes of conduct in order to ensure that there is no exploitation of people who have a guardian appointed.

Working Group on Capacity

The bill if enacted would allow for the Department of Health to establish a working group on capacity to review issues relating to healthcare. The working group would establish guidelines on assessing capacity and procedures in emergency situations among others.

Conclusion

Inclusion Ireland will be recommending a range of amendments if this Bill is brought to the Dáil. However, the introduction of the Bill is significant and it is hoped will work as a catalyst for keeping the issue of Legal Capacity on the Government agenda.

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