



STATUTORY INSTRUMENTS.

S.I. No. 203 of 2023

ASSISTED DECISION-MAKING (CAPACITY) ACT 2015 (PAYMENT OF
CERTAIN EXPENSES AND REMUNERATION TO DECISION-MAKING
REPRESENTATIVES) REGULATIONS 2023

ASSISTED DECISION-MAKING (CAPACITY) ACT 2015 (PAYMENT OF CERTAIN EXPENSES AND REMUNERATION TO DECISION-MAKING REPRESENTATIVES) 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 42 (amended by section 35 of the Act of 2022) of the Assisted Decision-Making (Capacity) Act 2015 (No. 64 of 2015), after consultation with the Director of the Decision Support Service and with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, as adapted by the Public Expenditure and Reform (Alteration of Name of Department and Title of Minister) Order 2023 (S.I. No. 19 of 2023), hereby make the following regulations:

1. These Regulations may be cited as the Assisted Decision-Making (Capacity) Act 2015 (Payment of Certain Expenses and Remuneration to Decision-Making Representatives) Regulations 2023.

2. In these Regulations –

“functions” means the functions of a decision-making representative under a decision-making representation order;

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

3. The travelling (not including subsistence) expenses that are incurred by a decision-making representative in accordance with section 42(1) of the Principal Act of an amount equal to the travelling expenses at the highest travel (not including subsistence) rate applying to a person holding a position in the Civil Service of the State are prescribed for the purposes of that section.

4. For the purposes of section 42(4) of the Principal Act, the reimbursement of -

- (a) travelling (not including subsistence) expenses to which section 42(3)(i) of the Principal Act relates shall be calculated on the basis of the highest travel (not including subsistence) rate applying to a person holding a position in the Civil Service of the State, and
- (b) expenses other than those to which paragraph (a) relates shall be subject to the following conditions:

- (i) a submission in writing having been made to the Director in advance of the expenses being incurred outlining the nature of and necessity for the expenses,
- (ii) the provision of written material supporting the submission where appropriate or where requested by the Director, and
- (iii) the approval of the Director given on the basis of the submission in advance of the expenses being incurred.

5. For the purposes of section 42(4) of the Principal Act and subject to Regulations 7, 8 and 9, the payment of reasonable remuneration referred to in section 42(2) of the Principal Act shall be subject to the approval of the Director in advance of the performance of the functions to which the remuneration relates, and shall be calculated subject to the maximum applicable limit specified in Schedule 1, taking the following into account:

- (a) the functions of the decision-making representative;
- (b) a written submission made to the Director by the decision-making representative providing his or her reasoned estimation (in the context, where appropriate, of functions performed previously) of –
 - (i) how frequently each function will be performed during the relevant reference period for the remuneration, and
 - (ii) the amount of work that in his or her estimation will be required to perform the functions during the relevant reference period for the remuneration;
- (c) any previous reports submitted by the decision-making representative under section 46 of the Principal Act;
- (d) the finances of the relevant person.

6. For the purposes of section 42(4) of the Principal Act and subject to Regulations 8 and 9, the payment of reasonable remuneration referred to in section 42(3)(ii) of the Principal Act shall be subject to the approval of the Director in advance of the performance of the functions to which the remuneration relates, and shall be calculated, subject to the maximum applicable limit specified in Schedule 2, taking the following into account:

- (a) the functions of the decision-making representative;
- (b) a written submission made to the Director by the decision-making representative providing his or her reasoned estimation (in the context, where appropriate, of functions performed previously) of –
 - (i) how frequently each function will be performed during the relevant reference period for the remuneration, and

- (ii) the amount of work that in his or her estimation will be required to perform the functions during the relevant reference period for the remuneration;
- (c) any previous reports submitted by the decision-making representative under section 46 of the Principal Act.

7. Where –

- (a) the court has appointed more than one decision-making representative for a relevant person, and
- (b) section 42(2) of the Principal Act applies to the payment of reasonable remuneration to those decision-making representatives,

the total remuneration paid to all those decision-making representatives shall –

- (i) not exceed the maximum applicable amount specified in Schedule 1 unless Regulation 8 applies, and
- (ii) be divided between the decision-making representatives based on the number, nature and complexity of the relevant functions to be performed by each of them.

8. Reasonable remuneration in excess of the maximum applicable amounts specified in Schedule 1 or Schedule 2, as the case may be, may be paid where –

- (a) a submission in writing requesting approval for such payment is made to the Director, containing information regarding the criteria to be assessed by him or her, in advance of the performance of the functions to which the remuneration would relate,
- (b) the Director has assessed the submission on the basis of the following criteria:
 - (i) whether the circumstances are of such an exceptional nature as to warrant the payment of remuneration in excess of the maximum threshold;
 - (ii) the nature and frequency of the particular functions of the decision-making representative on the basis of which the submission is made;
 - (iii) the level of additional work that would be involved in performing such functions, and
- (c) following his or her assessment, the Director has approved any excess remuneration in writing in advance of the performance of the functions to which the remuneration would relate.

9. In the period immediately after a decision-making representation order has been made and before the submission referred to in Regulation 5(b) or 6(b), as the case may be, has been made, the decision-making representative may be paid remuneration during that period (which shall not be longer than 3 months), in respect of the performance of his or her functions during that period, and such remuneration shall not exceed in total one quarter of the applicable maximum annual remuneration limit for year 1 specified in Schedule 1 or 2, as the case may be.

SCHEDULE 1*Regulations 5, 7, 8 and 9*

(1) Reference period for remuneration	(2) Annual maximum limit (personal welfare functions only)	(3) Annual maximum limit (property and affairs functions only)	(4) Annual maximum limit (both personal welfare and property and affairs functions)
Year 1	€3,000	€4,000	€5,000
Year 2 and subsequent years	€2,500	€3,500	€4,500

SCHEDULE 2*Regulations 6, 8 and 9*

(1) Reference periods for maximum rates or limits	(2) Remuneration for property and affairs functions, or both property and affairs and personal welfare functions, in Year 1	(3) Remuneration for property and affairs functions, or both property and affairs and personal welfare functions, in Year 2 and subsequent years	(4) Remuneration for personal welfare functions only in Year 1	(5) Remuneration for personal welfare functions only in Year 2 and subsequent years
1. Maximum Hourly Rate	€100	€100	€100	€100
2. Maximum Daily Rate	€600	€600	€600	€600
3. Annual Maximum Limit	€3,000	€2,500	€2,000	€1,500

The Minister for Public Expenditure, National Development Plan Delivery and Reform consents to the making of the foregoing Regulations.



GIVEN under the Official Seal of the Minister for Public Expenditure, National Development Plan Delivery and Reform,

26 April, 2023.

PASCHAL DONOHOE,
Minister for Public Expenditure,
National Development Plan Delivery and Reform.



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
FOILSEACHÁIN RIALTAIS,
BÓTHAR BHAILE UÍ BHEOLÁIN,
CILL MHAIGHNEANN,
BAILE ÁTHA CLIATH 8,
D08 XAO6

Tel: 046 942 3100
r-phost: publications@opw.ie

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 978-1-3993-2354-3



€ 3.00

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