

Factsheet on the Assisted Decision Making Bill; June 2015



What is Assisted Decision Making?

This means that a person whose Decision-Making capacity is in question can appoint a person to assist, co-decide or represent them for the purpose of making a decision.

Why might my capacity be 'in question'?

The Bill does not limit the provisions to a person with a disability or impairment. It sets out a functional test that outlines a person's capacity. Everyone is to be presumed to be able to make all decisions unless the contrary is shown.

What is the definition of capacity?

It is the ability to understand, at the time that a decision is to be made, the nature and consequences of the decision to be made by him or her in the context of the available choices at that time.

How is capacity decided?

A person can be said to lack capacity to make a decision if they are not able to

- understand the information relevant to the decision,
- retain that information long enough to make a voluntary choice,
- use or weigh that information as part of the process of making the decision,
- to communicate his or her decision in whatever way they communicate (not only verbally)

If I lack capacity, what does that mean?

A person cannot lack capacity as a decision maker but may lack capacity to make a particular decision at a particular time. This capacity may be regained at a different time and for a different decision.

What is the Decision Support Service (DSS)?

The DSS is a part of the court service established to deal with assistant decision making. A Director will be named to promote public awareness of the law, information and guidance, develop codes of practice, advise state bodies, make investigations and keep a record of assistance agreements and reports from representatives.

What about 'informal decision-making'?

The language of 'informal decision-making' has been removed from the Bill, however there is scope for the taking of an action in good faith for the benefit of the relevant person in respect of the personal welfare (including healthcare and treatment)

This table outlines the structures in the Bill and the main elements

<i>Who is the 'appointer'?</i>	In all cases the 'appointer' is the person whose capacity is in question and they must be 18 years or older		
Structure	Assistance	Co-Decision Making	Decision-making representative
What is it?	Appointer chooses an assistant to assist with decisions on personal welfare or property and affairs, or both	Appointer chooses a co-decision maker to jointly make one or more decision on personal welfare or property and affairs.	A person with a bona fide interest in another person's welfare applies to court to be made a decision-making representative.
Who can the person be?	<p>A person chosen by the appointer.</p> <p>Appointer can have more than one assistant but only one per particular decision</p>	<p>A person chosen by the appointer.</p> <p>A relative or friend of the appointer who has had such personal contact with the appointer over such period of time that a relationship of trust exists between them.</p>	<p>Any person who is 18 years or older and who has a bona fide interest in the welfare of a relevant person.</p> <p>The court will have regard for the will and preferences of the person and the desirability of maintaining family structures.</p> <p>There may be more than one.</p>
What's the role?	<p>Role of the assistant is to</p> <ul style="list-style-type: none"> • obtain any relevant information that is required in relation to a relevant decision, • advise on the decision by explaining relevant information • get the will and preferences of the appointer • assist the appointer to make 	<p>The role of the co-decision-maker is to</p> <ul style="list-style-type: none"> • advise on matters relating to the decision(s) and get relevant information • share with the appointer the authority to make relevant decisions • advise the appointer by explaining relevant information • get the will and preferences of the appointer and assist communication of this and to make and express a relevant decision, • endeavour to ensure that 	<p>The role of the decision-making representative is to</p> <ul style="list-style-type: none"> • take decisions on personal welfare or property and affairs, or both • Report into the Director of the DSS • Keep accounts and records.

	<p>and express a relevant decision,</p> <ul style="list-style-type: none"> • Try to ensure that the appointer's relevant decisions are implemented 	<p>the appointer's relevant decisions are implemented.</p>	
Who makes the decision?	<p>The appointer.</p> <p>An assistant does not make the decision</p>	<p>A co-decision maker makes the decision jointly with the appointer</p>	<p>The Decision Making Representative makes the decisions as laid out in the court order.</p>
Are there restrictions?	<p>An assistant must be over 18 years of age and not have certain convictions.</p>	<p>A co-decision maker must be over 18 years of age and not have certain convictions or judgments.</p> <p>A co-decision maker is a relative or friend of the appointer who has had such personal contact with them over such a period of time that a relationship of trust exists between them.</p> <p>A co-decision maker cannot be the owner or the registered provider, of a nursing home, a mental health facility, or a residential facility for persons with disabilities, in which the relevant person lives</p>	<p>An applicant must be over 18 years.</p> <p>A court order will only be made if it has been shown that a less intrusive approach would not be suitable or as beneficial.</p> <p>A decision making representative cannot be the owner or the registered provider, of a nursing home, a mental health facility, or a residential facility for persons with disabilities, in which the relevant person lives.</p>
How does it happen?	<p>A decision-making assistance agreement is completed.</p>	<p>A co-decision-making agreement must be registered to have effect</p>	<p>An application must be made to court. Legal aid system may be introduced but not declared at this point. The person whose capacity is in question may use a 'court friend'</p>

<p>Are there safety or reporting mechanisms?</p>	<p>A third party must explain Information about the agreement to the appointer.</p> <p>The decision-making assistance agreement can be ended at any time by either party or changed with agreement from both parties.</p>	<p>Notice is given to close relatives who can object.</p> <p>The co-decision must report into the Director of the DSS</p>	<p>The Decision –Making representative must prepare a report every twelve months or more for the Director of the DSS.</p> <p>There will be no power to prohibit a particular person from having contact with the relevant person</p>
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The information enclosed in this information sheet is intended as a guide and is not an exhaustive overview of the Assisted Decision-Making Bill 2013 (as amended). The Bill has not been enacted and is subject to change.

Further information on capacity, including the Lunacy Act and practical information is available from www.inclusionireland.ie/capacity



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