



**Assisted Decision-Making (Capacity) Act 2015
Status update – Preparation for commencement
ADM Implementation Steering Group
January 2022**

Introduction

This document is a status update on the commencement of the Assisted Decision-Making (Capacity) Act 2015 and the work and actions that are being undertaken in the HSE to prepare for commencement.

This document will be issued after each monthly HSE ADM Implementation Steering Group meeting to steering group members for further dissemination to colleagues and staff.

ADM commencement

The Government has committed to commencement of the Assisted Decision-Making (Capacity) Act in June 2022 and full operationalisation of the Decision Support Service by July 2022. The Act will have wide-ranging implications for all health and social care providers as the provisions of the 2015 Act apply to all decisions including those related to health and social care.

<https://decisionsupportservice.ie/news-events/dss-could-assist-5500-people-its-first-six-months-operation>

Heads of Bill

Draft Heads of Bill for the Assisted Decision-Making (Capacity) (Amendment) Bill 2021 were published by the Department of Children, Equality, Disability, Integration and Youth in November 2021.

The proposed legislation will amend the Assisted Decision-Making (Capacity) Act 2015 and improve processes and safeguards for those who will make use of the new decision-making supports. The proposed Bill also includes measures to further realise the United Nations Convention on the Rights of Persons with Disabilities in Ireland, including legislating for the Irish Human Rights and Equality Commission's (IHREC) position as the national monitoring body for the United Nations Convention on the Rights of Persons with Disabilities, and increasing the public sector duty regarding the employment of persons with disabilities from 3% to 6%.

Decision Support Service

The Decision Support Service is a new service established under the Assisted Decision-Making (Capacity) Act 2015 based within the Mental Health Commission. It is expected that the Decision Support Service will be fully operational in July 2022.

Once the Act has commenced, their role will be to:

- regulate and register decision support arrangements
- supervise the actions of decision supporters
- maintain a panel of experts who will act as decision-making representatives, special and general visitors, and court friends
- investigate complaints made under the 2015 Act
- promote awareness and provide information about the 2015 Act.

<https://decisionsupportservice.ie/news-events/are-you-interested-learning-about-assisted-decision-making-capacity-act-2015-and-decision-support-service-dss>

Wardship

The current Wards of Court system under the Lunacy Regulations (Ireland) Act 1871 will remain in place until the Assisted Decision-Making (Capacity) Act is commenced. Commencement will change the existing law on capacity from the status approach of the wardship system to a flexible functional approach, where capacity is assessed on an issue and time-specific basis.

Once the Act has been commenced, all current Wards of Court will be reviewed by the wardship court and discharged from wardship within three years after commencement. The courts will decide whether or not a current Ward of Court needs formal support under the new Act.

<https://decisionsupportservice.ie/news-events/what-happens-wards-court-and-their-committees-commencement-assisted-decision-making-capacity-act-2015>

Codes of Practice- Decision Support Service

Consultation Phase 1

The first tranche of draft Codes of Practice on the Assisted Decision-Making (Capacity) Act 2015 were published by the Decision Support Service for public consultation in December 2021. These Codes of Practice included:

- Code of Practice on Supporting Decision-Making and Assessing Capacity
- Code of Practice for Healthcare Professionals
- Code of Practice on Advance Healthcare Directives for Healthcare Professionals
- Code of Practice on Designated Healthcare Representatives.

Consultation Phase 2

The second consultation phase on the remaining codes is now underway, with submissions due to the Decision Support Service by **18th February 2022**. These codes of practice include the following:

- Code for Decision Making Assistants
- Code for Co-Decision-Makers
- Code for Decision Making Representatives

- Code for Attorneys (Enduring Power of Attorney)
- Code for Special Visitors
- Code for General Visitors
- Code for Court Friends
- Code for Independent Advocates

<https://decisionsupportservice.ie/news-events/dss-launch-phase-2-public-consultation-draft-codes-practice>

HSE Preparations for commencement

Current resources for healthcare staff

A number of resources are available to staff to gain an understanding of the Act. These include:

- A short **Explainer Video** on the Act containing simple core messages on the Act from the voices of staff and people who use our services
- **Recordings of webinars** on key provisions within the Act, including supporting decision-making, advance planning, and the role of advocacy
- A quarterly **newsletter** providing updates on the Act and the work of the HSE National Office of Human Rights and Equality Policy
- *The Assisted Decision-Making (Capacity) Act 2015 – Personal and Professional Reflections* – a **collection of essays** written from both a personal and professional perspectives highlighting the importance of the Act

All of these resources can be found on www.assisteddecisionmaking.ie.

Feedback on Decision Support Service- Draft Codes of Practice

Consultation phase I:

The HSE ADM Implementation Steering Group coordinated a response on behalf of the HSE and highlighted a number of areas of concern on the draft codes to the Decision Support Service, including:

- The very tight timeframes in which to feedback on detailed codes to the Decision Support Service particularly for front line health and social care staff dealing with the December-January Covid surge
- The overly legalistic nature of the codes of practice;
- The need for the codes to focus on supporting decision making first and presumption of capacity
- The absence of inclusion of vignettes and case examples in the codes to reflect the complexity of issues in health and social care practice;
- The absence of one overarching code for health and social care practice which encompasses supporting decision making, assessment of capacity and other health and social care related matters pertaining to the 2015 Act.

Consultation phase 2:

The HSE ADM Implementation Steering Group is coordinating a response on behalf of the HSE for the second tranche of codes. Submissions are due to the Decision Support Service by **18th February 2022**.

Please note that the timeframes for feedback on the codes of practice are set by the Decision Support Service and NOT the HSE.

HSE National ADM Implementation Plan

A national ADM Implementation Plan is currently being developed through the ADM Implementation Steering Group. This plan will set out key resources required to support the implementation of the 2015 Act across HSE and HSE funded services. A targeted impact assessment will be undertaken to determine the impact of the 2015 on all aspects of services and to inform the development of key actions required to support implementation of the 2015 Act. This work is being supported by Clara Learning.

This work will commence in January 2022.

HSE Disabilities and Mental Health ADM Impact Assessments

HSE Disabilities and HSE Mental Health are each currently undertaking an ADM impact assessment and action plan which will help inform the National ADM Implementation Plan.

This work will be undertaken in a way which maximises staff and service user engagement and minimises duplication of processes. This work is being supported by Clara Learning.

This work will commence in January 2022.

CHO 1 ADM Impact Assessment and Action Plan

CHO 1 have recently completed an ADM impact assessment and action plan. Work is underway to finalise the report which will inform the National ADM Implementation Plan. This plan will set out a number of actions and priorities for CHO1 in order to enable compliance with the 2015 Act and the HSE National Consent Policy and prepare services for the full implementation of the 2015 Act. It will also identify potential risks and measures to mitigate such risks.

Education and training

A series of webinars on the Act will be commencing in February 2022, and monthly thereafter. The topics of these webinars are based on feedback received from a staff survey that was issued in December 2021. Notification of the webinars will be disseminated to the HSE National Office for Human Rights and Equality Policy mailing list, through the members of the ADM Implementation Steering Group and through the HSE broadcast.

Work is continuing on the development of an e-learning programme, due for launch in March 2022. This programme will cover supporting decision-making, planning for the future and the functional assessment of capacity. Work on the second suite of e-learning will commence in February 2022 with a launch date in May 2022.

Further information and materials to support staff to prepare for commencement of the Act will be uploaded to the website www.assisteddecisionmaking.ie over the next few months.

Communications

The HSE National Office of Human Rights and Equality Policy are developing a communications plan to ensure that information is issued to the system on a monthly basis in preparation for the Act being commenced. This communications plan will also include the updating of the website www.assisteddecisionmaking.ie, a quarterly newsletter and regular broadcasts and memos to the system.

Wardship Applications – A Guide for Healthcare Workers

HSE Community Operations with the support of the HSE Office for Human Rights and Equality Policy, the HSE National Safeguarding Office, HSE Acute, HSE Office for Legal Services and Safeguarding Ireland have developed a guide of health care workers on wardship applications. These guidelines were developed to provide for a clear and consistent approach on the steps required before an application for wardship of an adult is considered by the HSE. It is also to ensure that any application for wardship is given due consideration and undertaken in a way which respects the person's constitutional, European and international human rights throughout the process.

The document will be disseminated by Community Operations into the system in early 2022.

The document will be relevant until the 2015 Act comes into effect and until all wards have been transitioned into new arrangements which will take a period of three years from the date of commencement of the 2015 Act.

Prescribed classes of professionals

A Health and Social Care expert working group- Prescribed classes of professionals has been established through the ADM Inter-Departmental Steering Group. The ADM Inter-Departmental Steering Group is chaired by the Department of Children, Equality, Disability, Integration and Youth and this piece of work is being led by the HSE on behalf of the Inter-Departmental Steering Group.

The purpose of Health and Social Care Expert working group is to provide advice and guidance on a scoping exercise to determine the resources required to enable the prescribed classes of professionals to undertake capacity assessments under the Assisted Decision-Making (Capacity) Act 2015. This specifically pertains to capacity assessments for co-decision-makers and enduring powers of attorney.

This group is currently undertaking a scoping exercise that will look at the specific implications of this aspect of the Act and what it will mean for the health service and for health and social care professionals.

For further information on any of the above, please contact Jacqueline Grogan – Jacqueline.grogan@hse.ie.

