



STATUTORY INSTRUMENTS.

S.I. No. 205 of 2023

ASSISTED DECISION-MAKING (CAPACITY) ACT 2015 (SECTION
10(4)) REGULATIONS 2023

ASSISTED DECISION-MAKING (CAPACITY) ACT 2015 (SECTION 10(4)) REGULATIONS 2023

I, RODERIC O'GORMAN, Minister for Children, Equality, Disability, Integration and Youth, in exercise of the powers conferred on me by section 4A (inserted by section 6 of the Assisted Decision-Making (Capacity) (Amendment) Act 2022 (No. 46 of 2022)) (the “Act of 2022”) and section 10(4) (amended by section 9(c) of the Act of 2022) of the Assisted Decision-Making (Capacity) Act 2015 (No. 64 of 2015), hereby make the following regulations:

1. These Regulations may be cited as the Assisted Decision-Making (Capacity) Act 2015 (Section 10(4)) Regulations 2023.

2. In these Regulations –

“Act of 2015” means the Legal Services Regulation Act 2015 (No. 65 of 2015);

“agreement” means a decision-making assistance agreement;

“immediate family member” means –

- (a) a spouse, civil partner, or cohabitant,
- (b) a child, son-in-law or daughter-in-law,
- (c) a parent, step-parent, mother-in-law or father-in-law,
- (d) a brother, sister, step-brother, step-sister, brother-in-law or sister-in-law,
- (e) a grandparent or grandchild,
- (f) an aunt or uncle, or
- (g) a nephew or niece;

“Principal Act” means the Assisted Decision-Making (Capacity) Act 2015 (No. 64 of 2015).

3. An agreement and any variation thereof shall –

- (a) be in accordance with the specifications made by the Director under section 10(4A) of the Principal Act,
- (b) subject to Regulation 12, specify those personal welfare or property and affairs decisions, or both, to which the agreement relates, and
- (c) take effect from the date of its execution.

4. An agreement shall be executed as follows:
 - (a) by the signature of the agreement by –
 - (i) the appointer or a person on his or her behalf in accordance with Regulation 5, and
 - (ii) the decision-making assistant;
 - (b) by the attestation of the signatures in accordance with Regulation 6 and in the form specified by the Director under section 10(4A) of the Principal Act.

5. An agreement may be signed on behalf of the appointer by a person who has attained the age of 18 years and who is not a witness referred to in Regulation 6 if –

- (a) the appointer is unable to sign the agreement,
- (b) the appointer is present and directs that the agreement be signed on his or her behalf by the person, and
- (c) the signature of that person is attested in accordance with Regulation 6.

6. (1) The appointer, or the person signing on his or her behalf in accordance with Regulation 5, and the decision-making assistant shall sign the agreement in the presence of each other and in the presence of a witness to whom Regulation 7 refers and who –

- (a) has attained the age of 18 years,
- (b) is not an immediate family member of the appointer or of the decision-making assistant, and
- (c) is not an employee or agent of the decision-making assistant.

(2) A witness referred to in paragraph (1) shall attest the signature of the appointer, or the person signing on his or her behalf in accordance with Regulation 5, and the signature of the decision-making assistant, by applying his or her own signature to the agreement.

7. A person may act as a witness under Regulation 6 if he or she is –
 - (a) a commissioner for oaths,
 - (b) a healthcare professional specified in Regulation 3 of the Assisted Decision-Making (Capacity) Act 2015 (Prescribed Classes of Healthcare Professionals) Regulations 2023,
 - (c) a member of any rank of the Garda Síochána appointed under Part 2 of the Garda Síochána Act 2005 (No. 20 of 2005) or under an enactment repealed by that Act, other than a member of the civilian staff of the Garda Síochána,
 - (d) a member of the clergy or minister of any religious denomination,

- (e) a person who –
 - (i) has been admitted as, and is, a member of a prescribed accountancy body within the meaning of section 900(1) of the Companies Act 2014 (No. 38 of 2014),
 - (ii) is currently practising in the profession of accountancy, and
 - (iii) is maintaining such minimum level of professional indemnity insurance as is required by the prescribed accountancy body concerned,
- (f) a practising barrister within the meaning of section 2(1) of the Act of 2015,
- (g) a practising solicitor within the meaning of section 2(1) of the Act of 2015,
- (h) a registered dentist within the meaning of section 2 of the Dentists Act 1985 (No. 9 of 1985),
- (i) a registered medical practitioner within the meaning of section 2 of the Medical Practitioners Act 2007 (No. 25 of 2007),
- (j) a registered pharmacist, being a person whose name for the time being is entered in the register of pharmacists, established and maintained under section 13 of the Pharmacy Act 2007 (No. 20 of 2007), or
- (k) an elected representative within the meaning of section 40 of the Data Protection Act 2018 (No. 7 of 2018).

8. Regulations 4 to 7 shall apply to the variation of an agreement as agreed between the appointer and the decision-making assistant under section 10(3) of the Principal Act, as they apply to the execution of an agreement, with any necessary modifications.

9. The revocation of an agreement by an appointer or a decision-making assistant under section 10(3) of the Principal Act shall –

- (a) be in accordance with the specifications made by the Director under section 10(4A) of the Principal Act, and
- (b) take effect from the date of its execution.

10. Regulations 4 to 7 shall apply to the revocation of an agreement as they apply to the execution of an agreement, with any necessary modifications, including the following:

- (a) where the agreement is revoked by the appointer –
 - (i) Regulation 4(a)(ii) shall not apply,

- (ii) Regulation 6(1) shall be read as if the words “and the decision-making assistant” and “in the presence of each other and” were deleted, and
- (iii) Regulation 6(2) shall be read as if the words “and the signature of the decision-making assistant,” were deleted;
- (b) where the agreement is revoked by the decision-making assistant –
 - (i) Regulations 4(a)(i) and 5 shall not apply,
 - (ii) Regulation 6(1) shall be read as if the words “The appointer, or the person signing on his or her behalf in accordance with Regulation 5, and” and “in the presence of each other and” were deleted, and
 - (iii) Regulation 6(2) shall be read as if the words “the signature of the appointer, or the person signing on his or her behalf in accordance with Regulation 5, and” were deleted.

11. Notwithstanding Regulations 9 and 10, where a decision-making assistant becomes disqualified from being a decision-making assistant for the appointer under section 13 of the Principal Act –

- (a) the agreement concerned shall be deemed to be revoked from the date of disqualification, or
- (b) if there is more than one decision-making assistant appointed in the agreement concerned, that agreement shall be deemed to be revoked, insofar as it relates to the decision-making assistant who has become disqualified, from the date of disqualification.

12. Any one or more of the following may be specified in an agreement:

- (a) matters contained in paragraph (a), (b), (c), (d), (e), (ea) or (f) of the definition of “personal welfare” in section 2(1) of the Principal Act in relation to the appointer;
- (b) matters contained in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i), (j) or (k) of the definition of “property and affairs” in section 2(1) of the Principal Act in relation to the appointer.

13. (1) The appointer or decision-making assistant shall, not later than 5 weeks after the execution of the agreement, and of any variation or revocation thereof, as the case may be, or such longer period as may be agreed in advance with the Director, give notice, in the form specified under section 10(4A) of the Principal Act, to the following persons of such execution:

- (a) the Director;
- (b) the spouse or civil partner (if any) of the appointer;
- (c) the cohabitant (if any) of the appointer;

- (d) any children of the appointer who have attained the age of 18 years;
 - (e) any co-decision-maker for the appointer;
 - (f) any decision-making representative for the appointer;
 - (g) any attorney for the appointer;
 - (h) any designated healthcare representative for the appointer;
 - (i) any other decision-making assistant for the appointer.
- (2) The notice referred to in paragraph (1) shall be accompanied by –
- (a) a copy of the executed agreement, or the variation or revocation thereof, as the case may be, and
 - (b) any additional documents or matters specified by the Director under the Principal Act.



GIVEN under my Official Seal,
26 April, 2023.

RODERIC O'GORMAN,
Minister for Children, Equality, Disability, Integration and
Youth.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
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DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
MOUNTSHANNON ROAD,
KILMAINHAM, DUBLIN 8,
D08 XAO6

Tel: 046 942 3100
E-mail: publications@opw.ie

ISBN 978-1-3993-2356-7



€ 3.00

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