Assisted Decision-Making (Capacity) Act 2015

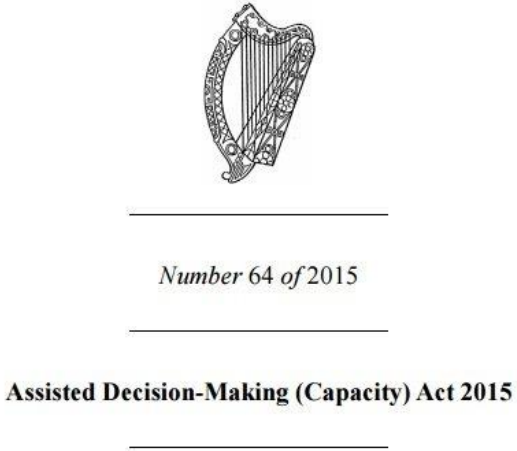
Jacqueline Grogan

Project Manager, HSE National Office for Human Rights and Equality Policy

@jacqgrogan

Assisted Decision-Making (Capacity) Act 2015

- "An Act to provide for the reform of the law relating to persons who require or may require assistance in exercising their decision-making, whether immediately or in the future…"
- Signed by President – 30th December 2015
- Some sections of the Act have commenced
  - Establishment of the Decision Support Service
  - Appointment of the Director
  - Establishment of the multi-disciplinary working group on advance healthcare directives


Number 64 of 2015

Assisted Decision-Making (Capacity) Act 2015

Who is the legislation for?

Who in particular?

It applies to a person whose **decision-making capacity is being called into question, may shortly be called into question, or lacks capacity,** in respect of one or more than one matters.

FIGURE 16. ESTIMATE ENGAGEMENT OF ADULT POPULATION WITH DECISION SUPPORT SERVICE

220,000

Adults may have arrangements with the Decision Support Service

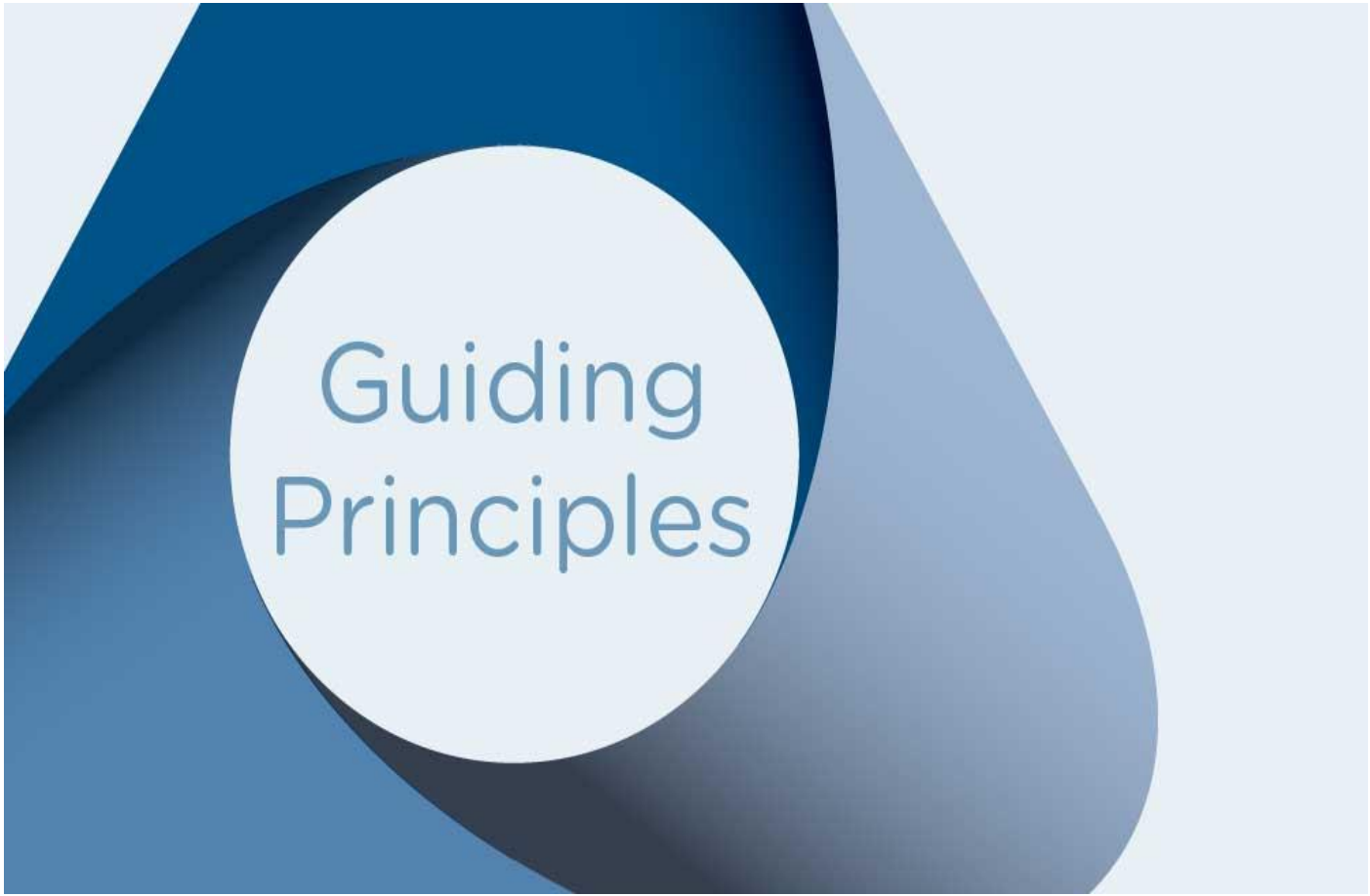
What does the Act say?

It requires service providers to provide a range of supports and information to help a person make a decision.

Important to remember

The ADMCA is a disability neutral Act

This reminds us that we all need support at some time and that at times, in certain situations, some people need more support!!


Guiding
Principles

Presumption of capacity

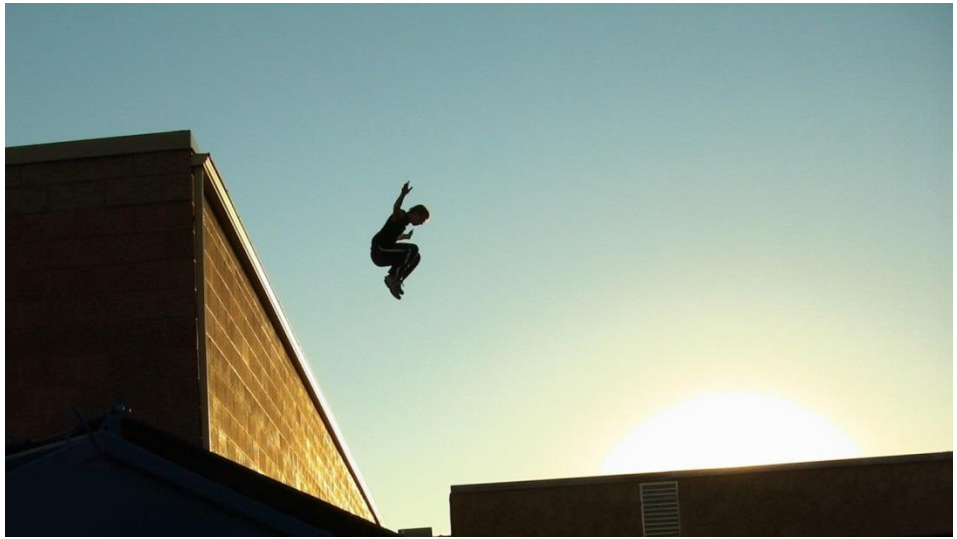
It is presumed that the person has capacity to make their own decisions, unless it is proved otherwise

Support to make a decision

Everyone has the right to be supported to make decisions

Unwise decisions

A person cannot be considered as being unable to make a decision merely because they are making, have made, or are likely to make, an unwise decision



Accessible information

- A person has the right to have accessible information in relation to a particular decision
- More time to understand information
- And information in a range of different formats to maximise understanding (eg easy to read, audio, video, text, pictures)

Legally recognised persons

The Act provides for legally recognised persons referred to as ‘interveners’ to support a person to maximise their decision making capacity

[intervention, Intervention, get involved, intervener]

Retention for short periods

The ability to retain information for short periods only should not be equated to a lack of capacity

Least restrictive intervention

There shall be no intervention unless it is necessary to do so. Any intervention must be in a manner that:

- Minimises any restrictions on a person's rights and freedom of action
- Is as limited in duration as possible
- Is proportionate to the significance and urgency of the decision
- Is for the benefit of the person

What is capacity?

Capacity is defined as the person's **ability to understand**, at the **time** 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

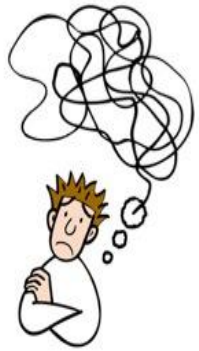
Functional Approach to Capacity

- Functional approach
  - How the decision is made, **not** the outcome or consequence of the decision
  - Functional approach is issue, context and time specific

Functional assessment of capacity

The functional assessment states that a person is unable to make a decision for himself if he is unable to:

- **Understand** the information in relation to the decision
- **Retain** the information for long enough to make a choice
- **Use or weigh up** that information at part of the process of making a decision
- **Communicate** their decision (whether by talking, sign language, using technology or any other means).



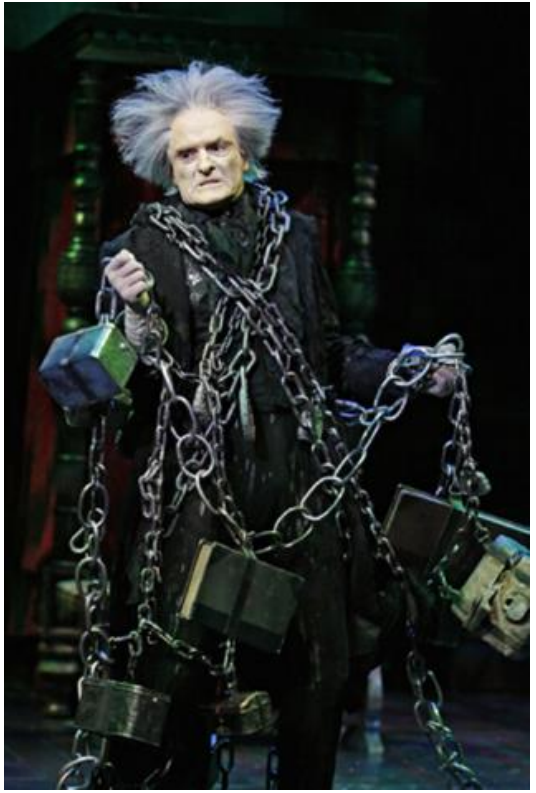
Will and preference

If there is concern that someone lacks capacity to make a decision, it is essential that their past **will and preferences** are taken into consideration

"He'll take a dozen long-stemmed roses."

Abolition of Wards of Court

- The Wards of Court system will be **abolished.**
- There will be a **review** of all existing wards – they will be **discharged fully and may be supported to transition** into one of the new decision-making arrangements provided for under the Act.
- This will happen within 3 years of the Act being commenced.



Who are the legally recognised persons?

- Decision-Making Assistant
- Co-Decision-Maker
- Decision-Making Representative
- Enduring Power of Attorney
- Designated Healthcare Representative

New three-tier framework of 'decision supporters'

Decision-Making Assistant (DMA)

Appointed by the relevant person to help obtain and explain information and communicate a decision

The person still makes the decision

Co-Decision Maker (CDM)

Appointed by the relevant person to make specified decisions jointly

Decision-Making Representative (DMR)

Last resort

May be appointed by the Circuit Court

The court order sets out what decisions the DMR can take on behalf of the relevant person

Enduring Power of Attorney

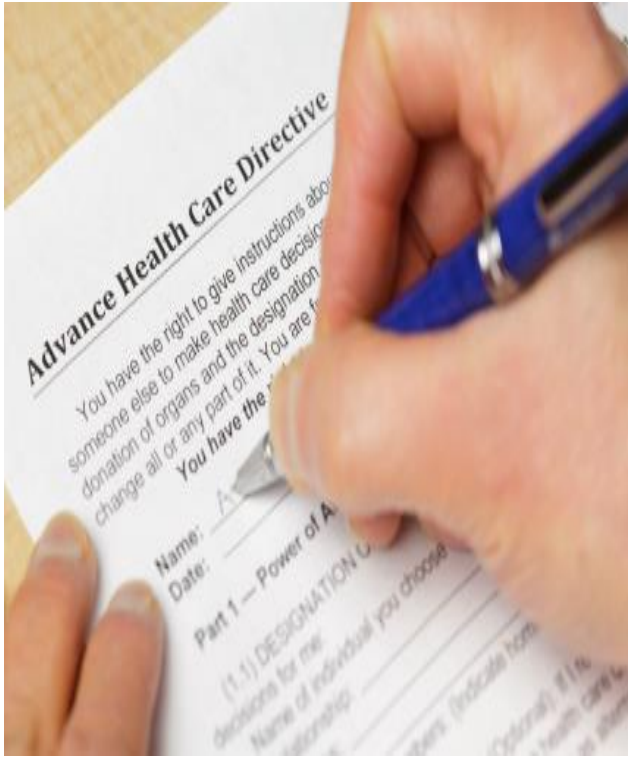
An Enduring Power of Attorney (EPA) is an arrangement whereby a **Donor** (the person who may **lack capacity in the future**) gives a general power to an **Attorney** (the person providing assistance) to act on their behalf.

Enduring Power of Attorney

- The EPA only comes into effect when **registered with the Decision Support Service**.
- An objection can be made to the Director of Decision Support Service to the registration of an EPA for a number of reasons:
  - the **unsuitability** of the attorney
  - **fraud** or
  - **undue pressure** was used to induce the donor to create the EPA.

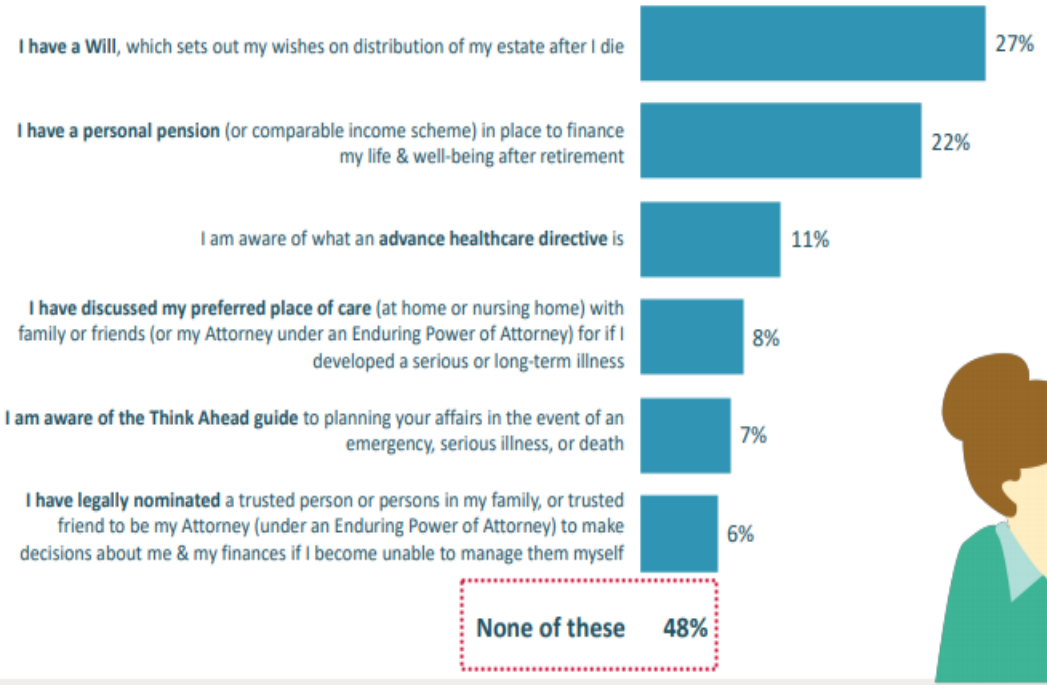
Advance Healthcare Directives

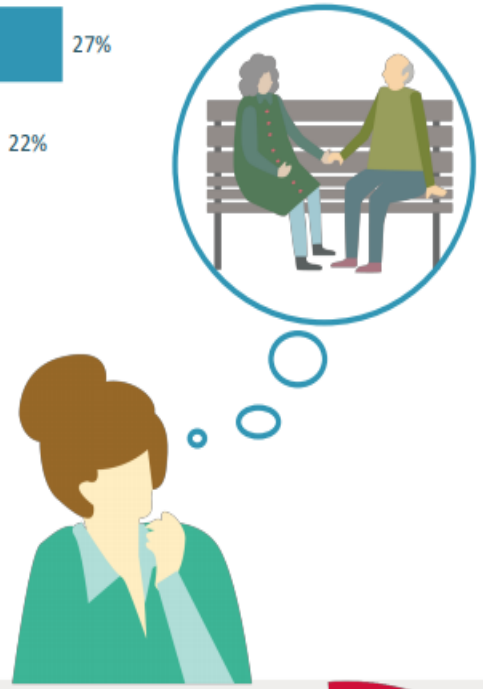
- Legally recognised statement about your future **medical or surgical treatment choices**
- Comes into **effect** when you **lack capacity**



Incidence of Planning Ahead to Safeguard Future

(Base: All Adults 18+; n=1,009)





Half of the population (52%) have taken at least one of the six suggested actions to safeguard their future. Taking out a will is the most common action, followed by having a personal pension. Only 6% have nominated an Attorney to make decisions for them, if they become unable to do so themselves.

(Q.1)

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Assisting and Supporting Decision-Making

- **Appointment by person with Capacity to plan for the future – comes into effect when person lacks capacity**
  - Attorney: Enduring Power of Attorney
  - Designated Healthcare Representative: Advance Healthcare Directive
- **Appointment by person when Capacity is in question/shortly in question**
  - Decision-Making Assistant: Decision-Making Assistance Agreement
  - Co-Decision-Maker: Co-Decision-Making Agreement
- **Appointment by Court when person lacks capacity – EPA or AHD does not include decision to be made**
  - Decision-Making Representative: Decision-Making Representation Order

Decision Support Service

Functions include:

- Promote awareness and confidence in the new framework;
- Provide information and guidance to organisations and bodies;
- Maintain searchable registers of arrangements;
- Supervise the decision support arrangements;
- Complaints and investigations function in respect of arrangements;
- Support organisational change to promote the exercise of capacity;
- Maintain panels of persons to carry out certain roles under the Act;
- Publish Codes of Practice to provide guidance to relevant persons, decision supporters and professionals.

seirbhís tacaíochta cinnteoireachta
decision support service

Decision Support Service

- Received 17 draft Codes of Practice – National Consultation
- Public Information Campaign – explainer video
- Establishment of Panels and Registers
- Developing ICT system – Digital first approach
- Commencement – June 2022

seirbhís tacaíochta cinnteoireachta
decision support service

HSE National Office for Human Rights and Equality Policy

- Support for front line services
- Draft Codes of Practice
- Guidance and documentation
- Education and training – development of e-learning
- Webinars
- Newsletter – adm@hse.ie
- Website and information
  - www.assisteddecisionmaking.ie

HSE National Office for Human Rights and Equality Policy:

Caoimhe Gleeson caoimhe.gleeson@hse.ie
087 650 4793

Jacqueline Grogan jacqueline.grogan@hse.ie
087 190 4787

Elaine McCaughley elaine.mccaughley@hse.ie
087 101 9404

Marie Tighe marie.tighe1@hse.ie
087 627 4815

Web: **www.qualityimprovement.ie**

www.assisteddecisionmaking.ie

Email: **adm@hse.ie**